

Corruption and the C-Suite

On the Increase: Enforcement Actions Targeting Individuals

[In 2014 alone](#), the United States Department of Justice (DOJ) has issued 13 Foreign Corrupt Practices Act (FCPA) enforcement actions – an unprecedented number for a six month period. All the more striking is the fact that many of these actions have targeted individuals, some of them from the C-Suite.

Indeed, in February the SEC settled a [case against seven former Siemens AG representatives](#), accused of paying out more than \$100 million in bribes to top government officials to secure a contract to produce national identity cards. As a result of the proceedings, two major project heads paid \$937,957 and \$524,000 respectively, “the largest civil penalties ever assessed against individual defendants in SEC FCPA proceedings.”

In [another case](#) in January, two former CEOs of Petro Tiger Ltd. faced allegations of bribery, and the former general counsel pleaded guilty to bribery and fraud under the same scheme, which involved payments to an official in Columbia in exchange for a \$39 million contract.

In April, the [former CEO and Managing Director of Direct Access Partners LLC](#) were charged with conspiracy to violate the FCPA, among other things, for paying bribes to a Venezuelan state bank official in exchange for the award of lucrative contracts to their bond-trading business. Both are currently out on bail with a trial date set for February 9, 2015. Earlier FCPA enforcement activity also demonstrates that executives are key targets. This year, the [former CEO of Lufthansa’s Bizjet pleaded guilty](#) to bribery of Mexican and Panamanian officials in exchange for help procuring contracts for Bizjet. This came after [Bizjet’s former VP of Sales and Marketing and VP of Finance both pleaded guilty](#) in 2012 and received home detention in exchange for cooperating with the investigation.

The increased focus on individuals is a key strategy of enforcement agencies to ensure that the FCPA is an effective deterrent to corruption. At an [American Bar Association FCPA panel](#), the Department of Justice’s FCPA Unit Chief noted that they were “very focused” on prosecuting individuals in addition to companies. He went on to say, “going after one or the other is not sufficient for deterrence purposes.”

Individuals found in violation of the FCPA [face a maximum penalty](#) of five years in prison and a fine equaling the greater of either \$250,000 or twice the value gained or lost.

Given the threats of financial damage and incarceration, what should executives be doing to mitigate risks? [Under the Sarbanes-Oxley Act](#), CEOs and CFOs are required to certify the accuracy of their companies’ financial statements, leaving them responsible for any corrupt financial practices. Furthermore, the Act includes reporting requirements, mandating that all material issues, including FCPA issues, be disclosed to auditors, the Board of Directors, and periodically the SEC.

This level of activity provides all the more reason for companies to improve and enforce anti-corruption programs. Ensuring that these programs are followed both internally and among business partners will help companies and executives prevent corruption and subsequent risks of FCPA penalties.

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