



Beware Of Bribery Beyond Our Borders

Although the U.S. Foreign Corrupt Practices Act (FCPA), an anti-bribery statute, has been law since 1977, it has only been vigorously enforced in recent years. The Department of Justice (DOJ) and the Securities and Exchange Commission (SEC) have stepped up their investigations and prosecutions of domestic companies' activities overseas and have signaled that they have no intention of slowing down. Settlement amounts have skyrocketed as high as hundreds of millions of dollars.

The FCPA makes it unlawful to give anything of value to foreign officials, including foreign political parties — party officials or candidates — to obtain or retain business. The FCPA applies to any firm, individual, officer, director, employee or agent of the firm, including consultants. U.S. parent companies have even been held liable for the acts of their foreign subsidiaries. In addition, the FCPA requires U.S. public companies to satisfy certain recordkeeping and accounting provisions.

Produce and other food companies are not immune from the risks associated with anti-bribery enforcement. In fact, Chiquita International Brands is currently defending against shareholder derivative lawsuits stemming from illegal protection payments the company made to a Colombian terrorist organization. Chiquita pled guilty to making these payments and has already paid a \$25 million fine to the DOJ. In addition, in 2001, the company paid a \$100,000 civil penalty to the SEC and agreed to an SEC cease-and-desist order alleging that it violated the FCPA by paying bribes through a Chiquita subsidiary to Colombian customs officials.

Last year, the Fifth Circuit Court of Appeals upheld the convictions of two executives of American Rice Inc. for violating the FCPA through a Haitian subsidiary by making payments to reduce certain taxes and duties.

Enforcement Actions And Settlement Amounts On The Rise

The DOJ and SEC have increased their FCPA investigations and prosecutions. In a 2009 report highlighting the DOJ's accomplishments, the agency noted that from 2001-07, it brought more FCPA prosecutions than it had in the previous 24 years combined. Similarly, the SEC brought more FCPA cases from January 2006 to October 2008 than it had in the previous 29 years combined.

"FCPA violations have been and will continue to be dealt with severely by the SEC and other law enforcement agencies," SEC chairman, Mary L. Schapiro, said in an SEC press release. "Any company that seeks to put greed ahead of the law by making illegal

payments to win business should beware that we are working vigorously across borders to detect and punish such illicit conduct."

As the number and scope of enforcement actions have grown, so have the costs associated with settling an action. Last month, Halliburton and KBR Inc. agreed to pay \$177 million in disgorgement to settle the SEC's charges that KBR subsidiary Kellogg Brown & Root bribed Nigerian government officials over a decade-long period in violation of the FCPA. Kellogg Brown & Root also agreed to pay a \$402 million fine to settle parallel criminal charges brought by the DOJ.

In December, Siemens AG and three of its subsidiaries pled guilty to violating the FCPA and agreed to pay at least \$800 million in fines and disgorgement to settle the charges brought by the DOJ and SEC.

More Cross-border Enforcement Actions Expected

Beyond stepping up their enforcement efforts, the SEC and the DOJ are collaborating with various international authorities to prosecute FCPA violations. For example, the SEC and the DOJ last year announced that they had partnered with authorities in the United Kingdom, Germany, and Hong Kong to secure a \$1.6 billion settlement from Siemens — the largest amount any company has ever paid to resolve corruption-related charges — for bribing government officials around the world to obtain business.

If you do business with growers, shippers, wholesalers or retailers overseas, here are some steps to minimize your company's risk

**Here are
some steps to
minimize your
company's
risk of FCPA
violations.**

of FCPA violations:

- Develop a compliance program. Make sure the program gives clear guidance to employees and that every employee in the organization is educated on the FCPA.
- Try to identify potential risk areas.
- Ask your employees for help. Create an FCPA hotline so that employees in the field can report suspected FCPA violations.
- Don't sit back and wait for problems. If you have a compliance program in place, conduct regular FCPA audits with the help of outside counsel experienced in FCPA issues.
- Don't assume that certain industries are safe. There is an erroneous assumption that corruption issues are more pervasive in the defense and energy industries.
- Cooperation is often the best policy. Consider prompt, voluntary disclosure of FCPA violations to the DOJ and SEC, and an internal investigation of the underlying facts lead by an appropriate board committee and experienced outside counsel. **pb**