



To find out how your business may be affected in the coming year and how Venable may be able to assist you, contact one of the attorneys listed below.

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## DOJ Uses Undercover Sting Operation to Bring Foreign Bribery Case

On January 19, 2010, the Department of Justice (DOJ) announced the indictments of 22 executives and employees of small- and medium-sized military and law enforcement supply companies, alleging violations of the Foreign Corrupt Practices Act (FCPA). The indictments stem from a two and a half year undercover operation, and represent the single largest investigation and prosecution of individuals for violations of the FCPA.

### The Foreign Corrupt Practices Act

The FCPA prohibits the paying, offering, promising to pay (or authorizing to pay or offer) money or "anything of value" with corrupt intent, for the purpose of obtaining or retaining business. In addition, the FCPA requires publicly traded companies in the United States to accurately reflect all payments in their books and records, and to maintain adequate FCPA controls.

### The Scheme

This sting operation also marked DOJ's first use of undercover law enforcement techniques in a foreign corporate bribery case. The sting centered around a fictitious defense minister of an unnamed African country floating a \$15 million contract to outfit the country's presidential guard. Two undercover FBI agents posed as representatives of the minister, asking each U.S. business representative if they would be willing to pay a 20 percent "commission" in order to secure a portion of the procurement deal. According to DOJ, each defendant agreed to the scheme, even after being informed that half of the "commission" would go directly to the defense minister. The defendants then purportedly agreed to prepare two price quotations—one including the 20 percent commission and one without it—as well as agreeing to engage in a small "test" deal to demonstrate to the minister that he would personally receive the 10 percent bribe.

In announcing the indictments, Assistant Attorney General Lanny A. Breuer said, "[t]he message is that we are going to bring all the innovations of our organized crime and drug war cases to fight against white-collar criminals."

### Lessons Learned

While these indictments are unique in terms of the number of individuals charged and the investigative techniques used, they nevertheless highlight several growing trends in FCPA enforcement, including:

- **Continued emphasis on charging individuals:** DOJ concluded that too many corporations factored a potential FCPA investigation and/or fine into the cost of doing business, and that increased indictments against individuals were a necessary deterrent. Commenting on the January 19 indictments, Assistant Attorney General Breuer stated, "these actions are a turning point. From now on, would-be FCPA violators should stop and ponder whether the person they are trying to bribe might really be a federal agent." More than a dozen individuals were criminally charged in 2009, and DOJ predicted there would be even more individuals charged in 2010. Only three weeks into the new year, and DOJ has proven good to its word. Expect more charges against individuals in 2010, and beyond.
- **Multinational investigations:** These indictments also underscore the continued trend of international cooperation in anti-corruption enforcement, as U.K. authorities executed seven search warrants in London on January 19<sup>th</sup> in connection with their own investigation into the conduct that formed the basis for the U. S. indictments. On this point, Assistant Attorney General Breuer added, "international cooperation is growing every day and getting better and better."
- **Continued emphasis on certain industries:** The defense industry, because of its many dealings with foreign government officials, has long been an area of FCPA enforcement focus. Thus, it is no surprise that DOJ chose this industry for its sting operation. Other industries that have seen recent intense enforcement activity from DOJ and the SEC are the oil and gas, and pharmaceutical and medical device industries. Indeed, Assistant Attorney General Breuer recently announced that DOJ had the pharmaceutical and medical device industry under close scrutiny for FCPA violations in 2010. (See Venable Client Alert, "DOJ Targets Pharmaceutical & Life Sciences Companies for FCPA Enforcement," available [here](#).)
- **Enforcement against medium- and small-sized companies:** Many erroneously believe that the FCPA is enforced only against large multinational corporations. These arrests demonstrate, however, that DOJ will also pursue FCPA cases against medium- and small-sized companies. Clearly, with 21 search warrants executed in conjunction with these arrests, investigations of these individuals' employers are well under way. As the pace of FCPA enforcement continues to grow, so will the number of criminal and civil cases brought against smaller companies.

### How and When Will the FCPA Affect My Business?

The FCPA has a broad spectrum of penalties, such as incarceration for individual violators, disgorgement of profits, and civil and criminal fines, that have recently cost companies hundreds of millions of dollars, and

executives and employees, several years in prison. As such, any company involved in international commerce should assess its anti-corruption controls and compliance policy, as well as undertake a review of payments and activities to and through customers, agents, representatives, and business partners. Don't wait until the government has opened an investigation into your company before taking these steps. Aggressive compliance is the best route to avoiding an investigation and mitigating the damage should one occur.

Venable's FCPA team includes a former U.S. Attorney General, several former federal prosecutors, SEC lawyers and other government officials, as well as practitioners with decades of collective FCPA experience. These attorneys frequently design FCPA compliance programs and FCPA controls, perform FCPA training, conduct audits and internal investigations, and, when necessary, defend individuals and corporations in DOJ and SEC investigations.

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*Venable is ready to assist you in navigating through this uncertain economic terrain to ensure that you and your business fully comply with these heightened standards. For more information regarding the FCPA, the OECD Anti-Bribery Convention, and other recent developments in anti-bribery legislation and enforcement, please contact a member of Venable's Foreign Corrupt Practices Act and Anti-Corruption team.*

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