

British and US Antibribery Laws Affect Czech Companies Both at Home and Abroad.

It could be argued that the Czech Republic is still awaiting its first considerable bribery case. As a result, the battle against corruption in the Czech Republic is still viewed as a more political topic, as opposed to legal, with many managers still refusing to admit that corruption among workers may lead to a company prosecution.

However, since 1 January 2012, a legal entity may be prosecuted for criminal offences (including corruption crimes) directly if such crimes are committed in its name, interest and/or as part of its activity. In addition, corruptive practices may lead to criminal law consequences under foreign regulations.

Companies with connections to the UK and US need to pay particular attention to these regulations. The UK Bribery Act 2010 has extended the “long arm” concept and sanctions for the criminal offence of “failure to meet the company’s obligation to prevent bribery” now apply regardless of the country in which the criminal offence is committed. Furthermore, they apply to any and all companies incorporated under UK law or those which partially carry out their business activities in the United Kingdom. Therefore, a company with connections to UK may be prosecuted for this crime in the UK even where the crime was committed in the Czech Republic.

What are the Boundaries?

Currently, it is not obvious how strong the connections to the United Kingdom must be for the concept to apply. However, it is certain the Act will apply if the company is incorporated under UK laws or has a registered place of business in the United Kingdom. The Act may also apply if company representatives make occasional business trips to the UK or conduct business activities in the UK even without establishing a physical place of business, e.g. through the Internet. However, acceptance of securities by the London Stock Exchange should not be considered a sufficient connection.

Under the UK Bribery Act 2010, companies are liable for corruption-related offences committed by their employees and any other person providing services in the name or on behalf of the company including business representatives and subsidiaries.

Thus, if a Czech subsidiary or Czech business representative of a UK company commits a corruption-related offence in the Czech Republic, it is not only that company that will face criminal liability under Czech law; the UK parent company will also face criminal liability under the UK Bribery Act of 2010.

The only defense of the UK parent company in such a case will be to prove that it introduced sufficient internal measures to prevent any corrupt conduct. The UK Ministry of Justice issued, as a guideline, a document containing the basic principles that companies should follow in order to rely on this defense. Thus, UK parent companies are forced to “export” these anticorruption standards to all countries in which they operate.

Warning Cases

The US Foreign Corrupt Practices Act has significant cross-border effects as well. This act will reach not only those foreign persons whose shares are traded on a stock exchange in the US, but also the persons acting on their behalf including employees. This act also applies to acts of corruption committed anywhere in the world and US authorities do not hesitate to investigate these cases and impose strict sanctions.

One example is a Norwegian oil and gas company Statoil which was traded on the New York Stock Exchange. In 2006 it entered into an agreement with the US Ministry of Justice, under which the company had to pay a penalty of US\$10.5 million for bribing Iranian officials.

Probably the most well known incident under the Foreign Corrupt Practices Act is a German telecommunications company, Siemens, with securities on the New York Stock Exchange. In December 2008, it admitted to the US Ministry of Justice that it had bribed foreign state representatives. As a result, the penalty imposed by the US Ministry of Justice amounted to US\$450 million. Moreover, the company subsequently had to spend hundreds of millions of US dollars on internal investigation and disclosure of all the corruption cases and the introduction of strict preventive measures.

Thus, cross-border business activities now bring with them the necessity of submitting to foreign anti-bribery legislation not only abroad, but in the Czech Republic as well; the efficiency of UK and US authorities should not be underestimated.

Contacts**Martin Mládek**

Local Counsel

T +420 221 662 283

E martin.mladek@squiresanders.com

Ivan Chalupa

Associate

T +420 221 662 274

E ivan.chalupa@squiresanders.com