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International Anti-Corruption Enforcement on the Rise

Foreign prosecutors and regulators have dramatically stepped up their efforts to fight international bribery and corruption. For example, on September 25, 2009, Mabey & Johnson Ltd., a U.K.-based supplier of steel bridging, was sentenced in Southwark Crown Court and ordered to pay fines and restitution totalling \$10.5 million after pleading guilty in July 2009 to charges by the U.K.'s Serious Fraud Office ("SFO") that the company corruptly sought to influence public officials in Jamaica and Ghana and paid kickbacks to Saddam Hussein's regime in violation of the United Nations "oil-for-food" program. Under the plea agreement, the company consented to the imposition of financial penalties and the appointment of a compliance monitor.

The prosecution of Mabey & Johnson represents the first conviction in the U.K. of a company for overseas corruption. SFO Director Richard Alderman noted that the plea agreement represented a landmark outcome and lauded the company for coming forward to self-report. Indeed, shortly after the plea announcement, the SFO issued a Guide detailing procedures for self-reporting by companies with respect to overseas corruption. While the Guide does not guarantee that self-reporting will result in leniency, it identifies several factors -- similar to those identified by the U.S. Department of Justice ("DOJ") in assessing whether to prosecute a corporation -- that the SFO will consider in determining whether a company will face civil or criminal charges, including among other things, the nature of the company's culture, the adoption of a code of ethics, and the company's willingness to cooperate and take appropriate corrective action. The Guide further provides that, in considering whether voluntary disclosure will result in leniency, "the timing of an approach to the U.S. Department of Justice is also relevant. If the case is also within our jurisdiction we would expect to be notified at the same time as the DOJ." Further underscoring its intent to focus enforcement efforts on overseas corruption, the SFO announced earlier this month that it intended to seek the U.K. Attorney General's consent to press charges -- after plea negotiations stalled -- against BAE Systems plc for bribes allegedly paid by BAE to win contracts in various countries including the Czech Republic, Romania, South Africa and Tanzania.

The Mabey & Johnson prosecution follows last year's guilty plea in the United States by Siemens AG to criminal violations of the U.S. Foreign Corrupt Practices Act ("FCPA"), resolving one of the most significant FCPA investigations ever. The Siemens case also involved a settlement, reached by DOJ and the U.S. Securities and Exchange Commission ("SEC") working together with German prosecutors, in which Siemens paid a criminal fine to the U.S. of \$450 million, and disgorgement of \$350 million to the SEC. German prosecutors imposed an additional \$395 million fine, as well as requiring disgorgement, resulting in a total settlement amount of more than \$1.6 billion, the largest amount any company has ever paid to resolve corruption-related charges. In announcing the Siemens settlement, Acting Assistant Attorney General Matthew Friedrich stressed that U.S. prosecutors are now "working with our foreign law enforcement colleagues in bribery investigations to a degree that we never have

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previously.” More recently, Assistant Attorney General Lanny A. Breuer and SEC Enforcement Director Robert Khuzami reiterated that DOJ and the SEC anticipate augmenting their own FCPA enforcement efforts through enhanced cooperation with foreign authorities.

Other countries are getting more active in their investigation of global corruption. With the recent addition of Israel, 38 countries have now signed on to the anti-bribery convention of the Organization for Economic Cooperation and Development (“OECD”). In a 2009 Progress Report by Transparency International regarding enforcement of the OECD convention, three countries in addition to the United States -- Germany, Norway and Switzerland -- were identified as actively pursuing anti-corruption cases. Germany alone is listed as having over 150 ongoing foreign bribery investigations. An additional 11 countries were credited with moderate foreign anti-bribery enforcement.

Clearly, international businesses now must consider more than just U.S. FCPA enforcement efforts as they think about their global compliance programs. Companies with significant international operations should reassess their compliance programs to ensure that they adequately address anti-corruption risks under the FCPA, as well as locally applicable anti-corruption laws and regulations. While anti-corruption enforcement efforts overseas may still lag behind those by U.S. authorities, it is more likely now than ever that a multinational company could face investigations and even possible prosecutions in multiple jurisdictions.

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