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The Foreign Corrupt Practices Act: The Cost of Compliance

INTERNATIONAL, PUBLIC COMPANIES
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The Foreign Corrupt Practices Act (FCPA), enacted in 1977, generally prohibits the payment of bribes to foreign officials to assist in obtaining or retaining business. The FCPA can apply to prohibited conduct anywhere in the world and extends to publicly traded companies and their officers, directors, employees, stockholders, and agents. Agents can include third party agents, consultants, distributors, joint-venture partners, and others.

The FCPA also requires issuers to maintain accurate books and records and have a system of internal controls sufficient to, among other things, provide reasonable assurances that transactions are executed and assets are accessed and accounted for in accordance with management's authorization.

The costs of implementing and adhering to a robust compliance program relative to the Foreign Corrupt Practices Act, which is the governing law that regulates a Company's procedural responsibilities in foreign lands insofar as it relates to bribery, is a small price to pay in relation to the penalties and headaches of non-compliance with this law.

The sanctions for FCPA violations can be significant. The SEC may bring civil enforcement actions against issuers and their officers, directors, employees, stockholders, and agents for violations of the anti-bribery or accounting provisions of the FCPA. Companies and individuals that have committed violations of the FCPA may have to disgorge their ill-gotten gains plus pay prejudgment interest and substantial civil penalties. Companies may also be subject to oversight by an independent consultant.

Take for example, in February 2016, the Securities and Exchange Commission announced a global settlement along with the U.S. Department of Justice and Dutch regulators that requires telecommunications provider VimpelCom Ltd. to pay more than \$795 million to resolve its violations of the Foreign Corrupt Practices Act (FCPA) to win business in Uzbekistan.

The SEC alleges that VimpelCom offered and paid bribes to an Uzbek government official related to the President of Uzbekistan as the company entered the Uzbek telecommunications market and sought government-issued licenses, frequencies, channels, and number blocks. At least \$114 million in bribe payments were funneled through an entity affiliated with the Uzbek official, and approximately a half-million dollars in bribes were disguised as charitable donations made to charities directly affiliated with the Uzbek official.

“VimpelCom made massive revenues in Uzbekistan by paying over \$100 million to an official with significant influence over top leaders of the Uzbek government,” said Andrew J. Ceresney, Director of the SEC Enforcement Division. “These old-fashioned bribes, hidden through sham contracts and charitable contributions, left the company’s books and records riddled with inaccuracies.”

The settlement requires VimpelCom to pay \$167.5 million to the SEC, \$230.1 million to the U.S. Department of Justice, and \$397.5 million to Dutch regulators. The company must retain an independent corporate monitor for at least three years.

“International cooperation among regulators is critical to holding companies responsible for all facets of a bribery scheme. This closely coordinated settlement is a product of the extraordinary efforts of the SEC, Department of Justice, and law enforcement partners around the globe to jointly pursue those who break the law to win business,” said Kara N. Brockmeyer, Chief of the SEC Enforcement Division’s FCPA Unit.

FOREIGN CORRUPT PRACTICES ACT (FCPA) ENFORCEMENT ACTIONS

The following is a list of the SEC's FCPA enforcement actions listed by calendar year:

2016

- [VimpelCom](#) - The Dutch-based telecommunications provider agreed to a \$795 million global settlement to resolve its violations of the FCPA to win business in Uzbekistan. (2/18/16)
- [PTC](#) - The Massachusetts-based tech company and its Chinese subsidiaries agreed to pay more than \$28 million to settle FCPA cases involving bribery of Chinese government officials to win business. (2/16/16)
- [SciClone Pharmaceuticals](#) - The California-based pharmaceutical firm agreed to pay \$12 million to settle SEC charges that it violated the FCPA when international subsidiaries increased sales by making improper payments to health care professionals employed at state health institutions in China. (2/4/16)
- [Ignacio Cueto Plaza](#) - The airline executive agreed to pay a \$75,000 penalty to settle SEC charges that he violated the FCPA when he authorized improper payments to a third-party consultant who he knew could route portions of the money to union officials in the midst of a labor dispute. (2/4/16)
- [SAP SE](#) - The software manufacturer agreed to give up \$3.7 million in sales profits to settle SEC charges that it violated the FCPA when its deficient internal controls enabled an executive to pay bribes to procure business in Panama. (2/1/16)

2015

- **Bristol-Myers Squibb** - SEC charged the New York-based pharmaceutical company with violating the FCPA when employees of its China-based joint venture made improper payments to obtain sales. Bristol-Myers Squibb agreed to pay more than \$14 million to settle charges. (10/5/15)
- **Hitachi** - SEC charged the Tokyo-based conglomerate with violating the FCPA by inaccurately recording improper payments to South Africa's ruling political party in connection with contracts to build power plants. Hitachi agreed to pay \$19 million to settle charges. (9/28/15)
- **BNY Mellon** - SEC charged the global investment company with violating the FCPA by providing valuable student internships to family members of foreign government officials affiliated with a Middle Eastern sovereign wealth fund. BNY Mellon agreed to pay \$14.8 million to settle charges. (8/18/15)
- **Vicente E. Garcia** - SEC charged a former SAP SE executive with violating the FCPA by bribing Panamanian government officials through an intermediary to procure software license sales and receiving more than \$85,000 in kickbacks. Garcia agreed to settle the case and return the kickbacks plus interest. (8/12/15)
- **Mead Johnson Nutrition** - SEC charged the infant formula manufacturer with violating the FCPA when its Chinese subsidiary made improper payments to health care professionals to recommend the company's product to new and expectant mothers. Mead Johnson Nutrition agreed to pay \$12 million to settle the case. (7/28/15)
- **BHP Billiton** - SEC charged global resources company BHP Billiton with violating the FCPA when it sponsored the attendance of foreign government officials at the Summer Olympics. BHP Billiton agreed to pay a \$25 million penalty to settle the case. (5/20/15)
- **FLIR Systems** - SEC charged Oregon-based FLIR Systems with violating the FCPA by financing a "world tour" of personal travel for Middle East government officials who played key roles in decisions to purchase FLIR products. FLIR, which earned more than \$7 million in profits from such sales, agreed to pay \$9.5 million to settle the charges. (4/8/15)
- **Goodyear Tire & Rubber Company** - SEC charged Goodyear with violating the FCPA when its subsidiaries paid bribes to land tire sales in Kenya and Angola. The company agreed to pay \$16 million to settle the charges. (2/24/15)
- **Walid Hatoum / PBSJ Corporation** - SEC charged a former officer at a Tampa, Fla.-based engineering firm with violating the FCPA by offering and authorizing bribes and employment to foreign officials to secure Qatari government contracts. Hatoum agreed to settle the charges, and PBSJ entered into a deferred prosecution agreement and must pay \$3.4 million. (1/22/15)

Note: The above information was obtained directly from the SEC website www.SEC.gov.

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