



Client Alert



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Walmart Allegations Show Need for Robust Compliance Program

According to a *New York Times* article published online Saturday, April 21, 2012, top executives in Walmart's Mexican division allegedly attempted to conceal a widespread bribery scheme from the company's U.S. headquarters. These allegations date to 2005, when a former Walmart de Mexico executive supposedly emailed one of Walmart's senior lawyers, spelling out how the company had paid more than \$24 million in bribes to secure construction permits throughout Mexico. The story illustrates the risks of international business operations, as well as the need for companies to adopt a robust compliance program to deter, detect and remedy the risk from transnational bribery.

The U.S. Foreign Corrupt Practices Act (FCPA) makes it unlawful for U.S.-based companies (including companies listed on a U.S. securities exchange) and persons to make payments to foreign government officials to assist in obtaining or retaining business. Specifically, the anti-bribery provisions of the FCPA prohibit the willful use of interstate commerce corruptly in furtherance of any offer, payment, promise to pay, or authorization of the payment of money or anything of value to any person, while knowing that all or a portion of such money or thing of value will be offered, given or promised, directly or indirectly, to a foreign official to influence the foreign official in his or her official capacity, induce the foreign official to do or omit to do an act in violation of his or her lawful duty, or to secure any improper advantage in order to assist in obtaining or retaining business for or with, or directing business to, any person.

The U.S. Department of Justice, over the past few years, has significantly increased the volume and scope of FCPA investigations. Penalties, financial and otherwise, imposed by the Justice Department in settlements has increased exponentially. In addition, companies face the loss of reputation, significant investigation costs and, in some cases, shareholder litigation. The clear message is that the U.S. government has, and will continue, to devote significant resources to combat international bribery.

Any company with any measure of international activities—from companies whose supply chains begin overseas through those with significant off-shore operating subsidiaries (as well as foreign companies operating in the U.S.)—should assess its international bribery exposure. Arnall Golden Gregory LLP can help companies assess and mitigate their international bribery risk.

The U.S. Department of Justice has advised companies that risk assessments are an important aspect of an effective anti-bribery compliance program. The assessments should be specific and based on a number of factors, including the jurisdictions in which it operates and how it interacts with government officials in such places. Part of the assessment should focus on the company's anti-bribery compliance program—standards and procedures to prevent and detect criminal conduct. A written compliance program is treated as a mitigating factor in the determination of penalties for FCPA violations.

An effective anti-bribery compliance program should, among other goals:

- Inform the company's senior management and Board of Directors about the content and operation of the compliance program;
- Assign one or more individuals among a company's high-level personnel to be responsible for the compliance program;
- Communicate periodically and in a practical manner its standards and procedures, and other aspects of the compliance program, to directors, officers, executives, managers, employees and agents; and
- Provide for periodic evaluations to ensure that the compliance program is followed and to have a system whereby a company's employees and agents may report or seek guidance.

A company's anti-bribery policy should be appropriate for its size, industry and culture. The policy should be supplemented with implementing procedures addressing compliance risks such as the use of third parties, the provision of gifts and hospitality, supply chain management and charitable contributions.

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