

## Suspension of FCPA in NOT the Solution

Should enforcement of the Foreign Corrupt Practices Act (FCPA) be suspended for those US companies now working in Haiti? This topic has been in discussion for a few weeks. It began with a statement by Wall Street Journal editorial board member Mary Anastasia O'Grady in a piece entitled "*Democrats and Haiti Telecom*". Ms. O'Grady cited "an American entrepreneur" for the quote "We did not bother with Haiti as the Foreign Corrupt Practices Act precludes legitimate U.S. entities from entering the Haitian market. Haiti is pure pay to play".

This "*pay to play*" statement led George Mason University Professor Tyler Cowen, writing in the Marginal Revolution Blog, to write "one of the best ways to help Haiti" is to "pass a law stating that the Foreign Corrupt Practices Act does not apply to dealings in Haiti. As it stands right now, U.S. businesses are unwilling to take on this legal risk and the result is similar to an embargo. You can't do business in Haiti without paying bribes". Professor Cowen's statement led Eric Lipman, writing in the Legal Blog Watch, followed this up with "[i]t should not be necessary to suspend enforcement of an anti-corruption law to enable U.S. companies to participate, but, realistically speaking, is it justified in this case to look the other way for a time?".

Responding to the suggestion that FCPA enforcement should be suspended in Haiti, the FCPA Professor articulated three reasons the law should not be suspended in Haiti. First the FCPA applies only to foreign governmental officials so not all business dealings in Haiti are covered by the FCPA. Second, empirical evidence suggests that foreign investment will be high in countries should as Haiti if their markets are lucrative but Haiti's is not. Third, is Haiti's 2009 ranking in Transparency International's Corruption Perceptions Index demonstrates that it is a country where corruption is rampant.

As the lead editorial in its Sunday, March 28 edition, the New York Times urged that Haiti "will need to sweep out the old, bad ways of doing things, not only those of the infamously corrupt and hapless government, but also of aid and development agencies, whose nurturing of Haiti has been a manifest failure for more than half a century". The piece suggested the following ideas to further this goal: Transparency, Accountability and Effectiveness; Haitian Involvement, Self-Sufficiency; Tapping the Diaspora and Decentralization as some of the keys for a successful rebuilding of Haiti. These ideas applied to groups both inside the country and out. But it is clear that the Times did not suggest that cow-towing to a "*pay to play state*" by suspending the enforcement of the FCPA was a way to move forward.

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