Debevoise & Plimpton LLP

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Defendants Contest DOJ's Definition of "Foreign Official"

Is an employee of a state-owned enterprise a "foreign official" for the purposes of the FCPA? This is the question of the day as defendants in three FCPA cases challenge the government's broad interpretation of this term. The three cases are *United States v. O'Shea* ("*O'Shea*"), *United States v. Noriega, Lindsey Manufacturing Co., et al.* ("*Lindsey*"), and *United States v. Carson, et al.* ("*Carson*").[1] In each case, the defendants argue that employees of state-owned enterprises ("SOEs") are not "foreign officials" under the FCPA. In *Lindsey*, the government prevailed against a pre-trial motion to dismiss on the ground that the at-issue payments were not made to "foreign officials" as defined by the FCPA, but the issue remains as a potential ground for further litigation at trial, as well as on appeal. The issue is pending in both *O'Shea* and *Carson*. In this article, we address the arguments and the status of the pending cases.

* * *

Introduction

As we discussed in our November 2010 *FCPA Update*, defendants have previously challenged the government on the definition of foreign official.[2] And as we predicted, such challenges have become more frequent as the government pursues a vigorous enforcement agenda, with multiple indictments alleging improper payments to employees of SOEs.[3] Thus far, however, the government has been able to rebuff with relative ease challenges to its interpretation of "foreign official."[4] But the recent, formidable efforts by defendants in these three cases suggest that a new phase of

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1 *United States v. O'Shea*, 4:09-cr-00629, Motion to Dismiss (S.D. Tex. Mar. 7, 2011) (hereinafter, "O'Shea Motion to Dismiss"); *United States v. Noriega., et al.*, 2:10-cr-01031, Motion to Dismiss (C.D. Cal. Feb. 28, 2011) (hereinafter, "Noriega Motion to Dismiss"); *United States v. Carson*, 8:09-cr-00077, Motion to Dismiss (C.D. Cal. Feb. 21, 2011) (hereinafter, "Carson Motion to Dismiss"). The hearing on the motion in the *Carson* case was originally scheduled for March 21, 2011, but the matter was continued until May 9, 2011.

2 Colby Smith, "DOJ Challenged on Meaning of 'Foreign Official,'" *FCPA Update* Vol. 2, No. 4 (Nov. 2010), http://www.debevoise.com/files/Publication/ad10aedb-1582-4e2e-b4bb-983a55cd6736/Presentation/PublicationAttachment/40a912f9-485a-45ef-89ca-be27b63b9ba6/FCPAUpdateNovember2010.pdf.

3 *Id.* at 9.

4 *United States v. Esquenazi, et al.*, 09-CR-21010, Order Denying Motion to Dismiss (S.D. Fla. Nov. 19, 2010); *United States v. Nguyen, et al.*, 08-CR-522, Order Denying Motion to Dismiss (E.D. Pa. Nov. 23, 2009).

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vigorous advocacy has begun and that the definition of who is a foreign official is far from settled.

The FCPA defines foreign official as: "[A]ny officer or employee of a foreign government or any department, agency or instrumentality thereof."[5] Historically, the government has interpreted "foreign official" broadly to include employees of SOEs, "even if those employees or entities do not directly perform a traditional government function."[6] The government's operating theory has been that SOEs, even though they are not departments or agencies of foreign governments, are nevertheless "instrumentalit[ies] thereof."[7] Based upon this theory, the government has interpreted foreign official to include, for example, officials at state-owned oil and oil services companies, airport officials, employees of a regional health fund, physicians and laboratory employees at government-owned hospitals, and employees of a government-owned bank.[8]

The defendants, on the other hand, argued that employees of SOEs are categorically excluded from the definition of foreign official because SOEs are not instrumentalities of foreign governments.[9] Thus they argued that any payment,

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5 15 U.S.C. § 78dd(1)(f)(1)(A).

6 Smith, note 2, *supra* at 9.

7 *See* 15 U.S.C. § 78dd(1)(f)(1)(A).

8 Smith, note 2, *supra* at 9. As the government sees it, SOEs may, "in appropriate circumstances," be considered "instrumentalities" of foreign governments. As such, improper payments to SOE employees may violate the FCPA. U.S. Response to OECD Phase I Questionnaire, at § A.1.1 (Oct. 30, 2008), http://www.justice.gov/criminal/fraud/fcpa/docs/response1.pdf.

9 The United States is a party to the OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions ("OECD Convention"), which explicitly includes employees of SOEs within its definition of foreign public official. The OECD Convention defines a foreign public official as "any person holding a legislative, administrative or judicial office of a foreign country, whether appointed or elected; any person exercising a public function for a foreign country, including for a public agency or public enterprise; and any official or agent of a public international organisation." OECD Convention on Combating Bribery of Foreign Public Officials In International Business Transactions, Art. 1.4(a) (2010), http://www.oecd.org/dataoecd/4/18/38028044.pdf. The 1997 Commentaries to the Convention clarify that "[a] 'public enterprise' is any enterprise, regardless of its legal form, over which a government, or governments, may, directly or indirectly, exercise a dominant influence. This is deemed to be the case, *inter alia*, when the government or governments hold the majority of votes attaching to the shares issued by the enterprise or can appoint a majority of the members of the enterprise's administrative or managerial body or supervisory board." *Id.* at n.14. The Commentaries also state: "An official of a public enterprise shall be deemed to perform a public function unless the enterprise operates on a normal commercial basis in the relevant market, i.e., on a basis which is substantially equivalent to that of a private enterprise, without preferential subsidies or other privileges." *Id.* at n.15. The OECD Convention tracks the Foreign Sovereign Immunities Act's ("FSIA") definition of agency or instrumentality (passed in 1976): An "agency or instrumentality" means any entity "(1) which is a separate legal person, corporate or otherwise, and (2) which is an organ of a foreign state or political subdivision thereof, or a majority of whose shares or other ownership interest is owned by a foreign state or political subdivision thereof ..." 28 U.S.C § 1603(b). The United States and 32 other nations signed the OECD Convention on December 17, 1997. Congress passed the International Anti-Bribery and Fair Competition Act of 1998 on October 21, 1998, which amended the FCPA. Topically, Congress amended the definition of foreign official to include a person acting for or on behalf of a "public international organization." The definition's inclusion of an "instrumentality" of a foreign government was unchanged. The bill was approved on November 10, 1998 and the legislation came into force that same day. Pub. Law. 105-366, 112 Stat. 3312 (1998). The United States submitted its instrument of ratification to the OECD on December 8, 1998. The Convention entered into force on February 15, 1999. The interaction between Congress's amendment of the definition of "foreign official" in 1998, an obvious response to the OECD Convention; the Convention's definition and history; and the inter-relation of the FSIA's definition of "foreign state" and the FCPA's definition of "foreign official" provide further ground for litigation, and, potentially, congressional intervention.

