

## Historic FCPA Sting Operation Nets 22 Individuals

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On January 19, 2010, the Department of Justice (“DOJ”) announced the arrest and indictment of 22 executives and employees of the defense and law enforcement products industry for violations of the Foreign Corrupt Practices Act (“FCPA”) and related conspiracy and money laundering statutes. According to the DOJ, the operation represents the largest single FCPA investigation and prosecution of individuals to date, with the number of individuals indicted yesterday surpassing the total number of individuals charged with FCPA violations in any prior year, including last year’s record-setting 19. As highlighted in our [FCPA Winter Review 2010](#), the DOJ’s prosecution of individuals has emerged as a cornerstone of its enforcement strategy for FCPA matters.

The operation also stands out as the first acknowledged use of undercover tactics on a large scale in an FCPA investigation, and one of the few times enforcement agencies are known to have used undercover operatives to solicit illicit payments. As noted by Assistant Attorney General Lanny Breuer when announcing the indictments, this operation was meant to signal that companies and individuals should consider the possibility that intended recipients of bribes, or their intermediaries, may in fact be undercover federal agents.

The indictments allege that 22 executives and employees representing 19 companies engaged in a scheme to bribe the minister of defense of an unnamed African country in connection with a contract to outfit the country’s presidential guard. The scheme actually was part of an undercover operation conducted by the Federal Bureau of Investigation (“FBI”), with undercover FBI agents posing as intermediaries for the fictitious defense minister.

Likely with an eye to dramatic impact, law enforcement officials arrested 21 of the defendants on January 18, 2010, in Las Vegas, where they were scheduled to attend the SHOT Show, an annual industry trade show for the shooting, hunting and firearms industry. Law enforcement officials simultaneously arrested the remaining defendant in Miami. According to officials at the January 19 press briefing, the arrests were the culmination of a two-and-a-half year investigation targeting the defense and law enforcement products industry. With approximately 150 FBI agents executing search warrants across the United States and the City of London Police executing search warrants throughout the United Kingdom -- a total of 21 search warrants in all -- the operation involved large-scale cooperation between U.S. law enforcement agencies and their U.K. counterparts.

In a press release announcing the indictment, the DOJ emphasized the scope of the investigation and the new techniques employed to combat bribery of foreign officials. The FBI’s involvement underscored the Department’s growing focus on individual criminal prosecutions. Assistant Director Kevin Perkins of the FBI’s Criminal Investigative Division emphasized that enforcement authorities intend to use “every investigative technique at our disposal” and warned that “investigating corruption at all levels is the number one priority of the FBI’s Criminal Division.”

### Facts

The indictments, issued by a grand jury in Washington, DC, on December 11, 2009, describe an alleged scheme to pay bribes to the minister of defense of an unnamed African country to win a \$15 million contract to provide law enforcement and defense equipment to the country’s presidential guard, including items such as grenade launchers, body armor, and night vision goggles.

A former Vice President of International Sales for a company that supplied law enforcement and military equipment, identified in the indictments as “Individual 1,” introduced each of the defendants to an undercover FBI agent posing as a sales agent for the defense minister and arranged meetings at various locations within the United States. The defendants, according to the indictments, allegedly agreed at these meetings to pay a 20 percent commission to the undercover agent with the understanding

that half of the commission would be paid to the minister of defense. The defendants also allegedly agreed to produce two price quotations for the contract, one representing the true cost of the sale and one representing an inflated sale price to include the 20 percent commission. The arrangement allegedly consisted of two phases: the first was an initial “test sale” of goods designed to show the minister of defense that he personally would be receiving 10 percent of the commission, and the second was a larger contract to supply additional goods. The defendants each allegedly proceeded through phase one and, upon successfully completing the “test sale,” each executed or approved contracts to undertake phase two.

The agreement for this “test sale,” arranged and entered into within the United States, appears to have created the jurisdictional basis for the prosecution of the eight non-U.S. nationals indicted in this investigation. It also appears to establish the basis for the money-laundering counts brought by the DOJ.

