

## Settlement Between ITT and Government Further Illustrates New Reach of Foreign Corrupt Practices Act

In the latest example of the government's apparent commitment to stepping up enforcement of the Foreign Corrupt Practices Act (FCPA), ITT Corporation (ITT) entered into a settlement with the Securities and Exchange Commission (SEC) in which the company agreed to pay more than \$1.5 million. The February 11 settlement resolved the civil complaint against New-York based ITT, in which the SEC had alleged violations of the FCPA's books and records and internal controls provisions, Section 13(b)(2)(A) and (B) of the Securities Exchange Act of 1934. In the new climate of stepped-up enforcement of the FCPA, companies would be well-served by a thorough review of their compliance programs and other areas in which they risk exposure.

Pursuant to the settlement, ITT agreed to disgorge \$1,041,112, together with prejudgment interest of \$387,538.11, and also agreed to pay a \$250,000 civil penalty. According to the SEC, ITT self-reported the violations, cooperated with the SEC's investigation, and instituted remedial measures.

The SEC complaint stemmed from allegations that ITT's wholly-owned Chinese subsidiary, Nanjing Goulds Pumps Ltd. (NGP), made payments to Chinese government officials. According to the complaint, from 2001 through 2005, NGP paid approximately \$200,000 in bribes to employees of Chinese state-owned enterprises. Through these bribes, the complaint alleged, ITT generated more than \$4 million in sales and made profits of more than \$1 million.

According to the SEC complaint, NGP bribed employees of Chinese state-owned enterprises to sell water pumps for large infrastructure projects. The payments were allegedly disguised as increased commissions in NGP's books and records. The complaint alleged that the improper NGP entries were consolidated and included in ITT's financial statements contained in its filings with the SEC for the company's fiscal years 2001 through 2005.

The SEC's complaint said ITT did not make or keep books, records, and accounts which, in reasonable detail, accurately and fairly reflected the illicit payments by NGP employees and the related disposition of its assets. According to the complaint, ITT also failed to devise and maintain a system of internal accounting controls sufficient to provide reasonable assurances that: (i) transactions were executed in accordance with management's general or specific authorization; (ii) transactions were recorded as necessary to maintain accountability for its assets; and (iii) access to its assets was permitted only in accordance with management's general or specific authorization.

ITT discovered the illegal payments in December 2005. The company had a corporate compliance ombudsman program in place designed to receive and respond to anonymous complaints of alleged wrongdoing throughout the company. The ombudsman received an anonymous complaint from NGP employees alleging illegal payments to Chinese government officials by NGP employees.

If you would like to learn more about the recent settlement or discuss FCPA compliance policies, please contact your usual Ropes & Gray attorney.

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