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improper or not, to employees of SOEs cannot violate the FCPA.

Defendant's Motions to Dismiss

In *O'Shea*, *Lindsey*, and *Carson*, the defendants filed motions to dismiss, arguing that the payments to employees of SOEs are not prohibited by the FCPA. In the *O'Shea* and *Lindsey* cases, the defendants are accused of violating the FCPA by bribing employees of the Comisión Federal de Electricidad (Federal Electricity Commission, or "CFE"),[10] which the U.S. government alleges is an enterprise owned by the Mexican government.[11] In *Carson*, the defendants are accused of making numerous, improper payments to employees of SOEs in China, South Korea, Malaysia and the United Arab Emirates.[12]

The motions to dismiss filed in the three cases vary somewhat, but have arguments in common. First, in accord with the doctrine of *noscitur a sociis* ("a word is known by the company it keeps"), the defendants argue that the meaning of "instrumentality" should be gleaned from the other two FCPA operative terms in the definition of foreign official: department and agency.[13] Departments and agencies perform government functions. Therefore, the defendants reason that an instrumentality should be defined as something that performs government functions.[14]

Second, the defendants draw upon a supporting declaration filed by Professor Michael J. Koehler (author of the FCPA Professor blog)[15] in *Carson* to argue that Congress did not intend for employees of state-owned enterprises to be considered foreign officials.[16] Koehler's 144-page declaration in support of the motions to dismiss provides an extensive history of the FCPA, from early debates in 1975 before its enactment to hearings held in Congress last November.[17] Koehler argues that there is no express statement or information in the FCPA's legislative history to support the Department of Justice's ("DOJ") interpretation that SOEs are instrumentalities of foreign governments.[18]

"Historically, the government has interpreted 'foreign official' broadly to include employees of SOEs, 'even if those employees or entities do not directly perform a traditional government function.'"

Moreover, Koehler states that several historical events indicate that Congress did *not* intend to regulate payments to employees of SOEs.[19]

Third, the defendants argue that the government's interpretation, if carried to its logical conclusion, would lead to "absurd results."[20] For instance, they

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10 *See* Comisión Federal de Electricidad, "What is CFE," http://www.cfe.gob.mx/lang/en/Pages/thecompany.aspx, (last visited Apr. 7, 2011).

11 *United States v. O'Shea,* 4:09-cr-00629, Indictment at 5 (S.D. Tex. Nov. 16, 2009); *United States v. Noriega, et al.*, 2:10-cr-01031, Indictment (C.D. Cal. Sept. 15, 2010).

12 The *Carson* indictment alleges improper payments were made to employees of the following companies: Jiangsu Nuclear Power Corporation (China), Guohua Electrical Power (China), China Petroleum Materials and Equipment Corporation, PetroChina, Dongfang Electric Corporation (China), China National Offshore Oil Corporation, Korea Hydro and Nuclear Power, Petronas (Malaysia), and National Petroleum Construction Company (United Arab Emirates). *United States v. Carson, et al.*, 8:09-cr-00077, Indictment at 12 (S.D. Cal. Apr. 8, 2009).

13 Carson Motion to Dismiss, note 1, *supra* at 14-15; *see also* 15 U.S.C. § 78dd(1)(f)(1)(A).

14 Carson Motion to Dismiss, note 1, *supra* at 15; O'Shea Motion to Dismiss, note 1, *supra* at 4 ("A business entity owned by the Mexican government … should not be deemed an 'instrumentality' because it has little in common with the rest of the series: unlike departments and agencies, it carries out commercial, not government functions.").

15 *See* FCPAprofessor.blogspot.com.

16 Carson Motion to Dismiss, note 1, *supra* at 21-29.

17 *United States v. Carson*, 8:09-cr-00077, Declaration of Professor Michael J. Koehler in Support of Defendant's Motion to Dismiss Counts One Through Ten of the Indictment ¶¶ 15-16 (Feb. 28, 2011) (hereinafter, "Koehler Declaration").

18 *Id.* at ¶ 16.

19 Koehler emphasizes the following: (1) Congress enacted the FCPA in 1977 because of concern over payments to foreign governments or foreign political parties; (2) some of the competing bills in the 94th and 95th Congresses (1975-76, 1977-78) defined foreign government to include, *inter alia*, corporations established or owned by, and subject to control by, a foreign government, but Congress chose not to include this definition in the bill that became law in December 1977; (3) the 1988 amendments clarified that facilitating payments made for "routine government action" were excluded, thus suggesting, according to Koehler, that Congress remained focused on government action; and (4) the 1998 amendments expanded the definition of foreign official to include officials of "public international organizations," *e.g.*, the United Nations, following the adoption by the United States of the OECD Convention, but the 1998 amendments did not expand the FCPA to include "public enterprises," a term mentioned and defined in the OECD Convention. *Id.* at ¶¶ 16-17.

20 Carson Motion to Dismiss, note 1, *supra* at 19-21.

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suggest that employees of Citigroup, Morgan Stanley, and Blackstone would be considered foreign officials by virtue of the fact that foreign sovereign wealth funds have taken ownership stakes in each of these companies.[21] Pressing this point, the defendants suggest that employees of General Motors and AIG would be considered "instrumentalities" of the U.S. government because of the recent government bailouts of both companies.[22]

Fourth, the defendants argue that the rule of lenity requires that any ambiguity in the statute be construed in defendants' favor.[23] As applied to the FCPA, the defendants argue that unless the government's interpretation is "unambiguously correct," then it must be rejected.

Finally, the defendants argue that if the government's broad interpretation is correct, then the FCPA is rendered unconstitutionally vague.[24] This argument, like the rule of lenity challenge, is based on the notion that, if read too broadly, the FCPA does not provide fair notice as to what conduct is prohibited.

