Snell & Wilmer L.L.P.

Global Connection

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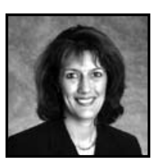
Dear Friend of Snell & Wilmer:

With an increasingly global economy, Snell & Wilmer is committed to continuing to exceed expectations as our clients expand into new frontiers throughout the world. With a broad range of international experience among our attorneys and our strong affiliation with premier law firms around the world, Snell & Wilmer can address your global legal issues.

Snell & Wilmer's International Group consists of attorneys practicing in each of the firm's six regional offices. These attorneys have experience in various practice areas including franchising, dispute resolution, business and finance, import/export controls and economic sanctions, environmental, tax, anti-trust compliance, cross-border investments, healthcare services, real estate and development, gaming, immigration, and intellectual property and technology.

The Global Connection, a newsletter from Snell & Wilmer's International Group, will touch upon hot topics for businesses involved in the global marketplace. We look forward to bringing you the wide range of information that you need to recognize and capitalize upon opportunities -- no matter where they are found.



Best regards,
Barb Dawson
Co-Chair, International Group

Entering Global Markets Without Violating U.S. Law

UNDERSTANDING THE FOREIGN CORRUPT PRACTICES ACT'S ANTI-BRIBERY PROVISIONS

Brett W. Johnson

A business that cannot compete in a global economy has very limited prospects. However, sending representatives to develop international business can only succeed if their efforts do not violate the anti-bribery provisions of the Foreign Corrupt Practices Act ("FCPA").

The FCPA was passed in 1977 in response to multiple disclosures of large U.S. companies making questionable or illegal payments to foreign government officials, politicians, or political parties. Although the FCPA has generated relatively few actions, at the end of June 2007 there were a flurry of investigations and admissions of FCPA violations.

- On June 29, 2007, a former Senior Officer of Schnitzer Steel Industries pled guilty to violating the FCPA by making payments to senior Chinese government officials over a 10-year period. His criminal sentence is pending;
- On June 22, 2007, the FBI arrested a Senior Executive of Pacific Consolidated Industries, LP for allegedly making payments to a United Kingdom Ministry of Defense Official;
- On June 26, 2007, it was reported that the U.S. Department of Justice has opened investigations against Britain's BAE in regard to payments to Prince Bandar bin Sultan – the Saudi Ambassador to the U.S.;
- On June 25, 2007, Global Santa Fe Corporation announced that it is conducting an internal investigation, with the assistance of outside counsel, into possible FCPA violations in regard to its Nigerian operations; and
- On June 28, 2007, Global Industries, Ltd., announced that is also conducting an internal investigation through an audit committee into possible FCPA violations in regard to its West African operations.

The anti-bribery provision is the basis of the majority of law enforcement investigations under the FCPA. The anti-bribery provision prohibits any offer, payment, promise to pay, or authorization to pay any money, gift, or anything of value to any foreign official, foreign political party, or candidate for (i) influencing any act, or failure to act, in the official capacity of that foreign official or party, or (ii) inducing the foreign official or party to use influence to affect a decision of foreign government or agency, in order to obtain or retain business for anyone, or direct business to anyone. These prohibitions are equally applicable to prohibited benefits provided to officials of public international organizations, such as the United Nations, International Telecommunications Union, or World Trade Organization.

However, the FCPA does not apply when a payment is to merely "facilitate" or "expedite" the performance of a "routine" governmental action. This often litigated "caveat" could be the subject of a separate article. But, as a general matter, this caveat recognizes that graft is so common in many countries that U.S. companies could not do business if they were prohibited from not making payments to facilitate routine services: U.S. companies can, for instance, pay a "gratuity" to the telephone serviceman, who may be a government employee in some countries, to connect the businesses phone lines.

The issue of business gifts poses special concerns under the FCPA. Unlike in the U.S., it is customary in many countries to exchange gifts in appreciation for hospitality and continued business goodwill. However, before giving a gift, it is wise to determine whether the gesture would be subject to FCPA sanctions. For example, under the U.S. Joint Ethics Regulations, which governs U.S. officials, a written determination is made by "Ethics Counsel" before a significant gift is made to any individual or organization (whether domestic or foreign).

One of the deadliest traps under the FCPA is the use of foreign agents or "middlemen." It is sometimes necessary and often helpful to engage local representatives to navigate the customs and bureaucracy of a foreign country. However, an agent's request for a sizable commission, the "commission" should be a "red flag." If a large commission is requested, it is quite possible that a part will end up as a payoff to a foreign government official. Foreign agents must be carefully selected, screened and supervised. Any agreements with the foreign agent must be clearly written describing the specific services to be performed and forbid any conduct that would be considered a violation of the FCPA.

