

ETHICS CORNER**Anti-Bribery Enforcement
On the Increase Overseas****BY FRED SHAHEEN AND KARA BOMBACH**

U.S. government contractors involved in overseas sales have long recognized the need to comply with the anti-bribery provisions of the U.S. Foreign Corrupt Practices Act, the law barring bribery of foreign government officials in order to obtain or retain business. Last September, we discussed the recent FCPA enforcement trend, clearly on the increase. Interestingly, a similar review of recent enforcement actions overseas demonstrates that the focus on international bribery has increased in its intensity. Below, we highlight some of the most notable of these enforcement actions.

These actions commonly arise under local laws implementing the Organization for Economic Cooperation and Development's Convention on Combating Bribery of Foreign Public Officials in International Business Transactions. U.S. firms operating overseas should heed this trend and ask themselves if they have implemented the requisite robust safeguards vis-à-vis their offshore operations, including all teaming and joint ventures with non-U.S. partners.

In October 2005, French courts found 43 defendants guilty of colluding, concealing corruption and peddling influence during a trial involving alleged corruption in public procurement. France's main political parties allegedly accepted bribes between 1989 and 1997 totaling more than 30 million Euros (approximately \$36 million in U.S. currency) from five multinational building contractors in return for the award of lucrative contracts to renovate schools in and around Paris. Politicians apparently received payments to finance party campaigns amounting to 2 percent of the value of any school building contract. According to the investigation, over half of the bribery money went to Jacques Chirac's political party.

Also, several high level French officials were found guilty of corruption, including Chirac's former chief-of-staff when he was mayor of Paris and former sports minister. Both received four-year suspended prison sentences and were assessed fines of 50,000 Euros. Additionally,

the former employment minister and regional leader of one political party received a four-year suspended prison sentence and an 80,000 Euro fine. The party's treasurer received a 20-month suspended prison sentence and was fined 10,000 Euros.

In a 2005 case in Greece, four judges came under investigation for allegedly accepting bribes from a high-ranking clergyman, who sought favorable rulings in cases involving misappropriation of antiquities and illegal excavation. One of the judges was fired and charged on seven counts, including money laundering and accepting a bribe.

The related investigation led to a series of other scandals in Greece involving alleged bribery of the judiciary. Specifically, in one pending investigation, Greek authorities claim to have evidence that a local businessman deposited 60,000 Euros (approximately \$73,380 in U.S. currency) into an account of a judge from Crete, in order to obtain a favorable ruling. The judge also allegedly vacationed aboard the yacht of another individual over whose case he presided.

One major recent case involved an Italian power generation company, Enelpower SpA, and its construction contracts for power and desalination plants in Abu Dhabi, Oman and Qatar. Those contracts collectively exceeded 1 billion Euros in value. Middle East consultants assisted Enelpower to secure contracts, after which Enelpower subcontracted to Germany's Siemens AG to supply gas turbines and to France's Alstom to provide boilers.

Internal audits for 2002 and 2003 at Enelpower revealed that the Middle Eastern consultants secretly transferred more than \$6 million into foreign bank accounts of two senior Enelpower officers. The audits further revealed that several subcontractors to the power plant projects, including Siemens AG and Alstom, transferred more than 6 million Euros into the foreign bank accounts of these two officers, evidently to secure the subcontracts. As the Italian government wields de facto power over Enelpower, the two officers were considered to be Italian "public officials" for purposes of Italy's national anti-bribery laws.

The two officers were charged with domestic passive bribery for accepting payments from subcontractors. They also were charged with foreign bribery for allegedly paying officials in Abu Dhabi, Oman and Qatar to secure the contracts. The bribes were paid through a consultant in the Middle East, and the two officers of Enelpower apparently had no direct contact with the government officials. Separately, Siemens AG and Alstom were charged with bribery of Italian officials for allegedly paying

the two officers to win the subcontracts.

Significantly, in 2004, a Milan court took the extraordinary measure of banning Siemens AG from selling gas turbines to the Italian public administration for a one-year period for its part in the corruption scandal.

Clearly, the days are gone when U.S. companies could complain legitimately of bearing the sole burden of anti-bribery compliance, principally under the FCPA. On this front, the so-called "un-even playing field" is slowly but surely being replaced by an even playing field as other countries enact and increasingly enforce their own anti-corruption laws. The OECD Convention brought on line local laws in more than 30 jurisdictions that now criminalize improper payments to public officials. Increasingly, bribery is receiving serious worldwide attention.

Now, more than ever, it is incumbent upon U.S. companies to integrate comprehensive, global, anti-bribery compliance in the culture and practice of both domestic and international operations, be they subsidiaries or branch offices.

Fred Shaheen and Kara Bombach are attorneys at the international law firm of Greenberg Traurig LLP. The opinions expressed here are solely those of the authors and are not intended to provide legal advice or represent the view of NDIA or the NDIA Ethics Committee.

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