

# The Newspaper of Corporate Finance Financial Week

crain

August 11, 2008

## COMPLIANCE

## Olympics seen as biz bribe tar pit

*Experts: U.S. companies paying big fees to tap big profits from Beijing games run big legal risk*

By Nicholas Rummell

THE SLOGAN FOR THE SUMMER OLYMPICS IN Beijing may be One World, One Dream, but the games could turn out to be a nightmare for corporate participants. They hold the potential for a huge amount of litigation arising from charges of bribery and corruption of government officials by U.S. companies.

The Olympics are highly lucrative wherever they are hosted, and this year's are no exception, with tickets to individual events and the opening ceremonies fetching thousands of dollars online. But the combination of profit potential and governmental involvement has led to bribery charges in the past. And it's no secret that China has government officials everywhere and a culture particularly inclined to gift-giving.

Similar cases may be brought soon that involve other recent high-profile sporting events. According to a source with ties to the Justice Department, the agency is pursuing two cases involving alleged bribery using tickets to the most recent World Cup and America's Cup events. The source did not want to be named because the cases have not yet been made public.

Under the Foreign Corrupt Practices Act, payments made to government officials to obtain or retain business constitute bribes, and are subject to criminal enforcement by the Justice Department and accounting-related civil enforcement by the Securities and Exchange Commission. Even if gifts or entertainment are not designed to corrupt an official, prosecutors can easily make the case they were illegal, sources say.

"The Olympics present just such an opportunity for FCPA violations," said Ellen Zimiles, co-founder of Daylight Forensic & Advisory, a consulting group setting up risk profiles for companies doing business in the country. "The problem is that in China, almost everybody counts as a government official."

Most at risk for bribery violations are the service and infrastructure-building industries, which have helped set up Beijing as the Olympic host city. "Anytime you have a massive infrastructure project, and political overtones, and a rush to finish with the world watching, there is an awful lot of pressure to get things done," said Pat Brady, a corruption expert at Deloitte Financial Advisory Services and a former DOJ prosecutor.

That pressure can lead to quick-and-dirty payments to Chinese officials to complete projects, he said, or to employees excessively entertaining government officials in an effort to obtain contracts from them. "The risk of sending employees over there and [them] doing something they shouldn't has escalated," Mr. Brady said. "The mantra should be, 'If you're going to have fun, don't do it with company money.'"

Another danger zone is the overuse of third-party vendors and consultants, which are often valuable liaisons for doing business in China but which may have less stringent controls to prevent corruption. Consultants who command extremely high fees and who market themselves as power brokers to the Chinese government present

glaring red flags, Ms. Zimiles said.

The most obvious concern is excessive gift and entertainment budgets that do not involve pre-authorization and include open-ended cash accounts, said John Davis, a partner at Miller & Chevalier who has visited China and counsels companies doing business there. "It is a worldwide event...with lots of opportunity to wine and dine government officials."

Bribery allegations have surfaced at past Olympics. Before the 2002 winter games in Salt Lake City, allegations flew over whether city boosters paid bribes—including tickets to the Super Bowl and gifts of plastic surgery—to members of the International Olympic Committee to host the games there. No prosecutions were made against city officials, but sanctions and resignations followed the scandal.

Debates have raged ever since over whether Olympic officials counted as government officials for the purposes of FCPA enforcement. It's still unclear, according to Ms. Zimiles, but such officials can always be prosecuted under other anti-money-laundering and corruption laws. "There's more than one way to skin a cat," she said.

According to experts, China has been beefing up its anti-bribery efforts within the last five years and has prosecuted many of its own government officials for taking bribes—most notably, the food safety official who was executed last year.

Enforcement against corporate executives? Not so much, despite a few high-profile detentions last year. Some think this

**\$1.1 million**  
Amount Faro Technologies agreed to pay to settle bribery charges by the U.S. government.

is because China, which is arguably the world's fastest-growing major economy, with an estimated 9.7% growth in gross domestic product this year, has not wanted to chase away foreign investment.

That may soon change, however. "Right now they are trying to draw attention to the fact that it takes two hands to clap," said Richard Cassin, an attorney who works part time out of Singapore and who runs a blog on FCPA legal issues. He noted that China draws attention to foreign companies caught up in corruption sweeps but may eventually refer cases to outside entities,

such as the Justice Department.

On this side of the Pacific, enforcement cases related to business in China have been hot lately. Just this past June, computer device maker Faro Technologies agreed to pay \$1.1 million to settle FCPA allegations that it made bribes to Chinese government officials via improper "referral fees" through a shell company. The fees apparently led to contracts worth \$4.9 million.

China is considered a very high priority for the DOJ, Mr. Brady said, noting that it also ranks highly on the corruption index published periodically by Transparency

International. The settlement with Lucent Technologies last year for \$1 million—in the case in which the company spent millions on junkets for Chinese government officials—also shows the DOJ is willing to prosecute corruption cases regardless of where the bribery takes place.

Requests for comment e-mailed to the Beijing committee were not returned. The Justice Department declined to comment on specific countries or events tied to FCPA violations. **FW**