

## **Anti-Corruption Risks for Private Equity -- Portfolio Companies**

FCPA and UK Bribery Act enforcement is about to hit the private equity industry. The Justice Department, SEC and the UK's Serious Fraud Office have made it clear that they intend to bring down the hammer of anti-corruption enforcement.

The anti-corruption cottage industry continues to remind the industry, and lawyers are out beating the drums. The private equity industry better take note.

The greatest risk for private equity companies is their portfolio companies. Private equity owners move fast in the world of buying and selling companies. Anti-corruption due diligence prior to an acquisition is not a priority. After acquiring the company, private equity owners are not focused on integrating compliance programs or training new employees to follow a global corporate culture. Instead, private equity owners are interested in quick increases in revenues or reductions in costs, all with an eventual sale and quick profit.

In the United States, private equity liability is most significant when the acquiring private equity company has control of the portfolio company and/or may have a representative sit on the board of directors of the portfolio company.

The United Kingdom is a different story. SFO Director Alderman has made a number of public statements concerning private equity liability under the UK Bribery Act which suggest:

1. Private equity owners can be held liable under the UK Bribery Act for bribery committed by a portfolio company even when the private equity owners do not have control of the portfolio company.
2. Private equity owners can be liable under UK money laundering laws for bribery committed by a portfolio company even when the private equity owners do not have any knowledge of the bribery. Specifically, SO Director Alderman stressed that the SFO will seek to confiscate profits/dividends from a portfolio company where the company has benefitted from corrupt conduct.

The UK anti-money laundering law applies to bribery and is very broad with wide extraterritorial effect. The SFO has a long and aggressive track record of using its confiscation powers and appears ready to do so as part of Bribery Act enforcement.

Private equity companies are on the political and enforcement chopping block. The Justice Department made public statements in 2008 and 2010 cautioning private equity companies, and SFO Director Alderman has made a series of speeches this year outlining enforcement and compliance strategies.

Private equity companies need to address the problem promptly. The first task is to conduct a quick risk assessment of portfolio companies to prioritize each for a thorough risk assessment and the design of compliance programs and internal controls. It may be too late to avoid real enforcement risks but action is a must.