FCPA & International Anti-Corruption

Having represented clients in Foreign Corrupt Practices Act (FCPA) matters for more than 30 years, Miller & Chevalier has a wealth of experience in anti-corruption work. As a result, our clients benefit from our familiarity with hosts of fact patterns and legal issues, first-hand experience in numerous industries and scores of countries, minimal learning curves, and the reduced costs of experienced advice and efficient problem solving.

Our Experience. Our experience includes not only decades of FCPA counseling, but also internal investigations, global due diligence investigations, government enforcement actions, formal opinions, litigation and arbitration, compliance program development, training, and many novel issues.

We have helped develop more than 100 anti-corruption compliance programs for clients; been selected as Independent FCPA Compliance Monitors in four cases and served as counsel to an additional eight companies navigating a monitorship; conducted well more than 100 independent internal investigations; advised on due diligence and other issues in transactions exceeding $90 billion in total value; testified as expert witnesses; and represented clients in enforcement actions presenting a great variety of factual circumstances and issues of first impression.

Our Resources. Our lawyers range from the "dean of the bar" to junior but experienced FCPA lawyers. Our FCPA team includes multiple leading FCPA practitioners, former prosecutors, former in-house counsel, white collar defense counsel, and Independent Compliance Monitors – more than 35 experienced anti-corruption FCPA lawyers in all. We are thus able to tailor resources to individual situations and provide efficient, responsive assistance. Our lawyers are frequent speakers or commentators, and more than 25 have published articles on FCPA or anti-corruption topics.

From our offices close to U.S. enforcement agencies, we can put experienced anti-corruption lawyers on the ground around the globe on short notice, often taking advantage of language skills in more than a dozen different languages to bring local language abilities to the matter. Over the past few years, our lawyers have made more than 350 visits to over 70 different countries, including China, Korea, Japan, Russia, Brazil, Colombia, Mexico, Nigeria, Angola, Ukraine, Uzbekistan, Tajikistan, Algeria, Iraq, the United Arab Emirates, Jordan, and India. Our clients have found this rapid response approach to be cost-effective, regardless of the location or complexity of the issue.

Since anti-corruption rankings have been made by Chambers, U.S. News – Best Lawyers® "Best Law Firms," and other publications, Miller & Chevalier and its lawyers have been among those most highly ranked. The firm's strength and breadth in internal investigations is reflected in the fact that seven of its lawyers were recognized in the Who's Who of Investigations Lawyers (2015-2018).

Distinguished Clients. Our clients, representing more than 15 different industries, are perhaps our strongest credential. Our corporate clients range from start-ups to many of the world's largest corporations. We frequently advise their boards of directors, Audit Committees, and senior management, as well as individual executives, accounting and auditing firms, governmental entities, and other law firms.

Our Track Record. We deal frequently with enforcement agencies. Although we expect no special treatment, our experience does afford us insights into the judgments and questions that enforcers bring to FCPA issues. Whether in fairly disclosing investigative results, urging a declination, or advocating a point of law, we believe that credibility and consistency serve us and our clients well.

Matters that we have handled include the first FCPA Deferred Prosecution Agreement accepted by the government; the first Deferred Prosecution Agreement that the government agreed to terminate before its term had run; and a number of cases that...
resulted in declinations, including some that included lengthy government investigations. The variety of matters has included multi-jurisdictional investigations; cases in which the SEC, but not DOJ, had jurisdiction; and vice versa; cases resulting in declinations; cases with multiple parties and counsel; and cases of both systemic failures and isolated violations of company policy.

Detailed FCPA Experience

Since 1981, Miller & Chevalier has advised scores of clients from numerous industries on Foreign Corrupt Practices Act (FCPA) and other anti-corruption matters. The firm’s broad and diverse team of FCPA lawyers draws its experience from government service, from having served as both prosecutors and white collar defense counsel, and from years of counseling, designing compliance programs, and representing clients in internal investigations, enforcement actions, due diligence, litigation, and novel issues.

Wide-Ranging Experience. Over 30 years of experience has involved us in such issues as:

- Developing, managing, and testing anti-corruption compliance programs;
- Counseling management, boards of directors, lawyers, compliance officers, auditors, trainers, and co-counsel on both common and novel issues;
- Serving as, and advising on Independent Compliance Monitors and consultants;
- Providing issue-specific advice, opinion letters, transaction-structuring experience, and written and oral advocacy;
- Conducting global internal investigations and world-wide pre- and post-merger due diligence, as well as focused reviews and mini-audits;
- Representing clients in U.S. Department of Justice (DOJ) and Securities and Exchange Commission (SEC) investigations and foreign investigations; dealing with subpoenas, document requests, and issues of jurisdiction, privilege, privacy, and statutory interpretation; and reviewing and evaluating investigations already completed; and
- Assisting on other issues, from proposed legislation to treaty interpretation, expert testimony, managing voluntary disclosures, negotiating resolutions, and more.

