

The FSA Bares its Teeth: Be Aware of International Enforcement Regimes

While many companies here in the US complain about the enforcement of the Foreign Corrupt Practices Act (FCPA), and are actively seeking to soften its enforcement by lobbying Congress to amend the FCPA, just imagine how they might feel about paying a multi-million dollar fine for a situation in which no bribery was proven. That is the situation that UK insurance broker Willis Ltd., found itself in yesterday, in what reporter Sam Rubinfeld termed “the largest fine by the FSA (the UK Financial Services Authority) ... ever imposed for failure to implement controls to prevent financial crimes”. The FSA announced on July 21 that it had assessed a penalty of £6.9MM to the insurance broker Willis Ltd., for failing to ensure payments it made to third parties were not used for corrupt purposes.

In an article in the Wall Street Journal’s Corruption Currents blog, entitled “*FSA Fines Willis GBP6.9 Million For Anti-Corruption Failures*”, Rubinfeld detailed that Willis had, from January 2005 through December 2009, made payments of over £27MM to foreign third party agents to assist in obtaining business of £60MM. Of this £27MM there were \$227,000 (yes the FSA switched from GBP to USD in mid-Final Notice) identified in suspicious payments to counterparties in Egypt and Russia, which the FSA said were referred to the UK Serious Organized Crime Agency for further investigation.

Rubinfeld noted that the fine could have been significantly higher as the FSA recognized that Willis had “taken significant steps” to address failings identified by the FSA. These steps, together with Willis’ cooperation and willingness to settle, qualified the company for a 30% discount on its fine. He reported that without the discount, Willis would have had to pay £9.85 million. So for those of you keeping score at home, that is £60MM (\$97MM) in business, generating £27MM (\$44MM) in commissions, for which a ‘suspicious \$227K’ was found. All of this resulted in a fine of £ 6.9MM (\$11.2MM).

The FSA Final Notice detailed several clear guidelines which the UK Bribery Act or FCPA practitioner may find useful in establishing an adequate procedures or a best practices compliance program. The FSA stated that Willis had failed to:

- Make and document a business case for the payments to overseas third parties;
- No formal training was provided to Willis’ staff in analyzing requests for payments or third party billings;
- There was no risk assessment of the third parties;
- There was inadequate monitoring of the third parties;
- There was inadequate due diligence performed on the third parties, particularly their relationships to foreign governmental officials; and
- Willis ignored clear Red Flags that the third parties would make improper payments.

All of these factors led to an overall “weak control environment” regarding payments to foreign third parties. This gave rise to unacceptable risk that the payments made to these third parties could be used for the payments of bribes. The FSA noted that although Willis had introduced improved policies and guidance, aimed at reducing and better managing its compliance risks, the company failed to ensure that these new policies were followed. Additionally, although the Willis Board was involved in the new policy development, the Board did not receive adequate information from senior management to assess whether the risks of bribery and corruption “were effectively mitigated.

So while your company is complaining about the US enforcement regime, perhaps it might reflect on actual violations of the FCPA, or as our colleagues from thebriberyact.com, Barry Vitou and Richard Kovalevsky, QC, put it yesterday, “*If your business is regulated by the FSA take note. This warning is directed to your business.*”

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