
India Initiative Update - FCPA Client Alert

By Mahesh K. Nayak / Oct 30, 2012

The Foreign Corrupt Practices Act (FCPA) prohibits making or offering to make payments to foreign government or other public officials to further business interests. It also requires businesses with securities listed in the United States to maintain accurate books and records for its transactions and develop a system of internal accounting controls.

Particularly for companies that intend to do business in corruption-prone countries like India, it is extremely important to understand and adhere to the FCPA. The penalties for FCPA violations can be extremely steep, even when the infraction is minor. Ensuring compliance is vital, especially because in recent years the U.S. Government has increased its enforcement of the FCPA.

In July 2011, Diageo, a world leading alcoholic beverage producer, consented to the entry of an order requiring it to pay over \$16 million dollars for its FCPA violations. The SEC charged Diageo with making improper payments to government officials in India, Thailand, and South Korea amounting to \$2.7 million. The activities in India included payments to hundreds of Indian officials between 2003 and 2009. The SEC discovered that Diageo's records concealed or omitted these payments in violation of the FCPA. Moreover, Diageo's failure to maintain a sufficient internal accounting control system constituted a FCPA violation. The \$16 million paid by Diageo included disgorgement of profits, pre-judgment interest, and a financial penalty.

By failing to ensure strict compliance with the FCPA, companies can expose themselves to severe financial liability, and even criminal liability. To ensure compliance, companies can and should take certain steps such as defining clear and concise FCPA policies and procedures. In this regard, Clark Hill attorneys work with their clients to develop rigorous due diligence procedures, comprehensive internal audit programs, and company-wide compliance policies, implementing broad training and education programs. To stay abreast of the new developments in FCPA enforcement and the risks present in doing business in India, please contact Mahesh Nayak at (248) 988-5868, mnayak@clarkhill.com, or any of the attorneys in Clark Hill's India Practice Group.