

Extraterritorial regimes: the FCPA and the UK Bribery Act

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The Foreign Corrupt Practices Act of 1977 is the oldest and most influential law against foreign bribery. It contains two sets of provisions. The anti-bribery provisions prohibit payments to foreign officials in order to obtain or retain business. The accounting provisions require issuers of securities listed in the United States to keep accurate books and records and to maintain an adequate system of internal accounting controls. Because Novartis has American Depositary Receipts listed on the New York Stock Exchange, it is an issuer within the meaning of the Act. Roche's American Depositary Receipts, by contrast, have been traded over the counter, which affects the extent to which the accounting provisions apply. Subsidiaries in the United States and anyone who uses the American financial system or acts on American territory may also fall within its scope.¹

The accounting provisions are particularly important for groups with many subsidiaries. A payment that a distributor in a distant country makes to an official may never be proven as a bribe, yet the inaccurate recording of the underlying invoice in the books of a consolidated subsidiary can constitute a violation of the books and records requirement. The Securities and Exchange Commission has used this mechanism in numerous cases against pharmaceutical and medical device companies. For Swiss groups, it means that the internal controls of their subsidiaries worldwide can become the subject of proceedings in the United States.²

The enforcement policy of the United States has been subject to change. In February 2025 the President of the United States ordered a pause in new FCPA investigations and a review of enforcement guidelines. In June 2025 the Department of Justice published new guidelines, which focus enforcement on cases connected with cartels and transnational criminal organisations, on conduct that harms American companies and on serious misconduct. The statute itself remains unchanged, and the limitation

period of five years for the anti-bribery provisions means that conduct can still be pursued under a later administration. Compliance departments in Basel have therefore not reduced their programmes, although the risk assessment has become more complex.³

The UK Bribery Act 2010 adds a further layer. Its section 7 creates the offence of a commercial organisation's failure to prevent bribery by persons associated with it. The offence applies to any organisation that carries on a business or part of a business in the United Kingdom, which includes the British subsidiaries and branches of the Basel groups. The only defence is that the organisation had adequate procedures in place to prevent bribery. Unlike the FCPA, the Bribery Act also covers private bribery and does not exempt facilitation payments. The Economic Crime and Corporate Transparency Act 2023 has since introduced a further failure-to-prevent offence for fraud, which entered into force in September 2025.⁴

For a company in Basel, the coexistence of these regimes means that a single incident can trigger proceedings in several countries. Authorities have developed rules on the crediting of penalties paid elsewhere, which are designed to avoid multiple sanctions for the same conduct. In practice, the coordination of these proceedings is one of the most demanding tasks of the lawyers who advise a group in a bribery investigation. Questions of legal privilege, data protection and Swiss blocking statutes arise, because documents located in Switzerland can be handed to foreign authorities only within the limits of Article 271 StGB and the rules on mutual legal assistance.⁵

1 Notes

1. Foreign Corrupt Practices Act of 1977, 15 U.S.C. §§ 78dd-1 et seq. (anti-bribery provisions) and 15 U.S.C. § 78m(b) (books and records and internal controls). On the listing status of Novartis and Roche securities in the United States, see the companies' annual reports and SEC filings. To be verified. ↩
2. On the enforcement of the FCPA accounting provisions against life sciences companies, see the FCPA enforcement pages of the SEC and the DOJ and the FCPA Resource Guide (2nd edition, 2020). To be verified. ↩
3. Executive Order of 10 February 2025, "Pausing Foreign Corrupt Practices Act Enforcement to Further American Economic and National Security"; US Department of Justice, Guidelines for

Investigations and Enforcement of the Foreign Corrupt Practices Act, June 2025. Status to be verified. ↩

4. Bribery Act 2010, sections 1, 6 and 7; Economic Crime and Corporate Transparency Act 2023, section 199 (failure to prevent fraud), in force since 1 September 2025. Status to be verified. ↩
5. Article 271 StGB (unlawful activities on behalf of a foreign state) and Article 273 StGB (industrial espionage); on the coordination of multi-jurisdictional resolutions, see the DOJ's policy on coordination of corporate resolution penalties (Justice Manual 1-12.100, 2018). To be verified. ↩

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