

# Under Scrutiny:

SHB's Government Enforcement & Compliance Monitor

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## GOVERNMENT ENFORCEMENT & COMPLIANCE

Although the challenges may change, our mission remains the same: Eliminating the legal obstacles to achieving your business objectives.

Our clients face unprecedented enforcement scrutiny and novel legal theories. Today, government enforcement actions can include civil as well as criminal investigations and litigation. They can involve a host of independent actors including federal and state prosecutors, regulators, whistleblowers and their counsel, and class-action attorneys. These cases must be defended under the watchful eye of investors and the public.

Shook, Hardy & Bacon has long been known for its Iron Triangle Theory of Modern Defense, a recognition that effective defense cannot take place solely in the courtroom but must entail anticipating, understanding and responding effectively to the other two important aspects of high-stakes litigation: government and media relations.

Drawing on our experience and the Iron Triangle Defense Theory, our Government Enforcement & Compliance Practice recognizes that successful representation and defense requires effective responses to the multiple independent actors that can affect the progress and outcome of a government-enforcement action.

### IN FOCUS: THE FOREIGN CORRUPT PRACTICES ACT

A *New York Times* article ("Payload: Taking Aim at Corporate Bribery," November 25, 2007) last week provided insights into what is becoming an increasingly large number of Foreign Corrupt Practices Act ("FCPA") investigations by the Justice Department, this time targeting British defense giant BAE. At issue in the BAE matter are payments totaling billions of dollars over 20 years to Saudi royals in connection with an \$80 billion defense contract with the kingdom. Apparently, an estimated \$2 billion in payments that were deposited into Prince Bandar bin Sultan's Washington bank account triggered the investigation by U.S. authorities. Although BAE is a British company, the FCPA's jurisdictional provisions are extremely broad, allowing the FCPA to apply not only to U.S. entities operating in foreign countries, but also to non-U.S. corporations that make use of the U.S. mail or any means or instrumentality of interstate commerce (i.e., banks) to do any act in furtherance of an otherwise prohibited payment.

Significantly, British law enforcement authorities had initiated a BAE investigation in 2004, but it was halted by then-Prime Minister Tony Blair after Saudi officials objected. Despite ongoing tensions between the United States and Britain over the BAE matter, the Justice Department has pursued an aggressive investigation with the cooperation of law enforcement agencies elsewhere in Europe, including Swiss and German authorities.

Both U.S. and foreign law enforcement officials have zeroed in on FCPA violations. Fueled by increasing allegations of international bribery and corruption, stepped up enforcement and new anti-corruption initiatives have been rolled out to prevent, detect and punish a wide array of business conduct. During the FCPA's first three decades, the government pursued only about 60 corporate cases. Justice Department officials this year,

however, estimated that approximately 60 cases are currently under investigation or prosecution in the United States. The Justice Department recently announced a new five-member FBI team dedicated to examining possible violations of the act. As stated in a *Wall Street Journal* editorial touting the effects of increased FCPA enforcement ("Global Cleansing," November 28, 2007), "[t]he rich world's tolerance of corruption is declining....May the crackdown long continue."

More than crippling fines and damage to companies' reputations are at stake in these investigations. U.S. executives and employees can face prison terms if found bribing foreign government officials to get deals abroad. Clearly, a harried, ineffectual response to investigation, an inadequate defense to an indictment or prosecution and crippling damage to corporate reputation all potentially await unwary U.S. companies doing business overseas. An updated and robust FCPA compliance program that enables company-wide understanding of and adherence to the FCPA's prohibitions is the best armor in this increasingly targeted area.

SHB represents and advises companies, their boards and management, and individuals in all aspects of FCPA matters, from developing and implementing effective compliance programs and conducting internal investigations to defending government inquiries and investigations, enforcement actions, and civil and criminal proceedings. SHB has numerous former government prosecutors in its Kansas City, Washington D.C. and Houston offices, providing clients with invaluable insights and experience when responding to the many facets of a government investigation with administrative, civil and criminal components.

*The choice of a lawyer is an important decision and should not be based solely upon advertisements.*

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