

China, FCPA, and SEC

Introduction

Doing business with China is always complex. Add in the need for compliance with the Foreign Corrupt Practices Act (FCPA) and the challenges can be formidable. Companies operating in or with ties to China must be diligent in adhering to both U.S. and Chinese regulatory requirements. And the SEC whistleblower program can provide real opportunity for whistleblowers to do the right thing – and be rewarded – when Chinese companies fail to toe the line of US law.

Understanding the FCPA:

The FCPA is a United States federal law, enacted in 1977, to address issues of bribery and corruption in international business. Its objective was to promote fair competition, and maintain the integrity of financial reporting in U.S. companies. It has two main provisions:

- **Anti-Bribery Provisions:** These provisions make it illegal for U.S. individuals and businesses, as well as certain foreign entities that trade on U.S. exchanges, to bribe foreign government officials or foreign political parties for the purpose of obtaining or retaining business.
- **Accounting Provisions:** These provisions require companies whose securities are listed on United States exchanges to maintain accurate and transparent accounting records and internal controls. The purpose is to ensure that bribes and other illicit payments are not concealed through deceptive accounting methods.

Violations of the FCPA can result in significant fines and penalties for individuals and companies, as well as potential imprisonment for individuals found guilty of corrupt practices.

Importantly, the scope of FCPA actions extends beyond American firms; it encompasses foreign companies listed—or whose securities are traded—on U.S. stock exchanges.

For example, individuals and organizations conducting business in China are not shielded from FCPA violations. Proper due diligence and robust compliance programs are essential.

SEC Whistleblower Program:

The SEC Whistleblower Program is a U.S. government initiative established by the U.S. Securities and Exchange Commission (SEC). Its primary purpose is to encourage and

protect individuals who come forward to report potential violations of federal securities laws, such as violations of the FCPA.

Key features of the SEC Whistleblower Program include:

- **Confidential Reporting:** Whistleblowers can submit tips, complaints, and information about potential securities violations to the SEC while maintaining their anonymity, provided they are represented by an attorney.
- **Protection from Retaliation:** The program includes provisions to safeguard whistleblowers from retaliation by their employers. Employees who experience adverse employment actions due to their reporting can seek legal remedies.
- **Monetary Awards:** Whistleblowers who provide original information that leads to successful enforcement actions resulting in sanctions exceeding \$1 million are eligible for monetary rewards. These awards typically range from **10% to 30%** of the monetary sanctions collected by the SEC.
- **International Reach:** The program has an international reach, allowing individuals from anywhere in the world to report potential violations that fall under the jurisdiction of the SEC.
- **Enhanced Enforcement:** By providing financial incentives and protections to whistleblowers, the SEC aims to encourage individuals with knowledge of securities law violations to come forward, thereby enhancing the agency's ability to detect and prosecute wrongdoing.

Recent Developments and Case Studies:

Whistleblower cases involving the Foreign Corrupt Practices Act (FCPA) and China have garnered significant attention in recent years. Often, these cases revolve around allegations of corrupt practices by individuals or companies operating in China; whistleblowers have played a crucial role in exposing such misconduct. Below are three case highlights:

- 3M paid over \$6.5 million to settle FCPA violation charges. The SEC's order found that 3M's wholly-owned subsidiary in China had manipulated travel records for Chinese government officials, falsely characterizing overseas trips as marketing and outreach initiatives, and directing \$254,000 to a Chinese travel agency for inappropriate tourism activities.
- Amsterdam-based Koninklijke Philips N.V. settled, for more than \$62 million, allegations that it violated the FCPA. Philip's Chinese subsidiaries were involved in misconduct regarding their sales of medical diagnostic equipment in China. The allegations included Philips' employees, distributors, or sub-dealers improperly incentivizing hospital officials to draft technical specifications in public tenders that favored Philip's products.
- Avon Products, Inc. reached a settlement exceeding \$67 million to resolve allegations of FCPA violations. The charges brought by the SEC related to Avon's failure to implement controls that could have identified and halted improper

payments made by its subsidiary to Chinese government officials. The SEC initiated its investigation following a letter from a whistleblower in China.

How Do I Start?

Our lawyers at Pollock Cohen are committed to protecting whistleblowers and helping them to secure their rewards. If you are aware of potential cases involving the FCPA and China, call us at +1.646.290.7251. Submit an inquiry on our website. Or email us at confidential@pollockcohen.com. We want to hear your story.