JONES DAY

JANUARY 2010

The Foreign Corrupt Practices Act: An Overview

THE FOREIGN CORRUPT PRACTICES ACT: AN OVERVIEW

R. Christopher Cook, Stephanie Connor

Corruption poses a significant legal and economic risk for corporations doing business around the world, particularly in developing and transitioning countries. The United States Department of Justice ("DOJ") and the Securities and Exchange Commission ("SEC") are leading the international fight against corruption by increasing the number of investigations, settlements, and prosecutions for violations of the Foreign Corrupt Practices Act ("FCPA" or the "Act").

Because of this increased enforcement activity, managers and directors who run multinational corporations are rightfully concerned about their compliance efforts. In order to minimize the risks posed by foreign bribery, an organization must have a clear understanding of the practices prohibited by the FCPA and other applicable laws, such as U.S. regulations against money laundering, racketeering, and conspiracy. Leaders and legal advisors must also remain up to date on trends in enforcement. Finally, the managers who run the organization must be able to recognize "red flags"—circumstances under which the risk of corrupt practices is high and enforcement authorities expect corporations to be particularly vigilant. With this knowledge and commitment to ethical business practices, an organization can implement an effective compliance program to avoid the pitfalls of international corruption.

THE FOREIGN CORRUPT PRACTICES ACT

The FCPA contains both antibribery prohibitions and accounting requirements. The latter are designed to prevent accounting practices designed to hide corrupt payments and ensure that shareholders and the SEC have an accurate picture of a company's finances.

Who Is Covered by the FCPA? The FCPA applies to two broad categories of persons: those with formal ties to the United States and those who take action in furtherance of a violation while in the United States.

U.S. "issuers" and "domestic concerns" must obey the FCPA, even when acting outside the country. An "issuer" is any company that has securities registered in the United States or is otherwise required to file periodic reports with the SEC.[1] "Domestic concerns" is a broader category, encompassing any individual who is a citizen, national, or resident of the United States. The category of "domestic concerns" also includes any corporation, partnership, association, joint-stock company, business trust, unincorporated organization, or sole proprietorship with its principal place of business in the United States or organized under the laws of a state of the United States or a territory, possession, or commonwealth of the United States.[2] Accordingly, U.S. corporations and nationals can be held liable for bribes paid to foreign officials even if no actions or decisions take place within the United States.

In the past several years, U.S. enforcement authorities have charged and prosecuted a number of foreign corporations for bribing non-U.S. officials.[3] The DOJ interprets the FCPA to confer jurisdiction whenever a foreign company or national causes an act to be done within the territory of the United States by any person acting as the agent of that company or national.[4]

What the FCPA Prohibits. A violation of the FCPA consists of five "elements." That is, a person or organization is guilty of violating the law if the government can prove the existence of:

1) a payment, offer, authorization, or promise to pay money or anything of value
2) to a foreign government official (including a party official or manager of a state-owned concern), or to any other person, knowing that the payment or promise will be passed on to a foreign official
3) with a corrupt motive
4) for the purpose of (a) influencing any act or decision of that person, (b) inducing such person to do or omit any action in violation of his lawful duty, (c) securing an improper advantage, or (d) inducing such person to use his influence to affect an official act or decision
5) in order to assist in obtaining or retaining business for or with, or directing any business to, any person.[5]

A covered individual or entity that violates the FCPA can be subject to criminal charges by the DOJ, which might lead to imprisonment or a fine, in addition to penalties by the SEC of up to $500,000 or the amount by which the entity profited from the offense.

The definitions of "payment" and "foreign official" are sufficiently broad to cover virtually any benefit conferred on someone in a position to affect a person's business dealings with a foreign government. Nonmonetary benefits, including travel and entertainment, fall within the FCPA's definition. Likewise, the DOJ has taken the position that employees of state-owned business enterprises are "foreign officials" for purposes of the FCPA.[6] The statute contains no monetary threshold; even the smallest bribes are prohibited.

Under the terms of the FCPA, a bribe need not actually be paid in order to violate the law. Rather, the FCPA prohibits the offer, authorization, or promise to make a corrupt payment in addition to the actual payment.

The FCPA prohibits payments made with a "corrupt" motive. The legislative history of the statute describes this as an "evil motive or purpose, an intent to wrongfully influence the recipient."[7] The Supreme Court recently reinforced the notion that a criminal prohibition against "corrupt" conduct requires a consciousness of wrongdoing, although the Court declined to provide an all-encompassing definition of the statutory term.[8] Truly innocent mistakes are not illegal under the FCPA.

