

Davis Polk

GLOBAL COMPLIANCE AND INVESTIGATIONS GROUP

WINTER 2012

Davis Polk's "stellar white collar group" has consistently been ranked 1st tier among New York law firms in white collar crime and government investigations in Chambers USA 2005-2012.

DAVIS POLK & WARDWELL LLP has one of the premier global compliance and investigations practices. We have long been the firm of choice for the world's leading companies on their most critical transnational legal and business matters. Our Global Compliance Group works side by side with companies to develop effective compliance programs, prepare policies and procedures to control risk, communicate policies, train employees, create monitoring and auditing procedures, investigate potential misconduct, deal with regulatory authorities in multiple jurisdictions and devise strategies for remedial action.

Davis Polk's global compliance practice combines professionals from our white collar criminal defense and regulatory enforcement, antitrust, corporate and financial institutions groups. Our team includes lawyers who have served in the Justice Department, CIA, SEC, State Department, Treasury Department and its Office of Foreign Assets Control, White House, Office of the Independent Counsel and state prosecutors' offices, as well as leading practitioners in white collar criminal defense, banking and securities regulation around the globe.

We have been involved in some of the largest DOJ, SEC and international corruption investigations in recent history. In addition, we routinely conduct internal investigations for companies that have discovered potential violations of anti-bribery and other laws. Clients also come to us for advice on all facets of FCPA compliance, including risk assessment, books and records, gifts and hospitality, and best practices as to business partners and mergers and acquisitions. We have designed and developed anti-bribery compliance programs and drafted numerous agent agreements, anti-bribery guidelines and compliance policies tailored to take account of differences in corporate operations, structures, locations and cultures. We also conduct intensive training programs at all levels for employees and executives of U.S. companies and their overseas subsidiaries in many parts of the world, as well as for foreign issuers of U.S. securities.

The roster of clients for whom we have done work in this area includes some of the largest financial institutions, investment banks and Fortune 500 companies, including pharmaceutical, medical device and consumer goods companies.

As each company has its own unique set of compliance needs and issues, we take a highly tailored approach to developing compliance policies and procedures for our clients. Given the nature of this work, much of what we do on behalf of clients remains confidential. Some of the areas on which we regularly advise include the following.

GOVERNMENT INVESTIGATIONS OF CORRUPTION

It is critical that companies doing business around the world comply with various anti-corruption laws, including the U.S. Foreign Corrupt Practices Act (FCPA), that prohibit giving or promising payments or anything else of value to government officials to secure an improper commercial advantage. Failing to comply with these laws may subject a company to criminal and/or civil fines, reputational risk and collateral consequences, including debarment, private litigation, loss of executives and forced oversight of compliance by independent monitors.

Davis Polk has been involved in some of the most complicated and seminal regulatory and white collar cases in recent times. We are widely recognized as having one of the most distinguished FCPA practices in the United States. For over 25 years, our litigators have represented corporate and individual clients in some of

Davis Polk's FCPA Group "impresses the market with its export controls and FCPA expertise... It has been involved in some of the most significant DOJ, SEC and international corruption investigations and advises clients on all facets of FCPA compliance."
– *Chambers USA 2011*

the largest and most significant government FCPA investigations, including our recent representation of Siemens AG in a global investigation involving corruption allegations brought by regulators and enforcement authorities in several countries. These matters frequently are international in scope and increasingly involve Davis Polk lawyers working closely with counsel in many other countries. In addition, we have numerous lawyers in our overseas offices who are experienced in conducting FCPA investigations and reviews.

Notable representations, among many others, include:

Davis Polk's "heavyweight FCPA practice attracts a highly prestigious client base."
– *Chambers USA 2012*

1st tier among New York law firms in white collar crime and government investigations matters – *Legal 500 U.S. 2007-2012*:

▪ **"'[W]onderful firm' Davis Polk & Wardwell LLP is justifiably regarded as 'one of the pre-eminent criminal defense and investigations practices in the US'."**

