

Cuneyt Akay ([00:00](#)):

Welcome to the initial episode of the GT ABC podcast. I am your host, Cuneyt Akay, here the GT.

Cuneyt Akay ([00:19](#)):

She stands for Greenberg Traurig and the ABC stands for anti-bribery and corruption. The purpose of the GT ABC podcast is three things. One, we will discuss current events related to foreign corrupt practices, act enforcement, otherwise known as the FCPA two will provide analysis and insights into relevant topics and trends related to anti-corruption enforcement worldwide. And third, this podcast is designed to provide tips and suggestions, to help organizations and compliance professionals better understand how to create and implement effective anti-corruption compliance programs. Before we delve into today's topics, I want to introduce myself, as I mentioned, I'm your host Cuneyt Akay. I'm a shareholder at Greenberg Traurig. And for nearly a decade, my practice has primarily focused on anti-corruption work ranging from conducting internal investigations. When there's an allegation of bribery to designing, building and implementing anti-corruption compliance programs. So companies can better mitigate their corruption risk.

Cuneyt Akay ([01:28](#)):

My experience includes representing fortune 10 companies with operations and dozens of foreign countries to helping midsize companies with foreign operations. Only one or two countries. I've advised clients in a myriad of industries, including telecom, financial services, technology, and IT manufacturing and retail. And I've had the privilege of traveling to five continents and providing advice in dozens of countries where my clients operate enough about me. Let's talk about today's podcast episode and today's episode. We're going to discuss two things, one corporate and individual enforcement statistics, and trends from the past year and a half. And secondly, at the end, I'll offer some key takeaways and advice based on the enforcement trends that we've seen in the last year and a half.

Cuneyt Akay ([02:21](#)):

Okay, well, let's start with some corporate enforcement trends regarding the FCPA coming out of 2019 and 2020, as many of you know, 2019 was the biggest year ever in terms of FCPA penalties. There were 14 cases in 2020, and there were \$2.65 billion in settlements. That's billions with a B in settlement amounts for FCPA cases. In fact, we saw two of the largest penalties ever in the FCPA's history in 2019. Now not all of the penalties were large. There some penalties that were as small as \$4 million, but we did see the first ever \$1 billion over \$1 billion settlement amount in 2020 is off to a similar start. We've seen three settlements so far this year with over \$320 million impound these for FCPA allegations. And today we've now seen the single largest global bribery resolution with one company setting settling with multiple countries for almost \$3.9 billion in a global bribery resolution, all told the last year and a half has seen nearly \$3 billion in FCPA penalties and a total of over \$6 billion in global bribery resolutions paid in the last year and a half.

Cuneyt Akay ([03:52](#)):

So what does that mean? Well, that means corporate enforcement of the FCPA is alive and well now some of the things that we're seeing in enforcement are continued trends from previous years, the industries that continue to get affected in terms of FCPA cases, the industry is still revolve around telecommunications technology and it financial services, companies, oil and gas companies. We're continuing to see enforcement around engineering construction, and we're seeing some newer areas where that are being affected by the FCPA, such as healthcare and retail, even consumer goods cases,

which really just means, and it just shows that really there's no industry that is immune to FCPA scrutiny and FCPA enforcement in terms of geography. In other words, where are the bribes being paid? It's, we're seeing similar hotspots as we have in previous years. The BRIC countries are certainly areas where we see allegations of improper payments and bribery.

Cuneyt Akay ([04:54](#)):

So there's continued enforcement for conduct that occurs in Brazil, Russia, India, and especially in China. And we're now starting to see more focus on areas like Venezuela and Uzbekistan. So as we look at the corporate enforcement over the last year and a half, what are the trends that seem to emerge? And what can we learn from the trends of corporate enforcement? Well, first and foremost, as I mentioned earlier, FCPA enforcement is alive and well, the last four years have been four of the top seven years in terms of FCPA settlement in the history of the FCPA. And currently there are well over a hundred companies that have disclosed active FCPA investigations. Another trend that we're seeing is what is affectionately referred to as the clustering of FCPA cases? And what does that mean? Well, that's where the same conduct is leading to multiple investigations.

Cuneyt Akay ([05:51](#)):

We're seeing three models of this one is where companies are getting charged and subsequently individuals get charged. One example of this is there was a company that settled with the us government in 2014 and paid a substantial penalty to the U S government for allegations of bribery, but we're still seeing individuals related to that case. And related to that company, getting charged all the way into 2019, the second model is where the U S government starts with one company in a certain industry or in a certain geography. And then we see a mushroom cloud effect of new enforcement cases that arise out of that similar conduct or that similar geographic area. The big example of this is the Brazilian carwash cases where we've seen a continued number of cases, including in 2019, a continued number of cases that are coming out of similar conduct, similar bribery allegations that started years ago out of Brazil.

