

Table of Contents

Volume 1

	PAGE
<i>Foreword</i>	F-1
<i>Preface</i>	P-1
<i>Table of Cases</i>	TC-1

Introduction and Overview

INT:10 Risk	INT-1
INT:10:10 Profiting from Risk Management and Compliance: Basic Principles	INT-1
INT:10:20 Risk	INT-3
INT:10:30 Risk and Harm	INT-8
INT:10:30.10 A Wide Spectrum of Subject Areas ...	INT-8
INT:10:40 Risk Matrix: Basic Principles	INT-12
INT:10:50 Matrix: Macro Priorities	INT-14
INT:10:60 Matrix: Micro Calculations	INT-16
INT:10:70 Thresholds Within the Risk Matrix: Life and Safety	INT-17
INT:10:80 Risk Matrix and Due Diligence	INT-20
INT:10:90 Risk Matrix and Trumping Gravity of Harm over Probability	INT-21
INT:10:100 Risk and a Theory of Justice	INT-25
INT:10:110 Framework: Rawls and the Veil of Ignorance	INT-26
INT:10:120 Injecting a Behavioural Model into the Framework	INT-27
INT:10:130 Application of Justice as Fairness to Matrix Thresholds and Priorities	INT-30
INT:10:140 Application of Justice as Fairness to the Legislative Choice of Ex Ante versus Ex Post Regulation and Determination of Priorities .	INT-31
INT:10:150 A Fair Organization and Profit	INT-33

REGULATORY AND CORPORATE LIABILITY

INT:10:160	Positive Risk Matrix – Basic Principles	INT-34
INT:10:170	Risk and Causes of Non-Compliance: An Introduction	INT-36
INT:10:180	Behavioural Theory and Predictions of Irrational Behaviour	INT-37
INT:10:190	Gender, Diversity, Risk Management and Compliance	INT-39
INT:10:200	Risk from the Regulator’s Perspective: A Regulator’s Risk Matrix	INT-45
INT:10:210	Compliance Templates – Basic Principles. . .	INT-46
INT:20	Legal Framework of Risk Management.	INT-46
INT:20:10	Ex Ante versus Ex Post	INT-46
INT:20:20	Pyramid Approach	INT-47
INT:20:30	True Crimes	INT-51
INT:20:40	Regulatory Offences	INT-51
INT:20:50	Violations and Administrative Remedies . . .	INT-53
INT:20:60	Governance and the Best Interests of the Corporation.	INT-69
INT:30	Due Diligence	INT-72
INT:30:10	Due Diligence	INT-72
INT:30:20	Due Diligence: Common Elements in Crimes, Regulatory Offences and Administrative Violations	INT-72
INT:30:30	Due Diligence and Logical Paradoxes	INT-73
INT:30:40	The Reasonable Person and Gender	INT-73
INT:30:50	Matrix Analysis and Due Diligence.	INT-74
INT:30:60	Due Diligence to Prevent Reputational Harm: A Shield and a Sword	INT-75
INT:30:70	Due Diligence in Merger Review.	INT-75
INT:40	Organizational Liability.	INT-77
INT:40:10	Corporate Criminal Liability	INT-77
INT:40:20	Corporate Liability for Regulatory Offences	INT-81
INT:40:30	Corporate Liability for Administrative Violations	INT-81
INT:40:40	Corporate Liability for Civil Liability	INT-82
INT:50	Individual Liability - A Typology	INT-83
INT:50:10	Principal	INT-83
INT:50:20	Party	INT-85
INT:50:30	Authorize and Permit or Acquiesce	INT-87
INT:50:40	Stigma: Offences	INT-87
INT:50:50	Stigma and AMPs	INT-91
INT:50:60	Risk Management Designed for Individuals	INT-92

TABLE OF CONTENTS

INT:60 Substantive Crimes, Offences and Violations INT-92

 INT:60:10 Bribery and Corruption INT-92

 INT:60:20 Fraud INT-96

 INT:60:30 Price Fixing INT-99

 INT:60:40 Misleading Advertising INT-101

 INT:60:50 Deceptive Marketing INT-101

 INT:60:60 Abuse of Dominance INT-103

 INT:60:70 Insider Trading and Securities Offences . . . INT-103

 INT:60:80 Environmental Offences INT-104

 INT:60:90 Occupational Health and Safety INT-106

 INT:60:100 Financial and Banking INT-106

 INT:60:110 Risk-Based Offences and Violations INT-107

INT:70 Compliance Systems INT-108

 INT:70:10 Drivers of Compliance INT-108

 INT:70:10.10 Internal Drivers INT-108

 INT:70:10.20 External Drivers INT-108

 INT:70:20 Drivers of Non-Compliance INT-110

 INT:70:30 Matrix Analysis and Levels of Audit INT-112

 INT:70:40 Design of a Business to Enhance
 Compliance INT-113

 INT:70:50 Gender, Diversity and Compliance INT-114

 INT:70:60 The Seven Steps of Compliance INT-114

 INT:70:60.10 Step 1: Management Commitment
 and Support: Evolution INT-115

 INT:70:60.20 Step 2: Risk-based Corporate
 Compliance Assessment: Evolution INT-115

 INT:70:60.30 Step 3: Corporate Compliance Policies
 and Procedures: Evolution INT-116

 INT:70:60.40 Step 4: Compliance Training and
 Communication: Evolution INT-116

 INT:70:60.50 Step 5: Monitoring, Verification and
 Reporting Mechanisms: Evolution INT-116

 INT:70:60.60 Step 6: Consistent Disciplinary
 Procedures and Incentives for
 Compliance: Evolution INT-117

