

Speaker 1: [inaudible]

Speaker 2: Welcome to the GT ABC podcast. I'm your host, Cuneyt Akay here. The GT stands for Greenberg Traurig [00:00:30] and the ABC stands for anti-bribery and corruption. On this episode, we're going to talk about what we can expect from FCPA enforcement in the coming years. Now, I generally hate making predictions about FCPA enforcement, but it certainly seems to be the season right now for pundits and commentators to making predictions of all sorts with the new administration coming into power here in the United States. So I decided to throw my hat in the ring and we'll make a few predictions on this episode. [00:01:00] And of course we will now see over time whether these predictions end up becoming true well as followers of the FCPA, no enforcement, particularly over the last two decades has steadily increased regardless of the political climate, regardless of economic circumstances of this country or the administration in power.

Speaker 2: Now, if I can take you back in time for a couple of minutes, if we were recording this episode four years ago, right before the Trump administration came into power, we [00:01:30] most likely be talking about all the pundits and commentators that were predicting that FCPA enforcement would decrease with the Trump administration. Well, that didn't happen. In fact, enforcement generally increased now specifically enforcement in terms of the number of cases didn't increase very much. In fact, it more or less stayed the same, however corporate settlement amounts certainly increased as we'll talk about in a few minutes. And the number [00:02:00] of individuals charged under the FCPA and FCPA related, uh, matters increased over the last four years. So despite the speculation that the Trump administration would disfavor enforcing this law, FCPA penalties and settlements hit record highs during the last four years. In fact, in 2020 and in 2019, we saw the two largest years ever for FCPA enforcement in terms of total pounding amounts.

Speaker 2: And [00:02:30] then the two previous years, 2018 and 2017 are also in the top 10 of FCPA enforcement years. So let's now turn our attention to the future. And as we're seeing right now, there's lots of commentary these days about what DOJ and sec enforcement will look like during the Biden administration. And I'm seeing lots of specific predictions regarding renewed sec regulatory focus, increased DOJ enforcement and corporate [00:03:00] governance requirements. Well at this stage at a minimum, I think it's fair to say that we certainly anticipate that the incoming Biden administration will aggressively pursue enforcement of financial crimes, corporate fraud, prosecutions, and increase regulatory a. So that generally well for those commentators that are predicting that FCPA enforcement will increase in the coming years. Of course, there's another component that we need to discuss during all of this, which is that [00:03:30] the financial and economic crisis that we're seeing that's caused by the current COVID-19 pandemic will most likely have an increase in corruption worldwide.

Speaker 2: We've seen that in the past when there are financial and economic crises, those types of crises make corruption ripe in many parts of the, the world. So for example, public corrupts typically rises when government policies directly affect business operations, as we're seeing now. And when more public money becomes available through stimulus

[00:04:00] measures, which we're certainly seeing here in the United States and worldwide plus government responses to this crisis have, and will most likely continue to vary from country to country, which means that there's a lot of uncertainty in terms of how government responses and government money will flow. Similarly, private companies are facing increased corruption risk during these times, particularly in certain industries. And we're seeing that both from an internal measure and external pressures that companies are facing [00:04:30] the external factors that many companies are facing are things such as supply chain disruptions or changing regulatory environments, which we just talked about, you know, such as closed borders or difficulties at borders during this pandemic.

Speaker 2: And that certainly creates new potential corruption risk, and internal factors are also a corruption risk for companies such as the increased pressure to meet business expectations or lower demand for services or products. And it decreased the ability to [00:05:00] develop business due to travel restrictions or other issues in terms of business disruptions that are taking place. So given this new administration and the current economic backdrop, I'd certainly expect that the trend of increased FCPA enforcement will continue in the coming years. Now it's of course, hard to predict from a policy standpoint, just exactly how the Biden administration will enforce the FCPA. But I certainly think there's three specific predictions we can [00:05:30] make when it comes to FCPA enforcement trends that we'll likely see in the coming years during the Biden administration. First, let's talk about large corporate Solomon mountains. We've certainly seen a trend over the last several years that corporate settlement amounts under the FCPA are getting larger and larger.

