

## You Mean You're Really Going to Try an FCPA Case?

*The Champion*

09.01.2011

In this article, Tim O'Toole and Andrew Wise explain that while for more than 30 years the Foreign Corrupt Practices Act (FCPA) has engendered only a handful of published decisions, the focus on corporations has begun to change. Since the beginning of the Obama administration, enforcement actions have often been directed at individuals who, unlike corporations, have greater incentives to defend themselves vigorously. Even with individuals, of course, there are strong incentives for them to plead guilty rather than subject themselves to the full power of U.S. prosecution authorities. Fighting FCPA charges can entail serious financial and emotional costs for individuals and families, even if the defense is successful. With individuals, however, the costs of settlement generally do not simply consist of financial penalties and compliance monitors; the costs include felony convictions that can detrimentally affect individuals and their families for the rest of their lives.

FCPA law will develop in sometimes unexpected ways, and it means that individuals will retain more criminal defense lawyers to defend FCPA cases. Because criminal defense lawyers will increasingly need to defend FCPA cases, this article provides a checklist of defenses that should be explored, including:

- The foreign official defense;
- Facilitating payments;
- Promotional expenses;
- Local laws;
- Jurisdictional defenses;
- Business nexus requirements;
- *Mens rea*; and
- Entrapment.