- We successfully represented Morgan Stanley in connection with investigations by the DOJ and SEC into FCPA violations relating to Morgan Stanley's real estate investing operations in mainland China. The decision not to charge Morgan Stanley was the first-ever publicly announced decision not to prosecute a company in an FCPA case based on the quality of its anti-corruption program and its cooperation in the investigation.
- We represented Smith & Nephew in connection with a joint SEC and DOJ anti-corruption investigation into practices in the medical device industry.
- We represent two major financial institutions in connection with the SEC's industry-wide FCPA review of the Sovereign Wealth Fund business.
- We represent a major drug company in connection with a joint SEC and DOJ corruption investigation.
- We represent BHP Billiton, the world's largest mining company, in an FCPA investigation relating to certain exploration projects in multiple worldwide jurisdictions.
- We represented Siemens in the largest FCPA investigation in U.S. history, which resulted in a landmark settlement with the DOJ and SEC. We also advised on the company's global defense to investigations in multiple jurisdictions and a settlement with the World Bank.
- We represent Con Edison, a New York utility company, in connection with investigations by the DOJ and other agencies into allegations that employees received kickbacks from contractors in exchange for the approval of inflated and fraudulent payments.
- We represent a major international industrial company in connection with an SEC investigation into possible improper payments.
- We represented a global telecommunications company in connection with an SEC investigation prompted by a whistleblower claim concerning alleged improper payments.
- We represent a multinational corporation in connection with a DOJ, SEC, and African Development Bank inquiry into possible corruption issues.
- We represent a professional services firm in connection with DOJ and SEC investigations into one of its clients, a major multi-national industrial company.
- We represent a major financial institution in connection with an SEC anti-corruption investigation into business conducted with Libyan government entities.

Davis Polk “provides ‘excellent industry knowledge and practical advice’ to corporates and executives engaged in regulatory enforcement actions, internal and congressional investigations, as well as litigation.”

– Legal 500 U.S. 2012

- We represented a former senior executive of British defense contractor BAE in the much-publicized investigations by the U.S. and U.K. governments into alleged corruption violations by that company.
- We represented a U.K. company in the first-ever SFO corruption case and in dealings with the World Bank on corruption issues.
- We are advising a major Japanese conglomerate in connection with an SEC FCPA investigation relating to a contract in Africa.
- We represented a large Silicon Valley company in a DOJ FCPA investigation.

INTERNAL CORRUPTION INVESTIGATIONS

Our practice has vast experience in conducting internal investigations and navigating through the issues that companies face in this context. Davis Polk has conducted hundreds of internal investigations over the years, for companies both public and private, large and small. In the past year, we have conducted confidential FCPA-related investigations or reviews for clients in many countries, including Argentina, Brazil, China, Colombia, India, Indonesia, Mexico, Pakistan, the Philippines, Russia and Venezuela. Many of those clients are Fortune 500 companies, including companies that provide market-leading products and services in the technology, consumer, defense/aerospace and finance industries. These include a variety of nonpublic investigations in response to such allegations as FCPA violations, money laundering, economic sanctions violations, campaign finance improprieties, insider trading, fraudulent business practices and others.

Notable representations, among many others, include:

- We represent the Audit Committee of a company with operations in multiple jurisdictions worldwide in an internal investigation of anti-corruption and accounting-related issues.
- We are advising a major European bank in connection with an internal investigation and potential litigation relating to a credit facility.
- We represent a multinational consumer products company on an ongoing basis with respect to confidential transnational compliance matters, including FCPA, anti-contraband and anti-money-laundering programs and investigations.
- We advised a Special Committee of the Board of Directors of a major pharmaceutical company and conducted an internal investigation with regard to alleged accounting irregularities.
- We advised a major European telecommunications company in connection with an internal investigation into possible corruption issues.
- We represented committees of independent directors of the boards of C-NET, E*TRADE and KB Home, in their respective investigations into practices for awarding stock options.
- We routinely advise major pharmaceutical companies in connection with internal investigations, due diligence and related matters.

“At the forefront of the white-collar bar for many years, the ‘very strong’ Davis Polk & Wardwell LLP provides a ‘fabulous’ service to an impressive cadre of blue-chip corporates and financial institutions.”

– Legal 500 U.S. 2011

CORRUPTION-RELATED COMPLIANCE SERVICES

In connection with these compliance areas and subjects, Davis Polk provides a variety of services, some of which are described below.

Codes of Conduct and Business Ethics Policies

Davis Polk routinely reviews, drafts and advises clients on their codes of conduct and business ethics policies, as well as the design of implementing procedures. These codes traditionally include discussion of a company's policies on compliance with anti-corruption laws and interactions with government officials; proper recording of assets, liabilities and transactions; compliance with U.S. economic sanctions, export controls, anti-boycott laws and antitrust laws; anonymous reporting of potential wrongdoing; document retention; and securities trading, to name a few.

