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Anticorruption Compliance & Foreign Corrupt Practices Act ALERT

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FCPA-Inspired Bribery Act Projected to Hit the Oil and Gas Industry Hardest

The UK Bribery Act is scheduled to take effect on July 1, 2011, and according to a recent study by Ernst & Young, it will hit the oil and gas industry the hardest.

Ernst & Young's [news release](#) revealed some troubling statistics regarding bribery prosecutions under the US Foreign Corrupt Practices Act (FCPA) since its inception in 1977. In the study, Ernst & Young analyzed 118 FCPA cases involving 242 companies (including subsidiaries) and 167 prosecutions (an additional 30 are still pending) to determine which industries were most likely to be prosecuted. The data revealed that oil and gas companies were the most likely to be prosecuted under the FCPA, accounting for 18 percent of all prosecutions. Life sciences and consumer products were the second and third most prosecuted industries, accounting for 13 and 12 percent of prosecutions, respectively. Criminal fines were the most common outcome of an FCPA investigation in all three sectors.

Ernst & Young noted in the release that it expects the oil and gas industry to see the harshest impact of the UK Bribery Act, not because the sector is somehow predisposed to greater corruption, but because the sector operates in different parts of the globe. David Lister, a director at the firm's Fraud Investigations and Dispute Services team, explained "There is no suggestion that individuals and companies within the oil and gas sector [or other sectors on the list] are intrinsically more corrupt than their counterparts in other sectors. Rather, it is the

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Contacts:

[Donald T. Bucklin](#)
+1.202.626.6816

[Nicholas Chan](#)
+852.2103.0388

[Gabriel Colwell](#)
+1.213.689.5126

[Rob Elvin](#)
+44.161.830.5257

[George N. Grammas](#)

nature and locations of their businesses that exposes them to additional risk."

According to Ernst & Young, it elected to examine the historical data on FCPA prosecutions to forecast the impact of the UK Bribery Act because the Act's provisions are similar to the FCPA and prohibit similar conduct. It is not exactly comparing apples to apples, however, because the UK Bribery Act, as written, is stricter than the FCPA, criminalizing the following three major areas that are not covered by the FCPA.

1. **Bribery of private individuals and companies** – The UK Bribery Act extends the prescribed conduct to include private commercial bribery, e.g., bribery between private individuals and companies, where a foreign official is not involved.
2. **Offerors and acceptors of bribes are equally culpable** – The FCPA only criminalizes the offer or payment of a bribe. The UK Bribery Act punishes not only the offer and payment of a bribe, but also the acceptance of a bribe.
3. **Facilitation payments** – Unlike the FCPA, the UK Bribery Act contains no exception for facilitation payments – monies paid to expedite the performance of a routine governmental action by a foreign official to which the payer is legally entitled – but rather, specifically prohibits their use.

Companies doing business in both the UK and United States should take note of the differences between the UK Bribery Act and FCPA, and will need to revise their existing compliance programs to reflect the more expansive provisions of the UK Bribery Act and the distinctions between the two.

Lawyers in Squire Sanders' global anticorruption and white collar practices regularly counsel clients on FCPA and UK Bribery Act compliance, training and enforcement issues. If you have any questions about the impact of the UK Bribery Act on your existing compliance program or business activities, please contact one of the individuals listed in this Alert.

+1.202.626.6234

[Rebekah J. Poston](#)

+1.305.577.7022

[Daniel F. Roules](#)

+86.21.6103.6309

[Ritchie T. Thomas](#)

+1.202.626.6686

[Joseph Walker](#)

+1.202.626.6725

[Carol M. Welu](#)

+44.20.7655.1750

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