

A dark teal background featuring a world map with glowing orange and white network lines connecting various points across the continents.

White Collar Defense

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Managing the Risks of Cross-Border Investigations for Israeli Businesses

Enforcement Efforts Are Increasingly International

White collar investigations and prosecutions, notably those initiated by American authorities, have become increasingly international, reaching far beyond the borders of the United States. The U.S. Department of Justice (“DOJ”) has promised that these international investigations and prosecutions will increase as it intensifies its efforts to pursue violations globally. The DOJ is more serious than ever about pursuing corruption, particularly violations of the Foreign Corrupt Practices Act (“FCPA”).

However, international enforcement efforts are not limited to FCPA violations. The DOJ’s Antitrust Division has also committed itself to uncovering and pursuing cartel activities worldwide with growing international cooperation. Additionally, violations of U.S. sanctions have also been aggressively pursued globally in the past few years by both the DOJ and the U.S. Department of Treasury’s Office of Foreign Assets Control (“OFAC”). Both financial entities and non-financial entities have found themselves under investigation for violations of U.S. sanctions.

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Violations of the FCPA can and do result in penalties of millions of dollars in fines and terms of imprisonment for individuals up to a maximum of 20 years, depending on the violation. The FCPA is not the exception, as the DOJ is serious about imposing heavy fines on corporations, and both fines and prison sentences on individuals, for all violations of U.S. law. Such sentences require individuals, including foreign nationals, to serve time in U.S. prisons without parole.

Three significant factors have contributed to the increasingly international nature of white collar investigations and prosecutions. First, the DOJ has made the global fight against corruption a priority, reaching far beyond the United States to investigate and prosecute foreign companies and nationals. Second, international cooperation has increased dramatically; international authorities have and will continue to cooperate to enhance their own investigative and prosecutorial powers. This uptick in international cooperation means that companies and individuals are more vulnerable to being swept up in a cross-border investigation. Third, other countries, such as France and the United Kingdom, have passed their own anti-fraud and anti-bribery statutes and are actively enforcing them.

Jurisdiction Is Rarely an Obstacle to Enforcement

Israeli companies and individuals could find themselves surprisingly subject to the jurisdiction of U.S. or other authorities regardless of their location.

First, the DOJ understands its jurisdiction very broadly and is not deterred by national borders. It could be enough for an Israeli company or individual to transact in U.S. dollars or to travel to the United States to find itself on the hook for a violation of the FCPA. Similarly, violations of U.S. sanctions can be alleged for U.S. dollars clearing through foreign branches of U.S. banks or on the basis that a U.S. person within or outside of the company was involved in a transaction that violated U.S. sanctions. In the aftermath of its actions against Swiss banks, the DOJ has warned of impending actions against other international banks and has struck deals with banks in other countries, including Israel. The New York State Department of Financial Services is also taking an increasingly active role in matters involving foreign banks, as it has, for example, obtained sanctions on Israel-based Bank Leumi.

Second, Israeli companies listed on the NASDAQ, of which there are currently 95, could also find themselves subject to U.S. jurisdiction simply by being listed. Israel’s growing presence internationally makes it vulnerable to investigations by U.S. and other national authorities. As Israeli companies open subsidiaries and offices internationally, they open themselves up to increasingly aggressive national enforcement authorities. Although U.S. authorities currently dominate the international investigation scene, other nations are quickly catching up and striving to join the fight against corruption and bribery. France is a recent example: The new Sapin II anti-corruption law and agency introduces a new era of anti-corruption enforcement. The United Kingdom has also been an increasingly aggressive enforcer in recent years, both internally and abroad.

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Even for individuals seemingly out of reach of investigating jurisdictions, cross-border investigations can have serious consequences. Extradition to the United States remains a risk and one to which Israel is no stranger. For example, the DOJ’s Antitrust Division extradited an Israeli national, Yuval Marshak, who had traveled to Bulgaria in October 2016 to face charges of fraud and money laundering.

What Can Israeli Companies Do to Minimize the Risks?

Given the increasing likelihood of the DOJ or another authority investigating an Israeli company, it is important to anticipate and prepare. The following are some of the issues to think about, and actions to take, before the next cross-border investigation is launched.

Develop real compliance: A company should review and revise its compliance programs regularly to make sure that it is up to date with legal and industry developments. It is not enough to have a program unless it has real teeth, real consequences and serious, active global oversight. What truly matters is that all employees across the world understand, respect and have effective corporate incentives to actually follow compliance policies.

