

FCPA Watch: 2016 - 2020 Enforcement Trends

Sherry Huang CFAP, CEAP, CIA

Chair, ICAEA Taiwan Chapter
 Chair, Professional Development Committee, IIA Taiwan
 CEO, Jacksoft Commerce Automation Ltd., Taiwan
<https://doi.org/10.53106/256299802020120201005>



In current situation, companies who accept bribes would receive huge panalties and economic losses. Corporate governance should come up with the solution to prevent enterprise bribery and correction. Enterprises need to build their compliance strategies of anti-corruption and anti-bribery to prevent risks [1]. With the increased globalization business environment and complex business models, an enterprise is going to face corruption risk inland or aboard. Current situation of global anti-bribery enforcement enforced strictly, especially Foreign Corrupt Practices Act (FCPA) enforcement. FCPA was legislated in 1977 and amended three times in 1988, 1994 and 1998. The purpose is to forbid American citizens to bribe enterprises and foreign government officials. It could create fair and honest business environment to develop and maintain specific business action. FCPA mainly includes anti-bribery and accounting clause. The anti-bribery clause banned enterprises or personals to provide bribing promises and gifts to foreign government officials, even to maintain improper business advantages for themselves. Accounting clause requires the securities issuer to maintain the correct bookkeeping records and the establishment of an effective internal control. Therefore, it could truly reflect the correct transaction records and properly authorized, and prohibit any behavior that may directly or indirectly lead to false or misinformation.

With the increasingly strict environmental supervision, FCPA's maximum penalty records over the years has been continuously refreshed, showing that its enforcement has continued to strengthen. Since 2016, SIEMENS AG in Germany has received FCPA's maximum penalty records, which paid US\$800M. Fine has increased in the following years. In 2017, Telia Company AB, the Swedish telecom giant was fined about US\$1B, and in 2018, Petroleo Brasileiro (PBR) was fined US\$1.78B as the highest record. In 2019, Ericsson telecom of Sweden was fined US\$1.06 B and ranked second. By 2020, Goldman Sachs of the United States paid US\$3.3B in fines, breaking the fine record for violating the FCPA (See Figure 1).

About 70% to 90% Non-U.S. companies have dominated the Top Ten list in Figure 1. Harry Cassin's commentary "The FCPA unfairly punishes foreign companies. Or does it?" argued that 53% to 67% FCPA corporate enforcement

actions have been against U.S. companies. One reason of non-U.S. companies always dominate Top Ten is the “culture” gap. Outside the United States, many executives and lawyers are still reluctant to cooperate with DOJ investigations, at least initially. And their lack of initial cooperation has contributed to so many foreign companies ending up on the Top Ten list [2].

2016-2020 Top Ten Cases of FCPA Enforcement Actions														
2016 Top Ten Cases			2017 Top Ten Cases			2018 Top Ten Cases			2019 Top Ten Cases			2020 Top Ten Cases		
No	Company	Year	Fines (million USD)	No	Company	No	Company	No	Company	No	Company	Year	Fines (million USD)	
1	Siemens (Germany)	2018	800	1	Telia Company AB (Sweden)	1	Petrobras (Brazil)	1	Petrobras (Brazil)	1	Goldman Sachs Group Inc. (United States)	2020	3300	
2	VimpelCom (Netherlands)	2016	765	2	Siemens (Germany)	2	Telia Company AB (Sweden)	2	Ericsson (Sweden)	2	Airbus SE (Netherlands/France)	2020	2090	
3	Alstom (France)	2014	772	3	VimpelCom (Netherlands)	3	Siemens (Germany)	3	Telia Company AB (Sweden)	3	Petrobras (Brazil)	2018	1700	
4	KBR/Halliburton (United States)	2009	579	4	Alstom (France)	4	VimpelCom (Netherlands)	4	MTS (Russia)	4	Ericsson (Sweden)	2019	1660	
5	Teva Pharmaceutical (Israel)	2016	578	5	KBR / Halliburton (United States)	5	Alstom (France)	5	Siemens (Germany)	5	Telia Company AB (Sweden)	2017	1610	
6	Och-Ziff (United States)	2016	472	6	Teva Pharmaceutical (Israel)	6	Société Générale S.A. (France)	6	VimpelCom (Netherlands)	6	MTS (Russia)	2019	850	
7	BAE (UK)	2010	400	7	Keppel Offshore & Marine Ltd (Singapore)	7	KBR / Halliburton (United States)	7	Alstom (France)	7	Siemens (Germany)	2008	810	
8	Total SA (France)	2013	398	8	Och-Ziff (United States)	8	Teva Pharmaceutical (Israel)	8	Société Générale S.A. (France)	8	VimpelCom (Netherlands)	2016	795	
9	Alcoa (United States)	2014	384	9	BAE (UK)	9	Keppel Offshore & Marine Ltd (Singapore)	9	KBR / Halliburton (United States)	9	Alstom (France)	2014	772	
10	Stamps.com (Netherlands)	2010	365	10	Total SA (France)	10	Och-Ziff (United States)	10	Teva Pharmaceutical (Israel)	10	Société Générale S.A. (France)	2011	585	

FIGURE 1 2016-2020 FCPA Top 10 Cases Trend

The court comprehensively considers various factors, consider and calculate the fines for the offender’s actions, including the severity of the crime, crime involved amount, the scale of the personnel involved, and status of the person involved in the company. The attitude of accepting government investigation is another consideration factor. Sometimes, the involved enterprise could have great degree of fine reduction even not to prosecute. In the case of Goldman Sachs, the company fails to be proactive in disclosing bribery to the Ministry of Justice and delay in providing relevant evidence, thus breaking the fine record. In 2016, Siemens’ record has ranked the seventh highest-paid fine in history. The enforcement of the FCPA has been increased year by year. Additionally, in recent years, U.S. Department of Justice and other countries cooperate in investigations has become normal.

There are more than 200 cases with 50 countries which involve within FCPA enforcement actions in 2015 - 2019 [3]. Therefore, modern companies urgently need to adopt cost-effective regulatory strategies to reduce related risks and prove the authenticity of their law commitments and whether they meet government standards. Continuously monitor on violation actions effectively prevents and reduce the risk of violations.

References

1. Shi Ming Huang, Wan Ping Lee, Chi Pei Lee and Phuong Anh Le, 2018, Enterprise Compliance Strategies for Anti-bribery and Anti-Corruption –An Industry Analysis, Proceeding of the 2018 International Conference on Computer Auditing (ICAEA 2018), Dubai. https://www.icaea.net/English/Publication/Download_file.php?file=2018_D6
2. Harry Cassin, 2020, The FCPA unfairly punishes foreign companies. Or does it?, FCPA Blog, <https://fcpablog.com/2020/11/19/the-fcpa-unfairly-punishes-foreign-companies-or-does-it/>
3. Gibson Dunn, 2020, 2019 Year-End FCPA Update, <https://www.gibsondunn.com/wp-content/uploads/2020/01/2019-year-end-fcpa-update.pdf>