In order to constitute an FCPA violation, a payment must be intended to cause an official to take an action or make a decision that would benefit the payor's business interest. Note that the business to be "obtain[ed] or retain[ed]" by the corrupt payment need not be with the government or a government-owned entity. Rather, the FCPA is violated if a corrupt payment is made in order to facilitate improperly the obtaining or retaining of business with a third party.

FCPA CASE LAW EVOLVES: *U.S. v. KAY*, 513 F.3D 432 (5TH CIR. 2007). After a lengthy appeals process, the United States Court of Appeals for the Fifth Circuit held that payments made by two executives at American Rice Incorporated ("ARI") to Haitian officials to reduce ARI's tax liabilities were indeed designed to "obtain or retain business" as prohibited by the FCPA. David Kay and Douglas Murphy were indicted in 2002 but argued that their actions did not fall under the scope of the FCPA prohibition against payments to "obtain or retain business" under the conventional understanding of that language. Kay and Murphy had moved to dismiss and arrest judgment based on lack of fair notice, a motion that the Fifth Circuit rejected after concluding that Kay's and Murphy's convictions met the various standards of fair notice. The United States Supreme Court denied Kay's and Murphy's petition for writ of certiorari on October 6, 2008.

Other Relevant Laws. Other statutes that reach allegedly corrupt activities, such as conspiracy, racketeering, mail fraud, wire fraud, and money laundering, complement the FCPA. Federal money-laundering laws list FCPA violations as predicate offenses and can be used to prosecute the funding of unlawful transactions.[9] In 2008, the DOJ demonstrated its willingness to use forfeiture actions to target the proceeds of bribery overseas—a significant development, given that the recipients of bribes are excluded from prosecution under the FCPA and the U.S. general conspiracy statute.[10]

YOU CAN'T BURY YOUR HEAD IN THE SAND. Although the FCPA prohibits only a "knowing" violation, knowledge can be proved by evidence of willful blindness. Indeed, when it amended the FCPA in 1988, Congress indicated that it intended to prohibit actions that "demonstrate evidence of a conscious disregard or deliberate ignorance of known circumstances that should reasonably alert one to high probability of violations of the Act."[11]

Penalties for Violating the FCPA Antibribery Provisions. Individuals face up to five years' imprisonment for each violation of the antibribery provisions of the FCPA, or up to 20 years for certain willful violations.[12] Corporations and other business entities may be fined up to $2 million for each violation, individuals as much as $100,000.[13] The maximum fine may be increased to $25 million for corporations and $5 million for individuals in the case of certain willful violations.[14] Under the Alternative Fines Act, all criminal fines, including those imposed under the FCPA, may be increased to twice the gain obtained by reason of the offense or twice the loss to any other person.[15] Both the DOJ and the SEC may seek a court order enjoining violations of the FCPA.[16]

Indemnification Prohibited. The FCPA prohibits "issuers" as defined under the Act (including all public corporations) from paying the criminal and civil fines that may be imposed on an officer, director, employee, agent, or stockholder.[17]

Collateral Consequences. Individuals and corporations that are found to have violated the FCPA may suffer collateral consequences such as exclusion or debarment from certain federal programs, ineligibility to receive export licenses, and suspension or debarment from the securities industry. Because violation of the FCPA is a predicate act under the Racketeer Influenced and Corrupt Organizations Act ("RICO"), a corporation or individual may be subject to additional civil or criminal actions, including a private RICO action by an aggrieved competitor or forfeiture proceedings by the government.[18]

Exceptions and Defenses Under the FCPA. The FCPA contains several provisions that exempt certain conduct from its antibribery provisions.

Facilitating Payments for Routine Government Actions. The FCPA does not prohibit "facilitating or expediting payment[s]" made to foreign officials for the purpose of causing them to perform "routine governmental actions."[19] This provision is commonly referred to as the "grease payment" exception. In order to qualify for this exception, payments must relate to the performance of routine, nondiscretionary government

functions such as the issuance of routine licenses or the provision of phone, power, and water service; providing police protection or mail delivery; or scheduling inspections associated with contract performance or the shipment of goods. The FCPA provides that a routine governmental function does not include any decision by a foreign official to award new business or to continue business with a party. It is important to note that this exception is not carte blanche to make small bribes. Relying on this exception is very risky, as the government has provided little guidance to help companies or individuals determine what conduct qualifies as a facilitating payment. Moreover, a facilitating payment that is permitted under the FCPA may still be unlawful under other laws, including those of the country in which the payment was made.

