
Newsletter: Eleventh Circuit Adopts Broad Definition of Government "Instrumentality" Under FCPA

22. MAI 2014

On May 16, 2014, in the first appellate decision of its kind, *United States v. Esquenazi*, the Eleventh Circuit affirmed a broad definition of "instrumentality" of a foreign government, as the term is used in the Foreign Corrupt Practices Act (FCPA) to define who qualifies as a "foreign official" under the statute, and upheld the longest prison sentence ever imposed in an FCPA case. The decision generally supported the position that the US government has advanced on this issue. The court provided a two-part definition of "instrumentality" as (1) "an entity controlled by the government of a foreign country" that (2) "performs a function the controlling government treats as its own." The court also laid out a non-exhaustive list of factors to consider in applying each part of the test. In addition to the main issues decided by the court, the court also touched on a number of other ancillary issues involving the FCPA.

[Read the full article.](#)