

UK Expected To Come Down Hard With New Bribery Law

By **Hilary Russ**

Law360, New York (June 30, 2011) -- When the U.K.'s new anti-bribery law goes into effect Friday, prosecutors are expected to come out swinging, launching investigations into major cases of corporate corruption — even though it's likely to take months or years for those probes to run their course, experts say.

With the implementation of the U.K. Bribery Act, the country's Serious Fraud Office — which investigates and prosecutes financial crimes, fraud and foreign bribery — is under public and political pressure to bring cases, after being lambasted by critics for years for being too lax.

Now, the agency needs to send a message that it will be tough but fair. That's likely to result in investigations that go after the most egregious cases of bribery first, attorneys said.

"They're going to look for a case that's not going to be at the margins but that's going to be right in the sweet spot, to begin to make an impact. That's the first blast you're going to see," said Paul E. Pelletier of Mintz Levin Cohn Ferris Glovsky & Popeo PC, who recently retired from a senior position in the fraud section of the U.S. Department of Justice's Criminal Division.

Under the new law, which is widely regarded as tougher and broader than the U.S.' Foreign Corrupt Practices Act, U.K. legislators haven't just banned companies and individuals from bribing foreign officials in order to win contracts or other business. They've also banned corporate hospitality, gifts and facilitation payments — so-called grease payments, or small monetary sums that don't necessarily earn companies any points with officials but might, for example, speed a shipment through customs.

The act, which modernizes the U.K.'s existing but arcane anti-corruption regime, also gives prosecutors a tool to combat commercial and private bribery — not just bribery aimed at public sector contracts — and to crack down on bribe-takers themselves.

Perhaps of the greatest concern in the business community, the new law makes a company criminally liable if an employee offers or pays a bribe and the company failed to prevent it by not having adequate compliance programs in place.

Together, the provisions give the SFO a strong new tool that should allow them to be more successful at prosecuting corruption, which the agency will need in order to appease naysayers and, according to some, justify its continuing existence.

"It has basically staked its reputation on it," said Barry Vitou, who leads the corporate crime team at Pinsent Masons LLP in London.

In fact, the agency has been fighting for its very survival, fending off a recent proposition to blend it into the National Crime Agency, a proposed FBI-like organization that would not be off the ground for about two years.

It's in that context that the SFO launched a major public relations campaign touting its effectiveness as an investigator, prosecutor and regulator, making it more likely that the agency will aggressively try to make a splash with its first bribery or corruption probes.

"There are a number of pressures on the SFO to show results, because the significant reason for the new U.K. act is that under the old regime, the SFO was not getting convictions," said Justin Williams, a partner at Akin Gump Strauss Hauer & Feld LLP in London.

The Bribery Act also applies to non-U.K. companies that do business in the U.K., and SFO Director Richard Alderman has promised that the agency will come down hard on foreign companies for serious infractions of the new law.

"They will be looking for an opportunity to be able to demonstrate that they mean business," said Andrew Legg, a senior litigation partner in the London office of Mayer Brown LLP.

Yet the SFO will face several challenges as it races off the starting blocks on Friday, according to attorneys.

First, the agency is reportedly facing a shrinking budget, as well as an extra allocation of just £2 million (\$3.2 million) with which to implement the act. The Financial Times reported recently that the agency's budget had dropped 26 percent since the 2008-2009 fiscal year, and it's slated to fall again by another 25 percent by 2014-2015, coming in at £30.5 million (\$48.8 million).

Some observers pointed out that such investigations can largely fund themselves if the government wins big penalties and settlements.

In the U.K., the prosecutor and the investigator are each entitled to receive an 18.5 percent of the cut from any recoveries they help get. The SFO counts as both, potentially allowing it to keep 37 percent of whatever settlement or fine it wins.

Beyond the budget issue, the Bribery Act, like other legislation, can't ban behavior retroactively, so it only applies to schemes that take place after the July 1 implementation stage.

What's more, the country's self-reporting system, established in 2009, is still in its infancy, attorneys said.

"Until you have an effective system that companies feel they can work with, we will continue this slow start on self-reporting," said Jonathan Pickworth, a partner at Dechert LLP in London.. "That won't change on July 1."

In the U.S., companies and individuals generally know they will earn some bonus points if they are the first to self-report.

"They don't have such a robust system [in the U.K.] yet," Pelletier said.

Those challenges, in addition to the normal course of time it takes to launch any serious investigation, mean that news of major SFO investigations under the Bribery Act is not likely to come for some time, experts said.

"It's going to be many months, or possibly longer, before you start having cases coming through the system," Williams said.

But as it sets out on its new course, the SFO will still be able to take advantage of an increased flow of information in its direction through several reinvigorated lines of communication.

Tips are flowing to investigators faster now than ever, with disgruntled employees, tattling competitors and information sharing between law enforcement agencies around the world all providing possible leads and evidence.

"How quickly you will get your first prosecution under the Bribery Act remains to be seen, but information tends to find its way into the hands of law enforcement agencies more quickly now than it has in the past," Pickworth said.

That information is now coming from better cooperation between jurisdictions, both domestically and across national boundaries, experts said.

"The U.S. has been coordinating for ... the last five years extensively with the U.K., and specifically with the SFO," Pelletier said. "The team at Main Justice has a great relationship with the SFO."

Information can also come from whistleblowers — who, at least in the U.S., have a financial incentive to report malfeasance because they can get a big cut of any eventual reward — and from disappointed competitors that think a rival obtained some contractual advantage through corrupt activity.

Currently, no such bounty exists in the U.K. for whistleblowers who take their tips directly to the government, but the DOJ could still provide information from its investigations into global corruption schemes that stretch into the U.K.

The SFO can also bank on the old saying that crime never sleeps, according to experts.

"My experience in the fraud section overseeing the FCPA unit has, at least for me, established that each and every day, new corruption schemes emerge and are put in place," Pelletier said. "So it wouldn't surprise me if they weren't up and running on several major investigations in the near future."

--Editing by Anne Urda and Chris Giganti.

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