



May 15, 2023

SEC Fines Philips N.V. \$62 Million for Foreign Corrupt Practices Act Violations

On May 11, 2023, the U.S. Securities and Exchange Commission ("SEC") announced that it had settled a an order to resolve charges against Amsterdam-based Koninklijke Philips N.V. and imposed a fine of over \$62 million for Foreign Corrupt Practices Act ("FCPA") violations in connection with sales of medical diagnostic equipment in China. A copy of the SEC order can be found [Here](#).

The FCPA is a 1977 U.S. federal statute that criminalizes the making of payments to foreign government officials to obtain or retain business in their countries, in other words, bribing them. Specifically, the FCPA prohibits the use of the mails or any instrumentality of interstate commerce corruptly to make any offer, payment, promise of payment or authorization of payment of money or anything else of value, directly or indirectly, to a foreign official to influence and induce that official to do anything in violation of his official duty, or to gain an improper advantage in obtaining or retaining business.

The FCPA applies to all U.S. persons and certain foreign issuers of securities, as well as to foreign firms and persons who directly or indirectly cause a corrupt payment to take place in the U.S., which explains how the SEC comes to be fining a Netherlands company for bribing officials in China. Fundamentally, a non-U.S. firm that has opted to access the U.S. capital markets is as subject to FCPA enforcement as a U.S. company would be. However, the FCPA is most frequently enforced by the U.S. Department of Justice ("DoJ"). Other countries, notably the United Kingdom, also have robust anti-bribery laws and enforcement.

According to the SEC order, Philips, through its China subsidiaries, engaged in practices such as giving local distributors special

discounts, creating profit margins that could be used to fund payments to Chinese government officials. Another Philips alleged practice was using payments to influence Chinese government officials to tailor medical diagnostic equipment procurement technical specifications so that only Philips' could qualify for the bid.

Takeaways:

- Because there are many countries in which it is fundamentally impossible for North American and European companies to do business without resorting to payments that arguably constitute bribes, a body of DoJ and SEC guidance has come into being for staying on the clean side of FCPA restrictions while still doing business. Practices such as "facilitation" payments and other euphemisms require international commerce and federal law experience and careful navigation to avoid FCPA problems.
- Given the FCPA's extraterritorial reach, it makes much more sense to navigate the FCPA guidance than to try to fly under the DoJ and SEC radar and hope for the best. Again, the Philips case involved a Dutch company doing business in China, in transactions that themselves never touched the U.S., and featuring some cunningly indirect payment schemes seemingly intended to hide the ball of what was actually going on. It wasn't good enough.

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