

## **Head ‘Em Up and Move ‘Em Out-the Bribery Act Becomes Effective**

Well it's been a long ride but it's here. The UK Bribery Act is effective as of today. It seems like it has been more like herding cats than herding cattle. Just where is Rowdy Yates when you needed him? The Bribery Act has been the subject of a veritable multitude of commentary and, as with all commentary, some is of value and some is, well, just commentary. For what it's worth, on this day of effectiveness, I add my two cents worth.

### ***Who's On First?***

As written in the FCPA Blog, in a post entitled, “*The Coming Chaos in Global Enforcement*”, there will certainly be a world-wide focus on anti-bribery and anti-corruption. Even if the Bribery Act is not “the FCAP on steroids” it does portend a growing trend towards multiple jurisdictions prosecuting bribery and corruption. There will certainly be cooperation between jurisdictions. The FCPA Blog quoted Serious Fraud Office (SFO) Chief Richard Alderman who said the following:

*It is important that the enforcement authorities liaise closely together so that there can be an overall resolution subject to the decisions of the courts in each jurisdiction. These issues are best left to the authorities in each jurisdiction and the courts.*

### ***Don't Get Picked Off First***

While we may not know what the future may portend, I can say with some degree of certainty that you do not want to be the first company which the SFO brings bribery or corruption charges against. If this happens, your company will probably face a very difficult time as the SFO will want to make a name for itself with a highly public and highly publicized enforcement proceeding. And remember, if your company thinks it may have reached a settlement or even the British equivalent of a Deferred Prosecution Agreement (DPA) with the SFO, it still must be accepted by the UK Courts, which hold the sentencing prerogative near and dear to their hearts. You certainly do not want to be the first to test the boundaries of what the British judiciary will accept.

### ***Watch for High Heater-it might be aimed at your head***

Writing in thebriberyact.com, in a post entitled “*BREAKING: We forecast it in March – SFO confirms involved in US sovereign wealth fund probe*” our colleagues Richard Vitou and Richard Kovalevsky QC, discussed the announcement that the SFO would be joining the US Securities and Exchange Commission (SEC) in investigating those companies which do or did business with Sovereign Wealth Funds (SWF) or are private equity companies. I would put my money on a “high hard one” towards private equity because what may look like reorganization of companies, by taking majority ownership and eliminating managerial inefficiencies to private equity, may look like cutting back or not taking compliance seriously to a regulator.

### ***Adequate Procedures-Rollin' Rollin' Rolling; Keep Those Doggies Rollin'***

As was pointed out in the US House Judiciary hearing last month, the Bribery Act has an affirmative defense called 'Adequate Procedures' which the Foreign Corrupt Practices Act (FCPA) does not. However, there are many unanswered questions about 'Adequate Procedures'. Mike Volkov, in a post entitled, "*T-Minus 32 hours and Counting -- The UK Bribery Act Becomes Effective*" detailed some of these unanswered questions

*How will the defense to a corporate charge for failing to prevent a foreign bribery offense actually operate? What kinds of evidence will companies be allowed to offer? Will acts of compliance, actual law-abiding conduct, be allowed or an overall presentation of the anti-corruption program and the compliance successes?*

What I believe is that a company should following the Six Principles of an 'Adequate Procedures' program; or the OECD Good Practices; or the Department of Justice *best practices* as it has set out in every DPA since last summer. The point is to begin moving forward with a written compliance program and then implementation. I believe that the SFO wants to see concrete steps made in good faith to set up a "proportionate" compliance program tailored to your company's risk profile based upon the risk assessment you have performed.

If you have not panicked as yet - don't. But if you have not started to implement a compliance solution that will put your company in compliance with the Bribery Act - the effective date of July 1 would seem like a good time to begin.

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