Distinguished Clients. Our clients -- perhaps our strongest credential -- have included not only several of the largest corporations in the world, but also a range of other corporate and non-corporate clients, including domestic and foreign companies, companies new to international markets, Silicon Valley start-ups, individuals, government instrumentalities, government agencies, and law firms. Our clients represent a wide variety of industries, including:

- Agriculture
- Automotive
- Chemicals
- Defense
- Entertainment
- Financial services
- Food and beverages
- Insurance
- Medical devices
- Metals
- Natural resources and mining
- Oil and gas and oilfield services
- Pharmaceuticals
- Plastics
- Retails and apparel
- Technology
- Telecommunications
- Tobacco

We have assisted clients on the ground operating in “red flag” countries in every part of the world, including:

- Africa (North and Sub-Sahara)
- Central Asia/Russia
- Central and South America
- China
- East Asia
- Europe, including the United Kingdom
- India
- Middle East
- Southeast Asia

Global Footprint. From a home base close to the world’s leading enforcement agencies, we have dealt with corruption and compliance issues arising in dozens of different countries. On short notice, we can put experienced anti-corruption lawyers in countries around the globe, often with capacity in local languages. In just the last 24 months, Miller & Chevalier FCPA lawyers have been on the ground in more than 30 different countries.

Representative Engagements. A sampling of past matters we have handled includes the first FCPA Deferred Prosecution Agreement accepted by the DOJ; multi-jurisdictional investigations; cases in which the SEC lacked jurisdiction, but DOJ did not; and vice versa; multiple cases that have resulted in declinations; cases involving multiple corporate and individual counsel; and cases of both systemic failures and isolated violations of company policy.

Experience at All Levels. More than 30 lawyers at Miller & Chevalier have significant experience in FCPA matters, and several have done anti-corruption work for more than a decade. Various of our FCPA lawyers have been prosecutors or public defenders, have white collar defense experience, have conducted training for clients, and speak several times a year on anti-corruption and compliance topics. More than 20 firm lawyers have published articles on FCPA or anti-corruption topics. In handling clients matters, we are able to match a client’s needs with the proper experience and background. Our lawyers range from relatively junior but experienced FCPA lawyers, to a “dean of the bar” recognized by Chambers USA as a Band 1 “FCPA Expert.”

Cost-Effectiveness. The extent of our practice and the number of lawyers who have worked on complex FCPA matters enable
us to staff leanly, minimize learning curves, accomplish more with fewer lawyers, and do so more quickly and cost-effectively. It enables us to tailor staffing to meet the needs of the client and the matter. Many matters require neither the most senior Member nor a team of lawyers. We and our clients have found cost-effectiveness in favoring experienced lawyers over regional or local counsel with little anti-corruption experience.

Experience with Related Laws. Matters we handle increasingly encounter intersections between the FCPA and other relevant anti-corruption laws, such as the U.K. Bribery Act, and with related laws, such as anti-money laundering laws, the USA PATRIOT Act, Sarbanes-Oxley, the whistleblower provisions of the Dodd-Frank Act, and anti-terrorism legislation. For matters of local law, a “go to” resource in the international corruption area is Getting the Deal Through: Anti-Corruption Regulation, a publication in which Miller & Chevalier has been significantly involved, that provides information on anti-corruption law and policy in over 50 jurisdictions. For complex issues, we are able to call on a tested network of local firms in key jurisdictions.

Prevention. Our continuing work designing and advising on FCPA compliance programs led to our creating a Global Compliance and Risk Management Practice Group that is closely integrated with our FCPA practice. We believe our success in enforcement matters is not unrelated to the remediation and compliance enhancements that we and our clients include in any final resolution. Innovating and meeting the ever-changing standard of “best practices” is, in our experience, closely tied to securing effective results.

Our Track Record. In resolving numerous FCPA matters, we deal frequently and extensively with enforcement agencies. Although we expect no special treatment because of our familiarity with government agencies, we believe that it affords us insights into the judgments and questions that enforcers are likely to bring to issues. Whether in fairly disclosing investigative results, urging a declination, advocating a point of law, or representing a commitment a client has made, we believe that credibility and consistency serve both us and our clients well.

We have found that all of the foregoing have equipped us to handle anti-corruption matters, regardless of size or geography, effectively and expeditiously in a cost-effective and result-oriented manner.

REPRESENTATIVE ENGAGEMENTS

- Pursuant to resolutions with the DOJ and SEC, Kathryn Cameron Atkinson served from 2009-2012 as a company’s Independent Compliance Monitor. Ms. Atkinson’s mandate was to review and assess the company’s global anti-corruption compliance program and its internal controls designed to prevent corrupt payments.

- We are conducting an independent investigation into potential FCPA violations in a U.S. company’s Asian and American offices, as well as handling the company’s voluntary disclosure to the DOJ. Miller & Chevalier was engaged after a whistleblower raised a concern. We have been involved from the beginning, launching an independent internal investigation that will meet the DOJ’s standards. We have conducted a large, yet targeted review of emails and other documents, while conducting more than 50 interviews of current and former employees, agents, and consultants. We are preparing to disclose the investigation’s findings to the DOJ, and also advising the company on compliance enhancements going forward.

