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Anti corruption e-bulletin

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Narrowing the differences between US and UK anti-corruption law

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Summary

- A recent US case in which a company pleaded guilty to bribing both foreign government officials and foreign private individuals may signal a new desire on the part of the US Department of Justice to tackle overseas commercial bribery.
- UK companies with US operations should consider bolstering their FCPA compliance programmes to prevent the bribing of foreign individuals in light of both this case and the forthcoming UK bribery bill.

It has long been known that there are significant differences between the scope of the US Foreign Corrupt Practices Act 1977 ("FCPA") and corresponding provisions of English law:

- Whilst the provisions of the FCPA do not apply to any facilitating or expediting payment to a foreign official, political party or party official, under English law, all facilitation payments, however small, and even if paid to ensure that persons do what they are in any event obliged to do, may be illegal if they are paid corruptly;
- There is no equivalent provision to the FCPA 'books and records' provisions in the UK legislation (except insofar as companies are required to maintain accounts by the Companies Act 2006);
- The fact that the conduct was lawful in the country where it took place is no defence under English law but is under the FCPA;
- The FCPA applies to (direct or indirect) corrupt payments to a foreign official, political party or party official. The English anti-bribery legislation, in contrast, is wider and applies to corrupt payments to any agents, whether or not they are based in the UK or abroad, and whether or not they are agents of a public body. Therefore UK legislation can apply to bribes paid to private company employees to influence their actions in relation to their employers.

Despite these, and other, express differences, there are cases which have demonstrated that the FCPA 'books and records' provisions could be used to prosecute the bribery of private individuals as well as public officials.

Now, a recent US case, *United States v Control Components Inc*, has further diluted the differences between US and UK anti-corruption legislation. Control Components Inc ("CCI") paid approximately \$7 million in bribes to numerous officers and employees of state-owned and privately-owned customers around the world, including in China, Korea, Malaysia and the United Arab Emirates, in order to retain business generating approximately \$47 million in net profits. Approximately \$4.9 million was paid in bribes to officials of foreign state-owned enterprises, for which CCI was charged with FCPA violations.

Interestingly, as a result of paying approximately \$1.95 million in bribes to officers

Contacts



Peter Burrell
Partner
+44 20 7466 2113



Nichola Peters
Of counsel
+44 20 7466 2160



Daniel Hudson
Senior associate
+44 20 7466 2470

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and employees of foreign and domestic privately owned companies, CCI was also charged with violating the Travel Act which prohibits using interstate or foreign commerce to promote any unlawful activity (including bribery in violation of state law). The Department of Justice ("DoJ") used the Travel Act to charge CCI in connection with conduct that violated the California state commercial bribery statute, which prohibits offering an employee anything of value corruptly and without the knowledge or consent of the employer in return for the employee using or agreeing to use their position for the benefit of that other person. CCI pleaded guilty to both the FCPA and the Travel Act violations and agreed to pay a fine of \$18.2 million, implement an anti-bribery compliance programme, retain an independent compliance monitor, and continue to cooperate with the DoJ's investigation.

This case is a potent example of a seemingly new willingness on the part of the DoJ to use the Travel Act in an overseas context to prosecute commercial bribery as well as the bribery of foreign public officials. It is also a further blurring of the dividing lines between US and UK anti-corruption law and UK companies with US operations should, as a result of this case, consider strengthening their compliance programmes to address commercial as well as government-related bribery by their US operations.

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This message is sent by Herbert Smith LLP, Exchange House, Primrose Street, London EC2A 2HS, United Kingdom. Tel: +44 20 7374 8000

這個信息是由史密夫律師事務所發出。地址: Exchange House, Primrose Street, London EC2A 2HS, United Kingdom. 電話: +44 20 7374 8000

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