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Phone: +1 646 783 7100 | Fax: +1 646 783 7161 | customerservice@law360.com

UK Bribery Act Crippled By Lack Of Funding, Attys Say

By **Ian Thoms**

Law360, New York (May 24, 2012, 6:34 PM ET) -- A severe lack of funding has sabotaged the U.K. Serious Fraud Office's ability to aggressively enforce the country's sweeping new anti-bribery law and to bring the types of major corruption cases many have long anticipated, experts told Law360 on Thursday.

The U.K. Bribery Act was supposed to mean big trouble for crooked companies around the world when it took effect last July. Seen as a tougher version of the U.S.'s already feared Foreign Corrupt Practices Act, attorneys warned their clients to take heed and beef up their compliance programs, or risk facing the wrath of the new British regulatory regime.

But those dire predictions have yet to come to pass. The Serious Fraud Office, which is charged with investigating and prosecuting fraud, bribery and other financial crimes, has brought just one criminal case under the Bribery Act, charging an administrative clerk with accepting a £500 (\$783) bribe to fix a speeding ticket.

"I still think that big companies have to take the Bribery Act much more seriously than they do, but without cases, we feel a little bit like Chicken Little saying the sky is falling — and the sky is not falling," said Raymond L. Sweigart of Pillsbury Winthrop Shaw Pittman LLP.

The deluge of Bribery Act cases has not come, in large part, because the Serious Fraud Office has so little political and financial support, attorneys said. The office's budget has been slashed repeatedly, from £52 million in 2008 to £33.9 million in 2012. It's due to fall again to £30.5 million in 2014.

But most crucially, the Serious Fraud Office was given just £2 million to implement the Bribery Act.

"For quite awhile, the lack of funding has posed a serious problem for the office," said Paul E. Pelletier of Mintz Levin Cohn Ferris Glovsky & Popeo PC, who previously oversaw the FCPA unit in the fraud section of the U.S. Department of Justice's Criminal Division. "And it's going to continue to be a problem until they get a permanent source of appropriate funding."

The fraud office found an unlikely ally on its funding issue Thursday when Lord Justice John Thomas, who in the past criticized the agency for "sheer incompetence," lamented its lack of financial resources, according to a report by the Financial Times. Thomas, the second-highest-ranking criminal judge in the country, suggested budget constraints may have played a role in the office's bungling of an investigation into the 2008 collapse of Iceland's largest bank, Kaupthing Bank HF.

"It goes some way to the necessity of properly financing the SFO so it can do things with the clarity with which they should be done," Justice Thomas said, according to the Financial Times report.

The Serious Fraud Office appreciated the judge's unexpected support.

"I'm sure the that the SFO will welcome that observation. Whether or not my other masters in the Treasury and elsewhere would welcome it is another matter," said James Eadie QC of Blackstone Chambers, an attorney for the agency.

Considered by many to be too lax, the Serious Fraud Office has long lacked political support. And when the Bribery Act was being considered, the London business community worked to further undermine the agency, said Michael Volkov of LeClairRyan, a former longtime federal prosecutor in the U.S. Attorney's Office in Washington.

"Political support is critical, and they clearly don't have it," Volkov said. "And big businesses in the U.K. have done a very good job of hemming them in."

The Bribery Act was seen as a big deal largely because attorneys read the law, realized it gave British regulators extraordinary reach to bring corruption cases and immediately began sounding the alarm with clients, according to attorneys.

"I blame the FCPA paparazzi and lawyers for that. They made it into this huge thing, and it was all meant to do one thing — scare clients into hiring lawyers. But clients are more sophisticated than that. They're not going to fall for it," Volkov said. "The U.K. Bribery Act is a big bowl of nothing."

A recent study suggests corporate clients aren't overly worried about the Bribery Act or even the FCPA, which has produced a number of high-profile prosecutions in recent years. Of the chief financial officers surveyed by Ernst & Young Global Ltd., 15 percent said they were prepared to make cash payments to win or maintain business overseas, compared to 9 percent in the firm's last survey in 2010

But while the Bribery Act has yet to show its teeth, that doesn't mean cases aren't coming down the pike, attorneys said. The law does not apply retroactively, so the Serious Fraud Office must base any prosecutions on activity that occurred after July 1, 2011, when the Bribery Act took effect.

The office also got a new director last month. David Green QC took over for former director Richard Alderman and promptly promised to start bringing criminal prosecutions befitting the agency's name.

"The SFO is here to stay," Green said. "It is and will remain a key crime fighting agency targeting top-end fraud, bribery and corruption. ... We will press for all the tools necessary to maximize our impact."

--Editing by Lindsay Naylor.

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