Payments Permitted by Written Laws. The FCPA does not prohibit payments that are lawful under the written laws and regulations of the foreign official's country.[20] This exception arguably would apply, for example, if a corporation followed a foreign country's written guidelines regarding permissible financial arrangements with managers of a state-owned business, provided the payments were not made in exchange for corrupt actions by the recipient. We are not aware of any country with written laws that permit bribery.

"Reasonable and Bona Fide Expenditures." The FCPA provides that it shall not constitute a violation of the statute if the person charged can prove that the payment in question constituted "a reasonable and bona fide expenditure, such as travel and lodging expenses," and that it was "directly related to (A) the promotion, demonstration, or explanation of products or services; or (B) the execution or performance of a contract with a foreign government or agency thereof."[21] Notwithstanding this affirmative defense, travel and lodging expenses intended to influence a foreign official's actions can violate the FCPA. For example, the DOJ has taken the position that luxury or recreational travel provided for government officials can form the basis for FCPA prosecution.[22]

Application of the FCPA to Foreign Subsidiaries. Corporations cannot insulate themselves from liability under the FCPA for actions taken overseas merely by moving foreign operations to a subsidiary. While it is true that the antibribery provisions of the FCPA do not explicitly make a parent corporation liable for violations committed by a foreign subsidiary, enforcement authorities are clearly prepared to employ other legal theories as a means of holding parent corporations responsible for the actions of their subsidiaries. As discussed below, the books-and-records provisions of the FCPA impose an obligation on corporate parents to ensure their subsidiaries' compliance. Corrupt payments, of course, are almost never recorded accurately on a corporation's books, making every antibribery case a potential books-and-records case. As a result, corporations that fall within the SEC's jurisdiction should implement at the subsidiary level comprehensive policies directed specifically to the accuracy of recordkeeping. Recent cases exhibit the U.S. government's increasing willingness to pursue foreign subsidiaries.[23]

Broadly speaking, parent corporations have potential exposure for the actions of their subsidiaries to the extent that the parent controls in any way the operations of the subsidiary. Prosecutors have at their disposal several legal theories that can permit them to bring an action against a parent for its subsidiary's actions. The prosecutor might seek to establish that the subsidiary was the "alter ego" of the parent. Similarly, it might try to establish that the parent and subsidiary formed a single "integrated enterprise" or that the corporate veil should be pierced, destroying the corporate separateness between the organizations. To the extent that employees of the parent are directly involved in the affairs of the subsidiary, the government may seek to attribute to the parent responsibility for the actions of those employees under the legal theory of *respondeat superior*. That doctrine can attribute responsibility to a corporation for an employee's illegal actions when the employee acted within the scope of his duties and for the benefit of the corporation. Criminal responsibility can be triggered by the act of any employee within a company, not just high-level officials. For all of these reasons, corporations are well advised to ensure that their foreign subsidiaries have in place adequate corporate compliance policies and procedures to prevent illegal activity.

Obtaining Advisory Opinions for Future Conduct. Under procedures promulgated by the DOJ, issuers and domestic concerns may seek and obtain "an opinion of the Attorney General as to whether certain specified, prospective—not hypothetical—conduct conforms with the Department's present enforcement policy regarding the antibribery provisions of the Foreign Corrupt Practices Act."[24] Opinions issued by the Attorney General are published, albeit without specifically naming the companies and persons involved. While the opinions are binding only as to the requestor, the government's approach to specific fact situations can be a valuable source when evaluating proposed courses of action.

Outside of these opinions, limited guidance exists regarding FCPA compliance. For example, how much government ownership or control is necessary to qualify an entity as state-controlled is still an open question, and the government has offered little explicit guidance as to the contours of the "reasonable and bona fide" affirmative defense for promotional expenses.

