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Global Cooperation on Law Enforcement Grows

Faced with Bonnie and Clyde's exploitation of the "state-line" rule that allowed the infamous bandits to escape state justice by robbing banks near state borders, the FBI changed its tactics and started pursuing bank robbers across state lines. As globalization expands the reach of multinational corporations, U.S. law enforcement agencies are changing tactics again by seeking partnerships with foreign law enforcement to gather evidence and extradite executives for domestic prosecutions.

The Department of Justice (DOJ) announced this month that it has signed 56 new agreements with the European Union to strengthen mutual assistance in criminal investigations and with information sharing. The Department and its foreign partners are actively pursuing business fraud and corruption under the Foreign Corrupt Practices Act (FCPA).

DOJ has also telegraphed its intention to hold executives personally accountable for widespread violations of the FCPA and related statutes. "[T]he prospect of significant prison sentences for individuals should make clear to every corporate executive, every board member, and every sales agent that we will seek to hold you personally accountable for FCPA violations," said Lanny A. Breuer, Assistant Attorney General, Criminal Division.

Global cooperation has always existed, but the last year has seen a dramatic growth in cross-border investigations and cooperation:

In December 2008, a joint German/U.S. investigation resulted in the largest fine under the "books and records" provisions of the FCPA, with \$800 million assessed against Siemens AG. The corporation paid a similar fine to German authorities. Read the DOJ release [here](#).

A joint investigation this year by the U.S. Department of Justice and the U.K.'s Serious Fraud Office has resulted in a plea agreement by BAE Systems, a \$400 million fine in the U.S. for making false statements and a \$47 million fine to the U.K. for poor record keeping. Read the article [here](#). Read the Serious Fraud Office (SFO) release [here](#).

Alcatel-Lucent SA has agreed this month to pay \$137.4 million and to change its compliance procedures after a joint French and U.S. investigation discovered that three of its subsidiaries had violated the anti-bribery provisions of the FCPA. The French Authorities are imposing a compliance monitor on the parent, the three subsidiaries are pleading guilty to the violations, and the company will pay both civil and criminal fines.

A three-year investigation into specialty chemical company Innospec by the DOJ, the Securities & Exchange Commission and the U.K.'s Serious Fraud Office has resulted in a charge against a Canadian citizen and anticipated charges against the company related to the U.N.'s Oil for Food Program in Iraq. Innospec has set aside \$40 million to pay the anticipated fines.

It's not just large companies that are the target of global regulators bent on stopping bribery. Making good on the Department's promise to hold individuals accountable for violations of the FCPA, in January, 22 individuals of 16 small and medium-size companies were arrested in a sting operation by the FBI that the DOJ has characterized as "the first large-scale use of undercover law enforcement techniques to uncover FCPA violations." Read the entire DOJ release [here](#).

The greatest risk for violations of the FCPA or other anti-corruption laws are those farthest from corporate headquarters and its oversight. Unfortunately, the liability for the company and its top executives is not diminished by this distance. Companies and executives wishing to avoid the serious costs and possible incarceration associated with a failure to comply with the mandates of the FCPA, European anti-corruption laws and related statutes need to take the following steps:

Adopt a zero-tolerance anti-bribery policy.

Provide face-to-face training on the FCPA to top managers.

Create a hot line or other mechanism for reporting violations.

Create internal controls to detect and discourage unauthorized payments.

Ensure the FCPA mandates are included in any due diligence reviews.

Ensure your FCPA compliance program, like any compliance program, takes into account the United States Sentencing Commission's view of what makes a compliance program effective. Read a prior article on USSG updates [here](#).

Husch Blackwell Sanders can help organizations evaluate current compliance efforts and upgrade to the type of robust compliance program that the Department of Justice and its European counterparts demand.

What This Means to You

Corporations with operations overseas should examine and enhance their FCPA compliance program in light of the new guidance from the United States Sentencing Commission on what characterizes an effective compliance program and ensure that it is fully implemented throughout their organization.

Contact Info

If you have any questions, please contact your Husch Blackwell Sanders attorney.

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