

Foley helps clients comply with foreign business practices laws

By Eric Decker, of SBT



David Simon is the only member of Foley & Lardner's Foreign Corrupt Practices Act team who works in the Milwaukee office.

Over the past decade, the world has become increasingly flat. Technology has made it easier to communicate across the globe, and business has increasingly become a global affair.

While importing and exporting has grown dramatically, there are increased risks when dealing with foreign companies and governments. Laws are different around the globe, as are enforcement standards.

Milwaukee-based law firm Foley & Lardner LLP has developed a team of attorneys over the past 10 years that specialize in the federal Foreign Corrupt Practices Act (FCPA), which prohibits American companies from offering anything of value to foreign government officials which could

help the company win a relationship in the foreign country. The law becomes increasingly slippery when dealing with communist or socialist countries that own stakes in companies that might be negotiating with American firms.

“When you are dealing with state-owned enterprises, more of your activities are at risk,” said David Simon, a partner at Foley & Lardner who has worked on the firm’s FCPA team since the late 1990s.

“Under the act, you might be dealing with a company in China as a commercial relationship, but if they are state-owned company and you take them on a trip, golf outing or fly your customers here, that’s a problem under the act,” Simon said.

Small to middle-market companies entering foreign markets for the first time could run into problems under FCPA, especially if they hire foreign third party firms such as distributors, sales agents or brokers, Simon said.

The FCPA team operates within Foley & Lardner’s government enforcement and white collar crime unit, Simon said. It has four partners and six associates that handle FCPA cases. Most of the FCPA-related cases that the group takes on are generated from its Washington, D.C. office, where the bulk of the attorneys within the team are based. Simon is the only partner in the group who is based in Milwaukee.

“I am here entirely because I live here,” he said. “I do some work for a few Wisconsin companies, but most of the work is for companies outside of the state.”

Most of the Wisconsin-based companies that Simon has worked with are small to medium sized manufacturers that are either exporting or working to enter new markets for the first time. Most of those companies do not have employees versed in the regulations of the FCPA and need outside expertise.

However, the FCPA team at Foley & Lardner usually works with much larger companies in sectors such as energy exploration and production, technology and OEM manufacturing.

“These are typically publicly traded companies,” Simon said. “This is a securities law and most of the enforcement actions have been against publicly traded companies. I think as they expand (enforcement) you could see some (Department of Justice) actions against smaller companies if the behavior was egregious enough.”