DOJ's Reply Brief in *Lindsey*

The DOJ filed an opposition brief on March 10, 2011 in *Lindsey*,[25] and it is similar to the DOJ's defense of its reading of the FCPA in *Carson* and *O'Shea*.[26] Before rebutting the defendants' legal arguments regarding SOEs, the DOJ highlighted certain facts about the SOE at issue in the *Lindsey* case, which suggest that even under a restrictive definition of "foreign official," these payees would qualify; specifically, the government argued that, (1) "Under the Mexican Constitution, the supply of electricity is *solely* a government function"; (2) the CFE was organized as a "public entity" to provide the "public service" of providing electricity; and (3) the President of Mexico appoints the Director General of the CFE.[27]

Turning to the legal arguments, the DOJ argued first that the defendants' motion presented a question of fact, which was ill-suited for resolution on a pre-trial motion to dismiss the indictment.[28] Second, the DOJ argued that the plain meaning of instrumentality, as a means or ends to achieve a purpose, makes clear that "a government instrumentality is an entity through which a government achieves an end or purpose."[29] As such, when a government achieves an end or purpose through use of a SOE, that SOE is a government instrumentality. Relevant to the *Lindsey* and *O'Shea* cases, the government noted that although not all countries, *e.g.*, the United States, provide "electricity as a government service," many countries do.[30] The logical inference the government seeks to draw is that when the government provides electricity through an SOE, that SOE is "an instrumentality of the government."[31]

The government also challenged what it described as defendants' selective reading of the FCPA's legislative history, arguing that Professor Koehler's history was "chiefly revealing for what it does not contain. In spite of 150 hours and 448 paragraphs spent distilling his research, Mr. Koehler is unable to find a single reference in any part of the legislative history that Congress intended to exclude state-owned companies from the definition of instrumentality."[32]

In rebutting the defendants' statutory construction argument, the government counters that "instrumentality" should not be read as redundant with "agency" or

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21 *Id.*

22 *Id.*

23 *Id.* at 35-39.

24 *Id.* at 39-48.

25 *United States v. Noriega, et al.*, No. 2:10-cr-01031, Opposition to Defendants' Motion to Dismiss the First Superseding Indictment (C.D. Cal. Mar. 10, 2011).

26 *See United States v. O'Shea*, No. 4:09-cr-00629, Response of the United States to Defendant's Motion to Dismiss Indictment (S.D. Tex. Mar. 28, 2011); *United States v. Carson*, No. 8:09-00077, Government's Opposition to Defendants' Amended Motion to Dismiss Counts One Through Ten of the Indictment (C.D. Cal. Apr. 18, 2011).

27 *United States v. Noriega, et al.*, No. 2:10-cr-01031, Opposition to Defendants' Motion to Dismiss the First Superseding Indictment at 3-4 (C.D. Cal. Mar. 10, 2011).

28 *Id.* at 5.

29 *Id.* at 11.

30 *Id.*

31 *Id.* at 12.

32 *Id.* at 30.

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"department," thus robbing it "of independent meaning." According to the government, an instrumentality should be understood to be an entity "through which a government achieves an end or purpose," regardless of whether it functions similarly with agencies and departments.[33]

Recent Developments in *Lindsey*, *Carson*, and *O'Shea*

Seeking to counter the effect, if any, of Professor Koehler's declaration on the legislative history of the FCPA, the DOJ attempted in *Lindsey* to introduce a three-page declaration by a U.S. State Department official.[34] The State Department official, Clifton M. Johnson, Assistant Legal Adviser for Law Enforcement and Intelligence in the Legal Adviser's Office, averred that interpretation of the FCPA in a way that would render the United States non-compliant with the OECD Convention "would have serious consequences."[35] Specifically, he stated that "[i]t would have a negative impact on these foreign policy goals and be contrary to the consistent interpretation of U.S. law that the United States has advanced in international fora."[36] In the concluding sentence of his declaration, Johnson stated that such an interpretation of the FCPA would "undermine the influence and impact of the United States" in "combating foreign corruption."[37] In response, the defendants filed an *ex parte* motion to strike Johnson's declaration, arguing (1) that the declaration was an inappropriate sur-reply brief; (2) that the declaration is based upon hearsay and testimony offered by an unqualified witness; and (3) that the declaration's foreign policy arguments are irrelevant.[38] On March 22, District Judge A. Howard Matz granted the motion to strike the declaration.[39]

On April 1, Judge Matz denied the motion to dismiss in *Lindsey*.[40] In his ruling from the bench, Judge Matz focused on the particular facts of the case, *i.e.*, that the provision of electric power is a government function under the Constitution of Mexico; the CFE describes itself as "the government agency in charge of planning the national electrical system";[41] Mexican government officials comprise CFE's governing board; and the President of Mexico appoints the Director General of CFE.[42] Denying the motion, Judge Matz rebuffed the defendants' arguments, saying, "The decision will be to deny the motion. I will not dismiss the case. I will not throw it out. I think it would be an improper, incorrect and unfounded legal conclusion to do so."[43]

> "I will not dismiss the case. I will not throw it out. I think it would be an improper, incorrect and unfounded legal conclusion to do so."
>
> – U.S.D.J. A. Howard Matz

In his written ruling on the motion,

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33 *Id.* at 11.

34 *United States v. Noriega, et al.*, 2:10-cr-01031, Declaration of Clifton M. Johnson (Mar. 18, 2011).

35 *Id.* at 2.

36 *Id.*

37 *Id.* at 3.

38 *United States v. Noriega, et al.*, 2:10-cr-01031, Ex Parte Application For an Order to Strike (Mar. 21, 2011).

39 *United States v. Noriega, et al.*, 2:10-cr-01031, Order Granting Ex Parte Application to Strike the Supplement to the Government's Opposition to the Defendant's Motion to Dismiss the First Superseding Indictment (Mar. 21, 2011); "Setback for Lindsey Prosecution," *The FCPA Blog* (Mar. 23, 2011), http://www.fcpablog.com/blog/2011/3/23/setback-for-lindsey-prosecution.html.

40 *United States v. Noriega, et al.*, No. 2:10-cr-01031, Criminal Minutes – General (C.D. Cal. Apr. 20, 2011).

41 CFE website, note 10, *supra*.

42 Constitution of Mexico, Article 27 ("It is exclusively a function of the general Nation to conduct, transform, distribute and supply electric power which is to be used for public service."), http://www.oas.org/juridico/MLA/en/mex/en_mex-int-text-const.pdf (Text translated from *Constitútion Política de los Estados Unidos Mexicanos*, Trigésima Quinta Edición, 1967, Editorial Porrua, S. A., México, D.F. Originally published by the Pan American Union, General Secretariat, Organization of American States, Washington, D.C., 1968); Joe Palazzolo, "Judge Sides With DOJ In 'Foreign Official' Ruling," *The Wall Street Journal* (Apr. 4, 2011), http://blogs.wsj.com/corruption-currents/2011/04/04/judge-sides-with-doj-in-foreign-official-ruling/; "Lindsey 'Foreign Official' Motion Denied,' *FCPA Professor Blog* (Apr. 1, 2011), http://fcpaprofessor.blogspot.com/2011/04/lindsey-foreign-official-motion-denied.html.

43 *United States v. Noriega, et al.*, No. 2:10-cr-01031, Transcript of Pretrial Motions Hearing at 29 (C.D. Cal. Apr. 1, 2011).

