The United Kingdom’s regime against bribery, corruption and fraud is operating in a new landscape following the introduction in August 2015 of the International Corruption Unit (ICU), a new governmental agency created under the auspices of the Department for International Development (DFID).

The latest step in the clampdown on nefarious business practices came as the Serious Fraud Office (SFO) gained more impact with a series of successes. In this climate, businesses need to beware of the tightening of anti-corruption enforcement in the United Kingdom.

A stronger SFO, bolstered by the new ICU and with the backing of wide-ranging legislation such as the Bribery Act 2010, together create very serious potential pitfalls for companies which fail in their anti-corruption diligence.

**The Role of the ICU**

The ICU was established last year by the DFID to investigate cases of international corruption in developing countries. The ICU unified other existing investigation units in the United Kingdom and was launched in line with the UK Anti-corruption Plan.
The ICU is intended to serve as the central point for investigating international corruption (replacing the Metropolitan Police Service Proceeds of Crime Unit and the City of London Police Overseas Anti-corruption Unit). The DFID pledged £21 million in funding to the ICU until 2020.

Upon launching the new unit, UK International Development Secretary Justine Greening said, “Corruption is not only picking the pockets of the poor, it is an enemy of prosperity and a brake on a country’s development. Through the International Corruption Unit, the best of British law enforcement will step up our aid work combating corruption head on across the developing world.”

In practice, the ICU will target corruption by:

- tracing and recovering the proceeds of international corruption;
- supporting foreign law enforcement agencies with international anti-corruption investigations;
- engaging with government and business to reduce the UK’s exposure to the proceeds of corruption; and
- working with business to support increased compliance with the Bribery Act 2010.

The ICU began to exercise its powers in 2015 by making arrests of five unnamed individuals in October, as part of an investigation that had commenced in 2013 into “suspected bribery and money laundering offences.”

**Increased Enforcement**

Despite speculation about plans to abolish the SFO, the SFO has chalked up some notable successes recently. For example, it secured the first Deferred Prosecution Agreement (DPA) with ICBC Standard Bank (formerly Standard Bank Plc) in December 2015 and the first successful conviction of a company for a Section 7 offence under the Bribery Act 2010 in November 2015.

The DPA with ICBC Standard Bank was granted in return for full self-reporting and compliance by the bank, which had paid US$6 million in bribes to government officials in Tanzania via an agent. Through the introduction of DPAs, companies are encouraged to self-report and these agreements effectively introduce another, less adversarial level of enforcement within the UK’s anti-corruption regime. The DPA is designed to increase the impact of the SFO on UK companies, particularly those operating overseas.

The prosecution of Sweett Group PLC for violation of Section 7 of the Bribery Act 2010 also demonstrates success for the SFO. The company, the UK’s only listed quantity surveyor, was fined £2.25 million for failing to prevent the company’s associates from attempting to organise bribes to officials in the Middle East. Section 7 introduced a potentially onerous burden on companies in that they can be held liable for the activities of associated parties, even if they do not knowingly commit acts of corruption. Failure to prevent the corruption made on behalf of a
company is enough to constitute the offence.

While companies can protect themselves against Bribery Act prosecutions by ensuring they have “adequate procedures” in place to prevent bribery, the SFO’s first prosecution is likely to be the start of a series of prosecutions. So although Theresa May mooted abolishing the SFO in 2014, events since then indicate that the agency is gaining momentum.

**Differences between the SFO and ICU**

The mandates of these two agencies overlap in many respects. Both target bribery, corruption and fraud, and both emphasise the importance of enforcing the Bribery Act 2010. Their powers are also similar; both enforce anti-corruption legislation and can prosecute UK companies for their activities overseas.

However, there are significant differences between the SFO and ICU, particularly when it comes to their purposes. While the SFO aims to primarily tackle domestic and overseas fraud, the ICU is predominantly international in focus and expects to do much of its work in the world’s poorer countries. Jon Benton, Joint Head of the ICU, has said, “The message to individuals and companies who see developing countries as fair game is that the UK has zero tolerance for overseas bribery and corruption.”

The ICU was created to strengthen an apparent weakness in the UK’s enforcement of anti-corruption measures on an international level. An example of an apparent weakness was the SFO’s decision in 2014 to drop its case against Victor Dahdaleh, the British-Canadian billionaire accused of paying more than £35 million in bribes to a sheikh in Bahrain in return for aluminium contracts worth $3 billion. Between 2006 and 2015, more than 150 cases of overseas bribery and corruption were investigated, with just 27 individuals and one company prosecuted.

The ICU aims to deliver a significant increase in the prosecution of overseas money laundering and bribery cases, with a particular focus on tackling corruption in DFID-priority countries (currently 28 countries identified by DFID as being most in need of economic development across Africa, Asia and the Middle East). At present it is unclear how the creation of the ICU will impact the SFO and the SFO’s caseload in those areas where the agencies’ mandates overlap. However the SFO and ICU interact in practice, it is highly likely that the enforcement of anti-corruption measures will now increase in the UK.

We recommend that all anti-corruption practitioners and businesses with an interest in anti-corruption keep an eye on the development of the ICU and on the increasing activity of the SFO. In the current enforcement climate, it is vital for companies to ensure they are vigilant in implementing robust anti-bribery and anti-corruption compliance programmes.

© Copyright 2020 Squire Patton Boggs (US) LLP