The charged offenses in the indictments include the violation of the FCPA’s anti-bribery provisions, conspiracy to violate the FCPA, conspiracy to commit money-laundering, and aiding and abetting. The maximum sentence for each conspiracy count and FCPA violation is five years in prison and a \$250,000 fine, and the maximum sentence for the money laundering conspiracy charge is twenty years in prison and a fine of \$500,000 or twice the value of the transaction, whichever is greater.

As part of the investigation, FBI agents executed 14 search warrants in cities and towns across the United States, including in Arkansas, California, Florida, Georgia, Kentucky, Pennsylvania, and Virginia. The City of London Police executed 7 warrants in connection with their own investigation. Most of the indicted individuals were executives of privately-held small to medium-sized law enforcement and military supply companies in the United States, the United Kingdom, and Israel. In addition to over a dozen U.S. citizens, the defendants include five U.K. citizens, two Israeli citizens, and one Peruvian citizen.

## **Noteworthy Aspects**

- Proactive enforcement employing classic “sting” methods

The undercover nature of the operation reflects the DOJ’s increased willingness to undertake proactive methods used in other criminal investigative contexts to enforce the FCPA. Public information regarding prior cases has only rarely referenced these methods in FCPA enforcement. Most recently, in the William Jefferson case (discussed in our [FCPA Autumn Review 2009](#)), a cooperating witness transferred a briefcase full of cash to Jefferson. In 1998, an FBI agent posed as an Argentinean government procurement officer and met with a U.S. businessman named Herbert Tannenbaum, President of Tanner Management Corp. After paying \$16,000 to this undercover agent in an effort to secure a contract for the sale of garbage incinerators, Tannenbaum pled guilty to conspiring to violate the FCPA’s anti-bribery provisions. He was sentenced to a year and one day in jail and fined \$15,000.

- Individual prosecutions

The indictments of 22 individuals for FCPA violations reflect a growing trend of individual prosecutions by the DOJ. As reported in our [FCPA Winter Review 2010](#), the last year has featured a marked increase in enforcement actions targeting individuals. The DOJ officials at the January 19 press briefing also noted that the investigation is ongoing, leaving open the possibility that corporations or other individuals will also be charged in connection with the alleged bribes. The corporations connected with the indicted individuals include at least one issuer who may be subject to accounting violations for the false invoices allegedly produced for the sales contract.

- Indictments of non-U.S. nationals

As noted above, the indictments covered eight non-U.S. nationals, signaling the DOJ’s interest in applying the full extent of the FCPA’s jurisdictional reach to attribute liability for improper payments. The indictments allege that the non-U.S. nationals

committed overt acts in furtherance of the conspiracy within the United States, including attending meetings at hotels and restaurants in Washington, DC, and Miami.

- Industry-wide investigation

These enforcement actions involving the defense and law enforcement products industry are the latest in a string of industry-wide investigations undertaken by the DOJ in recent years, coming on the heels of those involving the oil and gas, telecommunications, and medical device industries. During the January 19 press briefing, Assistant Attorney General Breuer again highlighted the DOJ's strategy of focusing on entire industries in corruption investigations, noting his recent announcement regarding the DOJ's focus on the pharmaceutical industry (see our [FCPA Winter Review 2010](#)).

- International cooperation

The collaboration between law enforcement agencies in the United States and the United Kingdom continues a trend of international cooperation in corruption investigations. The DOJ's work with the City of London Police in this investigation comes on the heels of the charges the U.K. authorities brought against an executive of a Johnson & Johnson subsidiary in December 2009, following a referral from the DOJ (see our [FCPA Winter Review 2010](#)). Assistant Attorney General Breuer, in remarks at a seminar last fall, suggested that this type of collaboration is likely to increase, stating that he fully expected "that the number of FCPA prosecutions -- of corporations and individuals alike -- will continue to rise, as will the extent of our cooperation with foreign law enforcement partners."

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