



# FCPA Powerhouse

## Kirkland & Ellis

Kirkland & Ellis LLP's Foreign Corrupt Practices Act practice, which spans six continents, is among the most formidable in the entire world — but since the firm cautiously avoids FCPA cases that involve high price tags, its work often flies under the radar.

The firm's government, regulatory and internal investigations group has resolved six active FCPA investigations by the U.S. Department of Justice and the U.S. Securities and Exchange Commission — more investigations than any other firm based on publicly available information, according to Kirkland, one of Law360's FCPA Powerhouse firms.

Its diverse client roster ranges from brokerage firm Aon Corp., which U.S. and U.K. authorities investigated for illicit payments to foreign officials, to global fuel specialties manufacturer Innospec Inc., which made the first-ever global settlement between the DOJ and the U.K. Serious Fraud Office.

What Kirkland's FCPA history doesn't include are headline-grabbing cases characterized by exorbitant penalties and legal bills — a point of pride for the firm.

"We've never been a subject of any FCPA billing controversy," said Chicago-based partner Mark Filip, who leads the firm's government enforcement defense and internal investigations group, and serves as one of 15 members of Kirkland's global executive management committee. "We try to be really cost-effective and not make news by being a firm that billed \$200 million on an FCPA matter."

Kirkland would have no problem doing so, as it employs more than 30 high-profile former federal attorneys who have contributed to its FCPA litigation efforts. Along with Filip, a former federal district judge and U.S. attorney general deputy attorney, they include Charles Clark, former assistant director of the SEC's Division of Enforcement; former deputy White House counsel Susan Davies; and Michael Garcia, former U.S. attorney for the Southern District of New York.

The roots of Kirkland's FCPA team — a loosely organized group featuring as few as 25 or as many as 60 attorneys at a time — trace back more than 20 years. Partner Larry Urgenson, who previously served as deputy assistant attorney general and chief of the Justice Department's Fraud Section during the early days of the FCPA, planted the seeds after joining the firm.

"Larry was unquestionably the leader in the FCPA space for many years," Filip said of Urgenson, who is currently working on an undisclosed FCPA matter in Asia. "He belongs on the Mount Rushmore of FCPA attorneys."

Kirkland's FCPA work grew incrementally after Urgenson joined the firm, and rather than establishing a subgroup for the practice, it carefully cultivated teams that were purpose-built for each particular matter.

The firm represented pharmaceutical company Biomet Inc., which allegedly paid public health care employees in South America and China to secure business with hospitals, as well as food processor Tyson Foods Inc. and engineering company ABB Ltd., which authorities investigated for FCPA violations.

Kirkland also represented Sensata Technologies Holdings NV in a now-closed internal investigation focused on a business relationship entered into by one of the company's subsidiaries involving business in China. As exemplified by that case, Kirkland FCPA practice's global presence has it well-positioned for the future, its attorneys say.

"As economies are becoming intertwined, we're seeing countries — like the U.S., the U.K., Germany and Poland, for example — coordinating on how to resolve an issue," said Sam Williamson, who leads Kirkland's Asia-based government enforcement and investigations practices, and is the only Mandarin-speaking former federal prosecutor living in China, according to the firm.

Satnam Tumani, who helped write anti-corruption rules and regulations for the U.K.'s Serious Fraud Office, seconded Williamson's notion.

"What [European officials are] doing with the OECD Convention is translating into countries such as the U.K., Switzerland and Spain developing their own strident anti-corruption frameworks," said Tumani, who leads Kirkland's government enforcement defense investigations effort in London.

Along with increased cooperation between governments, FCPA cases

are also growing in number thanks to electronic record keeping, Williamson said. Whereas authorities used to have trouble proving how a corrupt employee or official planned to spend money obtained from a bribe, online discussions now often reveal how they intend to use a payment.

**"We try to diligently work on behalf of our clients, letting our results, professionalism and cost-effectiveness speak for themselves."**

Williamson added that anti-corruption and anti-money laundering laws are also becoming more common as the federal government and financial services companies try to hold lenders, underwriters and consultants more accountable in the wake of the 2007-2008 financial crisis.

"Companies are holding third parties in other countries to higher standards," Williamson said.

"That's the thrust of the U.K. Bribery Act, to regulate what people do in your name," Tumani added. "I suspect the enforcement [of the U.K. law] will pick up its pace in the next 12 to 18 months, as [new Serious Fraud Office Director] David Green has signaled a more robust approach [to its application]."

As the FCPA's reach lengthens, Williamson said that it will be imperative for regulators to specify how the application of the law is changing and provide greater transparency in their decisions to bring or not to bring a FCPA case.

"It's not always clear why one case gets declined and another doesn't," he said.

To address what it predicts will be a growing number of FCPA cases worldwide, recently evidenced by investigations into allegations of bribery by Wal-Mart Stores Inc. executives in Mexico, Kirkland has bolstered its FCPA practices in the U.S., Europe and Asia over the past 18 months.

Beyond Williamson and Tumani, new hires include former deputy White House counsel Neil Eggleston; Bill Stuckwisch, assistant chief of the Fraud Section's FCPA unit; and Michael Keats, who previously served as a managing director in Goldman Sachs Group Inc.'s litigation and regulatory proceedings group.

In the coming year, the firm plans to add four to five attorneys who previously worked on FCPA and anti-corruption matters for the federal government. Filip said the practice could grow into other areas as well, if the FCPA continues to expand into anti-laundering and Federal Communications Commission issues.

"We continue to aggressively expand our footprint in response to client demands, particularly in Asia and abroad," Filip said. "We try to diligently work on behalf of our clients, letting our results, professionalism and cost-effectiveness speak for themselves."

REPRINTED WITH PERMISSION FROM THE JUNE 4, 2013 EDITION OF *LAW360*  
© 2013 PORTFOLIO MEDIA INC. ALL RIGHTS RESERVED. FURTHER DUPLICATION WITHOUT PERMISSION IS PROHIBITED.