Compliance Programs

The best way a company can avoid corporate criminal and civil liability is to implement effective compliance procedures and controls to deter and detect violations of law. Such procedures are not simply a matter of good corporate policy; many government agencies and contracting authorities consider such programs a crucial factor in deciding whether or not to bring charges or sanctions.

An effective compliance program must be closely tailored to a company's particular business and associated legal risks. In all cases, the procedures and policies must be up to date, verifiable (especially if they must be used in the future to convince a prosecutor of the company's good faith), and effectively communicated to and internalized by all employees and in some cases third parties.

Compliance Reviews

The requirements for an effective compliance program are complex, and the cost for not having an effective program is sufficiently high that it is essential that a company's policies and procedures periodically be subject to a thorough review. Such a review can be invaluable in preventing, or at least controlling, the kinds of problems that could otherwise lead to significant liability. In conducting a compliance review, Davis Polk lawyers work closely with management and in-house counsel to identify practices that pose the highest risks of potential violations and to review relevant business practices, including those of agents of the company or foreign subsidiaries, to see if the practices need to be improved.

The firm has designed anti-corruption programs and policies, including policies on gifts and hospitality; business partners and intermediaries; and mergers, acquisitions and joint ventures, for a broad range of companies, including, among others:

- Major pharmaceutical companies
- A cutting-edge Silicon Valley Internet and computer software company
- A premier cosmetics retailer
- A large aerospace company
- Leading banks and investment banks
- An international oil and gas company
- A leading technology solutions company
- An innovative software solutions company

“Highly Recommended” New York litigation firm – Legal Media Group’s Benchmark: America’s Leading Litigation Firms and Attorneys 2012

- A worldwide office support company
- A major real estate investment fund
- Large and small private equity companies
- Multinational consumer products companies
- A global furniture and appliance manufacturer
- A global food services provider
- A prominent tourist travel company
- An international utilities provider
- A multinational cable company

ANTITRUST AND OTHER COMPETITION LAWS

Davis Polk has extensive experience in advising clients on how to address antitrust challenges – both in terms of structuring potential transactions and designing corporate compliance policies and training to promote adherence to the law.

Davis Polk also has broad and deep experience in defending corporations and individuals in criminal and civil antitrust investigations, including transnational price-fixing conspiracies in diverse industries ranging from the marketing of pharmaceuticals to the auctioning of fine art. Davis Polk also regularly represents both plaintiffs and defendants in cases alleging predatory or exclusionary behavior, such as tying, monopolization and patent misuse.

Notable representations, among many others, include:

- We represent a major financial institution in connection with investigations being conducted by various governmental authorities, including the U.S. Department of Justice Fraud and Antitrust Divisions and the CFTC, regarding allegations of manipulation and collusion with respect to the setting of U.S. dollar LIBOR.
- We represented Nautilus Hyosung, a Korean manufacturing conglomerate, in an obstruction of justice investigation by the Department of Justice. After a two-year investigation, the company recently reached an unusual agreement, which allowed the company to resolve the matter with the Antitrust Division of the DOJ, without having the case referred to the DOJ's Criminal Division.
- We represent the Chairman and Chief Executive of a major U.S. corporation in connection with a criminal investigation by the Antitrust Division of the U.S. Department of Justice
- We represent T-Mobile USA and T-Mobile International (Deutsche Telekom), as lead national counsel in a series of class actions filed around the country alleging price-fixing and other antitrust violations by wireless carriers in the market for text messaging services.
- We represented AstraZeneca in antitrust litigation alleging a horizontal conspiracy among drug companies to block the reimportation of prescription drugs from Canada.
- We represented F. Hoffmann-La Roche in civil and criminal antitrust proceedings in connection with alleged worldwide vitamin price-fixing including representing the company in a U.S. Supreme Court case concerning the extraterritorial reach of the U.S. antitrust laws.

1st tier among New York law firms in antitrust matters – Chambers USA 2003-2012:

■ **“A New York market leader, the antitrust contingent at Davis Polk is noted for its deep bench of superb lawyers, all of whom possess strong powers of persuasion, the ability to analyze complex matters and tremendous written skills.”**

- We represented Freeport Copper & Gold in the worldwide antitrust investigation of the copper concentrate industry.
- We represented the former chairman of Sotheby's in a criminal investigation and jury trial concerning alleged price-fixing by major auction houses.
- We represent the former executive of a major Asian airline in a criminal grand jury investigation of alleged price fixing in air cargo and passenger fares.
- We represented an executive of one of the largest global suppliers of printing ink in a criminal grand jury investigation of alleged price fixing in that industry.
- We represented a German manufacturing firm in a federal grand jury investigation and federal and state antitrust class actions alleging a cartel in the magnetic tape industry.