 INT:70:60.70 Step 7: Compliance Program
 Evaluation: Evolution INT-117

 INT:70:70 Templates INT-118

 INT:70:80 Charts INT-118

 INT:70:90 Codes INT-118

 INT:70:100 Risk Software INT-118

INT:80 Operational Change Management INT-119

 INT:80:10 Profiting from Risk Compliance at
 Operational Levels INT-119

REGULATORY AND CORPORATE LIABILITY

INT:80:20	Change Management	INT-120
INT:80:30	Obstacles to Operational Change.	INT-120
INT:80:40	Behavioural Operational Matrix: A Blueprint for Change Management	INT-123
INT:80:40.10	Slow Down	INT-125
INT:80:40.20	Recognizing Irrational Tendencies and Counteracting Them	INT-125
INT:80:40.30	Welcome dissonance: The need for Continuing and Regular Education .	INT-125
INT:80:40.40	Peer Review.	INT-126
INT:80:40.50	Compensation for Compliance.	INT-126
INT:80:50	The Positive Matrix and Change Management	INT-126
INT:80:60	The Spectrum from Permissible Persuasion to Improper Manipulation.	INT-127
INT:90	The Zone of Non-Discovery, Internal Investigations and Negotiating with the Government	INT-128
INT:90:10	Zone of Non-Discovery	INT-128
INT:90:20	Internal Whistleblowing.	INT-129
INT:90:30	Internal Investigations: Framework	INT-130
INT:90:40	Internal Investigations: Protocols.	INT-133
INT:90:50	Is There a Duty to Cease Activities and/or Remediate?	INT-135
INT:90:60	Is There a Duty to Self-Report?.	INT-137
INT:90:70	Self-Reporting and the Due Diligence Defence	INT-140
INT:90:80	Self-Reporting and Mitigation of Penalty .	INT-140
INT:90:90	Game Theory in the Zone of Non-Discovery	INT-141
INT:90:100	Deferred Prosecutions	INT-143
INT:90:100.10	Legislation to Enact a Canadian Deferred Programme	INT-145
INT:90:100.20	Purpose of Remediation Agreements	INT-145
INT:90:100.30	Threshold Conditions to be Considered in Relation to the Availability of a Deferred Prosecution Agreement . . .	INT-147
INT:90:100.40	Factors Considered in the Public Interest	INT-149
INT:90:100.50	Factors Not to Consider	INT-155
INT:90:100.60	The List of Eligible Offences	INT-156
INT:90:100.70	Procedural Provisions of a Remedial Agreement	INT-157
INT:90:100.80	Application for Court Approval. . . .	INT-161

TABLE OF CONTENTS

INT:90:100.90 Variation, Termination or Successful
Completion of Remediation
Agreements INT-163

INT:90:100.100 Publication of Remedial
Agreements INT-164

INT:90:100.110 Regulatory Aspects INT-165

INT:90:110 Deferred Prosecutions and Individuals. INT-165

INT:90:120 Deferred Prosecutions in Regulatory
Offences INT-167

INT:90:130 Deferred Administrative Action in
Administrative Schemes. INT-167

INT:90:140 Immunity and Leniency. INT-167

INT:100 The Charter and Procedural Fairness. INT-168

INT:110 Remedies and Sentencing. INT-172

INT:120 Conclusion – Profiting from Risk Management
and Compliance INT-176

Chapter 1 Regulating and Deregulating Risk

1:10 Introduction 1-1

1:20 A Brief Historical and Philosophical Journey 1-2

1:20:10 Risk and Historical Analysis of Financial Crimes . 1-8.2

1:30 Deregulating Risk 1-8.3

1:35 2008 and its Aftermath: Civil Penalties, But No Conviction(s),
Civil and Criminal Consequences 1-14

1:40 Walkerton: A Case Study of the Importance of
Regulations 1-16

1:40:10 History Repeats Itself: The Water Crisis in
Flint, Michigan. 1-16.4

1:45 “Everyone in the World Eats a Hot Dog” 1-16.7

1:49 Recent Developments 1-16.8

1:49:10 Lac-Mégantic, British Petroleum Oil Spill
and Fukushima Daiichi Nuclear Accident:
Failures of Risk Management. 1-16.8

1:49:10.02 Lac Mégantic Defendants Acquitted . . 1-16.8

1:49:10.04 Regulatory Charges 1-16.9

1:49:10.10 Oil by Rail. 1-16.10

1:49:10.15 Regulatory Capture Contributed to
the Tragedy in Lac-Mégantic. 1-16.10

1:49:10.20 Devolving Risk Analysis, Limited
Oversight 1-16.10b

1:49:10.30 Calls for Change 1-16.11

1:49:10.40 International Developments: British
Petroleum and Fukushima. 1-16.13

REGULATORY AND CORPORATE LIABILITY

1:49:10.40.10	Deepwater Horizon and British Petroleum	1-16.13
1:49:10.40.20	Fukushima Daiichi	1-16.16
1:49:10.40.30	“If you ain’t cheating, you ain’t trying”	1-16.19
1:49:10.40.32	Wells Fargo Cross Selling Scandal	1-16.20
1:49:10.40.33	A Failure in Risk Management	1-16.21
1:49:10.40.34	Canadian Banks also Employ High Pressure Sales Tactics.	1-16.22
1:49:10.40.35	Volkswagen Emissions Scandal	1-16.22
1:49:10.40.37	The Panama Papers: Implications in Canada	1-16.26
1:49:10.40.40	Bread Price Fixing: The Importance of Whistleblowers	1-16.28
1:49:10.40.41	Privacy and the Lack of Regulation	1-16.30
1:49:10.40.41(a)	Equifax Data Breach	1-16.30
1:49:10.40.41(b)	Facebook-Cambridge Analytica Data Scandal	1-16.30
1:49:10.40.42	Pollution and the Effect on Indigenous Communities in Ontario	1-16.31
1:49:10.40.42(a)	Mercury Poisoning in Grassy Narrows.	1-16.31
1:49:10.40.42(b)	“Chemical Valley”	1-16.32
1:49:10.40.42(c)	Environmental Injustice: Ontario’s Environmental Commissioner Critical of “Decades of Neglect”	1-16.33
1:49:10.40.43	Shale Oil Wells in Saskatchewan	1-16.34
1:49:10.40.43(a)	Allegations of Public Money Flowing to Companies Breaching Environmental Rules	1-16.34
1:49:10.40.44	OSC Rules Sino Forest Defrauded Its Investors	1-16.35
1:49:10.40.45	Rana Plaza Collapse and Corporate Social Responsibility Standards	1-16.35
1:49:10.40.50	Risks and Financial Crime	1-16.36
1:50	From Risk Assessment to Risk Management and Judicial Review	1-16.39
1:50:10	Risk Assessment	1-16.40
1:50:20	Risk Assessment: Expert Evidence versus the Public Opinion	1-20
1:50:22	Risk Calculations, Cost-Benefit Calculations, and Alternate Explanations in Biology and Sociology	1-24
1:50:30	Risk Assessment and Empirical Measurement	1-26.1

