

FCPA Jurisprudence: U.S. Court of Appeals (11th Circuit) Defines “Instrumentality” Under the FCPA, Adopts Government’s View

May 21, 2014 | Client Update

The U.S. Court of Appeals for the Eleventh Circuit has defined, for the first time by a federal appellate court, a key statutory term in the U.S. Foreign Corrupt Practices Act (“FCPA”): the meaning of a foreign government “instrumentality.” The court held that an “instrumentality” under section 78dd-2(h)(2)(A) of the FCPA is “an entity controlled by the government of a foreign country that performs a function the controlling government treats as its own.” The court’s analysis emphasized two elements: whether the government “controls” the entity, and whether the entity is performing a function that the foreign government “treats as its own.”

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