DOJ Shows Its Continuing Strong Interest in FCPA Violations

April 21, 2011

Over the course of several years, officials of the United States Department of Justice have made clear the Department's intent to enforce vigorously the dictates of the Foreign Corrupt Practices Act (FCPA). In general terms, the FCPA prohibits the offering or giving of things of value to any foreign official to assist in obtaining or retaining business. Last November, Assistant Attorney General Lanny Breuer warned executives of the pharmaceutical industry that the Department's "focus and resolve in the FCPA will not abate" and that the Department "will be intensely focused on rooting out foreign bribery" in the pharmaceutical and other industries. A recent court decision and a recent corporate guilty plea seem to bear out the Department's focus on FCPA violations and show that the Securities and Exchange Commission shares that focus as well.

On April 1, 2011, in *United States v. Noriega*, No. 2:10-cr-01031, U.S. District Judge Howard Matz of the Central District of California held that officials of Mexico's state-owned utility company qualify as "foreign officials" for purposes of application of the FCPA. Judge Matz relied heavily on provisions of Mexican law that made clear that the provision of electricity through the state-owned utility company was solely a governmental function.

Judge Matz's ruling is significant because there are few judicial interpretations of the application of the term "foreign officials" in the context of bribes paid to state-owned entities, and the Department of Justice has long taken the position that executives at state-owned entities fall within the scope of the statute. This decision could have significant effects on the way in which companies evaluate their relationships with foreign companies, particularly in countries such as China in which many companies are owned by or otherwise connected with the government. It will be interesting to see whether judges in other pending cases that raise similar issues will interpret the scope of the term "foreign official" similarly, or whether there will be a split among courts that leaves companies with limited guidance on the application of the statute.

The other significant FCPA event of this past week was a settlement among the Department of Justice, the SEC, and Johnson & Johnson concerning charges that J&J violated the FCPA by bribing doctors in several European countries and paying kickbacks to Iraq. To settle charges, the company agreed to pay $48.6 million in disgorgement and prejudgment interest, and another $21.4 million to settle parallel criminal charges. J&J is also paying $8 million to resolve an investigation in the United Kingdom into conduct by one of its subsidiaries.

Johnson & Johnson's settlement is by no means the largest FCPA settlement by a corporation, but it certainly involves a large amount of money. And the settlement certainly reinforces the notion that there are serious consequences for companies that are not careful and scrupulous about their dealings in foreign countries.

Crime in the Suites is authored by the Ifrah Law Firm, a Washington DC-based law firm specializing in the defense of government investigations and litigation. Our client base spans many regulated industries, particularly e-business, e-commerce, government contracts, gaming and healthcare.

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