

No Turning Back: 40 Years of the FCPA and 20 Years of the OECD Anti-Bribery Convention

Impact, Achievements, and Future
Challenges

DRAFT AGENDA

9 November 2017

New York University School of Law, Greenberg Lounge,
40 Washington Square South, First Floor, New York, New
York, United States

Hosted by the Program on Corporate Law and Enforcement, New
York University School of Law



■ Draft agenda

08:30 Registration

09:00 – 09:10 Opening Remarks

Speakers	<ul style="list-style-type: none"> • Drago Kos, Chair, OECD Working Group on Bribery • Sandra Moser, Acting Chief, DOJ Fraud Section
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09:10 – 09:30 DOJ Keynote Address

Speaker	Assistant Attorney General, Criminal Division, United States Department of Justice
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09:30 – 10:00 The FCPA and the OECD Anti-Bribery Convention: An Historical Perspective

Moderator	F. Joseph Warin, Partner, Gibson Dunn
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Speakers	<ul style="list-style-type: none"> • Participant with US perspective on FCPA and OECD Anti-Bribery Convention (TBC) • Prof. Mark Pieth, President of Basel Institute on Governance, Former Chair of OECD Working Group on Bribery
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The panellists will present the historical backdrops of the FCPA and the Convention on Combating Bribery of Foreign Public Officials in International Business Transactions (the OECD Anti-Bribery Convention).

10:00 – 11:00 The FCPA's Impact on Corporate Behaviour

Objectives	This roundtable examines the FCPA's impact on corporations that conduct international business. It focusses on how the FCPA has influenced the establishment and implementation of internal controls and compliance programs in companies organized under the U.S. laws and outside, including in extremely high-risk environments. It also considers the role of the FCPA in promoting a culture of integrity in companies.
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Moderator	Prof. Jennifer Arlen, Professor of Law, Director, Program on Corporate Compliance and Enforcement, New York University School of Law
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Roundtable members	<ul style="list-style-type: none"> • Andreas Pohlmann, Pohlmann & Company, Former Chief Compliance Officer of Siemens AG, Former Executive Board Member of Ferrostaal AG responsible for Compliance and Administration, Former Chief Compliance Officer SNC-Lavalin Group Inc. • Kathryn Reimann, Chief Compliance Officer, Citibank • Charles Duross, Partner, White-Collar Defence Practice Group, Morrison Foerster; Former Deputy Chief, Fraud Section, U.S. DOJ • Laurent Cohen-Tanugi, Founder and Managing Partner, Laurent Cohen-Tanugi Avocats, Former FCPA Independent Corporate Monitor appointed by U.S. DOJ and U.S. SEC
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11:00 – 11:15 Coffee break

11:15 – 12:15 The OECD Anti-Bribery Convention's Impact on Bribery and Corruption over the Last 20 Years	
Objectives	Since its adoption 20 years ago, 43 countries have ratified the OECD Anti-Bribery Convention and joined the Working Group on Bribery. Before 1997, the United States was essentially alone in combating the supply of bribes to foreign public officials. This roundtable explores how the Convention helped to propel the global fight against transnational bribery, its impact on reducing foreign bribery, and the challenges that members of the Working Group on Bribery needed to overcome with respect to enforcement.
Moderator	Drago Kos, Chair, OECD Working Group on Bribery
Roundtable members	<ul style="list-style-type: none"> • Prof. Rachel Brewster, Duke University School of Law • Prof. Paul Healy, Harvard Business School • Prof. Kevin Davis, New York University School of Law • Fritz Heimann, Director, Coalition for Integrity; Founding Member of Transparency International
12:15 – 13:15 Implementing the OECD Anti-Bribery Convention: Diverse Approaches	
Objectives	The OECD Anti-Bribery Convention assures 'functional equivalence' among the measures taken by the Parties to sanction foreign bribery without requiring uniformity or changes in fundamental principles of a Party's legal system. This panel considers how the Working Group on Bribery has interpreted 'functional equivalence' in practice, and how it has resulted in a divergence of approaches in certain areas. This session explores areas including encouragement of self-reporting, use of settlement procedures, targeted enforcement, and suspended sentences.
Moderator	Nicola Bonucci, Director, Legal Directorate, OECD
Speakers	<ul style="list-style-type: none"> • Daniel Kahn, Chief, DOJ FCPA Unit • David Green CB QC, Director, UK SFO • Eric Russo, First Deputy Prosecutor, Parquet National Financier, France • Yoshimitsu Yamauchi, Director, International Affairs Division, Criminal Affairs Bureau, Ministry of Justice, Japan
13:15 – 13:30 SEC Keynote Address	
Speaker	<ul style="list-style-type: none"> • Steven Peikin, Co-Director, SEC Division of Enforcement
13:30 – 14:30	Lunch