Speaker 2: Let's start with 2019 in that year, corporate FCPA enforcement set an all time high with over 2.6, \$5 billion [00:06:00] in penalties and additional. We saw two new records that year. We saw the two largest FCPA corporate pals, not these ever imposed to date, including the first billion dollar settlement and FCPA history. Well, of course, 2020, like it has in every other facet of life was not going to be out done by 2019. And in 2020, we've seen corporate FCPA enforcement already eclipse the 2019 record [00:06:30] from enforcement penalties. So we have now seen all time records. Two consecutive years in 2020, certainly is the largest year ever in terms of FC enforcement penalties. Now a couple of other interesting things have happened in 2021 is that I just recently saw the largest settlement FCPA settlement in history with a settlement amount that was well over one half billion dollars.

Speaker 2: And similarly earlier this [00:07:00] year, the DOJ and sec announced the largest global anti-corruption settlement in history that was nearly \$4 billion in total penalties. So I think the first prediction is relatively easy to make, which is that we're going to continue to see large corporate Selmon mounts. Now, one thing that we know when we examine FCPA statistics is that the total number of FCPA cases per year has remained relatively stable over the last decade and a half. [00:07:30] And if I was to make a prediction here, I would expect that over the first six months, a year, maybe two years of the Biden administration, that we won't see, the number of cases necessarily go up since, as we all know, FCPA cases usually take anywhere from three to four years at a minimum to

settle. So we really won't see if there's renewed, uh, emphasis on the number of cases under the Biden administration until several years from now.

Speaker 2: But I think it's [00:08:00] relatively safe to say that the trend has been and will continue to be that we'll see large corporate penalties when there are FCPA enforcement cases. And that is been really the trend for a while. Now. In fact, almost 90% of the 50 largest FCPA corporate Solomons have occurred in the last decade. And remember that includes both the Trump administration and the Obama administration, and even more remarkably, nearly half [00:08:30] of the 50 largest FCPA corporate Solomons have occurred just in the last four years. When, if we had listened to the pundits four years ago, we would have expected to see a decrease or a stabilization of FCPA enforcement. So it certainly seems the trend towards your larger corporate settlements does not appear to be slowing. Even if the number of cases, at least initially will most likely remain stable and may see some level of increase towards the back [00:09:00] half of the Biden.

Speaker 2: Administration's first term, second, we've seen continued multi-jurisdictional coordination of FCPA cases. In recent years, we've seen much more cross border cooperation of the FCPA and foreign countries are increasingly adopting and enforcing their own anti-corruption laws, similar to the FCPA, which certainly leads to more multi-jurisdictional coordination. For sure. However, [00:09:30] we're also seeing that foreign countries are starting to understand, and maybe appreciate the benefits of cooperating with the DOJ and sec and FCPA cases since 2018 foreign governments in Latin America alone have received over a billion dollars in pounds from EFS, from FCPA investigations. And as I referenced earlier, they're the largest anti-corruption global settlement took place in 2020. And in that case, two European countries [00:10:00] received over \$3 billion in Selma. Now settlement amounts related to an FCPA investigation of a European based company. Now multi-jurisdictional co uh, coordination. Cooperation is not just a priority for foreign countries.

Speaker 2: We're certainly seeing that as a priority for the DOJ and sec, during recent public remarks, acting assistant attorney general, Brian rabbit noted that many of the DOJ's corporate resolutions in 2020 [00:10:30] included coordination with one or more foreign enforcement authorities, which as he said, is an increasingly important aspect of the DOJ has work. So with the recent rise of cases, as well as the potential geopolitical and financial benefits of cross border cooperation, I'd expect that we'd seen more multi-jurisdictional cases in future years. Now let's talk about the third trend that I think we'll continue to see, which is as we've seen in the past several years. [00:11:00] And if you listen to DOJ officials under both the Trump administration and the previous Obama administration, there's been an increased emphasis on individual accountability and on individual enforcement actions. Again, in public remarks just recently, the acting assistant attorney general stated that ensuring individual accountability for corporate wrongdoing has been a hallmark of the DOJ is white collar work in recent years. And he stated that 2020 was no exception to that. [00:11:30] And in fact, it's not just 2020 that we've seen individual enforcement increase between 20 18, 20 19 and 2020, all three of those years have seen the three highest number of years in terms of individual enforcement charges brought against.