THE IMPORTANCE OF KEEPING GOOD RECORDS. In complying with the FCPA, an organization cannot neglect its books and records. For those corporations that issue U.S. securities, the FCPA explicitly imposes recordkeeping and internal control requirements that extend to the company's foreign and domestic subsidiaries. It is, for example, a separate and independent violation for such a company to book as "consultant fees" money paid to a third party for other reasons, regardless of whether the funds actually can be traced to a foreign official. Indeed, most FCPA enforcement actions brought by the SEC arise from accounting violations, not bribery per se. Although the FCPA's accounting provisions apply only to issuers of securities in the United States, all organizations should focus on maintaining accurate financial records as a means of avoiding risky or suspicious payments. A *Jones Day White Paper* entitled "The Legal Obligation to Maintain Accurate Books and Records in U.S. and Non-U.S. Operations," which details the FCPA's recordkeeping and internal control requirements, is available at www.jonesday.com.

RECOGNIZING RED FLAGS

Corporations and individuals may be subject to prosecution for corrupt payments *even if they have no actual knowledge that bribes are being paid*. As noted above, the FCPA purports to impose criminal sanctions on persons who pay money to third parties with a reckless disregard for circumstances that suggests the money is being used for corrupt purposes. Thus, if an executive agrees to pay a consultant who in turn gives some of that money to a government official in exchange for official actions that benefit the corporation, the executive and the corporation may be targeted by the DOJ for violating the FCPA even absent actual knowledge of the corrupt payment. Whether the government believes that the company and its employees should be held liable for such indirect bribes largely depends on the existence of circumstances that should have put the company on notice that corrupt payments were likely to occur.

The government has provided some guidance regarding circumstances it considers to be "red flags" for FCPA violations:[25]

Unusual Payment Patterns or Financial Arrangements. Generally speaking, bribes have come a long way from the proverbial bag of cash exchanged under the table. Nevertheless, improper payments made to foreign officials almost always are accompanied by unusual payment arrangements. Companies should use increased vigilance when asked to make payments for services in a bank account not located in either the country where the services were rendered or the country where the recipient of the funds is located. Similarly, the use of shell entities or aliases should trigger heightened scrutiny of the transaction to ensure that it is not a vehicle for corrupt payments.

A History of Corruption in the Country. Although bribes may be paid or demanded in all countries, no one seriously disputes that certain nations—many in the developing world—see more than their fair share of corruption. When doing business in a country with a reputation for public corruption, corporations must be particularly suspicious of any activity that might suggest that bribes are being paid by their employees or agents. Enhanced compliance and training efforts often are in order. Thus, at a minimum, corporations doing business abroad should be familiar with the annual Corruption Perceptions Index published by Transparency International (www.transparency.org). Additional resources regarding the prevalence of corruption in a particular country are available from the State Department. International legal counsel can provide further details regarding the likelihood that bribes will be solicited or demanded in particular circumstances.

Rejection of Anticorruption Provisions. A corporation subject to the FCPA often asks a foreign business partner to warrant that it will not (a) take any action in furtherance of an unlawful offer, promise, or payment to a foreign public official or (b) take any action that would cause the firm to be in violation of the FCPA. To the extent that a prospective business partner refuses to agree to such a contract provision or other written certification, the corporation should be on alert that the partner may not intend to live up to those standards.

Unusually High Commissions. Commissions have historically been a vehicle through which bribes can be funneled to government officials. Accordingly, a request to pay unusually high commissions is a warning sign of possible corruption. A request to deposit commissions in multiple bank accounts, perhaps in offshore banks, also justifies additional scrutiny.

Lack of Transparency in Expenses and Accounting Records. As demonstrated by the books-and-records provisions of the FCPA, Congress and enforcement authorities view accurate books and records as a critical bulwark against corrupt payments. Lack of transparency in the books and records of a foreign business partner is a possible indicator of corrupt activity. If such a business partner seeks to shield expenses, accounting records, and other financial information from view, a possible motivation could be the desire to hide improper payments to government officials.

Apparent Lack of Qualifications or Resources. Corporations doing business abroad should be suspicious if a joint-venture partner or representative does not appear capable of performing the services offered. Numerous enforcement actions have arisen from sham service contracts, under which corrupt payments are disguised using a consulting agreement or other arrangement. Similarly, organizations and individuals doing

business in a foreign country should be particularly wary of anyone who claims to have the ability to obtain licenses or other government approval without providing a description of the legitimate manner in which those goals will be accomplished.