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Judge Matz rejected the defendants' argument that "instrumentality" should be defined as an entity that shares the characteristics of agencies and departments.[44] Judge Matz agreed with the government that such a definition would rob "instrumentality" of independent meaning.[45] Considering the acknowledged facts about the CFE, Judge Matz found that it shares characteristics typical of agencies and departments, *e.g.*, "it performs a function the Mexican nation has described as a quintessential government function – the supply of electricity."[46] Thus the CFE would qualify, Judge Matz suggested, as an instrumentality, even if "instrumentality" were defined as an entity having the characteristics of an agency or department.[47] As for the exhaustive legislative history provided by the defendants, Judge Matz found it "inconclusive" as to what Congress intended with regard to SOEs.[48]

Meanwhile, in *Carson*, on April 18 the government filed a supplemental declaration by FBI Special Agent Brian Smith, the lead agent on the case.[49] Smith's declaration provides information about the particular SOEs at issue in the case, *e.g.,* the degree of government ownership, the self-description of each SOE as demonstrated by their websites, and the role that each SOE plays in the economy of their home country.[50]

In *O'Shea*, jury selection and trial was set for seven days after the verdict in *Lindsey*.[51]

Conclusion

The rulings in these cases could have a profound effect on FCPA enforcement, especially with respect to cases arising in countries in which state ownership of commercial enterprises is common. For example, as companies subject to the FCPA continue to expand into high risk jurisdictions by means of mergers, acquisitions, and joint ventures, the decisions that flow from these challenges to the meaning of "foreign government official" will dictate how compliance programs are designed and implemented. FCPA Update will continue to report on these cases as they develop. ■

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44 *United States v. Noriega, et al.,* No. 2:10-cr-01031, Criminal Minutes – General at 8 (C.D. Cal. April 20, 2011).

45 *Id.*

46 *Id.* at 9-10.

47 *Id.*

48 *Id.* at 14 ("Although it does not demonstrate that Congress intended to include all state-owned corporations within the ambit of the FCPA, neither does it provide support for Defendants' insistence that Congress intended to exclude all such corporations from the ambit of the FCPA.").

49 *United States v. Carson*, No. 8:09-00077, Declaration of Special Agent Brian Smith (C.D. Cal. Apr. 18, 2011).

50 *Id.* at ¶¶ 13-55.

51 *United States v. O'Shea*, No. 4:09-cr-00629, Order Setting Trial (S.D. Tex. Apr. 11, 2011).

NEWS FROM THE BRICS

Developments in Indian Anti-Corruption Legislation

While U.S. authorities have stepped up FCPA enforcement to an unprecedented level, other countries have concurrently taken steps to pass tougher anti-corruption laws and bring their enforcement efforts in line with international standards. India, the world's largest democracy and second largest country by population, finds itself among the forefront of countries working to rid themselves of corrupt transactions, joining regional neighbors Indonesia[1] and the UAE,[2] as well as China, Mexico and Russia as countries that have most recently decided to tackle significant anti-corruption legislation.

India currently ranks 87 (in a tie with Jamaica and Liberia, and below China, which ranks 78) out of 178 countries on Transparency International's 2010 Corruption Perceptions Index.[3] The Indian government has been under significant pressure at home to enact new, strong anti-corruption legislation and to provide greater resources to back the enforcement of existing anti-corruption laws because of several major scandals involving high ranking public officials that have made international headlines over the past few months.[4] In March 2011, leaked diplomatic cables from the Wikileaks website described a senior Indian congressional aide showing a U.S. embassy official "chests of cash" allegedly used to bribe members of the Indian parliament to support the majority government in a vote of confidence in 2008.[5] Also in March of this year, the Indian Supreme Court overturned the appointment of P.J. Thomas as India's anti-corruption chief as a consequence of allegations that Mr. Thomas had earlier in his civil service career accepted bribes in exchange for agreeing to inflated contracts for imported palm oil.[6] And in what might be India's biggest corruption scandal to date, Telecommunications Minister Andimuthu Raja was arrested in February of this year for allegedly selling mobile phone frequency licenses at a reduced price – an alleged fraud that cost the exchequer nearly $40 billion in lost revenue.[7]

Despite these high profile corruption scandals, India has had several strong anti-corruption laws on the books for decades.[8] In particular, the 1988 Prevention of Corruption Act criminalizes both public and private corruption with potential prison sentences of up to five years.[9] And in 2005, India enacted the Right to Information Act ("RTI"), a significant piece of legislation similar to the Freedom of Information Act in the United States, which allows any Indian citizen to request specific information in the hands of public authorities.[10]

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1 In March, Indonesia's attorney general proposed a bill that would ban bribery of foreign officials and private entities, and would implement the U.N. Convention Against Corruption, which Indonesia ratified in 2006. *See* "New Corruption Bill Covers Private Sector, Foreigners," *Jakarta Globe* (Mar. 16, 2011), http://www.thejakartaglobe.com/home/new-corruption-bill-covers-private-sector-foreigners/429604.

2 Although the UAE Federal Penal Code has banned public and private bribery since the late 1980s, the UAE government has not strictly enforced the law until recently. *See* Al Tamimi & Company, "Federal Anti-Bribery Legislation in the United Arab Emirates" (April 2011), http://altamimi.newsweaver.ie/17yw2g5a6yb-1daavyhcf4?email=true. *See also, e.g.*, "Three Years in Jail for Bribe Giver and Taker," *Emirates 24/7 News* (Apr. 5, 2011), http://www.emirates247.com/news/emirates/three-years-in-jail-for-bribe-giver-and-taker-2011-04-05-1.377354.

3 *See* Transparency International, "Corruption Perceptions Index," (2010), http://www.transparency.org/content/download/55725/890310.

4 Most recently, Indian authorities arrested Suresh Kalmadi, the former chief organizer of the Commonwealth Games, alleging that he awarded an inflated $33 million contract to a Swiss company that provided timing equipment to the games. *See* "India Arrests Former Chief of Commonwealth Games," *The New York Times* (Apr. 25, 2011), http://www.nytimes.com/2011/04/26/world/asia/26india.html. And two days earlier, Indian airline safety officials stripped the licenses of more than a dozen commercial pilots in India after uncovering alleged fraud and corruption in the way pilot licenses were awarded. *See* "India Finds Corruption in Fast-Growing Aviation Industry," *The New York Times* (Apr. 23, 2011), http://www.nytimes.com/2011/04/24/world/asia/24india.html.

5 "India's Corruption Scandals," *BBC News South Asia* (Mar. 17, 2011), http://www.bbc.co.uk/news/world-south-asia-12769214?.

6 "India Anti-Corruption Chief PJ Thomas Forced to Resign," *BBC News South Asia* (Mar. 3, 2011), http://www.bbc.co.uk/news/world-south-asia-12631887?.