Assess vulnerabilities and consider self-reporting: Before an investigation begins, understand and try to address potentially problematic areas within the company. Self-

reporting is becoming a more common option, particularly with respect to DOJ investigations, for companies who wish to disclose possibly illegal conduct in exchange for lesser penalties or total amnesty. In fact, the DOJ recently put into place an FCPA enforcement program that encourages self-reporting by offering the possibility of substantial benefits.

Prepare a crisis management plan: A company should create or revise its crisis management plan to make sure it is up to date and takes into account the aspects of a DOJ or other cross-border investigation. Time is not on the corporation's side and things happen quickly, so it is crucial to be prepared.

Be familiar with applicable laws: Understanding the laws in jurisdictions where a company has activities, business, subsidiaries or employees, and thus vulnerabilities, is important. Local law will matter when a corporation has to react quickly in the face of an investigation.

Understand which authorities may have jurisdiction to act: Be aware of which authorities may have jurisdiction to pursue the corporation, its employees, executives and entities. There could be multiple authorities from multiple jurisdictions. Know their amnesty, leniency or cooperation policies.

Understand the possible ramifications of employees traveling: Employees traveling to the United States, along with any data, phones, laptops and/or documents on their person, may be subject to search and seizure immediately upon arrival.

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In addition to the steps discussed above, it is important to remember the big picture. Cross-border investigations can be disruptive and lengthy so it is essential to understand the scope and nature of the investigation to be able to manage it as efficiently as possible. Dialogue with the authorities can be important. It is usually in the corporation's best interest to get to the bottom of the conduct quickly so that it can move forward towards a resolution and get ahead, should there be a race into the relevant authorities.

Israeli companies and individuals have not been strangers to cross-border investigations. Teva Pharmaceuticals Industries Ltd. ("Teva") resolved an FCPA case with the DOJ and the SEC by pleading guilty and paying \$519 million in penalties, while Bank Hapoalim announced in January 2018 that it was setting aside additional reserves to potentially settle a U.S. investigation into possible tax evasion by the Israeli's banks U.S. clients. Israeli companies and individuals can expect to see more in the future, given the increasingly broad and aggressive nature of anti-corruption enforcement globally.



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Cohen & Gresser is an international law firm with offices in New York, Paris, Seoul, and Washington, DC that represents clients in complex litigation, investigations, and corporate transactions throughout the world. Founded in 2002, the firm has been recognized in a range of leading legal rankings guides, including *Chambers*, *Legal 500*, and *Benchmark Litigation*. Our practices include: Corporate, Employment Law, Intellectual Property & Technology, Litigation & Arbitration, Privacy & Data Security, Real Estate, Tax, and White Collar Defense. We are committed to providing outstanding client service and offer practical, strategic, and cost-effective counsel. We have a strong connection with the Israeli market and have worked with Israeli companies in the high-tech, security, agriculture, print, consumer products, manufacturing, information technology, fashion and design, and defense sectors.

C&G's *Chambers and Legal 500*-ranked White Collar Defense group represents corporations and individuals in connection with cross-border investigations, as well as regulatory and compliance issues spanning jurisdictions. Our attorneys have extensive experience representing clients around the globe with federal regulatory investigations, proceedings before self-regulatory organizations, corporate internal investigations, and white collar criminal cases. Staffed by highly experienced former DOJ prosecutors and defense counsel, this group handles our clients' most sensitive, complex, and time-sensitive regulatory, investigative, and criminal defense matters worldwide.

Mark Cohen co-founded C&G and leads the firm's Litigation & Arbitration and White Collar Defense groups. He represents companies, financial institutions, and individual clients in white collar criminal cases, federal and state regulatory proceedings, proceedings before self-regulatory organizations, and corporate internal investigations. Mark is a fellow of the American College of Trial Lawyers and serves as a visiting lecturer of U.S. white collar criminal law at the Sorbonne University in Paris. Prior to founding the firm, Mark was an Assistant U.S. Attorney for the Eastern District of New York.

Lara Kroop Delamarre's practice focuses on white collar investigations, antitrust and competition law, trade regulation, and international arbitration. As the only former U.S. Department of Justice prosecutor in Paris, Lara is uniquely suited to advise international companies on how their activities may interact with the focus of U.S. regulators. Lara has led internal investigations in both private practice and at the U.S. Department of Justice. Previously, she served as a trial attorney in the Antitrust Division of the U.S. Department of Justice and as a Special Assistant U.S. Attorney in the Major Crimes Unit of the U.S. Attorney's Office for the Northern District of California.

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