TABLE OF CONTENTS

1:50:40	Risk Management	1-28
1:50:40.10	Time Horizon	1-28.1
1:50:40.20	Scenarios	1-28.1
1:50:40.30	Risk Measure.	1-28.2
1:50:40.40	Benchmarks	1-32
1:50:40.45	Grey Areas and White Collar Crime	1-33
1:50:40.50	Enterprise Risk Management	1-34.1
1:60	Codification of Risk: The Role of Regulations	1-34.4
1:70	Risk Management and Enforcement of Regulations	1-41
1:80	Risk Interpretation (Communication): The Role of the Courts.	1-43
1:90	A New Risk-based Regulatory Approach	1-46
 Chapter 2 Evolution and Classification of Offences		
2:10	Introduction	2-1
2:15	Ex Ante Versus Ex Post Rules.	2-2
2:15:10	Advantages of Ex Ante Systems	2-2.1
2:15:20	Disadvantages of an Ex Ante System	2-2.1
2:15:30	A Suggested Approach	2-2.3
2:15:30.10	The Proper Role for Ex Ante Regulation	2-2.7
2:15:30.10(a)	Pro-Active Ex Ante Constraints.	2-2.8
2:15:30.10(b)	Risk Assessment as a Core Concept.	2-2.8
2:15:30.20	Rules Versus Principles within Ex Ante	2-2.8
2:15:30.30	Rules Versus Principles within Ex Post	2-2.9
2:15:30.40	Application of Four Models	2-2.13
2:20	Historical Expansion of the Criminal Model	2-3
2:30	Philosophical Review of Regulatory Offences by the Law Reform Commission of Canada	2-4
2:30:10	Proactive Prescriptions	2-6
2:30:20	Negligence versus Intentional Conduct	2-7
2:30:30	Streamlined Hearings versus Traditional Trials.	2-8
2:30:40	Lower Stigma.	2-8
2:30:50	No Jail.	2-9
2:30:60	A New Code	2-10
2:40	The Building of the Halfway House in Canada	2-11
2:50	The Impact of the Charter on Regulatory Offences: Expanding the Reach of Strict Liability.	2-12.1
2:60	From Wholesale Travel to Regulatory Offences in the New Millennium	2-16
2:70	A Methodology for Classification	2-21
2:80	The Use of Civil and Administrative Tracks: Full Circle Back to the Law Reform Commission’s Proposals.	2-34.2
2:80:10	More Dual Tracks	2-38
2:90	Constitutional Obstacles	2-41

REGULATORY AND CORPORATE LIABILITY

2:95	Competition Act Amendments 2009	2-42
2:95:10	Cartels/Conspiracy	2-43
2:95:20	Civil/Administrative Track	2-44
2:95:30	Abuse of Dominance	2-46
2:95:30.10	Substantial or Complete Control (Section 79(1)(a) of the Competition Act)	2-49
2:95:30.10	Practice of Anti-Competitive Acts (Section 79(1)(b) of the Competition Act)	2-50
2:95:30.30	Substantial Prevention of Competition (Section 79(1)(b) of the Competition Act)	2-50
2:95:40	Misleading/Deceptive Advertising	2-52
2:100	The Need for a New Hierarchy of Offences	2-53

Chapter 3 The Actus Reus in Regulatory Offences: A Risk-based System

3:10	Introduction	3-1
3:20	Types of Ex Post Regulation	3-2
3:20:10	Precise Codified Standards	3-2
3:20:20	Specific Prescription with Limited Site-specific Assessment	3-12.1
3:20:30	General Prohibitions with Site-specific Balancing	3-13
3:20:30.10	Inherently Toxic	3-15
3:20:30.20	Not Inherently Toxic	3-15
3:20:30.30	Site Specific Licences	3-18
3:20:40	Reasonableness Components in the Actus Reus of Some Offences	3-20
3:30	Prosecutorial Discretion to Choose Which Regime	3-23
3:35	Subsequent Remedial Measures	3-26
3:37	Continuing Offences?	3-30
3:40	Matching Types of Regulation to Due Diligence	3-31
3:50	Subsequent Civil Proceedings: Are Findings Regarding the Actus Reus Admissible or Potentially Res Judicata?	3-33
3:60	Intersection of Criminal Code Jurisprudence with Regulatory Law	3-35

Chapter 4 Due Diligence

4:10	Introduction	4-1
4:20	The Reasonable Person: Negligence, Due Diligence and AllReasonable Measures	4-2
4:30	Res Ipsa Loquitur and the Common Law Flaw	4-7
4:40	Regulatory Offences: A Paradoxical Tale of Two Levels of Risk Analysis	4-14.1
4:45	Steps Taken to Prevent the Particular Event: Another Paradox	4-20

TABLE OF CONTENTS

4:50 Mistake of Fact 4-24.1
4:60 Officially Induced Error 4-25
4:70 The Shopping List of 14 Factors of Due Diligence: Part
RiskAssessment, Part Risk Management 4-33
4:70:10 The Nature and Gravity of the Adverse Effect . 4-34.1
4:70:20 The Foreseeability of the Effect, Including
Abnormal Sensitivities 4-37
4:70:30 The Alternative Solutions Available 4-40.1
4:70:40 Legislative or Regulatory Compliance. 4-40.3
4:70:50 Industry Standards 4-40.6
4:70:60 The Character of the Neighbourhood 4-46.1
4:70:70 What Efforts have been made to Address the
Problem 4-46.1
4:70:80 Over What Period of Time and Promptness
of Response 4-50.3
4:70:90 Matters Beyond the Control of the Accused,
Including Technological Limitations 4-54
4:70:100 Skill Level Expected of the Defendant 4-55
4:70:110 The Complexities Involved 4-60
4:70:120 Preventative Systems. 4-60.2
4:70:130 Economic Considerations 4-60.4

(The next page is CON-5)

TABLE OF CONTENTS

4:70:130.10 Economic Factors and Governmental Defendants: A Subset. 4-62.1

4:70:140 Actions of Government Officials. 4-62.7

4:70:150 Summary of 14 Factors 4-62.7

4:75 Trends in the Due Diligence Cases 4-62.8a

4:80 A Matrix for Risk Management in Due Diligence. 4-62.8b

4:80:10 Precautions Taken to Avoid the Event 4-62.12

4:80:20 Systems to Measure Potential Gravity of Impact 4-62.12

4:80:30 External Factors to Risk Management 4-62.12

4:90 A Template for Due Diligence. 4-62.13

4:100 Gender: A New Reasonable Person. 4-66

4:110 The Costs Consequences of Due Diligence 4-70

4:110:10 Crown has Proven the Actus Reus Beyond a Reasonable Doubt 4-71

4:110:20 Due Diligence: The Shopping List of Factors Expands Towards a Civil Model. 4-72

