

BY JOHN PAPPALARDO AND KARA BOMBACH

Justice Department Beefs Up Foreign Corruption Act Enforcement

In recent years, U.S. government officials have acknowledged the increasing focus on Foreign Corrupt Practices Act (FCPA) enforcement. The government has been transparent about its priority to target individuals and companies who make improper payments or offer anything of value to foreign government officials for purposes of obtaining or retaining business.

For U.S. and international businesses and their individual officers, directors and employees, however, such generalized statements about FCPA enforcement priorities take on new significance when put in terms of hard numbers of investigations, fines and convictions.

In 2009, the Department of Justice set a record for numbers indicted and tried for Foreign Corrupt Practices Act violations, yet the enforcement momentum in 2010 has actually escalated. Consider these 2010 milestones:

- Justice imposed the most criminal penalties in FCPA-related cases than any previous 12-month period — well over \$1 billion. In 2009 and 2010 combined, the department charged over 50 individuals and collected nearly \$2 billion.

- Approximately 35 defendants now await trial on corruption charges in Houston, Miami, Los Angeles and Washington, D.C.

- Justice ranks have grown to over a dozen attorneys dedicated solely to prosecuting corruption cases.

- The department has deployed sting and undercover operations to reveal suspected FCPA violations, most notably with the high-profile indictment of 22 individuals in the military and law enforcement products industry in early 2010. The indictments resulted from Justice's most extensive use ever of undercover law enforcement techniques in a Foreign Corrupt Practices Act investigation, and represent the single largest prosecution in the history of the department's FCPA enforcement efforts.

In front of this backdrop of increased resources and attention, a distinct Foreign Corrupt Practices Act trend is emerging, namely, the internationalization of the enforcement efforts. The unit works not only with other Justice Department divisions, but also with foreign counterparts. This theme will doubtless color the nature of future enforcement.

Internally, Justice's FCPA unit now receives assistance from prosecutors in the department's asset forfeiture and money laundering section. The section recently initiated a new Kleptocracy Asset Recovery Initiative to target and secure proceeds of foreign corruption that have been laundered into or through the United States.

On the multinational front, many of the 144 member states who have ratified the U.N. Convention Against Corruption have implemented the required local laws providing for multinational enforcement cooperation, as well as extradition. Member states — including the United States — under the convention must render specific forms of mutual legal assistance in gathering and transferring evidence for use in court, and to extradite offenders. Member states must also implement measures to support the tracing, freezing, seizure and confiscation of proceeds of corruption.

Member states include the United States and European nations, as well as countries with a historical record of systemic corruption, such as China and Nigeria, signaling a tidal shift in tolerance for corrupt conduct globally.

Member states must implement the mutual assistance and cooperation provisions, and mutual assistance provisions require economically developed participants to assist developing countries to build and implement domestic anticorruption systems. Members are already following through on this obligation with the establishment of the International Anti-Corruption Academy in Vienna, Austria, a joint initiative of, among others, the United Nations Office on Drugs and Crime, the Republic of Austria and the European Anti-Fraud Office. The academy's goal is to provide degree and certificate programs in combating global corruption to geographically diverse private and public sector participants.

Apart from the the convention, a number of individual mutual legal assistance treaties between the United States and other nations

provide for investigation and enforcement cooperation, as well as extradition of defendants for various crimes, including alleged FCPA violations.

The Justice Department has already greatly increased its cooperation with foreign counterparts, and Justice officials have made recent public statements confirming that the department intends increasingly to rely on foreign partners in future cases.

Regardless of the level of direct cooperation between U.S. and foreign enforcement officials, multinationals are vulnerable to enforcement not just by U.S. agencies, but also by local authorities in the numerous foreign jurisdictions where they operate directly or indirectly. Indeed, enforcement by other countries is also on the rise.

For example, in June 2010, Daimler-Benz agreed to pay \$185 million to Justice to settle charges of alleged illicit payments in 22 countries worldwide including Nigeria, China, Iraq and Russia. The Nigerian government then launched its own investigation into payments made to Nigerian officials by Daimler and Anammco, a Nigerian company that assembles Mercedes trucks and buses. This case serves warning that settlement in one country hardly insulates the perpetrator from prosecution in other jurisdictions.

Foreign Corrupt Practices Act enforcement trends point toward 2011 investigations and prosecutions that likely will be industry-targeted and based, at least in part, on multilateral assistance and cooperation between enforcement agencies of different countries. Companies doing business overseas must continue to be vigilant in the selection and retention of foreign agents and business partners, and should continually examine and enhance existing compliance policies, procedures and practices to minimize exposure under the FCPA and other anticorruption laws.

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