14:30 – 15:30 Globalisation: Increased Foreign Bribery Risks and Increased Opportunities for Cooperation	
Objectives	Although globalisation increases the risk of foreign bribery, it also provides important opportunities for cooperation and coordinated resolutions between nations in order to combat the phenomenon. This roundtable discusses evolving areas of cooperation, including their challenges: international legal assistance; the use of joint investigation teams (JITs); multi-jurisdictional resolutions; and sharing fines and confiscated assets.
Moderator	Prof. Mark Pieth, President of Basel Institute on Governance, Former Chair of OECD Working Group on Bribery
Roundtable members	<ul style="list-style-type: none"> • Marianne Djupesland, Chief Public Prosecutor, Økokrim, Norway • Charles Cain, Acting Chief, SEC FCPA Unit • Darryl Wegner, International Corruption Unit, U.S. Federal Bureau of Investigation
15:30 – 16:30 Corporate Liability for Foreign Bribery	
Objectives	Article 2 of the Anti-Bribery Convention requires Parties to make corporations and other legal entities responsible for foreign bribery, and Annex I of the 2009 Recommendation clarifies the standards for this purpose. The standards for corporate liability under the Convention have been a catalyst for significant law reform by the Parties to the Convention. Despite major inroads, many Parties still struggle with certain challenges to investigating and prosecuting legal entities. This panel explores some of the most significant challenges and how to overcome them, including successor liability, investigating and prosecuting companies and other legal arrangements where the beneficial owner is a trust, and attributing liability to a company for the acts of its subsidiary abroad.
Moderator	Prof. Jennifer Arlen, Professor of Law, Director, Program on Corporate Compliance and Enforcement, New York University School of Law
Speakers	<ul style="list-style-type: none"> • Robert Luskin, Paul Hastings, LLP • Pascale Hélène Dubois, Vice President for Integrity, The World Bank • Markus Busch, Head of Division, German Federal Ministry of Justice and Consumer Protection • Prof. Samuel Buell, Duke University School of Law
16:30 – 16:45	Coffee Break

16:45 – 17:45 The FCPA and the OECD Anti-Bribery Convention: Unfinished Business

Objectives Over the last 40 years, the global economy and geo-political reality have changed drastically. This roundtable will discuss the application of the FCPA and the OECD Anti-Bribery Convention to major evolving foreign bribery issues including the links between foreign bribery and organised crime, cartels, and global security threats (e.g., terrorism, food security, environmental). It will also consider whether it is time to review the FCPA and Anti-Bribery Convention to ensure that they continue to be effective in view of increasingly complex foreign bribery methodologies, and in view of emerging issues such as: the economic and social damage caused by facilitation payments; the impact of foreign bribery on competitors in international business; and bribery in supply chains.

Moderator Drago Kos, Chair, OECD Working Group on Bribery

Roundtable members

- Katherine Choo, Chief Investigative and Anti-Corruption Counsel, General Electric
- Prof. Dr. Peter Eigen, Founder Transparency International; Chair of Transparency International's Advisory Council
- Patrick Moulette, Head, Anti-Corruption Division, OECD
- Prof. Matthew Stephenson, Harvard Law School

17:45 – 18:00 OECD Closing Remarks

Speakers

- Nicola Bonucci, Director, Legal Directorate, OECD