

White Collar Defense Advisory: The DOJ's Aggressive New Policy To Prosecute Foreign Private Commercial Bribery

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The Department of Justice (DOJ) continues its vigilant pursuit of violations of the Foreign Corrupt Practices Act (FCPA) by both corporations and individuals. A recent case in California indicates an aggressive new policy by the DOJ to use the Travel Act (18 U.S.C. § 1952), in addition to the FCPA (15 U.S.C. § 78dd-2), to prosecute alleged foreign bribery. The FCPA has been widely used to prosecute bribery of foreign *public* officials, but use of the Travel Act expands the scope of bribery prosecutions into the *private* business context. This is a noteworthy development for any company that conducts foreign business.

On July 31, 2009, Control Components, Inc. (CCI), a California-based valve-making company, pled guilty to one count of conspiracy to violate the FCPA and the Travel Act and two substantive FCPA counts.¹ CCI agreed to pay an \$18.2 million fine, to implement a strict compliance policy, and to be overseen by an independent monitor for three years. In addition, two former executives have pled guilty to a conspiracy charge and are awaiting sentencing in January. Six other former executives, including CCI's former CEO and directors of regional sales and customer service, are awaiting trial in December and face multi-year prison sentences if convicted.

According to the company's plea agreement, from at least 2003 to 2007, CCI made approximately \$6.85 million in corrupt payments to officers and employees of numerous state and privately owned foreign companies in exchange for business that generated approximately \$46.5 million in profits for CCI. Of the \$6.85 million, nearly \$2 million was paid to affiliates of privately owned companies, in violation of the Travel Act specifically. The bribes involved outright payments, but also included expensive gifts and paid vacations.

The Travel Act prohibits using interstate commerce to promote any "unlawful activity," including bribery, in violation of state law. Many states have commercial bribery statutes, violation of which forms the Travel Act predicate. *See e.g.* Massachusetts (MASS G.L. c. 271 § 39); New York (N.Y. PENAL LAW 180.00); Delaware (DEL CODE ANN. Tit. 11, § 881(1)); California (CAL PENAL CODE § 641.3(a)).

Use of the Travel Act in the CCI case reflects the DOJ's increasing aggressiveness in pursuing bribery allegations in the private commercial context, as well as the public context. Additionally, the SEC recently announced the creation of a new, specialized FCPA unit within the Enforcement Division. It is imperative, therefore, that companies move quickly to review and, if necessary, revise their corporate compliance policies to ensure that their existing policies are effective at detecting and preventing bribery of both public and private foreign individuals and entities, and to ensure compliance with both the FCPA and the Travel Act.

Endnotes

¹ *United States v. Control Components, Inc.*, No. 09-cr-00162-JVS (CD Cal.)

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