

INTERNAL INVESTIGATIONS AND COMPLIANCE UPDATE

NEWS FOR THE CLIENTS AND FRIENDS OF BASS, BERRY & SIMS PLC

Landmark U.K. Bribery Act to Have Far-Reaching Effects

April 19, 2010

The U.K. Parliament's recent passage of the Bribery Act further escalates the risk of anti-corruption enforcement against companies and individuals engaged in international business. The Bribery Act is more stringent than the U.S. Foreign Corrupt Practices Act ("FCPA") in several key respects and, for many offenses, applies to the worldwide conduct of any company that conducts business in the U.K.

Key differences between the Bribery Act and the FCPA include:

- 1) The Bribery Act explicitly provides for **strict criminal liability for companies that negligently fail to prevent their employees or agents from engaging in bribery**, even where company management had no knowledge of the bribes. The Bribery Act provides for an affirmative defense for companies that can demonstrate that they implemented "adequate procedures" to prevent bribery.¹
- 2) The Bribery Act specifically prohibits bribery of private citizens, as well as government officials. Though U.S. enforcers are increasingly sanctioning bribery of individuals who are not government officials (i.e., private sector or commercial bribery) through the use of the U.S. Travel Act, wire fraud statutes, or the application of the FCPA's books-and-records provisions, the FCPA does not directly prohibit commercial bribery.
- 3) The Bribery Act contains no exception for "facilitation payments" - small payments to foreign officials for non-discretionary "routine governmental actions" that are permissible under the FCPA.
- 4) The Bribery Act provides for imprisonment of individuals for up to 10 years per violation, rather than the 10 years per violation under the FCPA.

The impact of the Bribery Act is not limited to companies incorporated in the United Kingdom – any company that carries on business in the U.K. is subject to the Bribery Act. For example, a Delaware corporation that carries on business in the U.K. can be found criminally liable under the Bribery Act for a bribe paid by a local employee in China, if the company has failed to implement "adequate procedures"

¹ Though the Bribery Act does not define "adequate procedures," guidance is expected later this year.

for its Chinese operations – even if the company's Chinese operations are unconnected to its U.K. business.

Every company and individual with ties to the U.K. should be aware that compliance with the FCPA alone likely is insufficient to avoid significant criminal anti-corruption exposure. Companies need to examine whether their activities and compliance program need to be modified as a result of the Bribery Act and the continued increase in enforcement activity by the U.K.'s Serious Fraud Office (“SFO”).² Last Wednesday, on the heels of the passage of the Bribery Act, the SFO announced that Robert Dougall, a former medical device company executive, pleaded guilty to paying bribes to Greek physicians to induce the purchase of orthopedic devices. The British court sentenced Mr. Dougall to 12 months in prison, notwithstanding his “full cooperation” and the SFO’s recommendation that he receive a suspended sentence.

The enactment of the Bribery Act and the increasing foreign enforcement of anti-corruption laws – such as the anti-corruption raid conducted last week in Moscow by Russian authorities at the request of German prosecutors – underscore the importance of a foreign anti-corruption program that takes into account the FCPA, as well as the laws in each of the jurisdictions in which a company operates.

For more information or assistance regarding foreign anti-corruption compliance and international investigations, please contact one of the attorneys listed below. For additional information and resources on this topic, please see the [Bass, Berry & Sims PLC FCPA page](#).

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² Though enacted into law, the Bribery Act is still awaiting implementing instruments, which are expected later this year.