



# Foreign Corrupt Practices Act Investigations & Enforcement

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## Overview

Companies competing in the global marketplace can be challenged by local business practices that incentivize the payment of bribes, which can expose them to liability under the US Foreign Corrupt Practices Act (FCPA). The cost to the company for violating these laws can be severe, with significant damage to reputation as well as criminal and civil penalties, including imprisonment.

O'Melveny has decades of experience counseling multinational companies on compliance with the FCPA, the UK Bribery Act, and similar statutes. We advise clients on the full range of anti-corruption needs:

### EXPAND ALL

- ▶ **Government Enforcement Proceedings and Inquiries**

## Accolades

"With its national coverage and depth of expertise, the firm's bet-the-

company labor and employment litigation practice is very well known."

*Legal 500 US*

Drawing on a team of lawyers with extensive government experience, we represent and advise clients in enforcement proceedings before various regulatory bodies, including the DOJ, SEC, and enforcement agencies in jurisdictions outside the US. We also handle related administrative and civil actions.

► **Internal Investigations**

We are actively engaged in conducting internal investigations around the world and are experienced in assisting clients to manage the outcomes of such investigations

► **Risk Assessments and Audits**

We have worked with numerous companies to identify their anti-corruption risks and assess whether its existing controls are appropriately calibrated to mitigate such risk and consistent with industry best practices We also have experience in conducting multi-lateral risk assessments that address other substantive legal areas, such as export controls, economic sanctions, and antitrust.

► **Development of Compliance Programs**

We have worked with companies in a wide range of business sectors on their development of compliance programs and the enhancement of existing compliance programs, as well as training programs designed to ensure that such programs are properly implemented.

► **Transactional Due Diligence**

We work with our transactional teams to conduct due diligence to manage FCPA risk in the context of mergers and acquisitions, financings, public offerings, and other investment activity.

► **Counseling**

We counsel on FCPA issues that arise in the course of our clients' day-to-day operations, such as appropriate marketing expenditures and strategies for thorough third party due diligence.

We are well regarded not only for our knowledge and experience, but our exceptional service. We recently received a "Best FCPA Lawyers Client Service Award" from Main Justice, an independent news organization that covers the DOJ. The firm was praised for its "ability to maximize resources and expertise without additional costs to the clients, and its demonstrated ability to work well with in-house teams.

## Experience

## Government Enforcement Proceedings and Inquiries

- O'Melveny obtained declination of potential action by the SEC and charges by the DOJ of a partner in an Australian affiliate of an accounting firm in connection with a DOJ/SEC probe of bribery in Indonesia.
- We represented a foreign subsidiary of a U.S. issuer in connection with DOJ and World Bank probes of alleged FCPA violations in connection with a construction project in Africa.
- We represent a major U.S. financial institution in connection with the SEC's ongoing "sweep" concerning business with Sovereign Wealth Funds.
- We represented a U.S. oilfield services company in connection with an SEC inquiry related to bribery in countries subject to U.S. economic sanctions.
- We represent a major U.S. financial institution in connection with an investigation by Chinese authorities concerning alleged bribery at the Chinese subsidiary of a portfolio company.
- We conducted an FCPA internal investigation in Costa Rica concerning our client's acquisition of and dealings with a hospital/health care related contract with the government of Costa Rica. We assisted the client in dealing with Costa Rican and European regulatory authorities, and in making a presentation to the DOJ and the SEC.
- O'Melveny represented a U.S. citizen in connection with the Belgian government's criminal investigation of an investment by a Belgian company in the energy industry in Central Asia. The O'Melveny team interviewed witnesses and reviewed transactional documents, identified and coordinated with Belgian criminal counsel, and negotiated with U.S. and Belgian prosecutors the terms of witness interviews in the U.S. and Belgium.
- O'Melveny obtained declination of potential action by the SEC and charges by the DOJ of a partner in an Australian affiliate of an accounting firm in connection with a DOJ/SEC probe of bribery in Indonesia.
- We represented a foreign subsidiary of a U.S. issuer in connection with DOJ and World Bank probes of alleged FCPA violations in connection with a construction project in Africa.
- The International Olympic Committee retained O'Melveny in connection with the DOJ's investigation concerning Salt Lake City's bid to host the Winter Olympics. An O'Melveny team interviewed witnesses and reviewed documents in Europe, Asia, and the United States; examined the application of the FCPA to a private international organization such as the IOC; and provided assistance in responding to inquiries from the U.S. Congress.
- O'Melveny conducted an independent internal FCPA investigation on behalf of the Audit Committee of a major owner of casinos in connection with investigations by the SEC and DOJ regarding casino operations in China, and numerous related civil lawsuits. The investigation involved novel and complex issues regarding the gambling industry, the FCPA and foreign data privacy laws, as well as politically sensitive matters in China. The Wall Street Journal and The New York Times, among other

publications, have written extensively about the investigation.

- O'Melveny responded to allegations that our client, a major energy company, had employed a local agent in Mexico to bribe the governor of a Mexican state in order to induce him to expropriate the land contemplated for development by a competitor's industrial facility. We leveraged our technological expertise, the language skills of our attorneys, and our extensive experience with FCPA work to conduct a thorough, but cost-effective, internal investigation that included wide-ranging evidence preservation, electronic data review, on-site inspections at numerous Mexican power facilities, and in-depth witness interviews in both English and Spanish. The matter was concluded with a high-level conference with the SEC reporting that the allegations at issue were entirely unsubstantiated.