4:110:30 Proposal for Reform for Costs in Regulatory Proceedings 4-74

4:120 The Civil Consequences of Due Diligence 4-78

4:130 Due Diligence Principles Applied in Mens Rea Offences: A Template for White Collar Crime 4-81

Chapter 5 The Changing Face of Corporate and Organizational Criminal Liability

5:10 Introduction 5-1

5:20 The Old Law of Directing Minds and the Policy-Making/ Managerial Divide. 5-3

5:20:10 Multiple Minds. 5-4

5:20:20 Policy versus Operational Decisions 5-5

5:20:30 Rogue Managers and Directors 5-7

5:30 Modern Organizations and Problems of Proof. 5-9

5:40 The New Law of Expanded Organizational Criminal Liability 5-12

5:40:10 Expanded Definition of Organization 5-12

5:40:20 New Definition of Senior Officer 5-13

5:40:30 A Fundamental Shift 5-14

5:40:40 Responsible for Managing 5-15

5:40:50 Important Aspect of the Organization’s Activities. 5-17

5:40:50.10 Above the senior officer rung, the ladder is flat. 5-21

5:40:50.20 Analysis of factors 5-21

5:40:60 A Matrix to Determine Senior Officer Status 5-22

REGULATORY AND CORPORATE LIABILITY

5:40:70 Expanded Definition of Representative. 5-22.1

5:40:80 Is There a Two-Step Requirement That the
Prosecution Show Recklessness and Then a
Failure to Take Reasonable Care? 5-25

5:40:90 Summary: A Dichotomy When Dealing with
Agents or Contractors 5-27

5:40:100 Matrix Analysis 5-28

5:40:110 Subjective Intent Offences. 5-28.1

5:40:120 A Step-by-Step Analysis of Section 22.2: Senior
Officer Level Distinguished from Sectors under
Senior Officers' Supervision 5-28.4

 5:40:120.10 Senior Officer as a Party 5-28.4

5:40:130 Intent At Least in Part to Benefit the
Organization. 5-28.5

 5:40:130.10 Acting within the scope of their authority,
is a party to the offence. 5-28.7

 5:40:130.20 Having the Mental State Required to Be
a Party to the Offence and Acting Within
the scope of Their Authority, Directs the
Work of Other Representatives of the
Organization So That They Do the Act
or Make the Omission Specified in the
Offences. 5-28.9

 5:40:130.30 Levels below that of Senior Officer:
Taking of all Reasonable Measures
as a Potential Defence 5-28.10

 5:40:130.30.10 Reasonable Steps and
Mathematical Formulas 5-28.13

5:40:140 Wilful Blindness 5-28.14a

5:40:150 Negligence Offences 5-28.14c

5:40:160 Protecting Workers. 5-28.14h

5:40:170 Comparative Perspectives and the Compliance
Defence 5-28.14h

5:50 A Preliminary Evaluation of the New Law 5-28.14k

 5:50:10 Bill C-45 Track Record 5-28.14k

 5:50:20 A Comparison with the United States. 5-28.20

 5:50:30 Convergence of the Left and Right. 5-28.23

 5:50:40 The Symbolic Role of Corporate Criminal
Liability: The Apex of a Regulatory Pyramid 5-29

 5:50:40.10 Regulatory Corporate Liability 5-29

 5:50:40.20 Role of Individual Versus Corporate
Liability. 5-30

 5:50:40.30 The Role of an Imbedded Auditor. 5-31

 5:50:40.40 Incentives for Private Informations 5-34

TABLE OF CONTENTS

5:50:40.50 A Restorative Justice Approach towards
the Enforcement of Bill C-45 5-34
5:50:50 Enforcement of Bill C-45 5-36

Chapter 6 Corporate Directing Minds and Regulatory Offences

6:10 Introduction 6-1
6:20 Directing Mind in Regulatory Offences 6-2
6:20:10 The “Directing Mind” of Corporate Due Diligence:
True Crimes Compared to Regulatory Offences . . . 6-2
6:20:20 The Regulatory Offence: Primary
Corporate Liability 6-5
6:20:30 Directing Mind: From Sword to Shield in
Regulatory Offences 6-9
6:30 Illegal, But Not Criminal. 6-13
6:40 Legislative Reforms and the Role of Regulatory Offences . . 6-14.1

Chapter 7 Business Theory Applied to Risk Management

7:10 Introduction 7-1
7:20 Applying the Matrix to Organizational Theory in Corporate
Management 7-1
7:20:10 Application of Matrix Planning at the
Operational Level 7-1
7:20:15 Matrix Planning Applied to Specific Tasks 7-6
7:20:15.10 Step 1: Calculation of the Probability of
Non-Compliance 7-7
7:20:15.10(a) Aggregate probability of non-
compliance 7-12.1
7:20:15.20 Step 2: Calculation of Potential Gravity
of Harm. 7-12.2
7:20:15.30 Step 3: Drawing the Matrix 7-16
7:20:15.30.10 Self Audits and Privilege 7-20a
7:20:15.40 Step 4: Identifying Thresholds Within
the Matrix 7-21
7:20:18 Matrix Implementation at the Operational
Level 7-23
7:20:18.10 Whistleblowers: Another Reason to
Compensate Compliance 7-27
7:20:20 Adapting to Rapid Changes in Technology and
Growth. 7-30.2
7:20:20.10 Knowledge Management 7-30.4
7:20:20.20 Competence 7-30.5
7:20:20.30 Performance. 7-30.6

REGULATORY AND CORPORATE LIABILITY

7:20:30	Feedback Mechanisms	7-30.8
7:20:40	An Integrated Approach.	7-34
7:20:45	Corporate Compliance Systems and Due Diligence: A Suggested Seven-Step Program	7-34
7:20:45.05	Self Reporting: Can this Constitute Due Diligence to be a Defence of Taking All Reasonable Measures?	7-43
7:20:45.10	Corporate Compliance Programs: Competition Model	7-47
7:20:45.10.02	The zone of non-discovery.	7-52.3
7:20:45.10.03	Non-prosecution and deferred prosecution agreements	7-52.5
7:20:45.10.04	Risk analysis if there is no deferred prosecution programme available	7-52.10
7:20:45.10.05	The dark side of the pyramid and use immunity	7-52.11
7:20:45.10.10	Practical Tips	7-52.13
7:20:50	The New Math After Enron	7-52.15
7:20:50.10	Moral Corporation Model	7-52.17
7:20:50.20	Economic Corporation Model	7-54.4
7:20:50.30	Legal Corporation Model	7-54.7
7:20:50.40	Overlapping Models.	7-54.8
7:20:50.40.10	Directors' Liability.	7-70
7:30	From Chain Management to Hubs	7-71
7:40	The New Empiricism.	7-73
7:50	A Blueprint for Change: Linking Causes of Non-compliance to the Solutions.	7-74
7:60	The Positive Side of Risk and Reward: A Positive Matrix . . .	7-79

