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The United Kingdom's Bribery Act 2010 and other Recent Anti-Corruption Enforcement Activity in the United Kingdom

The Bribery Act

On April 8, 2010, the Bribery Act received Royal Assent and became law in the United Kingdom. The old laws, found in the Prevention of Corruption Acts dating back to around 1900, had been criticized as insufficient to address bribery of foreign public officials effectively, in particular with regard to establishing corporate liability. The new legislation, in contrast, is a wide-ranging reform of the United Kingdom's bribery laws, and now imposes heightened regulation of foreign bribery.

The new Bribery Act sweeps aside the old legislative framework. Notably, the criminal offences it creates go beyond the United States' Foreign Corrupt Practices Act ("FCPA") in their scope. In particular, the new English statute applies to bribes given to obtain business advantages in the private sector and not just the public sector. In other words, unlike under the FCPA, a bribe of a non-government official is prohibited under the new statute.

All companies incorporated in the UK, and all foreign companies that do business in the UK (wherever they are incorporated), should be aware of the new Act because the provisions requiring them to prevent bribery through "adequate measures" apply to all such companies. In addition, foreign companies not incorporated, but doing business, in the UK can incur vicarious liability if they fail to take sufficient measures to prevent bribery by "associated persons" - which can relate to acts committed anywhere in the world.

The Bribery Act introduces more than six criminal offences that cover bribing, being bribed, and corporate responsibility for bribery in the course of business. In summary, the new Act:

- creates two general offences concerned with offering, promising or giving of an advantage, and requesting, agreeing to receive or accepting of an advantage (this is the primary, private sector offence);
- introduces a separate specific offence of bribery of a foreign public official; and
- creates a new corporate offence where a commercial organization fails to prevent a bribe made on its behalf, though it will be a defense if adequate procedures to prevent this had been put in place.

The provisions of the Bribery Act that introduce these new offences utilize broad language and give the prosecuting authorities considerable discretion.

In addition to the wider scope and applicability of the Bribery Act, another notable difference between the Bribery Act and the FCPA is that the Bribery Act has no exemption for "facilitation payments" for "routine governmental action." This means that while so called "grease" payments may be permitted under the FCPA, such payments may violate the Bribery Act. This gives companies that have grown

accustomed to utilizing “facilitation payments” further reason to take immediate note of this new legislation.

The penalties to be imposed under the Bribery Act are significant. The offences of bribing another person, being bribed and bribing a foreign public official are punishable either by an unlimited fine, imprisonment of up to 10 years, or both. The new corporate offence of failure to prevent bribery is punishable by an unlimited fine.

Companies should acknowledge the broad scope of this new law, and ensure that the company has in place “adequate measures designed to prevent bribery” that are tailored to this legislation. At a minimum, companies should evaluate their internal anti-bribery and corruption policies and determine whether adjustments should be made. Expect to see a significant increase in UK anti-corruption enforcement under the new Bribery Act in the immediate future.

For more information regarding the UK Bribery Act, please see the Chadbourne & Parke memorandum available at <http://www.chadbourne.com/files/upload/UKBriberyActmemo.pdf>.

United Kingdom Increases its Anti-corruption Enforcement Activity

Other recent activity in the UK signals the country’s focus on curbing corrupt business practices. In February 2010, the UK fined BAE Systems (“BAE”), a maker of military planes and jets among other things, in connection with improper payments made to an official in Tanzania. Specifically, BAE had failed to properly record commissions paid to a marketing consultant involved in its sale of a radar system to Tanzania in 1999. The UK’s Serious Fraud Office imposed approximately US \$50 million in fines and a forced charitable payment to Tanzania.

Notably, BAE also settled with U.S. Department of Justice (“DOJ”) for \$400 million in relation to charges of conspiring to make false statements. The DOJ’s charge related to a portion of the billions of dollars in payments that BAE is thought to have made to Saudi Arabian officials over a 20-year period, and to more than \$200 million of business that the company won in arms deals involving the Czech Republic, Hungary and other countries.

In other FCPA related activity, a UK court recently approved the extradition of UK nationals Wojciech Chodan and Jeffrey Tesler, a former Kellogg, Brown & Root LLC (“KBR”) sales manager and KBR agent, respectively, for prosecution in the United States for their alleged FCPA violations. On March 5, 2009, the DOJ unsealed the indictment of Mr. Tesler and Mr. Chodan for their roles in a Halliburton and KBR bribery scheme, and charged Tesler and Chodan each with one count of conspiracy to violate the FCPA and ten counts of violating the FCPA. The indictment charges that Tesler was an agent since 1995 for a four-company joint venture that was awarded certain Nigerian liquefied natural gas plant construction contracts, and that Chodan and other co-conspirators used Tesler to bribe top-level Nigerian executive branch officials to be awarded the construction contracts.

The case highlights how the DOJ, in conjunction with foreign governments, is now aggressively pursuing foreign citizens involved in FCPA violations. The DOJ is seeking forfeiture of more than \$130 million, and the defendants face maximum prison sentences of 55 years. The defendants plan to appeal the UK court’s grant of extradition.

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