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Winter Olympics in Russia Set Stage for FCPA Scrutiny

By Nicholas J. Nastasi, Jr. and Patrick M. Hromisin

With the conclusion of the 2012 Summer Olympics in London, the world's eyes will soon turn to Sochi, the Black Sea resort city in Russia, which will host the 2014 Winter Olympics. In addition to serving as the backdrop for the usual feats of athletic prowess and national pride, the Sochi games may also be fertile ground for prosecutions under the United States' Foreign Corrupt Practices Act (FCPA). The U.S. government's actions in this setting will serve as a signal to any company doing business abroad that it must be proactive in ensuring compliance with the FCPA.

The FCPA is a federal statute that criminalizes the action of giving or offering anything of value to improperly influence foreign officials in order to further a business interest. Passed in 1976, while the United States was still processing the fallout from the Watergate scandal, it was the first statute on record in any nation to criminalize bribing foreign officials. FCPA prosecutions have increased in the past decade. In 2004, the Department of Justice charged two individuals with FCPA violations and collected roughly \$11 million in fines. In 2009 and 2010 combined, 50 individuals were charged with FCPA violations, and the government collected just under \$2 billion in fines. Assistant Attorney General Lanny Breuer of the Criminal Division also noted last November that in 2011 the Department went to trial on more FCPA cases than ever before, and also secured the longest prison sentence – 15 years – ever imposed under the FCPA.

In addition, the Department of Justice has signaled its intention to focus its attention on corruption in Russia. In March of 2011, Assistant Attorney General Breuer spoke at an anti-corruption summit in Moscow and touted the FCPA's effect on U.S. companies doing business in Russia. He stated, "the FCPA is a strong enforcement mechanism, and we are not shy about using it. Indeed, the threat of liability under the FCPA is itself a powerful tool, particularly for those from whom Russian officials seek bribes. . . . To the extent that an individual doing business in Russia understands that he or she may be prosecuted under the FCPA for bribing a Russian official, the Act provides a strong incentive for him or her to play by the rules, and a good reason for refusing not to."

Two factors, in particular, indicate that the Sochi Olympics will be on federal prosecutors' radar screens between now and 2014. First, the infrastructure required to make Sochi ready to host the Games is massive and costly. Although any Olympic host city must spend a great deal on venues, transportation, and the like, Sochi must undertake more construction than other recent hosts. Prior to its Olympic bid, the city was better-known as a summer resort; for example, until 2009, its proposed ski slopes were covered in forest. The estimated cost of construction has exploded to over \$35 billion, far beyond the \$11 billion that was initially budgeted. U.S.-based multinational companies have won, or are angling to win, contracts for these projects. For example, GE has already provided turbines that will provide electrical power at the Sochi Olympic sites, and a spokesperson for Dow Chemical has announced that Dow has won contracts for work at every single competition venue being constructed there.

The second factor that will lead to scrutiny of companies doing business associated with the Sochi Olympics is Russia's pervasive atmosphere of corruption. Russia has consistently ranked low on well-respected international surveys of corruption, such as the Transparency International Corruption Perceptions Index, on which it ranked 143rd out of 182 countries in 2011. There have also been allegations of corruption specifically related to the infrastructure projects being undertaken for the 2014 Games. Expatriate Russian businessman Valery Morozov has accused Vladimir Leshchevsky, a government official, of taking bribes to award Sochi construction projects, even detailing a bribe he says he paid to Leshchevsky. One article a Russian news wire published about the preparations for the games was entitled, "Corruption Making Sochi Olympics Most Expensive in History."

Russia itself recognizes its corruption problem, and in May of 2011, passed legislation similar to the FCPA, criminalizing the actions of offering and accepting bribes. This legislation applies to foreign entities doing business in Russia, so an individual who runs afoul of the FCPA due to bribery in Russia may also be in violation of Russian law. Earlier this year, Russia also joined the Organization for Economic Cooperation and Development (OECD) anti-bribery convention, which was a

condition for Russia to join the OECD itself. Even if the Russian legislation proves effective in decreasing corruption, though, Russian attitudes and practices will surely be slow to change.

Companies seeking to do business in Russia during the run-up to the Sochi Olympics would be well-served to review their FCPA compliance regimes, and strengthen them if necessary. A recent case involving financial services firm Morgan Stanley provides a powerful example of how useful a good compliance program can be. From 2004 to 2007, Morgan Stanley managing director Garth Peterson allegedly provided improper payments to a Chinese official in Shanghai. In April of this year, the Department of Justice and Securities and Exchange Commission charged him criminally and civilly for that conduct, but neither agency charged Morgan Stanley with any wrongdoing. The likely reason that Morgan Stanley avoided liability was that it had a robust anti-bribery compliance program, with numerous "reminders" about company policy and applicable laws on the issue. The company also conducted a thorough investigation when Peterson's conduct was brought to its attention, and fired Peterson in 2008.

Although a limited number of companies will be taking part in the preparations for the Olympics, any company doing business abroad must take steps to ensure its compliance with the FCPA. Creating and actively enforcing an anti-bribery compliance program along the lines of Morgan Stanley's can help companies avoid FCPA liability whether they are helping set the stage for the next Olympics or conducting business in any corner of the globe.

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