7 "India's Corruption Scandals," note 5, *supra*. On April 25, 2011, the Indian Central Bureau of Investigation named five more people in connection with the telecom scandal, including several politicians, and alleged that Raja and two other defendants accepted bribes of 2 billion rupees in exchange for "undue favors." *See* "CBI Charges Lawmaker In Indian Telecom Probe," *The Wall Street Journal* (Apr. 25, 2011), http://blogs.wsj.com/corruption-currents/2011/04/25/cbi-charges-lawmaker-in-indian-telecom-probe/?mod=google_news_blog.

8 *See* Central Services (Conduct) Rules of 1964, http://persmin.nic.in/EmployeesCorner/Acts_Rules/CCSRules_1964/ccs_conduct_rules_1964_details.htm; All-India Services (Conduct) Rules of 1968, http://apvc.ap.nic.in/js/vol4/c7t1s1.html; Foreign Contribution (Regulation Act) of 1976, http://www.usig.org/countryinfo/laws/India/India%20Foreign%20Contribution%20-%20Regulation%20-%20Act.pdf.

9 Prevention of Corruption Act of 1988, http://www.kar.nic.in/lokayukta/preact.htm.

10 Right to Information Act of 2005, http://righttoinformation.gov.in/webactrti.htm.

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In spite of these laws, the recent public corruption allegations and arrests have focused attention on weaknesses in both the laws themselves and in their enforcement. For example, though laudable in its promise of transparency to 1.2 billion citizens, the RTI's decentralized nature has resulted in significant backlogs of information release appeals at the state and local levels.[11] Only two years after the RTI's passage, the State Information Commission of Maharashtra had incurred a backlog of 11,000 cases and the Central Information Commission in Delhi had close to 4,000 cases pending.[12] Because of the backlog it takes approximately four to five months for an appeal to be heard,[13] but the RTI mandates that appeals must be disposed of within 30 days of their receipt.[14]

In addition, Transparency International has highlighted the "huge gap between anti-corruption policies and practice."[15] Although Transparency International has rated India's "legal framework against corruption" as "good," it noted that India needed a law protecting whistleblowers and that "law enforcement . . . remains weak, suggesting a lack of political will to effectively address corruption challenges in the country."[16]

In an attempt to strengthen India's anti-corruption regime, the parliament has introduced for debate two new pieces of legislation: (1) The Prevention of Bribery of Foreign Public Officials and Officials of Public International Organisations Bill, 2011 (the "Prevention of Bribery Act" or the "Act"); and (2) the Lokpal Bill.
The Prevention of Bribery Act, introduced on March 25, 2011, prohibits bribes to or received by foreign public officials, defined as "any person holding a legislative, executive, administrative or judicial office of a foreign country, whether appointed or elected," and "any person exercising a public function for a foreign country."[17] The Act, if passed, also holds liable those who abet the commission of an offense. Convictions for primary violators and abettors are punishable by up to seven years in prison and a fine.[18] In addition, the Act allows India to enter into agreements with other countries to enforce the provisions of the Act and exchange information, as well as extradite accused persons.[19] If passed, the Act would authorize the Indian government to ratify the U.N. Convention Against Corruption, which India signed on December 9, 2005, but has not yet ratified.[20] The Act has been praised both domestically and internationally; it is currently awaiting a vote in the Lok Sabha, the Indian parliament's lower house.

The Lokpal Bill ("Ombudsman Bill") is designed to create an ombudsman to enforce India's anti-corruption laws.[21] The bill, however, has stirred significant controversy in India. Critics claim that the Lokpal Bill is weak because it merely creates an advisory body as opposed to an independent investigative agency free of government interference.[22] The Lokpal Bill, as currently drafted, also requires that complaints made against the prime minister, ministers, and members of parliament be routed to the ombudsman through the presiding officer of the house to which the member of parliament

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11 Sidharth Pandey, "Losing steam: RTI Appeals Pile Up," *NDTV.com* (Oct. 13, 2007), http://www.ndtv.com/convergence/ndtv/story.aspx?id=NEWEN20070029213&ch=10/13/2007%208:04:00%20AM.

12 *Id.*

13 *Id.*

14 Right to Information Act of 2005, Section 19(6), http://righttoinformation.gov.in/webactrti.htm.

15 Marie Chêne, "Overview of Corruption and Anti-Corruption Efforts in India," U4 Anti-Corruption Resource Centre, Transparency International (January 21, 2009), http://www.google.com/url?sa=t&source=web&cd=1&ved=0CBoQFjAA&url=http%3A%2F%2Fwww.u4.no%2Fhelpdesk%2Fhelpdesk%2Fquery.cfm%3Fid%3D188&ei=fqO5Td6rFMXegQe0tPVm&usg=AFQjCNFRGUXvRqkED0c8Fk5d51oC5shLQA&sig2=32t9KA3S2DQdfP0WkrP2Qg.

16 *Id.*

17 The Prevention of Bribery of Foreign Public Officials and Officials of Public International Organisations Bill at ch. 1, § 2(c) (2011), http://www.prsindia.org/uploads/media/Bribery/Prevention%20of%20Bribery,%2026%20of%202011.pdf.

18 *Id.* at ch. 2, § 5.

19 *Id.* at ch. 2, § 5-6.

20 *Id.* at 2.

21 *See* Lokpal Bill of 2010, http://www.annahazare.org/pdf/Lokpal%20Bill%20by%20Government%20of%20India.pdf.; "Lokpal bill will fight graft at centre, not states," *Economic Times* (Apr. 15, 2011), http://articles.economictimes.indiatimes.com/2011-04-15/news/29422050_1_lokpal-bill-lokayukta-justice-n-santosh-hegde.