ECONOMIC SANCTIONS (OFAC) AND ANTI-MONEY LAUNDERING

Davis Polk brings unique experience to clients concerning economic sanctions administered by the U.S. Treasury Department's Office of Foreign Assets Control (OFAC) and has been a leader in helping clients comply with anti-money laundering laws and regulations, including the requirements of the Bank Secrecy Act, and the implementing regulations promulgated thereunder by the Department of the Treasury. With the insights of seasoned regulatory lawyers and litigators, Davis Polk assists domestic and foreign clients in all business fields in establishing their compliance programs, planning and conducting transactional due diligence, interacting with OFAC regulators on licensing, compliance and enforcement issues, and handling litigation affected by sanctions issues. The firm helps foreign clients understand OFAC compliance requirements when they come into the U.S. market or prepare for capital markets transactions involving U.S. investors, underwriters or legal advisers. The firm also assists foreign and domestic clients in responding to comments from the SEC's Office of Global Security Risk. Davis Polk provides updates to clients on the frequent changes to U.S. sanctions programs and to designations on OFAC's list of Specially Designated Nationals and Blocked Persons.

Notable representations, among many others, include:

- We represented Intesa Sanpaolo, the largest bank in Italy, in connection with an industry-wide, multiyear criminal and civil investigation by the U.S. Department of Justice, the Manhattan District Attorney's Office, and OFAC into alleged violations of U.S. sanctions and other laws arising from the processing of USD transactions relating to Iran, Cuba, Libya and Sudan. In the only such decision to date, the DOJ and the Manhattan DA determined not to pursue any criminal charges or impose any fines or other penalties against our client.
- We represented JPMorgan Chase Bank in connection with its settlement with OFAC for potential violations of multiple sanctions programs related to doing business with Cuba, Iran, Sudan and other countries.
- We represent the former Chief Compliance Officers of two major financial institutions in parallel criminal and civil investigations by the Manhattan District Attorney, the U.S. Department of Justice, the Federal Reserve and New York State Banking Authority regarding alleged violations of U.S. sanctions against Iran and anti-money laundering and Bank Secrecy Act provisions.

“[Davis Polk] has tremendous credibility before the regulators and is seen by clients as a go-to-firm, in particular for high-profile government-led investigations.”
– Legal 500 U.S. 2011

- We represent a major financial institution in connection with an SEC investigation concerning customers' use of tax shelters to avoid securities reporting.
- We represented ABN AMRO, a major European bank, in connection with a U.S. Department of Justice criminal investigation into the bank's dollar clearing activities, OFAC compliance procedures and other Bank Secrecy Act compliance matters. The bank entered into a deferred prosecution agreement in connection with the investigation.
- We provide ongoing advice to several major U.S. financial institutions with respect to compliance, licensing, transactional and other regulatory issues relating to OFAC economic sanctions requirements.
- We provide periodic advice to an international law firm concerning U.S. economic sanctions issues relevant to its clients' matters.
- We provide ongoing OFAC compliance and other regulatory advice to several European financial institutions.
- We represent major U.S. banks in connection with multiple litigations over claims to blocked assets under the Terrorism Risk Insurance Act.
- We have provided advice to numerous listed firms with their responses to inquiries from the SEC's Office of Global Security Risk concerning contacts with Cuba, Iran, Sudan and Syria.
- We are providing OFAC compliance advice to an international insurance company in connection with the U.S.-based supervision of the global reinsurance business.
- We provided compliance and other regulatory advice to a major professional services company relating to U.S. economic sanctions administered by OFAC.
- We are providing compliance program and other regulatory advice to a global natural resources company relating to U.S. economic sanctions, anti-boycott and anti-money laundering compliance requirements.
- We have represented major domestic and foreign credit card issuers and processors in filing voluntary self-disclosures to OFAC in connection with credit card transactions involving Cuba and the EU and Canadian blocking measures prohibiting compliance with U.S.-Cuba sanctions.

