EXECUTIVE SUMMARY

Both the United States and world community have attempted to eradicate the corruption of foreign governmental officials through the development of comprehensive anti-bribery statutes. These laws are complex and significantly increase the legal/financial liabilities of corporations. This paper creates the JAIL paradigm for purposes of exploring these liabilities and crafting corporate risk management strategies for an era of aggressive multinational anti-bribery litigation.

Keywords: FCPA, Bribery, Corporate corruption, DOJ, SEC, Anti-bribery Litigation

INTRODUCTION

Victor Kozeny, an expatriate Czechoslovakian businessman, saw an opportunity for earning massive profits in the Azerbaijani oil industry. This industry was controlled by the State Oil Company of the Azerbaijan Republic (SOCAR). During the 1990s, many state-controlled enterprises in Azerbaijan were in the process of being privatized (United States of America – against – Viktor Kozeny and Frederic Bourke, Jr., 2009). The privatization methodology used by the government issued vouchers to Azerbaijani citizens. Citizens could then use these vouchers to bid for shares in companies that were divesting themselves of government ownership. These vouchers were traded publicly by their owners and could also be sold to foreign investors/companies. However, to utilize these vouchers to buy shares of newly privatized firms, foreign investors would first have to purchase a government-issued “option” for each of the vouchers they acquired from citizens of the country (Department of Justice, 2009c; United States of America v. Victor Kozeny, Frederic Bourke, Jr. and David Pinkerton, 2005).

Pending a privatization order from the government, vouchers for the sale of SOCAR stock were made available to the Azerbaijani public. Kozeny began to acquire these vouchers/government “options” which would permit him to obtain a controlling interest in a “privatized” oil industry and its oil reserves. To secure capital for acquisition of these vouchers, Kozeny approached a variety of individual and institutional investors. Two of these investors, Frederic Bourke and David Pinkerton, contributed $8 million and $15 million respectively. The Bourke investment was compiled from personal funds and monetary contributions from friends. Pinkerton, an AIG employee, invested company funds in the venture (Marceau, 2007). These funds were transferred to Azerbaijan and used by Kozeny’s company (Oily Rock, Ltd.) in order to acquire the vouchers/government options (Department of Justice, 2009c; Marceau, 2007).

Kozeny’s plan depended on the President of Azerbaijan issuing a directive that would authorize privatization of SOCAR. In order to facilitate and influence this privatization decision/process, Kozeny began to distribute Oily Rock vouchers/options to various government officials. During 1997 and 1998, Azeri officials were (a) given 2/3 of Oily Rock’s vouchers/options; and (b) promised 2/3 of the profits that Kozeny’s investment consortium would earn in the event of SOCAR’s privatization (Department of Justice, 2009c). To further “induce” cooperation with this scheme, Bourke arranged for two of the corrupt