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belongs.[23] It also contains limitations on the ombudsman's jurisdiction over the prime minister.[24] Ultimately, critics' biggest complaint is that the Lokpal Bill creates an entity with mere advisory powers – the ombudsman can only receive forwarded complaints and recommend action; it cannot initiate or enforce inquiries and it has no police powers.[25]

In response, civil society activists drafted an alternative bill, the Jan Lokpal Bill ("Citizen's Ombudsman Bill"), which would create a central ombudsman with the power to initiate investigations and prosecutions against public officials and private entities, issue search warrants, impose fines and protect whistleblowers.[26] The Jan Lokpal Bill also requires all investigations to be completed within one year and trials to be completed within one year after completion of the investigation.[27] Existing anti-corruption agencies in India, including the Central Vigilance Commission and the anti-corruption branch of the Central Bureau of Investigation, would be merged into the ombudsman.[28] Members of the ombudsman would be appointed by judges, citizens, and constitutional authorities (not politicians), and could not include former or current politicians.[29]

In support of the Jan Lokpal Bill, social activist Anna Hazare began a "fast unto death" on April 5, 2011. Hazare demanded the formation of a joint committee equally composed of ministers and civil society activists to draft a new Lokpal Bill that would more closely resemble the Jan Lokpal Bill.[30] Soon after Hazare began his hunger strike, thousands of protesters joined his cause across India, some participating in candlelight vigils.[31] Four days later, on April 9, 2011, the government finally agreed to form a joint committee to draft a new Lokpal Bill and Hazare called off his hunger strike.[32] The new committee set June 30, 2011 as the deadline to submit the new Lokpal Bill to parliament.[33]

The committee, however, has been steeped in controversy – shortly after it was formed, activists accused the civil society of nepotism because it appointed Shanti Bhushan and his son Prashant Bhushan to the committee.[34] Hazare defended the appointments, saying that the committee needed legal experts, and both Bhushans were lawyers on the first drafting committee.[35] Additionally, a CD has surfaced that allegedly contains a recorded telephone conversation between Shanti Bhushan and two other individuals, in which they discuss influencing the presiding judge in two major pending corruption cases.[36] Shanti Bhushan has stated that the CD is doctored and the allegations are no more than a smear campaign to derail the civil society's anti-corruption efforts.[37] Amidst all the controversy, the real question is whether public support for drafting the new Lokpal Bill will continue at the same intensity with which the public supported Hazare during his hunger strike or whether public support will wane.

If both the new Lokpal Bill and the Prevention of Bribery Act are passed and

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23 Lokpal Bill at 12, note 21, *supra*.

24 *Id*.

25 Prakash, note 22, *supra*.

26 *See* Jan Lokpal Bill at 8(2)(b), 8(2)(h), 9, http://www.annahazare.org/pdf/Jan%20lokpal%20bill%20by%20Expert%20(Eng).pdf.

27 *Id*. at 30.

28 *Id*. at 24, 25.

29 *Id*. at 4.

30 "Anna Hazare Begins Indefinite Fast on Lokpal Bill," *Business Standard Reporter* (Apr. 6, 2011), http://www.business-standard.com/india/news/anna-hazare-begins-indefinite-fastlokpal-bill/431161/.

31 "Hunger Strike Over Lokpal Bill as Thousands Protest Corruption," *Reuters* (Apr. 6, 2011), http://in.reuters.com/article/2011/04/05/idINIndia-56135720110405.

32 "India Wins Again, Anna Hazare to Call Off Fast," *The Times of India* (Apr. 9, 2011), http://articles.timesofindia.indiatimes.com/2011-04-09/india/29400310_1_anna-hazare-revolutions-on-other-issues-law-minister.

33 "Lokpal Bill Draft to be Ready by June 30," *The Times of India* (Apr. 10, 2011), http://timesofindia.indiatimes.com/india/Lokpal-bill-draft-to-be-ready-by-June-30-Moily/articleshow/7934570.cms.

34 "No Nepotism, Need Experts In Panel for Lokpal Bill: Hazare," *The Economic Times* (Apr. 11, 2011), http://economictimes.indiatimes.com/news/politics/nation/no-nepotism-need-experts-in-panel-for-lokpal-bill-hazare/articleshow/7940447.cms.

35 *Id*.

36 "Shanti Bhushan CD Doctored: Prashant Bhushan," *The Economic Times* (Apr. 17, 2011), http://economictimes.indiatimes.com/news/politics/nation/shanti-bhushan-cd-doctored-prashant-bhushan/articleshow/8008484.cms.

37 *Id*.

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enforced vigorously, India will enter a new era in anti-corruption enforcement that could bring about a dramatic change in local business practices. Such local law reform and international cooperation could greatly augment current efforts by the United States, when enforcing the FCPA, and soon to be joined by the United Kingdom, whose Bribery Act comes into force on July 1, 2011, to prosecute corrupt behavior involving Indian officials.[38] ■

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38 *See, e.g., U.S. v. Pride Int'l, Inc.*, No. 4:10-cr-766, Deferred Prosecution Agreement (S. D. Tex. 2010); DOJ Press Rel. "Oil Services Companies and a Freight Forwarding Company Agree to Resolve Foreign Bribery Investigations and to Pay More Than $156 Million in Criminal Penalties" (Nov. 4, 2010), http://www.justice.gov/opa/pr/2010/November/10-crm-1251.html (Pride International, Inc. settled with the DOJ and SEC for a combined $52 million in fines and disgorgement for, in part, allegedly using a subsidiary to pay bribes to the Customs, Excise, and Gold Appellate Tribunal in India to obtain a favorable ruling worth approximately $10 million).

Upcoming Speaking Engagements

May 10, 2011
Paul R. Berger
Franci J. Blassberg
(Moderator)
Mark P. Goodman
Sean Hecker
Bruce E. Yannett
Private Equity, Meet the FCPA: What PE Professionals Need to Know About Anti-Corruption and Related Laws
Debevoise & Plimpton LLP
New York
Conference Brochure:
http://www.debevoise.com/files/Event/93a7be03-a0d6-463a-9c74-f8f764ba39dc/Presentation/EventAttachment/1c356e15-d84b-4da1-b967-0147b514390b/20110510SeminarInvite.html

May 17, 2011
Sean Hecker
"Detecting Facilitating Payments in Your Global Supply Chain and Distribution Operations: Strategies for Embedding Risk Assessment and Monitoring Activities"
ACI's Fifth National Conference on the FCPA & Anti-Corruption for the Life Sciences Industry
New York
Conference brochure:
http://www.americanconference.com/PharmaFCPA

May 24, 2011
Steven S. Michaels
"Crisis Management: Regulatory Inquiries, Internal Investigations, and Mitigating the Risks to Your Organization"
Risk and Corruption Symposium 2011
Hong Kong
Conference brochure:
http://www.debevoise.com/publications/HK_Risk_2011.pdf

June 15-16, 2011
Bruce E. Yannett
"New Frontiers in M&A Diligence"
Tenth Annual International Mergers and Acquisitions Conference
International Bar Association
New York
Conference brochure:
http://www.int-bar.org/conferences/380/

Comverse Technologies Settles FCPA Charges Involving Israeli Subsidiary: Is It a Harbinger of More Israel-Focused Enforcement to Come?