Chapter 8 Individual Liability Within Organizations

8:10	Introduction	8-1
8:20	Types of Liability	8-3
8:20:10	Principal.	8-3
8:20:10.10	Nature of Testimony	8-4
8:20:10.20	Due Diligence and Reliance upon Experts .	8-6
8:20:20	Party	8-10.5
8:20:30	Authorize, Permit or Acquiesce	8-10.7
8:20:40	Specific Duties to Take Reasonable Care	8-11
8:20:50	Statutory Language Defining Influence and Control.	8-17
8:20:60	Common Law Influence or Control: Back to Basic Liability as a Principal (Instructs) or Party (Aids and Abets)	8-18

TABLE OF CONTENTS

8:30 Summary 8-21

Chapter 9 The Stigma of Individual Liability in the 21st Century

9:10 Introduction 9-1

9:20 The New Securities Offences: A Wolf in Sheep’s Clothing . . . 9-3

9:30 A Return Trip to Wholesale Travel 9-8.2

9:30:10 Stigma 9-8.2

9:30:20 Licensing Rationale 9-12

9:30:30 Discovery of Evidence in Regulatory Offences . . . 9-17

9:40 A New General Theory of Licensing Individual Exposure . . . 9-18

Chapter 10 Risk Management Systems for Individuals

10:10 Introduction 10-1

10:20 Compliance Officers 10-1

10:30 Systems for Individual Due Diligence Separated From
Corporate Due Diligence 10-4

10:30:10 Documentation of Individual Due Diligence 10-4

10:30:20 Competing Directing Minds 10-7

10:30:30 Conflicts of Interest 10-8

10:30:40 Compensation 10-8

10:30:50 Indemnities 10-10

10:40 The Dynamic Between Individuals and Corporations
when Charges Occur 10-10.1

10:50 Individual Morality Within the Group 10-14

**Chapter 11 The Charter, Audits and Investigations:
Crossing the Rubicon**

11:10 Introduction 11-1

11:15 A Note about Procedure 11-2

11:20 Legal Compartments 11-8c

11:20:10 Individual versus Corporate Rights 11-8c

11:20:20 The Broad Ambit of Inspection Powers Under
Regulatory Statutes 11-8.8

11:20:30 Crossing the Rubicon to Adversarial Territory 11-14.1

11:20:40 Crossing the Rubicon in Strict Liability
Regulatory Offences 11-20

11:20:45 The Line Between Investigations of Adminis-
trative Monetary Penalties and Offences 11-24.6

11:20:50 Regulatory Warrants in Anticipation of Due
Diligence: An Attempt to Reconcile the Decision
in CanadianOxy with Wholesale Travel 11-24.7

11:20:60 Corporate Rights and C-45 11-27

11:20:60.10 Standing 11-27

REGULATORY AND CORPORATE LIABILITY

11:20:60.20 Adverse in Interest: Reality versus Legal Construct. 11-29

11:20:70 Use Immunity: Good Faith Redundancy 11-30

11:30 Remedies in the Post-Jarvis World 11-31

11:40 Remedies for Procedural Violations. 11-36.5

11:40:10 Costs as Remedies for Charter Violations:
A Remarkable Event 11-37

11:40:10.10 The Jurisdictional Threshold 11-38

11:40:10.20 The Test 11-38

11:40:10.30 Procedure for Applying the Test 11-42

11:40:10.40 Function of the Remedy 11-43

11:40:10.50 Proposals for Reform. 11-46

11:50 Trial Within a Reasonable Time Revisited. 11-48

Chapter 12 Sentencing in Corporate and Regulatory Offences

12:10 Introduction 12-1

12:20 Statutory Framework 12-2

12:20:10 True Crimes: A New Sentencing Regime for Organizations 12-2

12:20:10.10 Sentencing Principles for Organizations . . 12-3

12:20:10.10(a) Above the Senior Officer Level
the Ladder is Flat 12-5

12:20:10.10(b) Analysis of Factors 12-5

12:20:10.20 Probation Orders for Organizations . . 12-8.4a

12:20:10.30 Debarment. 12-8.4b

12:20:20 Historical Debarment Model 12-8.4b

12:20:20.10 Strict Rules with a Ten-Year Ban 12-8.5

12:20:20.20 Affiliates 12-8.6

12:20:20.20(a) Control Test 12-8.6

12:20:20.20(b) Certification Test. 12.8.6

12:20:20.20(c) The Control Test is Consistent
with Traditional Corporate Law. . 12-8.7

12:20:20.30 Lack of Administrative Discretion 12-8.9

12:20:20.40 Very Narrow Public Interest
Exceptions 12-8.9

12:20:20.50 Economic Impact. 12-8.9

12:20:20.60 No Administrative Appeals or Reviews 12-8.10

12:20:30 Revised Debarment Rules: The New Integrity
Regime. 12-8.11

12:20:30.10 Potential Reduction to 5 Years:
A Disjunctive Test 12-8.11

12:20:30.20 Affiliates: Participation or Involvement 12-8.12

12:20:30.30 Permanent Ineligibility. 12-8.12

TABLE OF CONTENTS

12:20:30.40 Interim Suspensions and Admissions
of Guilt 12-8.13

12:20:30.50 Due Process 12-8.14

12:20:30.60 Existing Contracts 12-8.14

12:20:30.70 Third Party Monitoring and
Verification 12-8.15

12:25 Minimum Sentences for Large Frauds: Bill C-21
Standing Up for Victims of White Collar Crime 12-8.15

12:25:10 Community Impact Statements 12-9

12:30 Regulatory Offences 12-10

12:30:10 Federal Regulatory Offences and Application
of the Criminal Code 12-10

12:30:20 Provincial Regulatory Offences 12-11

12:40 Sentencing Cases and General Principles 12-14

12:40:05 Proportionality in Sentencing: White Collar
Offenders Beware 12-16

12:40:05.10 Introduction 12-16

12:40:05.20 General Sentencing Principles 12-16.2

12:40:05.20(a) Facts 12-16.3

12:40:05.30 Standard for Intervention on an Appeal
from a Sentence 12-16.4

12:40:05.40 Proportionality 12-16.6

12:40:05.50 Proportionality Trumps Parity and Allows
for Evolution of Sentencing Law 12-16.8

