



## Recent FCPA Cases Involving Turkey

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The U.S. Foreign Corrupt Practices Act (“*FCPA*”) criminalizes the bribery of foreign officials anywhere in the world for the purposes of preventing corruptly influencing of an official governmental decision in order to obtain a business benefit. The anti-bribery provisions in the FCPA apply to entities covered by it, which include (i) “issuers” - companies that have a class of securities or are required to file periodic reports with the SEC, (ii) “domestic concerns” which are U.S. citizens, nationals, and residents, as well as any business entity that has its principal place of business in the United States or is organized under U.S. laws, and (iii) any other person who acts in furtherance of a corrupt payment while within U.S. territory which can reach foreign entities that operate outside of the United States if they make use of the mails or any means or instrumentality of interstate commerce or engage in any act in furtherance of” a corrupt offer or payment while in the territory of the United States.

For this reason, the U.S. Department of Justice (“*DOJ*”) and the U.S. Securities and Exchange Commission (“*SEC*”) have a wide range of jurisdiction in terms of investigating and sanctioning companies, which could result in criminal liability for many U.S. based companies with subsidiaries outside of the U.S. So far in 2020, together the DOJ and the SEC took a total of 27 enforcement actions, some of which were related to U.S. based companies with subsidiaries or clients in Turkey, as briefly explained below.<sup>1</sup>

For instance, in April 2020, the SEC charged Asante K. Berko, a former executive of a foreign-based subsidiary of a U.S. bank holding company, Goldman Sachs, worked with a Ghana-based intermediary to pay bribes to various Ghanaian government officials in order to gain their approval of an electrical power plant project for a Turkish client. It is alleged that from approximately 2015 to 2016, through the Ghana-based intermediary company, Asante K. Berko paid between \$3 million to \$4.5 million to the government officials for the Turkish Energy Company to win the contract. According to the SEC, Goldman Sachs was not charged on the grounds that it took appropriate steps to prevent the company from participating in the transaction, however Berko was charged in a civil complaint with violating and aiding and abetting violations of the FCPA anti-bribery provisions, for using a United States-based email account to advance the bribery scheme.

In July 2020, Boston-based pharmaceutical company Alexion Pharmaceuticals Inc. (“*Alexion*”) has agreed to cease and desist and to pay \$14,210,194 in disgorgement,

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<sup>1</sup> See <https://www.justice.gov/criminal-fraud/case/related-enforcement-actions/2020> and <https://www.justice.gov/criminal-fraud/case/related-enforcement-actions/2020> (last accessed on November 30, 2020).



\$3,766,337 in prejudgment interest, and a \$3.5 million penalty to resolve charges that it violated the books and records and internal accounting controls provisions of the FCPA. Among other findings, the SEC order finds that Alexion subsidiaries in Turkey and Russia made payments to foreign government officials to secure favorable treatment for Alexion's primary drug, "Soliris". According to the case file, between 2010 and 2015, Alexion Turkey paid Turkish government officials to improperly influence them to approve patient prescriptions and provide other favorable regulatory treatment for "Soliris".

There are several preventative measures companies can adopt in order to avoid misconducts that might result in civil or criminal liability originating from the FCPA, one of which is surely the evaluation of inherent risk profiles, which depend mostly on certain key elements that might render them vulnerable to corrupt acts. The most important key elements could be argued to be the geographic location of subsidiaries and the sector in which the company operates. By taking into account these parameters, the first step to be taken by companies could be strengthening of their compliance controls throughout their company structure, in a way to ensure strong, regular control over their subsidiaries.

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