Recommendation by a Government Official. Government officials need not demand a bribe directly in order to create potential FCPA liability for an organization or individual. Instead of demanding a bribe outright, a government official who is not a potential customer but exercises authority over a transaction may suggest that a particular third party be hired as a consultant or in some other capacity. Numerous enforcement actions have arisen from payments to third parties at the request of foreign government officials. Accordingly, any organization or individual doing business in a foreign country must be cautious when a government official suggests in any way that a particular third party be paid or hired.

CORPORATE COMPLIANCE PROGRAMS

Any organization seeking to do business lawfully and ethically in a foreign country should have in place a compliance program designed to detect and prevent corrupt payments to government officials. The benefits of such a program are twofold. First, an effective corporate compliance program will reduce the risk that employees in a foreign subsidiary will break the law out of ignorance or in the mistaken belief that paying bribes, although unlawful, is in the best interest of the organization. Second, in the event that an individual pays a bribe notwithstanding the organization's best efforts, a compliance program stands as tangible evidence of the organization's good faith. In the United States, for example, the existence of a corporate compliance program has been identified by the DOJ as one factor in deciding whether to bring charges against a corporation for the illegal actions of an employee. Likewise, corporations convicted of criminal charges in the United States are eligible to pay lower fines if they have corporate compliance programs in place.

An effective FCPA compliance program will contain the following elements:

1) A policy or code of business ethics that prohibits corrupt payments to government officials.
2) Detailed procedures, standards, and guidance to address specific issues that might arise in the course of a company's operations.
3) Training programs designed to provide the appropriate education to each employee on the basis of seniority, job responsibilities, geographic location, and line of business.
4) Systems to detect and investigate suspected violations, to monitor the effectiveness of the program, and to remedy violations.

The precise details of such a compliance program will vary, of course, from one company to another, depending on the size of the organization, the nature and location of its operations, and the degree to which its employees interact with government officials. Typically, an organization with significant overseas operations will include in its FCPA compliance program specific procedures for conducting due diligence of foreign consultants, agents, and business partners. The program also should set company policy regarding the use of contract terms relating to FCPA compliance, providing model language where appropriate.

Deciding Whether to Self-Disclose. In the event that a company learns of a possible FCPA violation—perhaps through its compliance program—the organization faces the difficult question of whether to alert the authorities. With increasing frequency, corporations are self-reporting to enforcement authorities activities of employees and business partners that might violate the FCPA. This is due to numerous factors, including the requirements of the Sarbanes-Oxley Act of 2002, the encouragement of the SEC and the DOJ, and the likelihood that enforcement authorities will discover violations that are not disclosed. Revised policies for the DOJ have identified "timely and voluntary disclosure of wrongdoing" as a key factor to be considered in deciding whether or not to prosecute a company.[26] At the same time, enforcement agencies have committed considerable resources to investigating and prosecuting corporate misconduct over the last several years.

In deciding whether to self-disclose, corporations must be cautious. While disclosure may reduce penalties and avoid negative publicity, it is only one of many factors used to determine the penalty for foreign corruption offenses. Some companies escape serious consequences when they self-disclose, but there is no guarantee of leniency from the SEC or the DOJ when companies report voluntarily. In short, companies often are subject to enforcement actions even after self-disclosure. Companies must be aware that the practical consequences of disclosure remain unpredictable.

ADDITIONAL INFORMATION

For further information, please contact your principal Jones Day representative, R. Christopher Cook (+1.202.879.3734; christophercook@jonesday.com), or one of the lawyers listed in this publication. General email messages may be sent using our "Contact Us" form, which may be found at www.jonesday.com.