12:40:05.60 Deterrence and Denunciation 12-16.9

12:40:05.70 Local Situation 12-16.10

12:40:05.80 Conclusion 12-16.11

12:40:10 Not a Mere Licence: Deterrence in Regulatory
Sentencing 12-16.12

12:40:20 Denunciation and Retribution 12-25

12:40:30 Rehabilitation 12-26

12:40:40 Incapacitation and Jail 12-27

12:40:40.10 Imprisonment as a Last Resort
in the Motor Vehicle Context 12-34

12:40:40.20 Imprisonment as a Last Resort in
the Environmental Context 12-35

12:40:50 Restorative Justice 12-36

12:50 Rethinking Theories of Sentencing Specific to Organizational
Compliance 12-41

12:50:10 Deterrence 12-41

12:50:10.10 Traditional Theory 12-41

12:50:10.10.10 Specific Deterrence 12-42

12:50:10.10.20 General Deterrence 12-44

12:50:20 Corporate Theory 12-44

REGULATORY AND CORPORATE LIABILITY

12:50:30	The Fine as Deterrent: A Further Level of Risk Assessment	12-46
12:50:30.10	External Measurement	12-46
12:50:30.20	Internal Factors	12-47
12:50:30.30	Marginal Utility	12-47
12:50:40	Risk of Apprehension: The Other Side of the Formula	12-49
12:50:50	The Myth of Rationality	12-50
12:50:50.10	Individuals in Regulated Sectors	12-50
12:50:50.20	Corporate Rationality	12-53
12:50:60	Rethinking Deterrence: An Empirical Onus	12-55
12:50:60.10	Denunciation and Retribution	12-56.1
12:50:60.20	Rehabilitation	12-58
12:50:60.30	Incapacitation	12-61
12:50:60.40	Restorative Justice	12-62
12:50:60.50	A Tiered Approach	12-64

Chapter 13 Corporate Organizations: Specific Problems and Strategies for Corporate Sentencing

13:10	Introduction	13-1
13:20	Sentencing and the Corporation: Stretching the Limits of the “Natural Person” Analogy	13-1
13:20:10	The Fine	13-1
13:20:20	Enforcing the Fine Against an Undercapitalized Corporation	13-2
13:20:30	The Corporate Veil	13-4
13:20:40	Subsidiary Corporations	13-8
13:20:50	Comparative Law: The American Experience	13-8.1
13:30	Theory Applied to Practice	13-9
13:30:10	Multinational Corporations and Jurisdictional Hurdles	13-9
13:30:20	Government as Unsecured Creditor for Corporate Risk	13-10
13:40	Secured Corporation Model	13-13

Chapter 14 Responsive Regulation, Restorative Justice and Regulatory Pyramids

14:10	Introduction	14-1
14:20	Responsive Regulation	14-2
14:30	Regulatory Pyramids	14-4
14:40	Restorative Justice	14-14.1
14:45	Restorative Justice and Enforcement	14-16
14:50	Procedural Justice and Regulation	14-18

TABLE OF CONTENTS

14:60	Corporate and Individual Liability	14-19
14:70	Regulating Unknown Future Risks	14-21
14:80	Conclusion	14-25
Chapter 15 The Growth and Validity of Administrative Monetary Penalties		
15:10	Introduction and Overview	15-1
15:10:10	AMP Schemes and the Punitive Paradigm	15-1
15:10:20	Robust Procedural and Appeal Protections.	15-2
15:10:30	A New Debate for Administrative Law	15-2
15:10:40	A New Pyramid	15-2
15:20	Administrative Monetary Penalties: History and Types	15-6
15:20:10	Competition Civil Track	15-6
15:20:20	Types of Administrative Remedies for Regulatory Compliance	15-9
15:20:20:10	Internal Discipline	15-9
15:20:20:20	Civil Redress	15-15
15:20:20:30	Tailor Made AMPs	15-17
15:20:20:40	Multiple Track AMPs	15-17
15:20:20:50	AMPs with Due Diligence as a Defence	15-20
15:20:20:60	AMPs where Due Diligence is a Factor on Sentencing	15-21
15:20:20:70	Environmental AMPs: Pushing the Edge of the Envelope	15-23
15:20:20:70:10	Innocent Acts are Now Punishable.	15-23
15:20:20:70:20	Any and All Contraventions are Subject to AMPs in Bill 133	15-25
15:20:20:70:30	Calculation of the Amount of the Penalty	15-25
15:20:20:70:40	Applicability Only to a “Regulated Person”	15-26
15:20:20:70:50	Reverse Onus Provisions in the New Environmental AMPs	15-27
15:20:20:70:60	Double Jeopardy.	15-28
15:20:20:80	Institutional Features of AMP Schemes.	15-29
15:20:20:80:10	Hearings	15-29
15:20:20:80:20	Appeals	15-31
15:20:20:80:30	Ability to Pay	15-33
15:20:20:80:40	Summary.	15-34
15:30	Constitutional Parameters	15-34
15:30:10	General Principles.	15-34
15:30:10:05	Framing the Punitive Paradigm	15-34

REGULATORY AND CORPORATE LIABILITY

15:30:10.05(a) A Balancing Test to Determine Whether
the Punitive Paradigm and Constitutional
Rights Will Apply 15-36

15:30:10.05(a)(i) The Magnitude of the Fine 15-36

15:30:10.05(a)(ii) To Whom it is Paid. 15-36

15:30:10.05(a)(iii) Whether its Magnitude is
Determined by Regulatory
Considerations Rather than
Principles of Criminal Sentencing 15-37

15:30:10.05(a)(iv) Whether Stigma is Associated
with the Penalty 15-37

15:30:10.10 Section 7: A Potential Alternate Route . 15-41

15:30:10.20 Section 11: Pre-Guindon Cases: The
Historical Context 15-46

15:30:10.20.10 The “By Nature” Test. 15-47

15:30:10.20.20 The “True Penal Consequences”
Test. 15-49

15:30:10.20.30 Securities AMPs 15-49

15:30:10.20.40 Investment Enforcement 15-55

15:30:10.30 Implications of “Offence”
Characterization 15-59

15:30:10.30.10 Burden of Proof 15-59

15:30:10.30.20 Disclosure of Evidence 15-60

15:30:10.30.30 Impartiality of the Tribunal. 15-60

15:30:10.30.40 Void for Vagueness. 15-61

15:30:10.30.50 Section 1 15-62

15:30:10.30.60 Section 12: Cruel and
Unusual Punishment 15-62

15:30:20 Application of the Listed General Principles
to a Typology of AMPs 15-63