The penalties for violating the FCPA are severe, including significant fines (up to $2,000,000) and prison time (up to five years) for the individuals involved. In addition, any FCPA sanction may lead to the U.S. Company's debarment from obtaining government contracts or grants. Individuals disciplined under the FCPA may be barred from obtaining export licenses and participating in the securities business. It is also important to remember that the FCPA is distinct from any foreign laws that may have been violated in a prohibition transaction. Violating local laws may lead to criminal prosecution with draconian penalties, including imprisonment and massive forfeitures.

Before entering the global market, take into account the applicable U.S. and foreign laws. The FCPA is just one important component of the international anti-fraud enforcement regime. The careful selection of foreign agents, well prepared company policies, and proper training and supervision can minimize the risk of unintended liability expense under U.S. and foreign law.

Extra-Territorial Application of United States Labor Law and Cross-Border Employers

Gerard Morales

Employer is a Texas corporation which performs services for its customers in the United States and, through its subsidiaries, in Mexico. Employee is a Mexican citizen, authorized to work in the United States, and employed by Employer in Texas. Employee's work is performed both in the United States and in Mexico. While performing services in Mexico, Supervisor, also a Mexican citizen, asked Employee about Union's efforts to organize Employer's employees in Texas. During the conversation, Supervisor also made statements which could be interpreted as veiled threats that Employee could lose his job, if he was to become involved with and/or support the Union.

The Union has filed unfair labor practice charges against the Employer with the National Labor Relations Board (NLRB) Regional Office in Texas. There is no dispute that Supervisor is an agent of Employer and that the statements, if made in the United States, would constitute unfair labor practices. However, Employer argues that since the conduct in question took place in Mexico, and since both Supervisor and Employee are Mexican citizens, the NLRB should dismiss the Union's charges. In sum, Employer maintains that Supervisor's statements could not constitute unfair labor practices in the United States since they were made in Mexico.

This scenario is becoming more frequent with the growth of cross-border business.

In determining whether to exercise its jurisdiction, when the conduct in question occurred outside of the United States, the NLRB applies the "effects test." Under this test, the NLRB would not regulate conduct occurring outside the United States if:

1. All of the conduct occurred outside of the Unites States, and
2. The conduct causes no effects within the United States, or
3. Even if the conduct causes effects within the United States, asserting NLRB jurisdiction would "create a serious risk of interference with a foreign nation's ability independently to regulate its own commercial affairs."

In the scenario described above, the NLRB is likely to find that unfair labor practices were committed. Although all of the conduct occurred outside the United States, the main effect of the statements (intimidation and threats) would be "principally felt" in the United States, since the employment relationship exists there. Further, the NLRB's remedial order with respect to those violations would have "no demonstrable extra-territorial effect," that is, it would not interfere with the application of Mexican law.

Employers whose United States based employees perform work both within and outside the United States should recognize that statements and conduct directed to such employees by the Employer's agents could become the subject of prosecution by the NLRB, even if such conduct occurs outside of the United States.

Multiple Regulations Multiply Risk

Matthew Goldstein

Violations of export controls and economic sanctions regulations can result in substantial civil and criminal penalties, including crippling fines, imprisonment of responsible individuals, and revocation of export licenses. Among other things, these laws and regulations restrict the transfer of various domestic origin products, information on technology in the U.S. and abroad, and the provision of services to certain countries, foreign nationals, and designated entities.

There are three primary sources of laws and regulations for export controls:

1. The Export Administration Act, implemented through the Export Administration Regulations ("EAR") and administered by the Department of Commerce Bureau of Industry and Security. The EAR controls the export of products, technology, and software with commercial or military applications (i.e., "dual use" items).
2. The Arms Export Controls Act, implemented through the International Traffic in Arms Regulations ("ITAR") and administered by the Department of State Directorate of Defense Trade Controls. The ITAR controls the export of articles designed, developed, adapted, modified, used, repaired, or manufactured for military or defense purposes, technical data regarding such articles, and technical assistance related to such articles, known as "defense services."
3. The Trading with the Enemy Act, Iran Sanctions Act, and other comprehensive embargoes and limited sanctions programs, primarily implemented through the Foreign Assets Control Regulations ("OFAC Regulations") and administered by the Department of Treasury Office of Financial Assets Control.

