

FCPA Investigations of Aircraft MROs Are Taking Off

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The aircraft maintenance, repair, and overhaul (MRO) industry is a primary target for U.S. enforcement activity under the Foreign Corrupt Practices Act (FCPA). The MRO industry is globally competitive, involving high dollar amounts, government /political influences, and a wide range of business cultures. FCPA violations can result in multimillion-dollar penalties and possible criminal convictions for responsible officers. As an example, in late 2014, the aircraft MRO company, Dallas Airmotive, admitted to paying bribes to government officials in Brazil, Argentina, and Peru to secure maintenance contracts for those countries' military aircraft. This marks the third aircraft MRO in as many years to settle FCPA allegations with the U.S. Department of Justice (DOJ). Current FCPA investigations have also touched other aspects of the aviation sector, such as aircraft manufacturer Embraer. Although DOJ denies that it conducts industry sweeps, historical evidence suggests certain industries do receive heightened scrutiny. Accordingly, it is likely that additional FCPA investigations of aircraft MROs are coming.

The FCPA prohibits U.S. companies and individuals, among others, from "corruptly" offering (i.e., offering with a wrongful intent) anything of value to a foreign official for the purpose of influencing that official to use his or her position to obtain or retain business for the U.S. company or individual. The FCPA has become a valuable tool the U.S. government uses to combat corruption across the globe. In 2014, the U.S. government issued FCPA penalties totaling more than \$1.5 billion. This past year also saw the average corporate FCPA fine surge to approximately \$157 million. Currently, at least 107 companies are being investigated for FCPA violations.

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In the case of Dallas Airmotive, DOJ alleged that between 2008 and 2012, Dallas Airmotive bribed officials of the Brazilian Air Force, the Peruvian Air Force, the Office of the Governor of the Brazilian State of Roraima, and the Office of the Governor of the San Juan Province in Argentina. Dallas Airmotive was alleged to have bribed such officials through the use of front companies affiliated with the officials, third-party representatives who acted as intermediaries, and by directly providing things of value, such as paid vacations, to the officials. Dallas Airmotive admitted to the bribery and entered into a deferred prosecution agreement with DOJ whereby Dallas Airmotive agreed to pay \$14 million in fines.

The recent Dallas Airmotive case tracks prior FCPA investigations involving MROs. For instance, in July 2012, the NORDAM Group, an MRO based in Tulsa, Oklahoma, entered into a non-prosecution agreement to settle allegations that it violated the FCPA. DOJ alleged that, in order to secure MRO services contracts, NORDAM paid bribes to employees of Chinese airlines. As part of the non-prosecution agreement, NORDAM agreed to pay a \$2 million penalty, implement an enhanced compliance program, and report periodically to DOJ regarding NORDAM's compliance efforts.

Another FCPA case involving an aircraft MRO illustrates the recent trend of DOJ pursuing criminal charges against individuals. In March 2012, BizJet International agreed to pay an \$11.8 million fine to resolve allegations that it bribed government officials in Latin America to secure contracts to service government aircraft. BizJet also agreed to cooperate with DOJ's ongoing investigations, submit periodic reports to DOJ regarding BizJet's compliance efforts, and implement an enhanced compliance program. In addition to the fines against the company, four BizJet employees, all of whom were alleged to have paid bribes, were criminally indicted by DOJ. Three of the four employees pled guilty, including BizJet's former president and CEO, while the fourth employee remains at large. This criminal prosecution trend is likely to continue as DOJ officials have explicitly made clear that prosecuting individuals is a significant focus of DOJ's FCPA unit.

The FCPA continues to remain a top enforcement priority for both DOJ and the U.S. Securities and Exchange Commission (SEC). As such, the U.S. government will continue to devote significant resources to investigate potential FCPA violations; the Federal Bureau of Investigation (FBI) recently announced it was more than tripling the number of agents focused on overseas bribery. Aviation MROs that work with civil or military fleets affiliated with foreign nations receive attention from the U.S. government and will likely continue to do so. Most countries have aircraft fleets, even countries rife with corruption, and the market typically requires close interaction between private MROs and foreign governments or instrumentalities. This fact, combined with increased enforcement activity by the U.S. Government, suggests that FCPA investigations in the aircraft MRO market will remain robust.

To avoid significant civil or criminal penalties, MROs cannot wait until they learn of a government investigation. Depending on the facts, MRO executives may also be criminally liable, as was the case with the BizJet executives. The best approach for an MRO is to develop and implement strong internal compliance procedures and policies before there is a violation. The most effective compliance programs are tailored to an organization's specific needs, risks, and challenges. In contrast, simply "checking the box" in regards to a compliance program could leave an MRO exposed to FCPA liability. While an effective compliance program may not prevent an FCPA violation, such a program allows for the early detection and remediation of any

violations - actions that are critical to avoiding or minimizing penalties. SEC officials have stated that most cases they decline to prosecute involve companies self-reporting and correcting any violations. DOJ also claims that voluntary disclosure and cooperation can result in smaller penalties.

With the high level of FCPA enforcement activity, companies cannot afford to ignore FCPA issues. Both the size of FCPA penalties/settlements as well as the increased potential of criminal liability for individuals demands that companies focus on FCPA compliance now. In the case of aircraft MROs, all signs indicate that they should be especially vigilant in light of recent enforcement and market trends.