## Internal Investigations

- A NYSE-listed gaming concern engaged O'Melveny to conduct a significant audit committee investigation following receipt of a subpoena from the SEC.
- A NYSE-listed manufacturer of medical equipment engaged O'Melveny to conduct two investigations in China of possible violations of the FCPA by the company's Chinese subsidiary. The investigations resulted in settlement agreements with the U.S. Department of Justice and Securities and Exchange Commission. O'Melveny assisted the subsidiary in handling a series of investigations and inquiries concerning the same matters by various Chinese regulatory authorities. Later, when the company was sold, O'Melveny assisted in the due diligence associated with that sale, including due diligence as to residual U.S. and Chinese regulatory issues arising out of the FCPA investigations. [this should move up to the previous section]
- A U.S. manufacturer of healthcare products retained O'Melveny to examine possible problems in connection with the recordkeeping, gifts, and entertainment practices at its subsidiary in Asia. Working with forensic accountants, an O'Melveny team interviewed witnesses and analyzed documents in Asia and the United States. The O'Melveny team assisted in follow-up steps, including employee training and revisions of applicable policies and procedures.
- O'Melveny conducted a confidential internal investigation related to our client's financing of two hydroelectric power plants in Latin America. At issue was whether any improper payments or other FCPA violations were committed in connection with the deal.
- O'Melveny provides ongoing advice to a leading pharmaceutical manufacturer on potential FCPA problems in its international operations. The manufacturer engaged us to investigate possible FCPA issues arising out of the company's promotional efforts in Asia.
- The audit committee of a Chinese company preparing to list on NASDAQ engaged O'Melveny as special counsel to investigate allegations of potential FCPA problems in the company's China business. O'Melveny's investigation involved extensive document review, principally in Chinese,

and interviews of senior management in China. O'Melveny then coordinated with the company's listing counsel as to the company's disclosure obligations, and assisted the company in designing a compliance program to ensure concurrence with FCPA and other U.S. legal requirements after listing.

- We were retained by a major international manufacturer of computer software and hardware to investigate issues concerning its promotional and discount practices in China. The O'Melveny team interviewed employees in China, Hong Kong, Australia, and the United States, and worked closely with the client's internal audit group and external forensic auditors to examine company records. We also provided advice about revisions to the company's compliance policy and procedures and overall internal controls. Thereafter, the company retained us to conduct and/or provide advice in connection with investigations of potential FCPA problems in its operations in the Philippines.
- The audit committee of a multinational medical equipment manufacturer engaged O'Melveny to review its internal investigation of possible FCPA problems in its Asian operations. We identified potential problem areas for the audit committee, and assisted the company in revising its compliance program going forward.
- We conducted an internal investigation in China into possible FCPA violations of a NYSE-listed manufacturer of equipment in the transportation industry.

### Risk Assessments and Audits

- We conducted an FCPA risk assessment for a U.S. publicly traded semiconductor manufacturer for the purpose of enhancing its FCPA program.
- A food supplement company requested that we conduct a targeted risk assessment for its Chinese operations to assess whether its existing procedures were adequate.
- We conducted a risk assessment for a leading real estate investment company with operations in Asia, South America, and the United States.
- We assisted a U.S.-based chemical and energy services company with its risk assessment, focused on a newly acquired entity with worldwide operations.
- Development of Compliance Programs
- We advised a European multinational chemical company on developing anti-corruption and economic-sanctions policies designed to address both U.S. and EU law and conducted a broad risk assessment covering anti-corruption, economic sanctions and antitrust.
- We assisted a multinational oilfield services provider in implementing a plan to integrate a new acquisition into its existing compliance structure, while tailoring that program to address the particular risks unique to the new business.
- We advised three U.S. pharmaceutical and medical device companies about sales and marketing strategies and the retention of consultants in Japanese, other Asian, and European markets. We also either created

or revised their compliance programs with a specific focus on the Asian market.

- We overhauled a compliance program for a NASDAQ-listed, Asian biomedical electronics company.
- We advised a Chinese manufacturer on how to structure its operations before going public in the United States. We advised on the type of compliance program that would be necessary for the company to comply with the FCPA when the company becomes an “issuer” for purposes of U.S. securities laws.
- After a NYSE-listed manufacturer of medical equipment uncovered extensive internal fraud in its China operations, O’Melveny designed a new compliance and training program to ensure that the problems did not recur.
- A team of O’Melveny attorneys assisted a defense contractor in designing a joint venture to comply with the FCPA, where the venture partner included European operating units that had not historically been FCPA compliant.
- An O’Melveny team conducted a risk assessment and then advised a large multinational insurance broker on the appropriate steps to structure a new FCPA compliance program.

#### Transactional Due Diligence

- A multinational U.S. industrial company was conducting due diligence in the possible acquisition of a U.S. company whose German subsidiary had an extensive international sales network. When general inquiries revealed a risk of improper payments and possible OFAC/sanctions issues, the company retained O’Melveny to review the target’s business model and compliance structure in order to identify the extent of the