

Fight against COVID-19 fraud is new investigation priority of the US Department of Justice

THE US DEPARTMENT OF JUSTICE (DOJ) HAS DIRECTED ALL US ATTORNEYS TO ACTIVELY DETECT, DETER AND PUNISH MISCONDUCT RELATED TO THE COVID-19 PANDEMIC.

According to recent reports, not only the coronavirus is currently rampant worldwide. Regrettably the most diverse variants of misconduct are spreading, too. In the German Armed Forces, for example, millions of face masks are "disappearing". Not only hospitals are complaining about scarce supplies of disinfectants. And: do the disinfectant containers supplied even contain the labelled disinfectant with the actual disinfecting effect? What about the actual technical performance and state of readiness of the ventilators or "iron lungs" that are critical for survival? How to stop impostors posing as World Health Organization (WHO) or Center for Disease Control (CDC) Officials in phishing emails? And how to deal with individuals selling fake cures for COVID-19 in the internet?

On Monday, March 16, 2020, the US Attorney General (AG) William Barr instructed all US Attorneys to prioritize the detection, investigation and prosecution of criminal conduct related to the current pandemic. "The pandemic is dangerous enough," the US Attorney General stated, "without wrongdoers seeking to profit from the public panic and this sort of conduct cannot be tolerated."¹

First US Attorneys' offices - including selected ones in Oklahoma, Pennsylvania, Nevada and Maine - have already implemented special task forces or special prosecutors to combat COVID-19 abuse. Further U.S. Attorneys from e.g. Maryland or Massachusetts issued stern warnings calling on all citizens who have reason to fear that they have become potential victims of fraudulent behavior to file criminal charges.

To underline the broad scope of this instruction, the AG pointed out that the DoJ Criminal Division, the Antitrust Division and the Consumer Protection Division of the Civil Division are explicitly available as resources for all Attorneys..

Potential consequences for Non-US companies

It can therefore be expected that the entire US law enforcement at the federal, state and local levels will use its full arsenal of available legal weaponry to combat COVID-19 fraud. With more and more government agencies actively cooperating with healthcare providers, BigPharma and BioTech companies or pharma logistics specialists in connection with the spreading virus threat, the possibility of future investigations becomes fairly realistic. All public sector contractors need to be fully aware of the necessity of accuracy and robustness of all claims for payment against government agencies. After all, knowledge of inaccuracies or incorrect information can lead to US False Claims Act - or other criminal investigations. Similarly, contracts should also carefully analyze their cost and pricing models to avoid liability risks under the US Truthful Cost or Pricing Data Act.

At this point, the importance of carefully managed financial reporting cannot be stressed enough - especially in today's environment. And this is not only about the substantiation of payment claims. As is well known, the US Foreign Corrupt Practices Act (FCPA) does not only penalise the bribery of any foreign public official anywhere on this planet but also incorrect accounting (books and records) - and this with cross-border applicability even to Non-US companies.

¹ Source: <https://www.justice.gov/ag/page/file/1258676/download>.



It remains to be seen how European or German authorities follow this US example in the current crisis. Pressure is already mounting on the UK Serious Fraud Office (SFO) to become more vigilant in the fight of the apparently ubiquitous attempts to exploit the spreading virus.

However, it is clear that all companies, no matter whether from the US or Europe, and also local government agencies must take an even more thorough look around when selecting and monitoring their business partners. Nothing would be more damaging to their reputation than to choose a supplier of face masks or disinfectants in times of this worldwide pandemic which is currently under US investigation.

The same applies to BioTech companies that depend on cooperation with specialized business partners, for example in clinical research, and where, after thorough Business Partner Compliance Due Diligence (BPCDD), it turns out that the US-based Clinical Research Organisation (CRO) in question is beyond the actual contractual relationship also suspected of having falsified COVID-19 vaccine test series.

In essence, these times call for a serious “Health Check” of our legal systems in the US and in Europe – still including the Post-BREXIT UK. Moreover, it does not stop with fighting “COVIDIOTS”, scammers, impostors or any other crisis profiteers. Democracies must stand the test today against openly competing public governance models that we can both protect our citizens and maintain the rule of law. Let’s stay healthy - together!

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