ENDNOTES

1 15 U.S.C. §78dd-1(a).
2 15 U.S.C. §78dd-2(h)(1).
3 *See* Press Release, "Former Alcatel CIT Executive Sentenced for Paying $2.5 Million in Bribes to Senior Costa Rican Officials," U.S. Department of Justice (Sept. 23, 2008), *available at* http://www.usdoj.gov/opa/pr/2008/September/08-crm-848.html (all web sites herein last visited Dec. 18, 2009); Press Release, "Three Vetco International Ltd. Subsidiaries Plead Guilty to Foreign Bribery and Agree to Pay $26 Million in Criminal Fines," U.S. Department of Justice (Feb. 6, 2007), *available at* http://www.usdoj.gov/opa/pr/2007/February/07_crm_075.html.
4 *See* United States Attorneys' Manual, Title 9, Criminal Resource Manual, 1018 Prohibited Foreign Corrupt Practices, *available at* http://www.usdoj.gov/usao/eousa/foia_reading_room/usam/title9/crm01018.htm.
5 15 U.S.C. §§78dd-1(a), 78dd-2(a), 78dd-3(a).
6 *See*, *e.g.*, FCPA Review Procedure Release No. 83-02, U.S. Department of Justice (July 26, 2002) (treating as a "foreign official" the general manager of a company owned by a foreign government and with which a U.S. company was entering a joint venture).
7 S. Rep. No. 114 95th Cong. 1st Sess. 10 (1977).
8 *Arthur Andersen LLP v. United States*, 125 S. Ct. 2129 (2005).
9 18 U.S.C. §1956(c)(7)(B)(iv).
10 Press Release, "Department of Justice Seeks to Recover Approximately $3 Million in Illegal Proceeds from Foreign Bribe Payments," U.S. Department of Justice (Jan. 9, 2009), *available at* http://www.usdoj.gov/opa/pr/2009/January/09-crm-020.html.
11 H.R. Conf. Rep. No. 100-579, at 919–20 (1988). The original 1977 version of the FCPA contained a broader knowledge requirement—prohibiting a defendant from engaging in prohibited conduct while "knowing or having reason to know" that the benefit in question could be passed on to a government official for corrupt purposes. *Id.* ("In clarifying the existing foreign anti-bribery standard of liability under the Act as passed in 1977, the Conferees agreed that 'simple negligence' or 'mere foolishness' should not be the basis for liability."). The DOJ may take an expansive view of the statute under which liability could be based solely on a failure to investigate, regardless of the reason. *See United States v. Green*, No. 08-59(B)-GW (Aug. 18, 2009), proposed instruction 31 (noting that the knowledge requirement may be satisfied if a person is aware of a high probability of the existence of a particular fact and "fails to take action to determine whether it is true or not"). *See also* Peter Clark, Deputy Chief of the Fraud Section, U.S. Department of Justice Criminal Division, Address at the Foreign Trade Council (Apr. 21, 1994) (summarized in Don Zarin, *Doing Business Under the Foreign Corrupt Practices Act* 4-32, n. 153 (1997)) (stating that "the department applies a standard of 'reckless disregard' or 'willful blindness' to the knowledge requirement" and that "the deletion of 'reason to know' has changed neither the prosecution standard nor counsel's advice"). Such an interpretation would appear to be at odds with the plain meaning of the statutory language, under which a defendant must take "conscious" or "deliberate" actions to avoid learning the circumstances which would suggest that a violation of the Act is taking place. Mere negligence should not suffice.
12 15 U.S.C. §78dd-1, §78ff.
13 15 U.S.C. §78dd-1 *et seq*.; 18 U.S.C. §3571.
14 15 U.S.C. §78ff(a).
15 18 U.S.C. §3571(d).
16 15 U.S.C. §78dd-1 *et seq*.
17 15 U.S.C. §78ff(c)(3).
18 *See*, *e.g.*, Glenn Simpson, "Alcoa Faces Allegation By Bahrain of Bribery," *The Wall Street Journal* (Feb. 28, 2008).
19 15 U.S.C. §§78dd-1(b), 78dd-2(b), 78dd-3(b).
20 15 U.S.C. §§78dd-1(c)(1), 78dd-2(c)(1), 78dd-3(c)(1).
21 15 U.S.C. §§78dd-1(c)(2), 78dd-2(c)(2), 78dd-3(c)(2).
22 *See also* FCPA Review Opinion Procedure Release No. 08-03, U.S. Department of Justice (July 11, 2008), *available at* http://www.usdoj.gov/criminal/fraud/fcpa/opinion/2008/0803.html; FCPA Review Opinion Procedure Release No. 07-02, U.S. Department of Justice (Sept. 11, 2007), *available at* http://www.usdoj.gov/criminal/fraud/fcpa/opinion/2007/0702.html.
23 *See In the Matter of Schnitzer Steel Industries, Inc.*, U.S. Securities and Exchange Commission Administrative Proceeding File No. 3-12456 (Oct. 16, 2006); Deferred Prosecution Agreement (Oct. 2006) (Schnitzer Steel consented to the entry of a cease-and-desist order and agreed to pay a $7.7 million civil penalty relating to corrupt payments made by its Korean subsidiary); Press Release, "Former Senior Officer of Schnitzer Steel Industries Inc. Subsidiary Pleads Guilty to Foreign Bribes," U.S. Department of Justice (June 29, 2007), *available at* http://www.usdoj.gov/opa/pr/2007/June/07_crm_474.html; Press Release, "SEC Settles Charges Against Former Portland Steel Executive for Anti-Bribery Statute Violations," U.S. Securities and Exchange Commission (June 29, 2007), *available at* http://www.sec.gov/litigation/litreleases/2007/lr20174.htm; *In the Matter of Diagnostics Products Corp.*, U.S. Securities and Exchange Commission Litigation Release No. 51724 (May 20, 2005) (finding DPC in violation of FCPA for improper payments made by Chinese subsidiary); *United States v. DPC (Tianjin), Ltd.* (C.D. Cal. 2005) (plea agreement); *see* 1588 PLI/Corp 63, 103 (2007); *In the Matter of Syncor International*, U.S. Securities and Exchange Commission Release No. 46979 (Dec. 10, 2002) (assigning liability to Syncor International for payments that Syncor Taiwan made to physicians employed by hospitals owned by the legal authorities in Taiwan in exchange for their referrals of patients to medical imaging centers owned and operated by the defendant).
24 28 C.F.R. §80.1 (1992).
25 *See* U.S. Department of Justice, "Lay-Person's Guide to FCPA," *available at* http://www.usdoj.gov/criminal/fraud/docs/dojdocb.html.
26 *See Principles of Federal Prosecution of Business Organizations—Title 9*, Chapter 9-28.000 (revised on Aug. 28, 2008, and describing factors that the DOJ will consider in deciding whether to bring charges against a corporation); U.S. Securities and Exchange Commission's October 2001 "Seaboard Report" (articulating factors the SEC considered in deciding whether or not to pursue an enforcement action).