Comverse Technologies, Inc. ("CTI"), a New York-based provider of communications software and billing services, settled FCPA-related charges with the U.S. Department of Justice ("DOJ") and the U.S. Securities and Exchange Commission ("SEC") in early April.[1] CTI agreed to pay a $1.2 million fine and $1.6 million in disgorgement and interest as part of the settlement – for issues that allegedly involved $536,000 in improper payments that conferred a $1.2 million benefit on the Company.[2] CTI also agreed not to commit any criminal violations for two years and consented to the entry of an injunction against future violations of the books and records provisions of the U.S. securities laws.[3]

The charges against CTI stemmed from payments an Israeli subsidiary, Comverse Limited, allegedly made to employees of Hellenic Telecommunications Organization S.A., the Greek telecommunications company often referred to as "OTE," which is partly owned by the Greek government.[4] Comverse Limited allegedly employed a third-party agent, who is an Israeli citizen, to set up a Cyprus corporation known as Fintron Enterprises Ltd., which allegedly used a Cyprus bank account to funnel money to OTE employees. According to the allegations, Fintron received a monthly retainer fee and also would keep 15 percent of the payments received from Comverse Limited for itself. The remaining 85 percent of the payments would be given as cash to OTE employees, either directly by Fintron or by Comverse Limited employees who would obtain the cash from Fintron. These activities allegedly took place between 2003 and 2006.[5]

In 2005, the allegations indicate, Comverse Limited was notified that the agent had flown same-day round-trip to Rome, where he was questioned by the airline about his activities. Apparently, he had made several such same-day round trips to Rome and, according to an internal Comverse Limited memorandum, had made several same-day round trips to Cyprus and to Athens. Once alerted to these suspicious trips, however, an employee of Comverse Limited allegedly wrote a memorandum recommending that in the future the agent should use different travel agents, stay in different hotels and avoid returning to Israel on the same outbound flight he had taken to leave the country. The same memorandum recommended that Comverse Limited gradually "disconnect" from the agent and ultimately "terminate" him because "he knows too much."[6]

Although the SEC's complaint alleges that Comverse Limited "engaged in a scheme to make improper payments to obtain or retain business,"[7] neither the SEC nor the DOJ accused the parent company, CTI, of violating the anti-bribery provisions of the FCPA. Rather, the SEC and DOJ focused their charges on the books and records provisions of the U.S. securities laws, accusing CTI of failing to maintain books and records that accurately and fairly reflected the transactions and dispositions of its assets, because the payments to the agent were recorded as "commissions" and not as bribe payments.[8] The SEC also accused CTI of failing to have polices or internal controls that would have prompted

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1 SEC Litig. Rel. No. 21920, SEC Files Settled FCPA Case Against Comverse (Apr. 7, 2011) ("SEC Litig. Rel."), http://www.sec.gov/litigation/litreleases/2011/lr21920.htm; *see also SEC v. Comverse Tech., Inc.*, No. 11-CV-1704-LDW, Complaint (E.D.N.Y. 2011) ("SEC Compl."), http://www.sec.gov/litigation/complaints/2011/comp21920.pdf; *In re Comverse Tech., Inc.*, Non-Prosecution Agreement (Apr. 6, 2011) ("DOJ NPA"), http://www.justice.gov/criminal/fraud/fcpa/cases/rae-comverse/04-06-11comverse-npa.pdf.

2 SEC Litig. Rel.; DOJ NPA at 3.

3 SEC Litig. Rel.; DOJ NPA at 2.

4 SEC Compl. ¶¶ 10-11; DOJ NPA, Appendix A ¶ 24.

5 SEC Compl. ¶¶ 2, 12, 18; DOJ NPA, Appendix A ¶¶ 13-16, 18-19.

6 SEC Compl. ¶ 22; DOJ NPA, Appendix A ¶¶ 20-22.

7 SEC Compl. ¶ 1.

8 *Id.* ¶¶ 19, 30; DOJ NPA, Appendix A ¶¶ 25-26.

Comverse Technologies Settles FCPA Charges Involving Israeli Subsidiary ■ Continued from page 11

Comverse Limited to respond appropriately when the suspicious activity of the agent led to questioning by airline employees in Rome and a report to the company. The SEC also criticized CTI for failing to (i) maintain a process for conducting due diligence of sales agents; and (ii) have agent contracts reviewed by personnel outside the sales department.[9]

CTI's settlement with the SEC took the form of a judicial order and injunction on consent. The settlement with the DOJ took the form of a non-prosecution agreement. As part of the resolution, CTI agreed to implement mandatory training programs focused on anti-corruption and the use of third party agents and intermediaries. It also agreed to institute more rigorous controls for the approval of third-party payments.[10] The settlement did not involve the appointment of a monitor.

Some have characterized this settlement as "lenient," noting the low dollar amount paid by CTI, but Professor Mike Koehler has questioned whether CTI should have faced any criminal liability in light of the fact that there are no allegations that CTI, the parent company, had any indication that wrongdoing was occurring at a subsidiary of a subsidiary.[11] The DOJ press release announcing the resolution expressly recognized CTI's "thorough self-investigation," "voluntary disclosure" and "full cooperation." In addition, the release acknowledged CTI's "extensive remedial efforts," including an "overhaul[]" of its "overall compliance culture" as mitigating factors that prompted the DOJ not to prosecute CTI or its subsidiaries.[12]

Emerging Anti-Corruption Focus in Israel?

Although at least two other recent FCPA cases involved Israeli citizens and entities,[13] the case involving CTI is only the second FCPA settlement to deal directly with misconduct of an Israel-based company or subsidiary.[14] These cases appear to coincide with the growing importance of Israeli companies to the global economy. Companies in "Silicon Wadi" – the Israeli version of California's Silicon Valley – have become magnets for American venture capital investment in communications, wireless technology, and chip-development in the last decade, and many have since sold out to large foreign firms.[15] A number of technology related

"These cases appear to coincide with the growing importance of Israeli companies to the global economy."

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[9] SEC Compl. ¶¶ 23, 27.

[10] DOJ NPA, Appendix B.

[11] *Compare* "Comverse Earns Lenient Settlement," *FCPA Blog* (Apr. 7, 2011), http://www.fcpablog.com/blog/2011/4/7/comverse-earns-lenient-settlement.html with "Comverse Technology, Is It Really That Simple?", *FCPA Professor Blog* (Apr. 12, 2011), http://fcpaprofessor.blogspot.com/2011/04/comverse-technology-is-it-really-that.html.

[12] DOJ Press Rel. 11-438, Comverse Technology, Inc. Agrees to Pay $1.2 Million Penalty to Resolve Violations of the Foreign Corrupt Practices Act (Apr. 7, 2011), http://www.justice.gov/opa/pr/2011/April/11-crm-438.html; *see also* DOJ NPA at 1 (highlighting CTI's "timely, voluntary, and complete disclosure," "full cooperation," and "remedial efforts already undertaken and to be undertaken").

