

# INTERNAL INVESTIGATIONS AND COMPLIANCE UPDATE

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

## Foreign Anti-Corruption Enforcement Continues to Escalate

April 6, 2010

The surge in enforcement of foreign anti-corruption laws, such as the U.S. Foreign Corrupt Practices Act ("FCPA") continues to intensify. The latest enforcement actions and announcements further confirm the following trends:

- **Massive Corporate Penalties:** Last week, Daimler AG agreed to pay the U.S. approximately **\$185 million**. This is the latest in a series of blockbuster foreign anti-corruption settlements since Siemens AG's [watershed agreement in December 2008](#) to pay **\$1.6 billion** to settle U.S. and German enforcement actions. Other large corporate settlements announced in the first quarter of 2010 include BAE Systems plc's agreement to pay **\$400 million** and **£30 million** to resolve U.S. and U.K. enforcement actions, respectively; and Alcatel-Lucent's agreement in principal to pay **\$137 million** to resolve FCPA-related offenses. More major corporate FCPA enforcement actions appear imminent, as multiple companies have disclosed that they have reserved \$100 million or more each to resolve foreign anti-corruption enforcement actions.
- **Increased Foreign Enforcement:** The risk of foreign anti-corruption-related liability is not limited to U.S. prosecutions; the enforcement of anti-corruption laws by foreign nations also continues to escalate. In the last six months, the **United Kingdom** announced penalties against BAE Systems plc and Innospec Ltd. and has arrested multiple individuals; **Germany** fined MAN Group over **€150 million**; and, last week, **China** sentenced an Australian employee of Rio Tinto to ten years in prison for bribery-related offenses in a highly publicized case.
- **Increased Individual Prosecutions:** U.S. enforcers have repeatedly announced that they intend to foster corporate FCPA compliance by aggressively prosecuting individual executives as well as corporations. In February, Lanny Breuer, Assistant Attorney General for the Criminal Division of the Department of Justice, stated, "**Put simply, the prospect of significant prison sentences for individuals should make clear to every corporate executive, every board member, and every sales agent that we will seek to hold you personally accountable for FCPA violations.**"<sup>1</sup> In the wake of 22 indictments in January in the [largest undercover FCPA sting in history](#), individual prosecutions have continued unabated, including the January 28 sentencing of former Willbros International Inc. employee Jason Steph to

<sup>1</sup> Lanny Breuer, Assistant Attorney General for the Criminal Division of the Department of Justice, Remarks at the American Bar Association National Institute on White Collar Crime (Feb. 25, 2010) (available at <http://www.justice.gov/criminal/pr/speeches/2010/02/02-25-10aag-AmericanBarAssociation.pdf>).

15 months imprisonment and the March 16 indictment of three former Nexus Technology, Inc. employees.

Anti-corruption enforcement and compliance expectations by the U.S. and other nations are expected to continue to increase. To reduce the foreign anti-corruption exposure faced by your company and employees, we recommend that you:

- Ensure your foreign anti-corruption compliance program is consistent with current best practices and the specific foreign anti-corruption risk factors your company and its employees face;
- Conduct FCPA due diligence on potential acquisitions, agents, joint ventures and partners; and
- Promptly and thoroughly investigate and address red flags and reports.

For more information regarding foreign anti-corruption compliance and internal investigations, as well as online resources, see [our FCPA page](#). If you have any questions regarding this alert, please feel free to communicate with your regular contacts at Bass, Berry & Sims PLC, or the attorneys listed below.

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