LAWYER CONTACTS

ATLANTA
Richard H. Deane, Jr.
+1.404.581.8502
rhdeane@jonesday.com

BEIJING/SHANGHAI
Peter J. Wang
+86.10.5866.1131/+86.21.2201.8040
pjwang@jonesday.com

CHICAGO
Daniel E. Reidy
+1.312.269.4140
dereidy@jonesday.com

CLEVELAND
Jonathan Leiken
+1.216.586.7744
jleiken@jonesday.com

Stephen G. Sozio
+1.216.586.7201
sgsozio@jonesday.com

DALLAS
Weston C. Loegering
+1.214.969.5264
wcloegering@jonesday.com

George T. Manning
+1.214.969.3676
gtmanning@jonesday.com

FRANKFURT
Jörg Rehder
+49.69.9726.3122
jrehder@jonesday.com

LONDON
Michael P. Brown
+44.20.7039.5226
michaelbrown@jonesday.com

Sion Richards
+44.20.7039.5139
srichards@jonesday.com

LOS ANGELES
Frederick D. Friedman
+1.213.243.2922
ffriedman@jonesday.com

Brian O'Neill
+1.213.243.2856
boneill@jonesday.com

Brian A. Sun
+1.213.243.2858
basun@jonesday.com

NEW YORK
Charles M. Carberry
+1.212.326.3920
carberry@jonesday.com

Henry Klehm III
+1.212.326.3706
hklehm@jonesday.com

SAN FRANCISCO
Martha Boersch
+1.415.875.5811
mboersch@jonesday.com

John D. Cline
+1.415.875.5812
jcline@jonesday.com

WASHINGTON
R. Christopher Cook
+1.202.879.3734
christophercook@jonesday.com

Mary Ellen Powers
+1.202.879.3870
mepowers@jonesday.com

Peter J. Romatowski
+1.202.879.7625
pjromatowski@jonesday.com

JONES DAY LOCATIONS

ATLANTA
BEIJING
BRUSSELS
CHICAGO
CLEVELAND
COLUMBUS
DALLAS
DUBAI
FRANKFURT
HONG KONG
HOUSTON
IRVINE
LONDON
LOS ANGELES
MADRID
MEXICO CITY
MILAN
MOSCOW
MUNICH
NEW DELHI
NEW YORK
PARIS
PITTSBURGH
SAN DIEGO
SAN FRANCISCO
SHANGHAI
SILICON VALLEY
SINGAPORE
SYDNEY
TAIPEI
TOKYO
WASHINGTON