[13] *See SEC v. Siemens A.G.*, No. 08-cv-02167, Complaint ¶ 44 (D.D.C. 2008), http://www.sec.gov/litigation/complaints/2008/comp20829.pdf (alleging that Siemens paid approximately $20 million in bribes to former director of state-owned Israel Electric Company, obtaining contracts worth over $780 million); *United States v. Goncalves*, No. 09-cr-335, Superseding Indictment ¶ 9 (D.D.C. Apr. 19, 2010), http://www.justice.gov/criminal/fraud/fcpa/cases/daniel-alvirez/11-16-09alvirez-supersede-indict.pdf (alleging that Israeli citizen Ofer Paz, president of an Israel-based company that acted as a sales agent for companies in the law enforcement and military products industry, participated in a conspiracy to make corrupt payments to foreign officials in order to retain business in the arms industry). A third case from 1994, *United States v. Steindler*, involved allegations that a GE employee attempted to obtain business with the Israeli government through a money laundering scheme set up by the Israeli intermediary and an Israeli Air Force Officer (all three of whom were charged). *United States v. Steindler*, No. CR 1 94-29 (S.D. Ohio 1994). GE also faced criminal and civil charges, which it settled in 1992. *United States v. Gen. Elec. Co.*, No. CR 1 92-87 (S.D. Ohio 1992).

[14] Paradigm B.V., a Dutch company which at one time had its principal place of business in Israel, entered into a non-prosecution agreement with the DOJ in September 2007 over the conduct of subsidiaries in the British West Indies, China, Mexico, Nigeria, and Indonesia. By the time of the investigation into this conduct, Paradigm's principal place of business had relocated to Houston, Texas, thus bringing Paradigm under the definition of "domestic concern." *See In re Paradigm B.V.*, Non-Prosecution Agreement, Appendix A ¶¶ 3-4 (Sept. 21, 2007), http://www.justice.gov/criminal/fraud/fcpa/cases/paradigm/09-21-07paradigm-agree.pdf.

[15] "Land of Milk and Start-ups: Silicon Wadi v Silicon Valley," *The Economist* (Mar. 19, 2008), http://www.economist.com/node/10881264?story_id=10881264.

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Fortune 500 companies have Israeli operating subsidiaries, including IBM, Intel, Motorola, and Applied Materials.[16] Several large companies that conduct business in industries that have been the focus of recent FCPA investigations, such as the pharmaceutical industry, also operate in Israel.[17]

As its economy has grown in global importance,[18] Israel also has taken steps to implement its own stringent anti-corruption measures. Israel undertook efforts to join the Organization for Economic Cooperation and Development ("OECD") in 2007, and acceded to the OECD's anti-bribery convention in 2009 after instituting new anti-bribery laws criminalizing bribery of foreign officials by both companies and individuals.[19] OECD's oversight arms subsequently urged Israel to spread awareness of anti-bribery laws and to enhance detection capabilities, especially in the defense industry.[20] Recognizing that Israel is making progress in its anti-corruption efforts, the OECD admitted it as a full member in May 2010.[21]

As more countries like Israel implement anti-bribery legislation, companies like CTI, which operate in multiple jurisdictions, risk exposure to anti-bribery prosecution on several fronts. Not long ago, Malaysia, Honduras, Costa Rica and Nigeria opened bribery investigations into companies after those entities settled FCPA-related suits with U.S. authorities.[22] Whether CTI will spawn follow-on investigations in Israel (or Greece), companies doing business in Israel, from Israel, or with Israeli partners, and indeed globally, must be attentive not only to the FCPA's global reach, but also to the growing local efforts to combat foreign bribery. ■

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16 *See, e.g.*, Motorola Israel Ltd., http://www.iaesi.org.il/Eng/?CategoryID=163&ArticleID=207; Applied Materials Israel, Ltd., http://investing.businessweek.com/research/stocks/private/snapshot.asp?privcapId=1199016; Intel Israel, Ltd., http://www.iaesi.org.il/Eng/?CategoryID=163&ArticleID=174; IBM Israel Ltd., http://www.ibm.com/planetwide/il/.

17 *See, e.g.*, Teva Pharmaceuticals, http://www.tevapharm.com/worldwide/israel.asp; Perrigo Industries, http://www.perrigo.com/company/globalpresence/globalpresence_landing.aspx?id=5; Quark Pharmaceuticals, http://www.quarkpharma.com/qbi-en/comtact/contactpage/.

18 In 2008, *Fortune* magazine ranked Israel Corp., a global manufacturing company that trades on the Tel Aviv Stock Exchange, as the world's tenth fastest growing company, and in 2009, it was the first Israeli company to be listed on the Fortune 500. *See* Malkah Fleisher, "Fortune Names Israel Corp. One of World's Largest Companies," *Arutz Sheva* (July 13, 2009), http://www.israelnationalnews.com/News/News.aspx/132374. In addition, twelve Israeli companies are currently listed on the *Forbes* list of the 2000 largest public companies in the world, including Teva Pharmaceuticals, Check Point Software, and several banks. "The World's Biggest Public Companies," *Forbes*, http://www.forbes.com/global2000/list?country=Israel&industry=All&state=All.

19 Merav Ankori, "Israel Joins OECD Anti-Bribery Convention," *Globes* (May 25, 2009), http://www.globes.co.il/serveen/globes/docview.asp?did=1000452857.

20 OECD Working Group on Bribery, "Israel: Phase 2, Report on the Application of the Convention on Combating Bribery of Foreign Public Officials in International Business Transactions and the 1997 Recommendation on Combating Bribery in International Business Transactions," at 7-8, 16-18 (Dec. 11, 2009), http://www.oecd.org/dataoecd/60/10/44253914.pdf.

21 "State of Israel Joins the OECD," *Israeli Government Portal* (May 12, 2010), http://www.gov.il/FirstGov/NewsEng/NewsEng_OECD.htm.

22 *See* Paul R. Berger, Bruce E. Yannett, Sean Hecker, Steven S. Michaels, Aaron M. Tidman, and Michael Janson, "The FCPA Matures: A Look Back at Enforcement in 2010," *FCPA Update*, Vol. 2, No. 6 at 7-8 (Jan. 2011), http://www.debevoise.com/newseventspubs/publications/detail.aspx?id=f989f0ca-fb97-43bd-9a42-8a3efc950847 ("In December 2010, authorities in Malaysia and Honduras announced investigations of Alcatel-Lucent, which also paid $10 million to Costa Rican authorities to resolve bribery charges, marking the first time Costa Rica brought such an enforcement action against a foreign corporation. Nigeria, a country that ranks 134 out of 178 countries on TI's 2010 Corruption Perceptions Index, opened its own investigations of Halliburton, Snamprogetti, Panalpina, and Siemens.").