Cuneyt Akay ([06:51](#)):

And we're seeing multiple companies in different industries getting affected and getting scrutinized by the U S government. And the third type of clustering that we see is where the us government will go after a certain industry practice. And there'll be multiple years of cases involving that industry practice. The classic example of this that we've seen recently is what is known as the princeling cases, where there's been a practice of hiring less than qualified friends and relatives of government officials to curry favors and to win business deals. Particularly in the banking sector, we saw these types of cases emerge five, six years ago, and we're still seeing these types of cases getting enforced by the us government. In fact, in 2019, we saw two new settlements based on this exact type of industry practice. One of the other trends that we're seeing is that there's continued multi-jurisdictional cases.

Cuneyt Akay ([07:49](#)):

So we're seeing lots of cooperation between different countries enforcing anti-corruption laws. Now I've given in conducted trainings and over a dozen countries and every single country that I've been to has an anti-corruption law in place. In fact, many times the anti-corruption law is more strict and stringent at least on the books than the FCPA itself. But as most of us know, many times those countries haven't enforced those FCPA laws. Well, that's starting to change foreign countries last year alone received almost \$300 million in penalties from FCPA investigations. So these countries are starting to realize the

benefits of cooperating with FCPA investigations. Certainly they're starting to see the financial benefits, minimally of cooperating with FCPA investigations. 2020 has already seen the best example of an FCPA investigation with multiple jurisdictions involved earlier this year, one company resolved a global bribery allegation and paid almost \$4 billion in total penalties.

Cuneyt Akay ([09:02](#)):

And of that \$4 billion. The us component was only around \$500 million. And the FCPA component of the penalty was less than \$300 million. That company paid over \$2 billion to the French government for their bribery allegations and over \$1 billion to the UK government for the bribery allegations. So as we see here, multi-jurisdictional cases are certainly a trend. And what we're seeing is multiple countries coming together with very large resolution amounts. And the \$3.9 billion is the largest global bribery resolution ever. And that trend does not seem to be decreasing the last trend and as a compliance professional, the one that's most near and dear to me is that proactive compliance is being rewarded. And how are we seeing that or seeing that in a couple of different ways, one is in the way that the U S government is talking about the FCPA and compliance. And two, as we'll discuss in a few minutes, the proof is in the pudding in terms of how the government is treating companies that are acting in a proactive manner when it comes to compliance, the DOJ has particularly been talking about and discussing compliance efforts.

Cuneyt Akay ([10:24](#)):

The DOJ continues to tout the corporate enforcement policy, which provides a potential dechlorination of charges or reduction in penalty for voluntary disclosures, cooperation, and remediation. Similarly, just recently, the DOJ revised its evaluation of corporate compliance programs, guidance, and a couple of things stand out with this new guidance in the new revisions. One is the timing of the revision certainly seems to send a message with everything going on in the world. Right now, the DOJ is signaling that the government still expects corporate compliance. Second, the DOJ expects companies to spend resources on compliance. The guidance lists three fundamental questions to ask regarding compliance is the compliance program. Well-designed second is the program applied in good faith, and here's the new language that the DOJ inserted into this question is the program adequately resourced and empowered to function effectively. They're focusing on company's resources and the resources that companies are spending on compliance to make sure the compliance is functioning effectively.

Cuneyt Akay ([11:37](#)):

And the third question asks is does the compliance program work? The last piece that I want to focus on in terms of the trends that we're seeing coming out of the DOJ with regards to compliance is the new revisions to the guidance, certainly show that the government does expect compliance to be a one-time event. It expects it to be ongoing. The guidance now includes questions regarding how company's compliance program has evolved, whether a company's risk assessment is a quote unquote snapshot in time, or is it based on a continuous review and does a company adapt its compliance program based upon lessons learned from its own misconduct and or that of other companies facing risks. So we're certainly seeing the U S particularly the DOJ take a very proactive stance regarding corporate compliance. As I mentioned, we're also seeing that proof in terms of how the U S government and particularly the DOJ are reacting to companies that have compliance programs.

Cuneyt Akay ([12:42](#)):

I'll give one example. Last year, there was a case where the sec alleged that accompany paid bribes through a construction firm to obtain construction license and the permits to build a new campus, a new headquarters in India, and I've done compliance and India for multiple years. And I've seen this type of transaction all the time. It's a very common occurrence in a place like NBA and in many other countries where in order to get the proper licenses and permits, the government officials are expecting bribes. And we all know that those vibes do get paid regularly. And the company bunny there for these allegations did settle the case with the sec for \$25 million. But more importantly was the DOJ declined to prosecute that company primarily because of the compliance efforts that the company took. And in the declaration, the DOJ listed out the factors for why the company w why the government decided not to prosecute the company.

