

Evaluating And Minimizing The FCPA Risks When Conducting Business In Emerging Markets



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In the aftermath of Sarbanes-Oxley, FCPA issues rightfully have become more dangerous and important for counsel to consider in connection with advising clients on corporate governance and regulatory matters.

THE PROVISIONS OF the Foreign Corrupt Practices Act (“FCPA” or the “Act”) that are incorporated into the Exchange Act pose significant liability for publicly traded businesses that conduct activities within and outside the United States. As one commentator explains, “[t]he FCPA addresses the problem of transnational bribery in two...ways. First...[it] prohibits corrupt payments made to foreign officials...to obtain or retain business. Second, the Act...require[s]...publicly traded companies [to] implement accounting and financial controls.” *See, e.g.,* H. Lowell Brown, *Avoiding Bribery When Doing Business Overseas: A Primer on the Foreign Corrupt Practices Act*, 20 Me. B.J. 78, 78-79, (2005). Violating the FCPA’s accounting and financial control provisions, or its anti-bribery provisions, can lead to civil and criminal liability and pose other serious consequences, such as suspension or debarment. *Id.* at 83-84.

THE ANTI-BRIBERY PROVISIONS • The Act’s anti-bribery provisions are codified as amended in section 30A of the Exchange Act, 15 U.S.C. §78dd-1. In pertinent part, these provisions “prohibit publicly held companies from making payments to foreign officials ‘for purposes of’ in-