15:40 Administrative Law Principles. 15-63

15:40:10 Scope of Disclosure of Details of Complaints
or Nature of the Violation 15-65

15:40:20 When Will an Oral Hearing be Granted
as Contrasted to the Making of Written
Submissions Concerning the Imposition
of an AMP? 15-66

15:40:30 Should the Enforcement Branch in Charge of
Investigating and Issuing Notices of Violations
be Formally Separated? 15-66

15:40:40 Should the Enforcement Branch in Charge of
Investigating and Issuing Notices of Violations
be Formally Separated from Other Divisions
of the CRTC? 15-67

TABLE OF CONTENTS

15:50 Policy Arguments 15-67

15:50:10 A Principled Approach Toward AMPs 15-67

15:50:10.10 A Proposed Regulatory Pyramid 15-68

15:50:10.10.10 Warning Letters 15-68

15:50:10.10.20 Mediation 15-69

15:50:10.10.30 Ticket AMPs 15-70

15:50:10.10.40 Basket (Multiple Track) and
Hybrid AMPs 15-71

15:50:10.10.50 Topic Specific AMPs 15-71

15:50:10.10.60 Mandatory Orders 15-72

15:50:10.10.70 Quasi-Criminal Sanctions 15-72

15:50:10.10.80 Apex of the Pyramid 15-72

15:50:10.10.90 De-escalating the Pyramid 15-72

15:60 Bright Lines 15-72

15:70 A Principled Approach 15-73

15:70:10 Principle 1: AMPs should be Capped at a Moderate
Level to Minimize the Damage from the Possibility
of a Wrongful Finding of a Violation 15-73

15:70:20 Principle 2: AMPs Should be Capped at Moderate
Levels to Draw a Bright Line Between Monetary
Penalties (Prices) and Criminal Offences
(Sanctions) 15-77

15:70:20.10 Violations of which the Regulator is
Aware 15-81

15:70:20.20 Violations of which the Regulator is
not Aware 15-82

15:70:30 Principle 3: AMPs Imposed for Anti-Competitive
Conduct should only be Imposed after a
Warning Letter has been Issued and Non-
Compliance has Continued 15-82

15:70:40 Principle 4: The Criteria for Assessment of the
Amount of a Particular AMP should reflect Risk
Management and Compliance Efforts 15-84

15:70:50 Principle 5: Separate Categories of AMPs should
be Created in Proportion to the Gravity of
Potential Harm 15-85

15:70:60 Principle 6: Procedure should Precisely Match
the Escalating Penalty Sought, and can be Varied
at Each Level 15-86

15:70:70 Principle 7: At the Higher Levels of Penalty,
Judicial Membership in the Tribunal may Counter
the Problem of Potential Agency Bias when
Administrative Agencies are given the Power to
Levy Monetary Penalties 15-88

REGULATORY AND CORPORATE LIABILITY

15:70:80 Principle 8: The Right to an Appeal should become
Wider as the Penalty Category Increases. 15-89

15:70:90 Principle 9: Ex Post Penalties should be Severe
Enough to act as a Disincentive — The New Role
of Regulatory Offences 15-89

15:70:100 Principle 10: New Criminal Offences. 15-90

15:70:110 Principle 11: Ex Post Enforcement should be
Swift. 15-90

15:80 A Suggested Approach Toward Determining the Magnitude
of Administrative Monetary Penalties in Specific Cases . . . 15-91

15:80:10 Regulatory Pyramids 15-91

15:80:20 Factors to Determine the Quantum of an AMP . 15-94

15:80:30 A Matrix Approach 15-96

15:80:30.10 Matrix Analysis Simplifies the Analysis
in Three Respects. 15-98

15:80:40 Caps on AMPs and Warnings 15-99

15:80:50 Post-Violation Rehabilitation Efforts 15-100

**Chapter 16 White Collar Crime: Risk Management in
a Wide Range of Commercial Dealings**

16:10 Introduction 16-1

16:10:10 White Collar Crime 16-2

16:20 The Law of Fraud. 16-3

16:20:10 The Actus Reus of Fraud – Underhanded
Designs. 16-4

16:20:10.10 The Elements of the Actus Reus: Dishonest
Act and Deprivation. 16-4

16:20:20 The Mens Rea of Fraud – Knowledge That
There is a Risk of Deprivation 16-14

16:20:20.10 The Elements of the Mens Rea: Subjective
Knowledge of the Act and Subjective
Knowledge of the Risk of Deprivation. . 16-16

16:20:30 The Mens Rea of Corporate Officials. 16-17

16:30 The Civil Law of Fraud and the Parallel to Criminal Fraud . . 16-20

16:30:10 Introduction to the Law of Civil Fraud 16-20

16:30:20 Civil Fraud Compared to Criminal Fraud 16-21

16:40 Secret Commissions. 16-24

16:50 Rules and Principles 16-28

16:60 Ethical Behaviour of Professionals. 16-31

TABLE OF CONTENTS

Chapter 17 The Canadian Corruption of Foreign Public Officials Act: Mandatory Risk Assessment

17:10 Introduction 17-1

17:20 CFPOA Essentials 17-3

 17:20:10 Centerpiece of the CFPOA 17-4

 17:20:20 “Agrees” to Give or Offer 17-4

 17:20:30 Level of intent required 17-6

 17:20:40 Exemption for reasonable promotional expenses . . 17-7

 17:20:50 Facilitations payments 17-8

 17:20:60 Books and records 17-10

 17:20:70 Six categories of books and records offences. . . 17-10

 17:20:80 Transparency in books and records 17-12

 17:20:90 Nationality jurisdiction and the real and
 substantial connection 17-13

17:30 Corporate Liability under the CFPOA 17-15

 17:30:10 Middle Managers 17-16

 17:30:10.10 Responsible for managing 17-16

 17:30:10.20 Important aspect of the organization’s
 activities. 17-17

 17:30:10.30 Two levels of due diligence: Senior
 officer level distinguished from senior
 officers’ supervision 17-19

 17:30:10.30(a) Senior officer as a party. 17-19

 17:30:10.30(a)(i) Intent at least in part to benefit
 the organization. 17-19

 17:30:10.30(a)(ii) “Scope of authority”: A second
 test 17-21

 17:30:10.40 Levels below that of a senior officer:
 Taking of all reasonable measures
 as a potential defence. 17-23

