

CLIENT ALERT

Take Two -- Charging The Bribe Recipient

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Last week the United States Department of Justice unsealed an indictment against Juthamas Siriwan, a senior official of the Tourism Authority of Thailand ("TAT"). The indictment alleges that Siriwan conspired to launder money and laundered money in violation of 18 U.S.C. §§ 1956(a)(2)(A) and (h). The charges stem from bribes paid to her in violation of the Foreign Corrupt Practices Act ("FCPA") and the anticorruption laws of Thailand. This is the DOJ's first attempt to charge a foreign official bribe recipient since some aborted efforts in the early 1990s.

Film producers Gerald and Linda Green were convicted after trial last year of paying Siriwan \$1.8 million in bribes to influence the award of \$14 million of TAT funds for media and entertainment projects for the Thai government, including the Bangkok International Film Festival. The Greens are awaiting sentencing.

The government's decision to charge the alleged bribe recipient with money laundering instead of FCPA violations is not surprising; foreign officials are not prohibited from *receiving* bribes under the FCPA. In *United States v. Castle*, 925 F.2d 831 (5th Cir. 1990), the Fifth Circuit held that a Canadian official could not be prosecuted for conspiracy to violate the FCPA. The Fifth Circuit held that Congress intended to exclude foreign officials from prosecution for FCPA violations because Congress included "virtually every possible person connected to the payments except foreign officials" in the statute. *Id.* at 835. The court concluded that it was "affirmative legislative policy to leave unpunished a well-defined group of persons who were necessary parties to the acts constituting a violation of the substantive law." *Id.* at 836. *Castle* noted that many foreign countries already prohibit their officials from accepting bribes.

In *United States v. Steindler* (S.D. Ohio 1:94-cr-0029), the United States also charged Israeli Air Force General Rami Dotan with numerous counts related to a scheme whereby he and a U.S. company executive allegedly siphoned off millions of dollars of U.S. Foreign Military Financing to Israel. DOJ, however, avoided substantive FCPA charges against Dotan, heeding the Fifth Circuit's holding in *Castle*. Dotan was, however, convicted by a military court in Israel and jailed there. He was never extradited to the United States and remains a fugitive.

Here, Thailand has not yet taken any action against Siriwan, but according to press reports she is associated with the ousted former Prime Minister. In charging Siriwan with money laundering, the indictment avers that a violation of the Thailand penal code is one of the predicate specified unlawful activities giving rise to the money laundering charges.

Whether the U.S. government will prevail on its money laundering theory in this case will not be known for some time. What is clear is that the DOJ decision to charge a foreign official in this creative manner is yet another example of DOJ's aggressive effort to combat foreign corruption. This and DOJ's recent sting operation against twenty-two U.S. and U.K. citizens demonstrates that the government is delivering on its promise to aggressively pursue individuals in FCPA prosecutions.

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