While separate export controls are also administered by the Department of Energy, Nuclear Regulatory Commission, Drug Enforcement Administration, Department of Agriculture, Food and Drug Administration, and other U.S. agencies, the EAR, ITAR, and OFAC Regulations are the most regularly encountered sources of control. They apply to a wide range of activities beyond what one may typically consider an export.

It may be the case that more than one of these controls applies to a company. For example, it is not uncommon for a company's product line to include commercial and military items subject to both the EAR and ITAR. Also, various transactions requiring a license under the EAR and ITAR may further require a license under the OFAC Regulations. There are even situations where a license is required under the OFAC Regulations even when none is required under the EAR or ITAR. Accordingly, companies must be mindful of each source of export control when engaging in exports of items and exchanges of information on technology.

Tax Exempt Interest Income for Foreign Partners of Lenders

Bill Kastin

Summary: The IRS issued final regulations under Code §§871 and 881 clarifying the "portfolio interest exemption" with respect to interest income earned by partnerships with foreign partners. The final regulations provide that the "10% limitation" is applied at the partner (as opposed to the partnership) level. Therefore, if a foreign partner of a lender owns, on a look-through basis, less than 10% of a borrower, then distributions of portfolio interest income received from the borrower qualify for the portfolio interest exemption and will not be subject to the 30% withholding tax that may otherwise apply.

Background Regarding Interest Income: In general, foreign payees are subject to a 30% withholding tax on "fixed or determinable" U.S. source interest income that is not effectively connected with a U.S. trade or business. An exception to this general rule is that, irrespective of the application of any tax treaty, interest that qualifies as "portfolio interest" is exempt from this 30% withholding tax.

However, the portfolio interest exemption is not available if the foreign payee owns (i) 10% or more of the total combined voting power of all classes of stock of a corporate-borrower or (ii) 10% or more of the capital or profits interest of a partnership-borrower.

The Need for Clarification: Prior to the issuance of the final regulations, it was unclear how the portfolio interest exemption applied to payments made with respect to a debt obligation held by a partnership with foreign partners. Specifically, did the 10% limitation apply to the partnership or the partners?

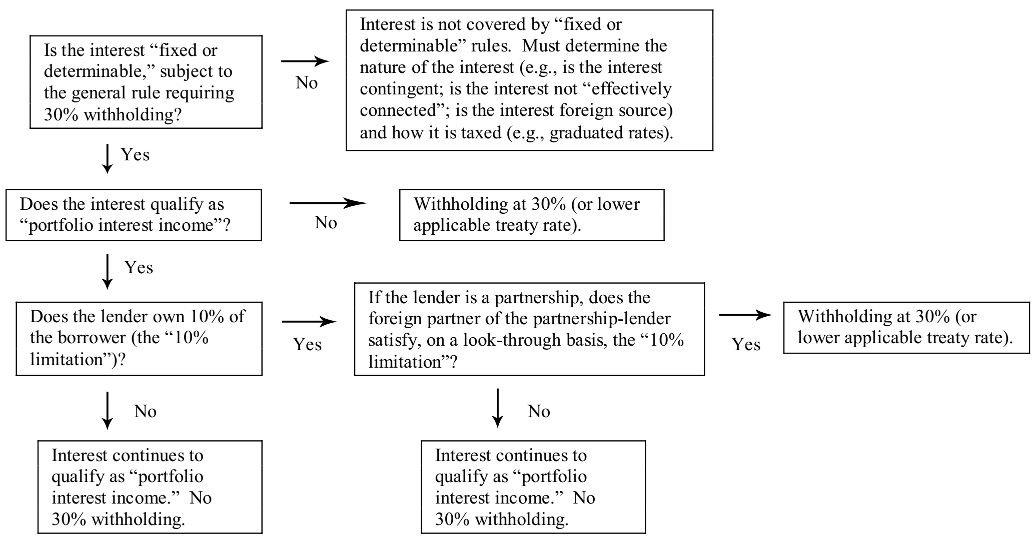
Example: Four unrelated foreign partners each own 25% of Partnership. Partnership both (i) owns 20% of Borrower, and (ii) lends money to Borrower. With respect to the interest paid on the loan:

- If the 10% limitation is applied at the partnership level, then none of the interest would qualify for the portfolio interest exemption because Partnership owns 10% or more of Borrower (in this case 20%). As a result, all of such interest would be subject to the 30% withholding tax (or lower applicable treaty rate).
- If the 10% limitation is applied at the partner level, then all of the interest would qualify for the portfolio interest exemption because none of the foreign partners indirectly owns a 10% or greater interest in Borrower (in this case, on a look-through basis, each foreign partner indirectly owns 5% of Borrower). As a result, none of such interest would be subject to the 30% withholding tax.

