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## **Logistics Companies Deliver FCPA Compliance**

By Michael E. Burke

It's no secret that logistics companies have significant risk exposure related to violations of the Foreign Corrupt Practices Act (FCPA), the U.S. statute that prohibits bribery of foreign government officials. The U.S. Department of Justice recently concluded an enhanced FCPA review of companies in the logistics industry—including Ann Arbor, Mich.-based Con-way Inc. and Swiss carrier Panalpina World Transport—and FCPA risk still impacts the industry.

Two trends heighten exposure to FCPA infractions: one is the increase and evolution of services offered to logistics customers; and the second is an expansion of the jurisdictions in which such services are offered. How can logistics companies mitigate their FCPA risk and remain competitive?

### **Establish a culture of compliance**

The most important safeguard logistics companies can take to prevent FCPA violations is to establish and further a culture of compliance. A logistics company should have a written FCPA compliance policy and procedure, and make it required reading for relevant employees and agents. A written policy provides a tangible measure of a company's anti-bribery culture, and should be translated into the local language or languages of each jurisdiction in which the company operates.

As part of the compliance program's upkeep, the logistics company should provide annual training on the FCPA and the company's obligations, clearly documenting and communicating to employees the attendance and certification requirements. Further, a logistics company should conduct realistic risk assessments that consider a jurisdiction's bribery reputation, the company's operations in that jurisdiction, and the nature and frequency of interactions with defined foreign officials in that jurisdiction.

### **Monitor actions of every affiliate**

A logistics company's operations involving affiliates, agents and other third parties can expand its FCPA exposure. Under the statute, a company may be held liable for the actions of others, even without actual knowledge of the violation. The relevant standard includes actions taken with actual knowledge

of the intended results, as well as actions a principal takes with a conscious disregard or “willful blindness” to circumstances that would reasonably alert someone to violations of the FCPA by the agent. Therefore, a logistics company must monitor the actions of every affiliate, agent and third party providing services to or for the company. Logistics companies also should develop and rigorously adhere to standardized documentation and contractual terms for foreign agents, representatives, consultants, distributors, and clinical research organizations. Those terms should include affirmations that the third parties agree to comply with the FCPA’s obligations.

Prior to engaging any third party, and on an ongoing basis thereafter, the company should conduct thorough due diligence of each potential agent or representative. Effective diligence should include in-person interviews and background checks, as well as frequent audits of the third party’s expenditures—particularly for gifts and entertainment expenses that involve foreign officials or seem to be larger than expected.

Finally, logistics companies should create confidential reporting mechanisms that employees and other individuals can safely use to report FCPA issues. Preventing FCPA exposure is the key to a successful compliance program, and the preceding tips should help logistics companies minimize their FCPA risk exposure.

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