Cuneyt Akay ([13:46](#)):

One, the company voluntarily self-disclosed within two weeks of the board learning the allegations of the improper conduct. Two the company conducted a thorough and comprehensive investigation, and also fully and proactively cooperative with the government's investigations. Third and most importantly to compliance professionals. The government said that the company had an effective pre-existing compliance program and took steps to enhance its compliance program and internal accounting interest. Fourth, the company disciplined in terminated and employees and contractors involved the conduct. And lastly, the company lacked a prior criminal history. The factors of the government laid out when it decided not to charge, but the DOJ decided not to charge and impose penalties upon this company. So it's a great example of why and how compliance works and how compliance can save a company, either a prosecution, or certainly minimize the risk of a prosecution and potential penalties. Now that we've discussed corporate enforcement of the FCPA, let's take a few minutes to discuss individual enforcement cases in 2019 and 2020, 2019 was the second highest year ever for FCPA and FCPA related charges.

Cuneyt Akay ([15:13](#)):

There were 39 individuals that were charged or indicted in 2019. And so far in 2020, we've seen nine other individuals charged. And the biggest trend that we're seeing from these enforcement individual enforcement cases is that there seems to be more of a willingness of individual defendants going all the way to trial, instead of settling their cases. In 2019, we saw a total of five trials, four individuals were convicted and one was acquitted, and we've already seen new developments in 2020 surrounding some of these individual enforcement cases. In fact, one of the individuals that was convicted in 2019 has already seen his FCPA charges dismissed by a judge earlier this year. And another case, two individuals that were convicted in 2019 will now receive new trials in 2020, because one of those individuals received ineffective assistance of counsel. And the judge in that case decided that both individuals deserved new trials in 2020.

Cuneyt Akay ([16:21](#)):

So what we're seeing is there appears to be more of a willingness of individuals going to trial. And the question becomes is this a new trend will more defendants continue to challenge the government's jurisdiction in its reach when the government is bringing FCPA and FCPA related charges. A second trend that we see emerging with these individual cases is the government is bringing more than just FCPA charges against individuals. They're also bringing FCPA related charges. And what this typically means is that we're seeing the government charge individuals, that they may not be able to otherwise charged with FCPA violations. So for example, the government has been charging foreign government officials

accused of receiving bribes who cannot otherwise be charged with FCPA violations. They're charging those types of individuals with other financial crimes, such as money laundering and wire fraud, oftentimes because that's the only vehicle they may have to charge those individuals, but they're also using these similar charges, the money laundering and wire fraud charges to charge other individuals that are part of an alleged bribery scheme, because oftentimes it's easier to bring these charges than just FCPA allegations.

Cuneyt Akay ([17:44](#)):

Another thing that we're seeing in the individual enforcement case is we're starting to see these clusters of individual enforcement that aren't necessarily tied to corporate settlements. So in 2019, we saw numerous individuals charged related to cases, really to allegations in Venezuela involving the Venezuelan state owned energy company. We saw individuals charged in the one MDB scandal involving the Malaysian sovereign wealth fund. And we've seen individuals charged in relate relation to activities in the oil and gas space in Ecuador. But so far, we haven't seen any corporate enforcement actions in these specific areas. So the question becomes, is this going to be, are these individual cases, individual enforcement cases going to be a precursor to future corporate enforcement of resolutions and cases. And time will only tell, but this may be a little bit of a playbook or a strategy that we're seeing from the government to start by charging individuals and then bringing subsequent charges against companies.

Cuneyt Akay ([18:58](#)):

So, we've talked about corporate enforcement and some of the trends that occurred in 2019 and early 2020, we've discussed some of the individual enforcement, uh, that's happened in 2019 and 2020, and some of the trends that we're seeing there. So what does this mean to us as compliance professionals? What are the key takeaways here? And there's really three things for compliance professionals to keep in mind, certainly when it comes to corporate enforcement enforcement is alive and well. There's a lot of cases over the last year and a half from all over the globe in a diverse set of industries. So this really means that companies and compliance professionals can't fall asleep at the wheel. And we're also seeing that individual enforcement is changing. The government is using more tools to charge individuals based on FCPA related charges. And we'll see if that leads to more corporate enforcement, uh, down the road as well.

Cuneyt Akay ([19:56](#)):

We don't know yet if that's a precursor to more corporate enforcement. And we're also seeing that more defendants are willing to go to trial, which means that there's going to be more scrutiny around the government's reach in the government's jurisdiction. So that's something to keep an eye on. And the last thing, and the thing as a compliance professional, a compliance attorney that is most dear to me, is that we're seeing the government give credit when compliance works, when corporate compliance programs work, the government is giving those companies either a declamation or a lot of times a reduction in penalties. So we're seeing the message come through loud and clear that proactive compliance works well. Thanks for joining the first GT, ABC podcast, and I look forward to future podcasts and discussing more about FCPA enforcement and compliance tips and tricks to help all of you better mitigate your corruption risk. Thanks for tuning in

Cuneyt Akay ([21:18](#)):

[inaudible].