Speaker 2: Now, recently we've seen the DOJ as we've talked on this podcast before charge numerous individuals with non FCPA charges resulting from both corporate [00:12:00] and individual FCPA investigations. Now, why is that? Well, charging individuals with FCPA related crimes has become more common, really for two primary reasons. First charging individuals with financial crimes, such as money-laundering and wire fraud is often easier than charging and then proving FCPA violations. Second utilizing FCPA related financial crimes also allows the DOJ to punish [00:12:30] bribe facilitators and probably more importantly, foreign official bribed recipients who otherwise would not be able to be charged directly with FCPA violations because of jurisdictional reasons. So again, we anticipate that the DOJ will continue to utilize these enforcement techniques in future years. So if we want to sum this up, I have no idea what corporate enforcement will look like under the Biden administration and quite frankly, no one else does.

Speaker 2: However, given [00:13:00] some of the public comments made by incoming administration officials and the general consensus that there will be more emphasis placed on enforcing financial crimes and corporate fraud. I'd certainly expect that this administration would continue at a minimum enforcing the FCPA at the levels that we've seen in the past. When you also then overlay the economic and financial crises that we're seeing due to COVID-19. And if we look at [00:13:30] what other, uh, time periods have looked like when we've seen those types of crises, we'd certainly expect to see a lot more opportunities for corruption and therefore more enforcement in later years of the FCPA and other anti-bribery laws. I think at least in the short term, we may see a stabilization or maybe even a decrease in the number of FCPA cases that are brought in the early stages of the Biden administration, because as we just discussed, it takes [00:14:00] so long for FCPA cases to be enforced, which is, we all know usually means that they are settled, but the large corporate settlement amounts do not appear to be changing anytime soon.

Speaker 2: So what are my three key takeaways or my three predictions for FCPA enforcement during the Biden administration? Number one, I predict that corporate settlement amounts will continue to remain relatively large. I don't know if we'll set new [00:14:30] records in the future, but the trend has certainly been towards large corporate settlement amounts. And even if the case numbers don't increase in the first few months and years of the Biden administration, I certainly would expect to see the continued trends towards large corporate settlement amounts, the statistics over the last decade and even in the last four years are quite remarkable. And there's nothing to suggest that those large corporate settlement amounts will change. My second prediction [00:15:00] is that we'll continue to see multi-jurisdictional coordination FCPA cases, and this prediction actually ties back to one of the reasons why I believe we'll continue to see large FCPA corporate settlement amounts, because as we've seen more foreign countries are not only adopting and enforcing their anti-corruption laws, but they're also seeing the benefits of cooperating with the DOJ and sec.

Speaker 2: And quite frankly, what's happening is as they're more hands in the pot, the [00:15:30] enforcement numbers certainly seem to have gotten larger over the last several years. So I believe that because of the geopolitical and the financial benefits, we're going to

continue to see many foreign jurisdictions cooperating with the U S efforts to combat corruption worldwide. And my third prediction is we're going to see increased individual enforcement. It's just been a trend that the DOJ and sec have talked about for years, and the numbers have been backing it up primarily [00:16:00] over the last three years. And we're continuing to see more individuals get charged, not only with the FCPA, but also these FCPA related crimes. And as the government has learned, they can use FCPA related crimes, such as money laundering and wire fraud to punish individuals. And that it's easier at times to charge individuals with those crimes. Then I think we're going to continue to see that trend continue under the Biden administration. [00:16:30] Now, the good thing about making these predictions in a public forum like on a podcast is we can revisit these in six months or a year and in four years and see if I'm right or if I'm wrong, or if it's somewhere in between, but either way, I've enjoyed making some predictions. And thank you for listening to this episode of the GT ABC podcast.

Speaker 1: [inaudible].