

# FCPA Background

## What You Need to Know About the Foreign Corrupt Practices Act (“FCPA”)

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### WHAT IS THE FCPA?

- The FCPA prohibits paying – or promising to pay – anything of value to a foreign government official where the purpose is to obtain or retain business.
- The FCPA also requires publicly traded companies to keep accurate books and records and implement appropriate internal controls.

### WHY IS THE FCPA IMPORTANT TO YOU?

- **FCPA applies to** all U.S. nationals (companies or individuals) and any foreign company listed on a U.S. exchange or that submits reports to the SEC as result of capital raising activities (including trading American Depository Receipts).
- Companies can be held responsible for FCPA violations by agents and joint venture partners.
- Increasing number and size of FCPA cases: In 2002, there were zero criminal prosecutions. In 2004, there were only 3. By 2009, there were 34, with 150 open U.S. Department of Justice (“DOJ”) investigations.
- Growing trend to aggressively enforce FCPA both by DOJ and U.S. Securities and Exchange Commission (“SEC”), with an increasing number of tag-along civil litigations.
  - Enforcement priority with increasing dedicated resources.
  - Steep financial penalties (e.g., Siemens was fined \$800 million in U.S.; Daimler was fined \$185 million).
  - Four letter word: J-A-I-L (executives have been sentenced to jail time).
  - Essentially strict liability for parent company for FCPA books and records violations of its wholly-owned subsidiaries.
  - Relevant to all industries: not just oil, pharmaceutical, or high tech.
  - Relevant to many geographies: China and many other countries are deemed “high risk.”
  - Collateral consequences, including debarment from government contracts and reputational harm.
- Growing global patchwork of anti-corruption laws and multi-national cooperation (i.e., OECD Convention, **UK Bribery Act 2010**).

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This is MoFo.

## HOW CAN MORRISON & FOERSTER HELP?

- Our domestic and international offices advise on and investigate FCPA matters.
- **We have a deep bench, and work seamlessly across our offices.** Our Securities Litigation, Enforcement, and White Collar ("SLEW") practice group includes more than 150 attorneys in our 16 offices worldwide, with over 20 former federal and state criminal prosecutors, former SEC enforcement attorneys, as well as in-house accounting experts.
- Been there, done that: We have performed a large number of FCPA investigations -- large and small — in China, Japan, Korea, Thailand, Indonesia, other Asian countries, and Latin America.
- **We have vast experience in scores of FCPA matters for major companies and individuals,** across a wide range of FCPA matters:
  - **Diligence:** conducted due diligence reviews for potential M&A transactions (both buy and sell side), prospective agents, consultants and joint venture partners, and in other contexts, in Asia-Pacific, Europe, Middle East, South America, and North America.
  - **Counseling:** advised on FCPA compliance policies and procedures, including real-time counseling to legal and compliance departments when problematic facts emerge.
  - **Compliance Programs/Training:** designed, reviewed, and provided anti-corruption compliance training (in numerous languages including English, Mandarin and Spanish).
  - **Investigations:** conducted scores of cross-border internal investigations on behalf of companies and Boards of Directors; represented companies and individuals in investigations by DOJ and SEC.
  - **Remediation:** when anti-corruption problems are detected, we help companies fix those problems.
- We are well-equipped to protect companies and individuals in parallel criminal, SEC and civil proceedings, as well as with related government contracts issues.
- Largest investigation practice among international firms in Asia, including over 30 litigators in Japan and over 20 Chinese-trained lawyers in Beijing, Shanghai, and Hong Kong offices.
- Strong presence in the UK.
- Follow the money: we have an in-house Forensic Accounting Services Group.
- Our Privacy & Data Security Group assists in cross-border investigations.

## EXPERTISE BASED ON HANDLING SCORES OF FCPA MATTERS

- Represented many global companies in internal investigations, government investigations, self-reporting procedures.
- Where necessary, we can field a team in several countries simultaneously.
- A few representative examples:
  - Represented a U.S.-based multinational Fortune 50 company in internal investigation of alleged violations of the FCPA in Asia-Pacific countries. Following the conclusion of our investigation and self-reporting, neither the SEC nor the DOJ took any action against our client.
  - Represented a U.S.-based multinational public corporation in an internal investigation of whistleblower allegations of violations of the FCPA in China and elsewhere in Asia, with interviews in several countries.
  - Assisting a public company acquisition target with FCPA diligence requests from potential buyers.
  - Representing senior executives of multinational corporations in investigations by DOJ and SEC into allegations of illegal payments to government officials in Nigeria, Angola, Kazakhstan, Venezuela, and Thailand.
  - Investigating FCPA allegations at a telecom company and software company in Venezuela.
  - Investigating FCPA allegations at a NASDAQ-listed Chinese services company.
  - Represented an officer of a large oil services firm in a joint DOJ and SEC investigation relating to payments to government officials in Indonesia and Brazil.
  - Conducting an FCPA internal investigation in Latin America for a Fortune 500 company.

## UK BRIBERY ACT 2010

- In April 2011, companies doing business in the UK will be subject to this new law **globally**.
- It is broader than the FCPA in important respects.
- We are advising companies on exposure and compliance with this new law.

For more information about Morrison & Foerster's FCPA and Anti-Corruption practice, please contact:

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