

INTERNAL INVESTIGATIONS AND COMPLIANCE UPDATE

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

New Law Provides FCPA Whistleblower Bounties; Latest Developments and Compliance Tips

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New Financial Reform Law Incentivizes FCPA Whistleblowers

The Dodd-Frank Wall Street Reform and Consumer Protection Act (the "Act") was signed into law by President Obama today. Section 922 of the Act will grant significant protections and rewards to individuals who voluntarily provide the Securities & Exchange Commission ("SEC") with original information relating to the violation of the securities laws, including the books-and-records and internal controls provisions of the Foreign Corrupt Practices Act ("FCPA").¹For information regarding the other provisions of the Act, [click here](#).

Pursuant to the Section 922 whistleblower provision, individuals (aside from certain ineligible persons such as law enforcement agents) who provide original information that leads to the assessment of monetary sanctions in excess of \$1 million are entitled to receive between 10 percent and 30 percent of the sanction amount. Moreover, whistleblowers may provide their original information (and file their whistleblower reward claims) *anonymously* through counsel, although before any reward payment is made to a whistleblower, the whistleblower's identity must be disclosed to the SEC.

Thus far in 2010, the median amount assessed against companies by the SEC and DOJ for FCPA violations exceeded \$260 million. Given the size of recent FCPA sanctions and the ability of whistleblowers to anonymously make reports and file reward claims, this bounty provision is expected to provide a lucrative incentive for employees, competitors, customers, vendors, former employees and others to swiftly report perceived FCPA violations to the SEC.

Recent Foreign Anti-Corruption Developments

The enactment of the Act follows a number of anti-corruption developments in the 2nd quarter of 2010:

¹ Dodd-Frank Act, 111th Cong. § 922 (2010).

- Shareholder Litigation – In June, shareholders of Parker Drilling Company filed a derivative suit in Texas alleging that the company's lack of a foreign anti-corruption compliance program constituted a breach of fiduciary duty by management and the board of directors because Parker conducted business in countries with a higher than normal risk of corruption.² The plaintiffs allege that, as a result of the company's lack of sufficient internal controls related to foreign anti-corruption compliance, the company spent more than \$20 million in internal investigation and defense costs resulting from Department of Justice ("DOJ") and SEC investigations. The *Parker* case is one of the most recent examples of collateral civil litigation resulting from FCPA-related problems.
- Foreign Enforcement – Of particular significance, the U.K. Parliament enacted the Bribery Act 2010, which can apply to the worldwide conduct of U.S. companies that carry on any business in the U.K. For more information on how the Bribery Act 2010 may affect your company and employees, [click here](#). Also, in the wake of multiple enforcement actions by the United Kingdom and Germany, Canada announced its first prosecution against an individual for violating Canada's foreign anti-corruption law. Canadian law enforcement authorities indicate that more enforcement actions will be announced soon.³
- FCPA Enforcement - U.S. enforcers continued their aggressive prosecutions of public and private companies and individuals. FCPA enforcement activity since March included:
 - assessment of more than \$700 million in fines, penalties and disgorgement by the DOJ and SEC;
 - announcement of DOJ and SEC investigations into business activities of four major pharmaceutical companies in Europe, Asia and South America;
 - the extradition of an Italian citizen from Germany for FCPA prosecution; and
 - sentencing of a former corporate officer to the longest prison sentence ever imposed for violating the FCPA (87 months).

On May 31, U.S. Attorney General Eric Holder re-emphasized that U.S. enforcers are using every tool at their disposal, including undercover investigations, to combat FCPA violations. He also warned that "prosecuting individuals is the cornerstone of our enforcement strategy The risk of heading to prison for bribery is real, from the boardroom to the warehouse."⁴

Reducing Your Risk

The Act and other recent developments highlight the importance of foreign anti-corruption compliance measures, such as:

² Cameron Langford, *Shareholders Say Oil Firm Paid Bribes*, Courthouse News Service, June 7, 2010, available at <http://www.courthousenews.com/2010/06/07/27856.htm>.

³ Greg McArthur, *RCMP Charge Canadian in Foreign-Bribery Crackdown*, The Globe and Mail, July 2, 2010.

⁴ Eric Holder, Attorney General of the United States, Remarks at the Organisation for Economic Co-Operation and Development (May 31, 2010), available at <http://www.justice.gov/ag/speeches/2010/ag-speech-100531.html>.

(1) Where lawful, requiring employees to promptly alert the company to any anti-corruption concerns of which they become aware, and requiring employees to periodically certify that they have done so. This will reduce the risk that some employees will fail to report a problem in the hopes of collecting a whistleblower bounty later;

(2) Ensuring your company has [implemented an anti-corruption compliance and training program](#) consistent with your company's risk factors;

(3) Confirming that your compliance program takes into account the requirements of [applicable foreign laws](#); and

(4) Promptly investigating and addressing corruption reports and red flags.

For more information or assistance regarding foreign anti-corruption compliance and international investigations, please contact one of the attorneys listed below. For more information and resources on this topic, please see www.bassberry.com/fcpa.

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