 17:30:10.40(a) Reasonable steps and mathematical
 formulas 17-26

 17:30:10.50 Comparative perspectives. 17-28

 17:30:10.50(a) Comparative perspectives and the
 compliance defence 17-28

 17:30:10.50(b) Comparative perspectives and a U.K.
 separate offence for failure to take
 steps to prevent bribery 17-30

 17:30:10.50(c) Comparative perspectives and bribing
 an FPO - U.K. section 6 17-31

 17:30:10.50(d) Comparative perspectives and failure
 to prevent - U.K. section 7 17-32

17:40 Agents and Contractors. 17-34

REGULATORY AND CORPORATE LIABILITY

	17:40:10	Maintain a full roster of all third party agents . .	17-37
17:50		Sentencing	17-37
	17:50:10	First jail sentence	17-37
	17:50:10.10	Aggravating factors	17-38
	17:50:10.20	Mitigating factors	17-38
	17:50:20	Sentencing Jurisprudence	17-39
	17:50:30	Lessons learned from Griffiths Energy	17-40
	17:50:40	Corporate criminal law sentencing	17-41
	17:50:40.10	Above the senior officer rung, the ladder is flat	17-42
	17:50:40.20	Analysis of factors	17-42
17:60		Debarment	17-43
	17:60:10	Historical Debarment Model	17-44
	17:60:10.10	Strict rules with a ten-year ban	17-44
	17:60:10.20	Affiliates	17-45
	17:60:10.2(a)	Control test	17-46
	17:60:10.2(b)	Certification test	17-46
	17:60:10.2(c)	The control test is consistent with traditional corporate law	17-46
	17:60:10.30	Lack of Administrative Discretion	17-48
	17:60:10.40	Very Narrow Public Interest Exceptions .	17-49
	17:60:10.50	Economic Impact	17-49
	17:60:10.60	No Administrative Appeals or Reviews .	17-49
	17:60:20	Revised Debarment Rules: The New Integrity Regime	17-50
	17:60:20.10	Potential Reduction to 5 Years: A Disjunctive Test	17-50.1
	17:60:20.20	Affiliates	17-50.2
	17:60:20.30	Permanent Ineligibility	17-50.2
	17:60:20.40	Interim Suspensions and Admissions of Guilt	17-50.2
	17:60:20.50	Due Process	17-50.3
	17:60:20.60	Existing Contracts	17-50.4
	17:60:20.70	Third Party Monitoring and Verification	17-50.4
17:70		Directors' Liability	17-50.5
17:80		Extractive Sector Transparency Measures Act	17-52
17:90		Risk Assessment	17-53
	17:90:10	Methodology: A Risk Matrix	17-53
	17:90:20	Foreign corrupt practices: Calculation of the probability of non-compliance	17-56
	17:90:20.10	Preventative systems	17-56
	17:90:20.20	Foreseeability of the effect	17-58
	17:90:20.30	Alternative solutions/scenarios	17-60

TABLE OF CONTENTS

17:90:20.40 Past compliance 17-60

17:90:20.50 Past efforts to address the problem 17-61

17:90:20.60 Over what period of time, and
promptness of response 17-62

17:90:20.70 Skill level 17-62

17:90:20.80 Matters beyond control and third
parties 17-64

 17:90:20.80(a) Risk that agents and contractors
 may be considered as senior
 officers 17-65

 17:90:20.80(b) Risk that senior officers do not
 take all reasonable steps to
 supervise agents and contractors. . . 17-66

17:90:20.90 Complexities: The law concerning
 subsidiaries 17-66

17:90:20.100 Industry standards 17-71

17:90:20.110 Aggregate probability of non-compliance 17-72

17:90:30 Calculation of the potential gravity of harm 17-73

 17:90:30.10 Formula for Calculation of the gravity
 of potential risk 17-74

 17:90:30.20 Seriousness of harm: Subsets 17-74

 17:90:30.30 Volume and scope of activities. 17-75

17:90:40 Drawing the matrix 17-76

17:100 Self reporting: Can this constitute due diligence to the defence
of taking all reasonable measures? 17-79

 17:100:10 Information Sharing 17-83

 17:100:10.10 Immunity from Canadian Law. 17-84

 17:100:10.20 Comments on the Seriousness of
 Corruption. 17-84.1

17:110 Case for deferred prosecution agreements: Increasing the
incentive to implement compliance programmes and to
self report 17-84.1

17:120 New systems to encourage compliance. 17-85

 17:120:10 Regulator response to the existence of compliance
 programmes 17-85

 17:120:20 Key steps in a risk based approach. 17-87

 17:120:30 Codes of Conduct: A template 17-90

 17:120:40 Compensation models and documentation
 of risk management 17-90

 17:120:50 Compensation models should reward compliance
 as well as profit 17-91

 17:120:60 The process of risk assessment needs to be
 compensated. 17-91

REGULATORY AND CORPORATE LIABILITY

17:120:70 Whistleblowers: Another reason to compensate compliance 17-91
17:120:80 Risk assessment processes must be documented . . 17-93
17:120:90 Tone from the top 17-93
17:120:100 Relationship between compliance programmes and enforcement 17-93
17:130 A plan for meeting with the government 17-95
17:130:10 Seek an advance opinion 17-95
17:130:20 Take ownership of the issue 17-96
17:130:30 Any misconduct has stopped 17-96
17:130:40 The investigation was thorough 17-96
17:130:50 Remediation has taken place 17-96
17:130:60 Regular risk assessment of the compliance programme are occurring 17-97
17:140 Theoretical Perspectives 17-97
17:150 Conclusion 17-98

Corporate Criminal Liability: Flowcharts and Checklists

Anti-Bribery and Corruption Policy FC-1
Anti-Bribery and Corruption Due Diligence Questions FC-11
Corporate Criminal Liability Flowchart – Senior Officer Level . . . FC-13
Corporate Criminal Liability Flowchart – Under Supervision of a Senior Officer FC-16
Secret Commissions FC-18
Books and Records Flowchart FC-19
Accounts that do not Appear in Books and Records FC-21
Threshold Matrix FC-22
Matrix of Harm Where Gravity of Harm Trumps Probability FC-23
Positive Matrix FC-24

Volume 2

Table of Contents CON-1

Appendix A

Leading and Seminal Cases in Sentencing A-i
Sentencing Tables - A:10 to A:40 A-1

TABLE OF CONTENTS

Volume 3

Table of Contents CON-1

Sentencing Tables *Continued* - A:50 to A:60 A-341

Appendix B: Due Diligence Table B-1

Index IN-1