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Anti-bribery and corruption: Risks and compliance strategies for UK insurance brokers

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In early February, the Financial Services Authority published its Financial Risk Outlook and Business Plan for 2009/10. Among other notable aspects of those reports, the Financial Risk Outlook indicates that financial crimes are on the rise (potentially exacerbated by current economic conditions), and the Business Plan states that the FSA is continuing in its ongoing "thematic review of anti-bribery and corruption systems and controls" in commercial insurance brokers' systems, to evaluate whether the industry is taking "appropriate action" to protect against anti-corruption risks. The Business Plan notes that the FSA intends to publish its results from the thematic review at the end of 2009, and that it also may conduct a similar review of anti-corruption systems and controls in other business sectors.

Those reports come on the heels of the FSA's £5.25m fine of Aon Limited for failing to implement adequate anti-bribery and anti-corruption controls, which the FSA found was in breach of principle three of the FSA's principles for businesses. The magnitude of the Aon penalty surprised many; however, the FSA had signalled as early as November 2007 (in an open letter to the industry) that it expected insurance brokers to implement safeguards "to minimise the risk that your firm makes, or will make, illicit payments either directly or indirectly to, or on behalf of, third parties, and to bring to our attention anything relating to such a review of which the FSA would reasonably expect notice."

Clearly the FSA is expending agency resources to ensure that firms honour their anti-corruption compliance commitments, or are penalised for failing to do so. Insurance can be a complex and global service, involving third-party intermediaries, multifaceted transactions and risks being covered, and expansion into developing countries that pose high corruption risks. The issue of improper payments is, as a result, a core compliance area for insurance brokers.

So what are the criteria for an effective anti-corruption compliance programme? The FSA-Aon penalty notice describes Aon's reformed compliance regime, as summarised in the notice, as "a model of best practices for other firms to adopt." The Aon approach can, therefore, serve as a point of reference. Other sources also are available, including "best practices" models that leading non-governmental organisations have offered in the anti-corruption field, and various commissioned reports focusing on particular industry sectors or firms (including, most notably in the UK, the Woolf Committee's May 2008 report concerning the BAE Systems anti-corruption compliance programme, which is not focused on FSA-regulated firms but provides guidance that can, in many respects, apply across business sectors).

It must be emphasised, however, that there is no such thing as "one-size-fits-all" compliance. The resources mentioned above provide a useful starting point, but firms must examine their organisational structures carefully, as well as the scope of their domestic and overseas businesses and their relationships with intermediaries, to ensure that effective anti-corruption safeguards are in place that correspond to the nature

of their business operations. The following are threshold considerations that insurance brokers, and other FSA-regulated firms with corruption risk exposure, should consider:

Who in the company has responsibility over the compliance programme?

Senior managers who are accountable for the success of the compliance programme should approve and administer the programme. Determining who will be responsible for overseeing anti-corruption compliance is one of the most important decisions in framing an effective programme — the person or persons should be highly knowledgeable of the international scope of the company's business, trained in the requirements of the anti-corruption laws implemented in the UK and those of other relevant jurisdictions, and connected through clear reporting lines to the business units. Compliance tasks should be delegated as necessary to ensure that they are implemented effectively, but the compliance programme ultimately should be reported to a central, senior management authority.

Do employees understand their compliance obligations?

Notably, Aon was penalised despite having in place a pre-existing written compliance programme that prohibited bribery. Firms must ensure that their written policies are up-to-date, drafted clearly so that a non-lawyer can understand them, and distributed widely and regularly throughout the organisation. Policies must be reinforced through training programmes for relevant personnel. More detailed training — focusing on specific risk areas of concern — should be mandated for company employees operating in high-risk jurisdictions or business roles. Employees should, moreover, be made aware of the consequences of non-compliance for themselves and for the company.

Are monitoring mechanisms in place?

Many FSA-regulated firms are familiar with risk-based transaction monitoring given pre-existing obligations under anti-money laundering laws. Transactions likewise should be monitored from an anti-bribery standpoint, pursuant to a risk-based formula that places particular focus on jurisdictions and transactions of concern, including cross-checking of transactions by compliance or auditing staff outside of the sales function. Pre-existing finance management review processes may be available to assist in this monitoring.

What controls are in place on the engagement and activities of third-party representatives?

Third-party representatives are an important element of the business of insurance brokers and other FSA-regulated entities. Intermediaries may, moreover, become a more active part of regulated firms' businesses in adverse economic conditions, as firms seek to consolidate their global overhead. Intermediaries, however, represent a primary anti-corruption risk for regulated firms.

Firms should ensure that (1) clear written criteria and approval requirements are in place within the company for determining how and when representatives will be hired; (2) representatives have been vetted through a transparent due diligence process, and that there is always a clear and demonstrable business case for hiring a representative (which should be documented and approved by a responsible senior manager); (3) representatives are made aware of their obligations under domestic and international anti-corruption laws; and (4) anti-corruption safeguards are built into contracts with representatives, including (among other features) clear anti-corruption commitments covering both domestic and applicable foreign laws, with contractual remedies for non-compliance, and company audit rights to ensure that the company can verify its representative's activities.

Net result

The FSA's emphasis on anti-corruption compliance signals an increased focus in the UK in utilising regulatory measures to control and penalise bribery and other forms of corruption. Other developments — including the Law Commission's November 2008 report on bribery law reform, which may result in new legislation this year, and increased recent enforcement of existing anti-bribery laws by the UK Serious Fraud Office — reinforce the imperative for UK-regulated firms with high corruption exposure to make compliance a central aspect of their business. For firms that already have systems in place, now is the time to review those procedures. For those who have not yet focused on anti-corruption compliance, now is the time to learn from the experience of other firms and implement effective safeguards.

- ***David Lorello*** *is a senior associate at Steptoe & Johnson LLP. He advises clients in a variety of industries regarding U.K., U.S. and international anti-corruption regimes, including strategies for developing effective compliance programmes to manage corruption-related risks. Tel: 44 20 7367 8007.*

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