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Military and Law Enforcement Products and the FCPA

The Federal Bureau of Investigation (FBI) culminated its first large-scale Foreign Corrupt Practices Act (FCPA) sting operation on January 19, 2010 with the arrest of 22 executives and employees of companies in the military and law enforcement products industries, most of whom were attending a trade show in Las Vegas, Nevada.

Prior to the arrests, in December 2009, a federal grand jury sitting in the District of Columbia returned 16 sealed indictments charging each of the arrestees with conspiracy to violate the FCPA and conspiracy to commit money laundering, as well as substantive violations of the FCPA. The indictments also seek forfeiture of the defendants' ill gotten gains from the alleged conduct.

The charges of FCPA conspiracy and substantive violations carry maximum penalties of five years in prison. The conspiracy to commit money laundering charge carries a maximum penalty of 20 years. In addition to possible imprisonment, the charges carry significant criminal fines.

The indictments charge the defendants with planning to bribe a "minister of defense" of an African country. The Department of Justice (DOJ) further alleges that the defendants agreed to pay a 20 percent "commission" to a "sales agent" – half of which would go to the "minister of defense" – to assure the defendants would win

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portions of a US\$15 million deal to equip the African country's presidential guard. The DOJ also alleges that defendants agreed to create two price quotes for the deal: one that represented the actual value of the deal's goods and another that represented the goods' actual value plus the 20 percent commission. In reality, the purported sales agent was an undercover FBI agent.

Several aspects of this undercover sting operation are noteworthy.

- It represents the first time that the government has used to such a broad extent covert law enforcement techniques in an FCPA investigation. During the past couple of years the DOJ has publicly warned that it was employing techniques in FCPA investigations that included undercover operations, wire taps and confidential informants. This case demonstrates the truth of those warnings.
- According to the DOJ, the arrests are part of "the largest single investigation and prosecution against individuals in the history of the DOJ's enforcement of the FCPA." ([DOJ Press Release, January 19, 2009](#)) The investigation, the DOJ reports, is ongoing and may result in additional indictments and arrests.
- The multi-agency coordination involved in the investigation illustrates the DOJ's continuing anti-corruption enforcement cooperation with its law enforcement brethren domestically and overseas. Approximately 150 FBI agents executed 14 search warrants across the United States while the United Kingdom's City of London Police executed seven additional search warrants.
- The indictments and arrests also are exemplars of yet another industry-wide FCPA investigation, similar to those underway in the pharmaceutical, medical device, and oil and gas industries. Industry-wide investigations allow the government to benefit from quickly reaching a high point of an industry learning curve. Once the government understands how an industry operates – and is most likely to become involved in violations of the FCPA – it can more efficiently marshal its resources and utilize that knowledge on the next targeted individuals and companies within that industry. This reduced case-by-case learning curve shortens the time it takes the DOJ to assemble its next prosecutable case.

The best way for companies to avoid becoming victims

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Tampa · Tysons Corner ·
Washington DC · West Palm Beach |
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Paz+ · Lima+ · Panamá+ ·
Rio de Janeiro · Santiago+ ·
Santo Domingo · São Paulo | Bratislava ·
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of an undercover sting operation is to implement, train, enforce and audit a robust and proactive FCPA compliance plan. Such a plan includes procedures that:

- instruct company personnel concerned regarding the principles and provisions of the FCPA;
- train for the appropriate response to circumstances where bribes may be solicited or thought to be "necessary"; and
- illustrate what can happen when the statute is violated.

Effective compliance plans must be designed to detect and prevent illegal activity – preferably before the government does. This requires effective due diligence when engaging third-parties (such as sales agents, consultants and distributors).

Remember, what happens in Vegas does not stay in Vegas when the DOJ is involved.

Lawyers in Squire Sanders' global anticorruption and white collar practices regularly counsel clients on FCPA compliance, training and enforcement issues. If you have any questions about FCPA issues, please contact one of the individuals listed in this Alert.

The contents of this update are not intended to serve as legal advice related to individual situations or as legal opinions concerning such situations. Counsel should be consulted for legal planning and advice.

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