Final Regulations: The final regulations clarify that the 10% limitation is applied at the partner (as opposed to the partnership) level. Accordingly, if the partnership lender receives portfolio interest, the 10% limitation is applied to each of the partnership's foreign partners based upon each foreign partner's indirect interest in the borrower on a "look-through" basis. The flow chart below illustrates this analysis.

To ensure compliance with Treasury Regulations governing written tax advice, please be advised that any tax advice included in this communication is not intended, and cannot be used, for the purpose of (i) avoiding any federal tax penalty or (ii) promoting, marketing, or recommending any transaction or matter to another person.

PORTFOLIO INTEREST EXEMPTION ANALYSIS



International Traffic In Arms Regulations

Matthew Goldstein

Together with the Arizona U.S. Export Assistance Center and JPMorgan Chase Vastera, Snell & Wilmer L.L.P. presented a one-day seminar on "Complying with the International Traffic in Arms Regulations (ITAR) in the Invigorated Post-9/11 Enforcement Environment". The seminar was held on June 12, 2007 at the Orange Tree Resort in Scottsdale, Arizona and covered such topics as: an overview of United States export controls, obligations of the Board of Directors under the United States Sentencing Commission Guidelines, and industry best practices. The event was a great success with over 100 area business representatives in attendance and a full day of questions, answers, and networking between small and large companies.

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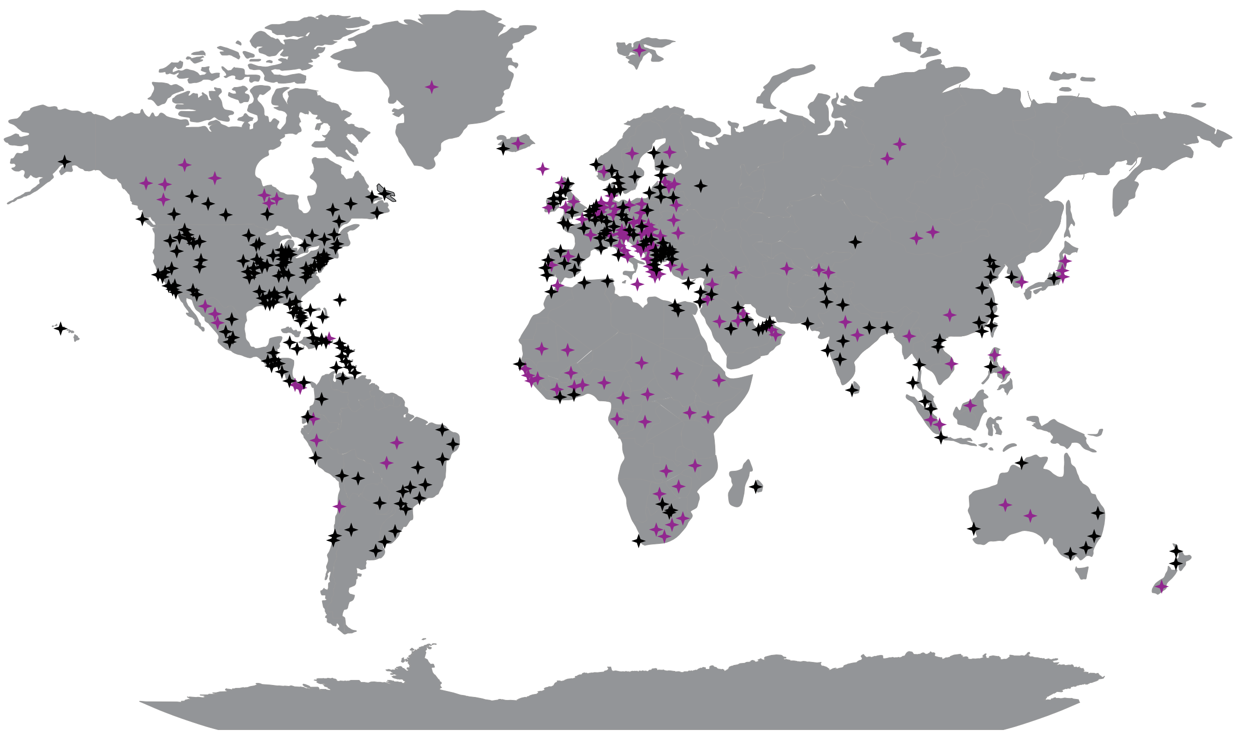

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