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Russia's Bribery Crackdown

Overview

In late February of 2008 Russian Prime Minister Viktor Zubkov accused Russia's Federal Customs Service of corruption, stating that bribes and blatant corruption are endemic among customs officials along Russia's western borders. He announced that customs officials may hold containers for days seeking bribes, and urged Russia's law enforcement agencies to pursue some 300 criminal probes into such cases.

FCPA Implications

The US Foreign Corrupt Practices Act ("FCPA"), among other things, criminalizes the bribery by covered persons of foreign government officials in order to obtain or retain business. "Business" has been broadly construed by the courts in the seminal Fifth Circuit *Kay* decision in United States v. Kay, 359 F.3d 738, 755 (5th Cir. 2004), as including payments in the customs context. In the past few years, there has been a heightened level of enforcement of the FCPA regarding payments intended to assist the payor indirectly to obtain or retain business – including business related to administrative or regulatory action, such as the payment of taxes or customs duties. The US government is currently actively investigating a large number of companies for potential violations of the FCPA involving payments to foreign customs officials via customs brokers in a number of countries.¹ Enforcement officials actively follow press reports, although it is not known at this juncture whether they have specifically focused on the reported customs issues in Russia.

For any company with extensive exports to and sales in Russia, interactions with Russian customs officials directly or indirectly may be inevitable. Some aspects of these interactions may have involved questionable payments in terms of the FCPA. Even if the payments involve facilitating payments that fall within the scope of the FCPA's anti-bribery exception, publicly traded companies must ensure that such payments are recorded properly under the FCPA's books and records requirements and that proper controls regarding such payments are in place. Payments may present local law issues as well.

In view of the foregoing, any US company with significant levels of imports into Russia or exports from Russia may wish to consider conducting an internal FCPA compliance assessment in this area. Such assessment should include a review of brokerage relationships, invoicing and payment practices, documentation, controls, as well as any direct dealings with the customs authorities.

Steptoe & Johnson has assisted several US companies in internal FCPA investigations in recent years, including investigations involving allegations of bribery of customs officials, and investigations in Russia and neighbouring

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countries. In addition, Steptoe & Johnson has lawyers and paralegals with Russian language expertise. Please contact Lucinda Low at +1 202 429 8051 or Alexandra Baj at +1 202 429 6478 for more information.

¹ For example, in February 2007 Vetco International Ltd. subsidiaries (“Vetco”) pleaded guilty and agreed: (1) to pay fines totalling \$26 million; (2) to institute an independent monitoring and compliance program; and (3) to conduct additional investigations, following DoJ’s investigation of corrupt payments made by Vetco’s agent to employees of the Nigerian Customs Service. [See DoJ Press Release](#).