

Welcome



Thank you for attending today's webinar. Under current circumstances, a significant portion of the workforce is working remotely; the higher utilization of the internet and servers impacts bandwidth. We appreciate your patience and understanding should any unexpected technical issues arise. As always, it is our intent to give you the information you need as seamlessly as possible.

Tips for best experience:

- Turn off unused or extra internet-connected devices. (TV streaming services, smart devices, Alexa devices, etc.)
- Use a wired connection, if possible. (Ethernet connection from router to computer.)
- Do not run additional applications during presentation. (Outlook, Internet **browsers...**)
- Mute your audio unless you are presenting.

The presentation will begin shortly.



FCPA – 2019 Year in Review

A review of 2019 FCPA enforcement cases and compliance tips

Speaker

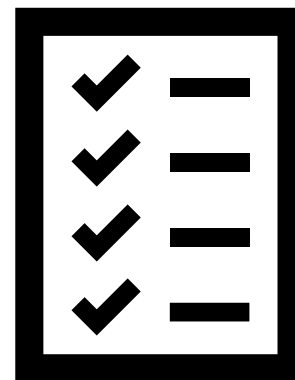


Cuneyt A. Akay

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Denver*

Agenda

- Summary of FCPA Basics
- Corporate Enforcement in 2019
- Individual Enforcement in 2019
- Compliance and Red Flags: What can you do?
- Key Takeaways



FCPA Basics

- The FCPA applies to:
 - Companies organized under U.S. law
 - Foreign issuers of securities in the U.S.
 - Individuals located in the U.S., including foreign nationals
 - Employees of covered companies
- What does the FCPA require?
 - **Don't bribe!**
 - Keep accurate books and records + maintain internal controls



FCPA: Anti-Bribery Provision

- Anti-Bribery Provision
 - Prohibits offering, promising, authorizing, or actually paying money or anything of value to a foreign official to influence any act or decision of a foreign official (in his/her official capacity) to secure any improper advantage or obtain/retain business
- **Let's break that down**
 - Yes, even any offer of a bribe is prohibited
 - What does “anything of value” mean?
 - Who is a “foreign official” under the FCPA?
 - What does it mean to influence an “act” or “decision” of an official?



FCPA: Accounting Provisions

- Keep books and records that accurately reflect transactions
- Maintain system of internal controls to assure company's control, authority, and responsibility over assets

Bribes often mischaracterized as:

- Commissions or royalties
- Consulting fees
- Sales and marketing expenses
- Travel and entertainment expenses
- Rebates or discounts
- After sales service fees
- Free goods
- Intercompany accounts
- "Customs intervention" payments

Corporate Enforcement 2019

- Biggest year ever for penalties
 - Two largest penalties in history
- Industries affected
- Geographic locations
- Trends:
 - Enforcement is alive and well
 - **Continued “clustering”** – same conduct leading to multiple investigations
 - Continued multi-jurisdictional cases
 - Proactive compliance is rewarded



INDUSTRIES MOST AFFECTED



14 Cases
AND
\$2.65B
in Settlement Amounts

Ericsson and Mobile TeleSystems

- Ericsson (record \$1.06 billion settlement)
 - Conduct involved executives and spanned 17 years in five countries
 - Used third-party agents to make bribe payments to government officials and/or to manage off-the-books slush funds
 - Agents engaged by sham contracts and paid pursuant to false invoices
- Mobile TeleSystems (\$850 million settlement)
 - Part of multi-year, multi-company FCPA enforcement cases involving Uzbekistan telecommunications
 - Bribed Uzbek official related to the former President of Uzbekistan and who had influence over the Uzbek telecommunications regulatory authority
 - Uzbek government official and bribe facilitator also charged
 - Payments improperly characterized as legitimate expenses



Cognizant

- SEC alleged company paid bribe through construction firm to obtain construction licenses and permits to build new campus in India
 - Company paid \$25 million settlement to SEC
- DOJ declined prosecution primarily because the Company:
 - Voluntarily self-disclosed within two weeks of the Board learning of conduct
 - Conducted a thorough and comprehensive investigation
 - **Fully and proactively cooperated with the government's investigations**
 - Had an effective pre-existing compliance program and took steps to enhance its compliance program and internal accounting controls
 - Disciplined and terminated employees and contractors involved in conduct
 - Lacked prior criminal history



Individual Enforcement 2019

- Second-highest year ever for cases
- Trends:
 - Trials
 - Four convictions and one acquittal
 - Already new developments this year
 - Will more defendants go to trial?
 - More FCPA-related cases
 - Money laundering and wire fraud charges
 - Continued individual enforcement not tied to corporate settlements
 - Is this a precursor to future corporate enforcement resolutions?

39 Individuals

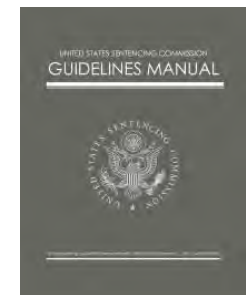


**What can
you do to
avoid this?**

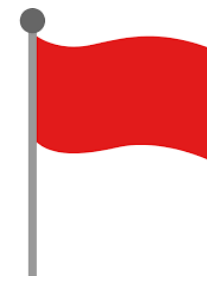


Hallmarks of Compliance

- Commitment from senior management – “tone at the top”
- Anti-corruption policies and procedures
- Oversight, autonomy, and resources
- Risk assessment
- Training and continuing advice
- Incentives and disciplinary measures
- Third-party due diligence
- Confidential reporting and internal investigation
- Periodic testing and review
- Mergers and acquisitions: pre-acquisition due diligence and post-acquisition integration



Look Out For Red Flags



- History of corruption in specific country or industry
- Third Party Agents
 - Unusually high commissions
 - Unusual financial arrangements – such as payments to parties not involved in the deal
 - Agents or representatives that do nothing or very little
- Government requests
 - To employ a relative or somebody associated with a government official
 - To make charitable contributions or sponsor specific organization/event
- Financial controls
 - Incomplete, vague, or duplicative invoices and/or missing supporting documents
 - Lack of transparency in accounting records – such as unrecorded transactions
 - Improper authorizations
 - Payments to offshore accounts

Key Takeaways

- Corporate enforcement continues
 - Many cases across the globe in diverse set of industries
- Individual enforcement is changing
 - More defendants are willing to go to trial
 - Government is using more tactics to charge individuals (non-FCPA related charges)
- Compliance programs work
 - DOJ declinations are proof



Q & A