

Anticorruption Enforcement: More Record Settlements to Come, Individual Prosecutions on the Rise, and the “New Normal” for Due Diligence



Aggressive enforcement of the Foreign Corrupt Practices Act (FCPA) in the United States and foreign anticorruption laws abroad continued unabated in 2009, and 2010 will see more of the same. The US Securities and Exchange Commission (SEC) has established a new unit devoted exclusively to FCPA investigations, and US Department of Justice (DOJ) officials have signaled their intent to expand enforcement of anticorruption laws to more industries (pharmaceutical companies being the latest to hear the warning bell).

More significantly, DOJ has signaled its intent to get much more aggressive with individual prosecutions. As one recent example, witness the undercover FBI sting operation that led to the arrest of 22 individuals and 16 indictments of executives and employees in defense companies in January. Other recent cases include a Japanese executive pleading guilty to two counts of conspiracy to violate the FCPA in connection with bribery of foreign government officials in Latin America (the Japanese citizen was sentenced to two years in jail and an \$80,000 criminal fine) and a recent case filed against two United Kingdom citizens each with one count of conspiracy to violate the FCPA and 10 counts of substantive FCPA violations relating to bribery of Nigerian government officials.

The rumor mill has it that dozens of settlements are in the works, and many more cases are under active investigation. One can argue about why the government is becoming so aggressive with these cases, but they cannot be ignored. The DOJ and SEC are fully committed to a course of zero tolerance in anticorruption matters.

We all know the effects of this. Companies must pour more scarce resources into compliance programs and prevention mechanisms. There is no other option. Of course, one key prevention mechanism is more due diligence – on agents, partners, contractors, etc. Proper vetting of parties substantially reduces your risk, and is a useful defense in an investigation. But what is considered “adequate” due diligence is shifting with each new case. The standard now requires more than routine questioning – background checks, third party screening, and other techniques are now the “new normal.” Look for more of this trend in 2010.

Should you have any questions, please contact the Arent Fox attorney with whom you work or a member of Arent Fox’s International Trade Practice Group.