CORPORATE GOVERNANCE

In addition to specific advice regarding global compliance issues, Davis Polk advises companies on a broad spectrum of corporate governance matters, including the following:

- Board structure and responsibilities
- Development of codes of conduct and whistleblower policies
- Certifications of SEC reports
- Disclosure obligations
- Loans to insiders/securities trading
- Obligations under SEC regulations and stock exchange rules
- Corporate communications
- Crisis management
- Employee and executive compensation plans

Lawyers in Davis Polk's Global Compliance Group

New York

Greg D. Andres	212 450 4724	greg.andres@davispolk.com
Martine M. Beamon	212 450 4262	martine.beamon@davispolk.com
Frances E. Bivens	212-450 4935	frances.bivens@davispolk.com
Angela T. Burgess	212 450 4885	angela.burgess@davispolk.com
Carey R. Dunne	212 450 4158	carey.dunne@davispolk.com
Robert B. Fiske Jr.	212 450 4090	robert.fiske@davispolk.com
Kimberley D. Harris	212 450 4797	kimberley.harris@davispolk.com
Scott W. Muller	212 450 4359	scott.muller@davispolk.com
Jennifer G. Newstead	212 450 4999	jennifer.newstead@davispolk.com
Paul Spagnoletti	212 450 4577	paul.spagnoletti@davispolk.com
Brian S. Weinstein	212 450 4972	brian.weinstein@davispolk.com

Menlo Park

Neal A. Potischman	650 752 2021	neal.potischman@davispolk.com
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Washington DC

Margaret M. Ayres	202 962 7142	margaret.ayres@davispolk.com
John B. Reynolds, III	202 962 7143	john.reynolds@davispolk.com
Linda C. Thomsen	202 962 7125	linda.thomsen@davispolk.com
Raul F. Yanes	202 962 7122	raul.yanes@davispolk.com

London

John Banes	44 20 7418 1317	john.banes@davispolk.com
Petja Toskan	44 20 7418 1054	petja.toskan@davispolk.com

Paris

Arnaud Pérès	33 1 56 59 36 60	arnaud.peres@davispolk.com
Jean-Mathieu Cot	33 1 56 59 36 13	jean-mathieu.cot@davispolk.com

Madrid

Michael J. Willisich	34 91 768 9610	michael.willisich@davispolk.com
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Tokyo

Theodore A. Paradise	81 3 5561 4430	theodore.paradise@davispolk.com
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Hong Kong

William F. Barron	852 2533 3303	william.barron@davispolk.com
Kirtee Kapoor	852 2533 3320	kirtee.kapoor@davispolk.com
Mark J. Lehmkuhler	852 2533 3305	mark.lehmkuhler@davispolk.com

Beijing

Howard Zhang	86 10 8567 5002	howard.zhang@davispolk.com
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Davis Polk includes Davis Polk & Wardwell LLP and its associated entities with offices in:

NEW YORK
450 Lexington Avenue
New York, NY 10017
212 450 4000 tel
212 701 5800 fax

PARIS
121, avenue des Champs-Élysées
75008 Paris
33 1 56 59 36 00 tel
33 1 56 59 37 00 fax

MENLO PARK
1600 El Camino Real
Menlo Park, CA 94025
650 752 2000 tel
650 752 2111 fax

MADRID
Paseo de la Castellana, 41
28046 Madrid
34 91 768 9600 tel
34 91 768 9700 fax

WASHINGTON DC
901 15th Street, N.W.
Washington, DC 20005
1 202 962 7000 tel
1 202 962 7111 fax

TOKYO
Izumi Garden Tower 33F
1-6-1 Roppongi
Minato-ku, Tokyo 106-6033
81 3 5561 4421 tel
81 3 5561 4425 fax

SÃO PAULO
Av. Brig. Faria Lima, 3900
11° andar – cj 1102
São Paulo – SP
04538-132
55 11 4871 8400 tel
55 11 4871 8500 fax

BEIJING
2201 China World Office 2
1 Jian Guo Men Wai Avenue
Chao Yang District
Beijing 100004
86 10 8567 5000 tel
86 10 8567 5123 fax

LONDON
99 Gresham Street
London EC2V 7NG
44 20 7418 1300 tel
44 20 7418 1400 fax

HONG KONG
The Hong Kong Club Building
3A Chater Road
Hong Kong
852 2533 3300 tel
852 2533 3388 fax

Davis Polk