

To: Our Clients and Friends

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The UK's Serious Fraud Office Announces Guide to Self-Reporting of Overseas Corruption by Corporations

As the UK's Bribery Bill is wending its way through the Parliament (*see* International Regulatory Bulletin 435), the UK's Serious Fraud Office (the "SFO") has published on 21 July 2009 a Guide setting out a process for self-reporting by companies concerning overseas corruption.

While the SFO does not provide a guarantee that self-reporting will not result in a criminal prosecution, particularly where board members have engaged personally in corrupt activities and have personally benefited, the Guide indicates that where certain requirements are met, the SFO would normally want to settle cases civilly rather than criminally. In addition to the benefit of the prospect of a civil rather than a criminal outcome, there would be the opportunity to manage the issues and publicity proactively. Moreover, a negotiated settlement would mean that mandatory debarment under Article 45 of the EU Public Sector Procurement Directive would not apply. The Guide does not provide guarantees in respect of criminal investigations of individuals (including corporate employees).

In order to grant more favorable treatment, the SFO would be looking to establish that the board is genuinely committed to resolving the issues and moving to a better corporate culture and transparency, and that the company is willing to cooperate in any further investigation and to take appropriate corrective action (including in some cases external monitoring in a proportionate manner). Where a self-reporting case also falls within the jurisdiction of the US Foreign Corrupt Practices Act, the SFO would expect to be notified at the same time as the US Department of Justice. The SFO would regard failure to report as a negative factor if a problem were later discovered.

The Guide also indicates that the SFO may be willing to offer an opinion procedure along the lines offered by the US Department of Justice, particularly in the M&A area, and to provide guidance on how the SFO would apply the offence in the Bribery Bill of negligently failing to prevent bribery.

This represents a new approach by the SFO, and it will be interesting to see how it develops.

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