

# Preconference II: FCPA, Antibribery and Anticorruption - Recent developments in Germany

Philipp Rau, Clifford Chance



Rome, 28 May 2009

# German provisions concerning international corruption

---

- (German) Act on Combating Bribery of Foreign Public Officials in International Business Transactions (*Internationales Bestechungsgesetz*, “**ACIB**“) of 10 September 1998  
  
international legal basis: OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions adopted on 21 November 1997
- (German) Act concerning the Protocol of 27 September 1996 regarding the Convention on the Protection of European Communities’ Financial Interests (*Gesetz zu dem Protokoll vom 27. September 1996 zum Übereinkommen über den Schutz der finanziellen Interessen der EU*) of 10 September 1998
- sec. 299 para. 3 of the German Criminal Code (*Strafgesetzbuch*) concerning active and passive bribery in private (international) business

# Recent developments regarding the German anticorruption provisions

---

## Extension regarding the application of the German anticorruption provisions (in particular, the ACIB):

- suspicion of German tax authorities regarding corruptive benefits: decision of the German Federal Supreme Tax Court of 14 July 2008 (matter number: VII B 92/08)

if there is a suspicion concerning potential corruptive benefits, German tax authorities are obliged – without any discretion – to inform the German prosecution authorities pursuant to sec. 4 para. 5 no. 10 sentence 3 of the German Income Tax Act (*Einkommensteuergesetz*)

- legal standards for defining the term „public official“ of the ACIB: decision of the German Federal Supreme Court of 29 August 2008 (matter number: 2 StR 587/07)

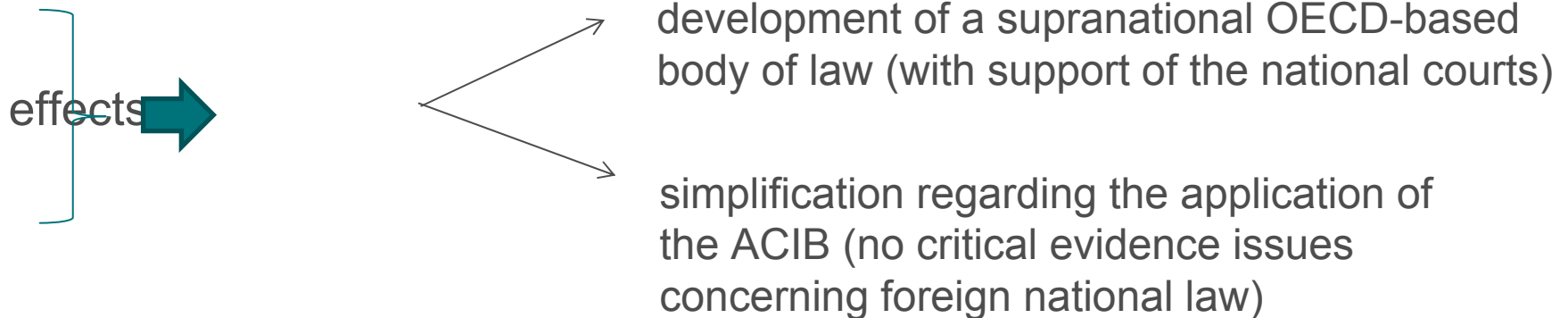
decision concerning the Siemens case and first decision of the German Federal Supreme court regarding the ACIB, see next slide

# „Public official“ according to the ACIB (decision of the German Federal Supreme court of 29 August 2008)

---

term „public official“ to be interpreted „autonomously“ from national law, i.e. exclusively based on the OECD convention without taking into consideration

- the national law of the *foreign country* where the (potential) public official is located
- the *German law*



question: Are physicians of public hospitals „public officials“ according to the OECD-based anticorruption regulations?

# Dr. Philipp Rau, LL.M.

---

Philipp Rau is a lawyer in the Frankfurt office of Clifford Chance and a member of the firm's white collar, regulatory and compliance team. He joined Clifford Chance in 2004.

Philipp Rau advises in the area of white collar, regulatory and compliance. He has experience in defending entities in connection with investigation proceedings concerning them and their employees and in advising on corporate investigations and prosecution of corruption and fraud cases. He is, in particular, experienced in preventive advice on anti-corruption compliance issues in order to avoid the risk of criminal and regulatory penalties.



## Contact:

Mainzer Landstraße 46  
60325 Frankfurt am Main  
Germany

Tel: +49 69 7199-2983  
Fax: +49 69 7199-4000  
E-mail: [philipp.rau@cliffordchance.com](mailto:philipp.rau@cliffordchance.com)

# Preconference II: FCPA, Antibribery and Anticorruption - Recent developments in Germany



[www.cliffordchance.com](http://www.cliffordchance.com)

Clifford Chance, PO Box 11 14 42, 60049 Frankfurt am Main, Mainzer Landstraße 46,  
60325 Frankfurt am Main © Clifford Chance 2009 Clifford Chance  
Partnerschaftsgesellschaft von Rechtsanwälten, Wirtschaftsprüfern, Steuerberatern und  
Solicitors · Sitz: Frankfurt am Main · AG Frankfurt am Main PR 1000