- In 2011, we conducted a global assessment of a client’s FCPA, export controls, and Code of Conduct compliance program. The assessment involved site visits to domestic and international operations, dozens of interviews with employees, and review of the company’s paper compliance program. We presented our findings and recommendations to the client’s Board of Directors.

- We are representing a client before the DOJ and SEC in response to letters of inquiry from those agencies seeking information regarding the client’s interactions with foreign officials in seven countries. We are coordinating the response and, as needed, conducting reviews in the seven countries. We are presenting information to the government regarding the client’s compliance program and working to further enhance the program.

- We assisted a client to implement FCPA compliance enhancements required by the DOJ in its settlement with the agency. The representation included creating compliance policies, training, and testing procedures that required approval by the client’s
Independent Compliance Monitor. In addition, we conducted numerous investigations and compliance assessments for the client in multiple countries, including Kazakhstan, Egypt, Gabon, Equatorial Guinea, Congo, Nigeria, Angola, Oman, Saudi Arabia, India, China, Indonesia, Vietnam, Malaysia, and Brazil.

- Represented a client in conducting an internal investigation and voluntary disclosure to the DOJ and SEC. Miller & Chevalier then developed a comprehensive new anti-corruption compliance program to address the weaknesses in the company’s program that has permitted the violations to occur. Under the terms of its Deferred Prosecution Agreement, the company was required to retain an Independent Compliance Monitor. Miller & Chevalier assisted in the selection of the Monitor and served as the company’s primary interface with the Monitor. We have since served as primary FCPA compliance counsel for the company, and conducted pre-acquisition, on-the-ground due diligence of a company with operations in Asia, Southern Africa, the Middle East, and South America.

- Following a request by a client for us to evaluate and/or investigate approximately 150 possible FCPA violations, we proposed a plan of action that the company provided to the SEC for investigating a selected number of these instances and for dealing with the remainder on a systemic basis through enhancements to the company’s FCPA compliance program. This engagement has required the presence of Miller & Chevalier lawyers in approximately a dozen different countries, including countries in Europe, Africa, Central Asia, and the Far East.

GOVERNMENT EXPERIENCE

- General Counsel, U.S. Department of Commerce
- Counselor to the Secretary, U.S. Department of Commerce
- Deputy General Counsel, U.S. Department of Commerce
- Assistant United States Attorney, Northern District of Illinois
- Chief Economist, Office of Policy, Import Administration (now Enforcement and Compliance), U.S. Department of Commerce
- Director, Office of International Affairs, U.S. Securities and Exchange Commission
- Trial Chief, Public Defender Service for the District of Columbia
- Senior Adviser for International Issues to SEC Chairman Arthur Levitt, U.S. Securities and Exchange Commission
- Deputy Director, Office of International Affairs, U.S. Securities and Exchange Commission
- Assistant Director, Office of International Affairs, U.S. Securities and Exchange Commission
- Assistant Chief Litigation Counsel, Division of Enforcement, U.S. Securities and Exchange Commission
- Special Advisor, U.S. Trade Representative
- Assistant U.S. Trade Representative for Congressional Affairs, Executive Office of the President
- Deputy Assistant U.S. Trade Representative for Congressional Affairs, Executive Office of the President
- Trial Attorney, Counterintelligence and Export Controls Section, National Security Division, U.S. Department of Justice
- Counsel, Assistant Attorney General for National Security, U.S. Department of Justice
- Trial Attorney and Director of Training, Public Defender Service for the District of Columbia
- Attorney-Advisor, Office of International Trade - Regulations & Rulings, U.S. Customs and Border Protection
- Senior Advisor and Special Assistant to the Assistant Secretary for Near Eastern and South Asian Affairs, U.S. Department of State
- Staff Attorney, Public Defender Service for the District of Columbia
RANKINGS AND RECOGNITION

- Chambers Global: Corporate Crime & Investigations (USA), 2016 - 2020
- Chambers Global: Corporate Investigations (Global-wide), 2017 - 2020
- Chambers Global: Corporate Investigations (Latin America-wide), 2015 - 2020
- Chambers Global: FCPA (United States), 2015 - 2020
- Chambers Global: Investigations & Enforcement (International & Cross-Border) (USA), 2020
- Chambers Latin America: Corporate Crime & Investigations (Latin America-wide), 2015 - 2020
- Chambers USA: FCPA (Nationwide), 2014 - 2020
- Chambers USA: Corporate Crime & Investigations (Nationwide), 2015 - 2020
- Chambers USA: International Trade (Nationwide), 2005 - 2014
- Global Investigations Review: Boutique or Regional Practice of the Year, 2016
- Latinx: Latin America’s Top 10 FCPA & Fraud Firm, 2015 - 2020
- Main Justice Best FCPA Lawyers Client Service Award, Distinguished Service Award: Compliance Champions, 2013