

# KIRKLAND ALERT

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## Telia Pays Nearly \$1 Billion in Penalties, Resulting in the Largest-Ever FCPA Resolution

### *Overview*

On September 21, 2017, the U.S. Department of Justice (“DOJ”), the U.S. Securities and Exchange Commission (“SEC”), and other foreign authorities reached a combined \$965 million settlement with Sweden-based telecommunications firm, Telia Company AB, to resolve a multi-year probe into bribes paid in Uzbekistan. The penalty is the highest ever under the U.S. Foreign Corrupt Practices Act (“FCPA”), exceeding the \$800 million fine Siemens AG paid in 2008.

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Beyond the stark lesson of the costs associated with bribing foreign officials, there are several key takeaways from the Telia case, including: (1) the Trump administration’s continuing commitment to enforcing the FCPA and extracting significant settlements; (2) the ongoing and increasing cooperation between U.S. and international enforcement authorities; (3) the significant advantages to be reaped from cooperation and remediation, even in the absence of a voluntary disclosure of the misconduct; (4) the demands on corporate leaders to supervise employees and actively detect misconduct; and (5) the need for caution and controls when approaching business in developing markets.

### *What Happened?*

According to court documents, in 2007, Telia acquired Uzbek telecommunications operator Coscom LLC in an attempt to enter the telecommunications market in Uzbekistan. Through a series of complicated transactions effectuated via a shell company, Telia and Coscom paid \$331 million in bribes between 2007 and 2010 to Gulnara Karimova, the daughter of the late Uzbek president. Ms. Karimova had substantial control over Uzbek telecommunications projects. The bribes resulted in \$457 million in profits for Telia. Moreover, certain company employees attempted to structure an additional bribe payment in late 2012, even after Swedish authorities informed Telia that they were investigating the company’s misconduct.

Notably, the resolution with Telia is the second major U.S. DOJ and SEC FCPA resolution relating to the Uzbek telecommunications industry. In early 2016, Amsterdam-based VimpelCom Limited and its Uzbek subsidiary paid \$795 million to the U.S. and Dutch authorities to resolve charges of bribing the same Uzbek government official.

### *The Resolution*

Telia admitted to violating the FCPA's anti-bribery and internal controls provisions, and agreed to pay separate criminal penalties of approximately \$274 million to each of the DOJ and the Public Prosecution Service of the Netherlands. In its settlement with the SEC, Telia agreed to pay approximately \$457 million in disgorgement of profits, with the SEC agreeing to credit \$40 million in forfeiture funds and any additional settlements with the Swedish Prosecution Authority.

The total combined payment to U.S., Dutch, and Swedish authorities is just over \$965 million.

### *Key Takeaways*

**Continued Enforcement of the FCPA.** While there was some discussion in the legal community that the Trump administration would be more business friendly and not prioritize prosecution of foreign corruption, this case reflects a continuing commitment to vigorous FCPA enforcement. Even though authorities had been investigating Telia since at least 2014, the willingness of the DOJ and SEC to impose such a large penalty is a strong reminder that both agencies are not wavering in their commitment to forcefully apply the FCPA.

**Cooperation Among International Authorities.** The Telia case underscores the increasing cooperation among foreign enforcement authorities, which has enabled greater information sharing and allowed for more efficient investigations. Swedish authorities began investigating Telia's conduct in 2012, eventually collaborating with their U.S. and Dutch counterparts. The fact that enforcement authorities in all three countries will share in the penalties demonstrates the incentives on enforcement agencies for international cooperation. In addition, the DOJ also credited its enforcement colleagues in the following countries for their assistance and cooperation in this investigation: Austria, Belgium, Cyprus, France, Ireland, Latvia, Luxembourg, Norway, Switzerland, the Isle of Man and the United Kingdom.

**The Importance of Cooperation and Remediation, Even in the Absence of Voluntary Disclosure.** Despite the size of the penalty, the consequences for Telia could have been worse. While Telia did not voluntarily disclose the conduct to government authorities (often the biggest reason for a discounted penalty), it nonetheless received substantial concessions. Specifically, Telia was credited for its: (1) extensive cooperation, which included providing authorities with all relevant facts and documents, and identifying relevant individuals (including former employees) and making them available for interviews; and (2) remedial efforts, which included terminating all culpable employees and revamping its compliance program and governance structure.

Telia's cooperation with government authorities resulted in three meaningful benefits. First, rather than a criminal conviction, the company received a three-year deferred prosecution agreement from the DOJ. Second, Telia's total financial penalty

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(as substantial as it was) represented a 25% reduction off the bottom end of the applicable fine range under the U.S. Sentencing Guidelines. According to the DOJ's calculations, the DOJ penalty alone could have been approximately \$1.5 billion. Third, the company avoided the imposition of an independent compliance monitor, which would have entailed a significant investment of time, resources and money.

**Broad View of Individual Culpability.** Among the remedial measures that the DOJ credited was Telia's terminations of involved employees. These terminations extended beyond those who actually engaged in the misconduct to include "all individuals who had a supervisory role over those engaged in the misconduct." This reinforces the need for corporate leaders to remain engaged and to establish processes through which they can actively monitor their subordinates' conduct.

**The Risks of Doing Business in Emerging Markets.** The Telia disposition also highlights the challenges of doing business in emerging markets, and Uzbekistan in particular. Of the 176 countries Transparency International ranks through its annual Corruption Perceptions Index, Uzbekistan is at 156, the lowest ranking in Europe and Central Asia. Indeed, as noted above, VimpelCom's substantial recent FCPA settlement stemmed from conduct in Uzbekistan. And Gulnara Karimova, the daughter of Uzbekistan's late president, is at the center of not only the Telia and VimpelCom matters, but numerous other corruption investigations and enforcement actions.

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