

FCPA Overview and Recent Trends

The International Monetary Fund recently estimated that bribery consumes \$1.5 to \$2 trillion (USD) around the world each year. Multinational organizations are increasingly facing related crises – including criminal investigation and prosecution as a result of what many of their employees might consider “business as usual.” The anti-bribery provision in the U.S. Foreign Corrupt Practices Act (the “FCPA”) generally makes it illegal for any person acting on behalf of a domestic or foreign company listed on a U.S. stock exchange to give anything of value to any foreign government official in order to obtain or retain business, or to secure an improper business advantage. FCPA accounting provisions require issuers to maintain accurate books and records, and to devise and maintain an adequate system of internal accounting controls.

Consequences for violating the FCPA include potentially severe civil and criminal penalties, irreparable damage to an organization’s reputation, and loss of investor and consumer confidence. They may also result in the appointment of an independent monitor to ensure reform and future compliance.

Recent prosecutions, the U.S. Sentencing Guidelines, and policies of the U.S. Department of Justice (“DOJ”) and Securities and Exchange Commission (“SEC”) underscore the need for organizations to be proactive, institute effective compliance measures, and thoroughly investigate allegations of FCPA violations. The FCPA has become embedded in international business risk. Recent trends indicate an increase in enforcement among both large and small companies, and in some cases those just entering international markets.

As cited in *A Resource Guide to the U.S. Foreign Corrupt Practices Act*, jointly issued by the DOJ and SEC, “in addition to considering whether a company has self-reported, cooperated, and taken appropriate remedial actions, DOJ and SEC also consider the adequacy of a company’s compliance program when deciding what, if any, action to take.” The compliance program assessment “will often affect the penalty amount and the need for a monitor or self-reporting.”

FCPA Compliance

In a global marketplace, an effective compliance program that is tailored to the company’s specific business risks is essential

to preventing, detecting, and properly addressing FCPA risks. Whether you have concerns about a possible FCPA violation or the adequacy of your FCPA compliance program, Chess Consulting (“Chess”) can help. Our professionals, which include former big four accounting partners and practitioners supported by a team of seasoned Certified Public Accountants and Certified Fraud Examiners, have amassed unrivalled experience performing risk assessments, compliance reviews and monitoring, forensic accounting, and due diligence.

Forensic Accounting

When concerns about possible FCPA violations arise, Chess has the investigative prowess and accounting expertise needed to efficiently and effectively conduct an investigation. We have decades of experience working with clients and outside counsel on large multi-national parallel investigations by the DOJ and SEC.

Our forensic accountants provide technical accounting guidance and analysis, as well as assist counsel with data collection and review, interview support, and transaction review. In doing so, we uncover the facts to determine if violations of the FCPA’s anti-bribery or books and records provisions have occurred, identify when and where the violations began, who was involved, how they occurred, the financial impact, and what controls were circumvented or not in place.

Our professionals’ financial insight, extensive experience, and investigative and data mining techniques enable us to quickly uncover and unravel complex financial issues surrounding FCPA allegations. Our independent status ensures an objective assessment upon which corrective measures can be built.

Risk Assessment, Compliance Reviews, and Monitoring

Chess helps clients implement and assess effectiveness of FCPA compliance programs. Through comprehensive risk assessments, we identify key risk areas and vulnerabilities and collaborate with the client’s personnel to implement internal controls that mitigate their risks. Our expertise in fraud/corruption prevention, along with our awareness of industry best practices, enable us to help companies enhance

existing controls or create and implement new ones. We also educate employees about the FCPA, including DOJ and SEC expectations regarding hallmarks of effective compliance programs and expectations for reporting and remediating alleged or actual FCPA violations.

Our experts conduct periodic reviews to measure and ensure internal compliance with policies and monitor risk areas to prevent corruption from occurring in the future. Additionally, we may serve as an independent monitor to mitigate SEC and DOJ concerns about the company's role in the FCPA violations, reducing the risk of continued investigation or prosecution of the company. Our capabilities allow a company to meet its legal compliance requirements, corporate mandate, and stakeholder responsibilities.

The Chess Consulting Advantage

Our experts have regulatory knowledge, industry expertise, and first-hand experience working on complex cross-border and sensitive, high-profile international investigations. This extensive experience has enabled us to develop an understanding of the strategies and tactics frequently employed by those who perpetrate fraud. We are well-positioned to provide clients with intelligence and facts needed for execution of anti-fraud measures and to strengthen internal compliance programs. By working closely with clients' management and counsel, we ensure minimal business disruption without compromising investigative goals. All of our assignments are managed in confidence and are performed in accordance with the highest legal and ethical standards. Notable engagements include:

- *A global nonprofit education and research organization.* We were engaged by client counsel at the request of its audit committee to investigate its Thailand operations for inappropriate transactions and ascertain whether or not questionable transactions were FCPA violations. The investigation was initiated due in part to questionable transactions identified by the Thailand government's tax authority which were facilitated by one of the company's subcontractors. Working with external counsel, we performed a thorough review of transactions over a six-year period. The results of our investigation concluded that the questionable transactions were isolated to a specific vendor (which was subsequently terminated) and therefore were not widespread throughout the organization. The client reported the results to the DOJ, and the DOJ accepted the client's disclosure and chose not to investigate further.
- *An international global security firm conducting business in the Middle East.* We were engaged by external counsel at the request of its client to evaluate appropriateness of gifts and other expenditures and to ascertain compliance with the FCPA and U.K. Bribery Act. Allegations of improper gifts and other expenditures were made during an exit interview with a terminated employee of the company's subsidiary. Working in collaboration with external counsel, we performed a thorough review of transactions encompassing the four year period since it acquired the subsidiary. As part of the investigation, our professionals were able to identify questionable transactions and names of employees associated with the transactions who were subsequently interviewed. Based upon the results of the review, the questionable transactions were not deemed to be FCPA violations and thus did not require disclosure to the DOJ.