

INTERNAL INVESTIGATIONS AND COMPLIANCE UPDATE

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

U.K. Bribery Act's Broad Reach Will Come Into Force July 1

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Key Points:

- U.S. companies that have a demonstrable business presence in the United Kingdom need to ensure they are in compliance with the U.K. Bribery Act as this far-reaching law comes into force on July 1, 2011.
- The U.K. Bribery Act is more stringent than the U.S. Foreign Corrupt Practices Act ("FCPA") in several key respects and imposes strict corporate criminal liability for companies whose "associated persons" (including employees and agents) violate the U.K. Bribery Act, regardless of where in the world the violation occurs.
- If your company carries on business in the United Kingdom, and you have not already implemented the "adequate procedures" that can provide an affirmative defense to strict corporate criminal liability under the U.K. Bribery Act, you should do so soon.

After several months of delay, the U.K. Bribery Act (the "Bribery Act") will come into force on July 1, 2011. The Bribery Act has significant ramifications for U.S. companies carrying on business in the U.K. – in some cases, compliance with the FCPA is insufficient to avoid criminal corporate and individual liability under the Bribery Act.

Key differences between the Bribery Act and the FCPA include:

- 1) The Bribery Act explicitly provides for strict criminal liability for companies whose "associated persons" (including employees and agents) violate the Bribery Act. The Bribery Act provides for an affirmative defense for companies that can demonstrate that they implemented "adequate procedures" to prevent bribery.
- 2) The Bribery Act specifically prohibits bribery of *private* citizens, as well as government officials. Though U.S. enforcers increasingly are prosecuting 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," payments to foreign officials for "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 five years per violation under the FCPA.

The U.K. Ministry of Justice ("MOJ") recently published guidance interpreting "adequate procedures," a key term in the Bribery Act. Though the MOJ's guidance, [available here](#), is not intended to be a "one-size-fits-all document," it provides useful principles and illustrative examples that can help guide companies in tailoring their compliance programs to their size and risk profiles. Conducting an efficient risk assessment can be a crucial first step in applying the MOJ's guidance. A well-tailored risk assessment with an emphasis on common corruption pitfalls can maximize the effectiveness of limited corporate compliance budgets.

Many observers have also focused on the hospitality section of the MOJ's guidance. The MOJ listed a number of factors that it will consider when determining whether hospitality rises to the level of a violation of the Bribery Act, including "the type and level of advantage offered, the manner and form in which the advantage is provided, and the level of influence the particular foreign public official has over awarding the business."

The U.K. Serious Fraud Office and the Director of Public Prosecutions also have published [joint guidance](#) interpreting key terms in the Bribery Act.

For more information or assistance regarding foreign anti-corruption compliance, international investigations and [international trade](#), please feel free to communicate with your regular contacts at Bass, Berry & Sims PLC, or the attorneys listed below. For more information and resources on this topic, please visit Bass, Berry & Sims PLC's webpage on [FCPA](#).

Wally Dietz	(615) 742-6276	wdietz@bassberry.com
Eli Richardson	(615) 742-7825	erichardson@bassberry.com
Ross Booher	(615) 742-7764	rbooher@bassberry.com
Taylor Phillips	(615) 742-7802	tphillips@bassberry.com

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