

Avon Pays \$135 Million to Settle FCPA Allegations Relating to Payments to Chinese Government Officials

December 18, 2014

Anti-Corruption

On December 17, 2014, Avon Products, Inc. (“Avon”) agreed to pay \$135 million to settle allegations brought by the US Department of Justice (“[DOJ](#)”) and the US Securities and Exchange Commission (“[SEC](#)”) that Avon’s wholly owned subsidiary, Avon China, violated the US Foreign Corrupt Practices Act (“FCPA”) by concealing bribes paid to Chinese government officials and the representatives of at least one state-owned entity (“SOE”). The settlement, announced in separate releases by the [DOJ](#) and [SEC](#), resolves allegations that, from at least 2004 through 2008, Avon and Avon China conspired to violate the books and records provisions of the FCPA by falsely describing the nature and purpose of certain Avon China payments and benefits provided to Chinese government officials. To settle the allegations, the Avon entities agreed to pay a total of \$135,013,013, including a criminal penalty of \$67,648,000, and an additional payment of \$67,365,013 in disgorgement and prejudgment interest. As part of the settlement, Avon China agreed to enter a [guilty plea](#), and Avon entered a [deferred prosecution agreement](#) (“DPA”) with the DOJ.

Alleged Misconduct

Avon is traded on the New York Stock Exchange, headquartered in New York, NY, USA, and is the world’s largest direct seller of cosmetics and beauty products.

The statements of facts in the [SEC Complaint](#), [Avon China’s guilty plea](#), and [Avon’s DPA](#) allege a broad range of violations by Avon China, including:

- the giving of gifts, such as Avon products, personal luxury items, designer wallets, bags, and watches to government officials;
- payments for meals and entertainment by Avon China’s “Direct Selling Special Task Force,” a subdivision of the Corporate Affairs Group allegedly created for the specific purpose of providing things of value to government officials in order to receive reciprocal benefits;
- payments for “non-business travel expenses” for officials and their families, including an 18-day “study” trip for officials of the Guangdong Food and Drug Administration, which involved a single morning at Avon’s research facility in upstate New York and 17 days on a \$90,000, all-expenses-paid sightseeing trip to New York, Vancouver, Montreal, Ottawa, Toronto, Philadelphia, Seattle, Las Vegas, Los Angeles, Hawaii, and Washington, DC;
- direct cash payments to officials in exchange for benefits or the evasion of fines;
- a \$77,500 “sponsorship” of a government-owned newspaper to prevent the running of a negative news article; and

- the retention of an unvetted consulting company for \$2,000 to \$7,000 per month for no identifiable business services, not including one-off expenses like a \$43,000 payment for public relations services at an art exhibition that never took place.

The Complaint and plea agreement allege that, as early as September 2005, Avon's internal audit team discovered the payments and benefits provided to Chinese government officials by Avon China and the lack of accurate recordkeeping. The team allegedly circulated a Draft Audit Report to executives at Avon and Avon China identifying the risk that these activities might violate the FCPA. Avon executives allegedly ordered the removal of any mention of the potential FCPA violations from the Audit Report and the destruction of all copies of the Draft Audit Report. The allegations particularly focus on the continued inaction of Avon's executives after internal auditors conducted another review of Avon China's operations in December 2006 and found the potential FCPA violations to be ongoing.

Consequences

To settle the SEC claims, Avon entered into a settlement agreement under which Avon must pay disgorgement in the amount of \$52,850,000 and prejudgment interest in the amount of \$14,515,013.

To settle the DOJ claims, Avon China entered a guilty plea to one count of conspiracy to violate the books and records provision of the FCPA, and Avon entered into a deferred prosecution agreement, under which the Avon entities must pay a criminal penalty of \$67,648,000. Under the DPA, Avon is permanently enjoined from violating the books and records and internal controls provisions of the federal securities laws and must retain an independent compliance monitor to review its FCPA compliance program for a period of 18 months, followed by another 18-month period of self-reporting on its compliance efforts.

Implications

This settlement reinforces lessons learned from other anti-corruption cases, including the need to:

- establish and ensure compliance with limits on employee gift, meal, and entertainment expenses;
- establish and ensure compliance with approval processes for nonemployee travel;
- ensure that detailed provisions on scope of work are inserted into agreements with consultants and other third parties, and ensure that the work product is actually provided;
- provide anti-corruption training to executives to ensure prompt action is taken in response to reports from the internal compliance function;
- monitor and audit discretionary authority delegated to foreign subsidiaries to ensure independent compliance judgments.

If you have any questions concerning the material discussed in this client alert, please contact the following China-focused members of our [Global Anti-Corruption Practice Group](#):

Eric Carlson	+86 10 5910 0503	ecarlson@cov.com
Hui Xu	+86 21 6036 2508	hxu@cov.com
Chaohui Liang	+86 10 5910 0510	cliang@cov.com
Victor Wu	+86 10 5910 0507	vwu@cov.com

Anti-Corruption

This information is not intended as legal advice. Readers should seek specific legal advice before acting with regard to the subjects mentioned herein.

In an increasingly regulated world, Covington & Burling LLP provides corporate, litigation, and regulatory expertise to help clients navigate through their most complex business problems, deals and disputes. Founded in 1919, the firm has more than 800 lawyers in offices in Beijing, Brussels, London, New York, San Diego, San Francisco, Seoul, Shanghai, Silicon Valley, and Washington.

This communication is intended to bring relevant developments to our clients and other interested colleagues. Please send an email to unsubscribe@cov.com if you do not wish to receive future emails or electronic alerts.

© 2014 Covington & Burling LLP. All rights reserved.