



CORPORATE BRIBERY LAWS IN THE U.S. AND U.K.: WHAT THEY MEAN FOR UGANDA'S OIL SECTOR

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Source: ACODE Digital Library, 2010

In July 2010, the United States government passed the Dodd-Frank Wall Street Reform and Consumer Protection Act, a law with enormous implications for Uganda's nascent oil sector. Among other things, the law includes a "publish what you pay" component that requires all extractives companies that trade on U.S. stock exchanges and submit annual reports to the U.S. Securities and Exchange Commission (SEC) to disclose the payments they make to any government throughout the world for the commercial development of oil, natural gas, or minerals. Two

oil companies that work in Uganda—Total and CNOOC—trade on U.S. stock exchanges, which means that they'll be required under the new law to disclose to the SEC—and to the worldwide public—detailed information on their transactions with the Ugandan government for the commercial development of oil. Yet, the passage of the Dodd-Frank Act is only the latest in a string of legislation designed to regulate the overseas activities of businesses that trade in the United States. Earlier legislation that seeks to curtail corporate bribery will also be relevant to Uganda's oil sector.

The U.S. Foreign Corrupt Practices Act of 1977

In the mid-1970s, the SEC conducted a series of investigations into the overseas business activities of U.S. companies. The results were staggering. The SEC uncovered evidence that American companies were

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paying hundreds of millions of dollars in bribes (and other questionable remunerations) to politicians, political parties, and officials within foreign governments. (According to the Fraud Section of the U.S. Department of Justice: “the abuses ran the gamut from bribery of high foreign officials to secure some type of favorable action by a foreign government to so-called facilitating payments that allegedly were made to ensure that government functionaries discharged certain ministerial or clerical duties.”¹) At the time, bribing foreign governments was not illegal in the United States, which prompted Congress to pass the Foreign Corrupt Practices Act of 1977 (FCPA), which prohibits U.S. firms from bribing foreign officials in order to facilitate business. In the intervening years, the scope of the law expanded to include those companies that may be domiciled outside the United States, but still trade on U.S. stock exchanges—companies like Total and CNOOC, for instance. Recently, a number of high-profile companies have been indicted under FCPA:

- In 2010, the SEC charged General Electric (GE) with making illegal kickback payments to the Iraqi Health Ministry and the Iraqi Oil Ministry to obtain lucrative contracts under the UN Oil for Food Program. GE agreed to pay

1 U.S. Department of Justice. “Foreign Corrupt Practices Act: Anti-Bribery Provisions.” Available at: <http://www.justice.gov/criminal/fraud/fcpa/docs/lay-persons-guide.pdf>.

over \$23 million to settle the suit with the SEC.

- In 2009, Kellogg, Brown and Root (KBR), a subsidiary of Halliburton, pled guilty to bribing Nigerian government officials in order to obtain contracts to build liquefied natural gas facilities in the country. KBR paid over \$400 million in fines to the SEC.
- In 2008, the German company Siemens, which trades on the New York Stock Exchange, paid \$800 million in fines to the SEC and the U.S. Department of Justice after pleading guilty to administering a series of bribes in multiple countries throughout the world.

The U.K. Bribery Act of 2010

In 2010, the United Kingdom passed its own version of FCPA, called the Bribery Act, which went into effect July 1, 2011. Recent findings from the research and consulting firm, Ernst & Young, suggest that the U.K.’s new law will likely hit the oil and gas industry hardest

Companies that trade on U.S. stock exchanges—like CNOOC and Total, for instance—can be prosecuted in the United States if they violate the provisions within the Foreign Corrupt Practices Act.

(based on an examination of FCPA prosecutions in the United States).² Within Ernst & Young’s sample, oil and gas companies accounted for 18 percent of all SEC prosecutions, making it the industry with the greatest proportion of bribery charges in the United States. In the upcoming years, the FCPA and the Bribery Act will no doubt complement and enhance the additional auditing power that the SEC received through the “publish what you pay” component of the Dodd-Frank Act. Ideally, these laws will also give some additional teeth to Uganda’s Anti-Corruption Act of

2 Ernst & Young (May 9, 2011). “Oil and gas sector most at risk from investigation under the UK Bribery Act, warns Ernst & Young.” Available at: <http://www.ey.com/UK/en/Newsroom/News-releases/Assur---11-5-9---Oil-and-gas-sector-most-at-risk-from-investigation-under-the-UK-Bribery-Act>.

2009, and to the work of Uganda's Inspector General of Government and Director of Public Prosecutions.

Rumors of Influence Peddling within Uganda's Oil Sector

Rumors of corporate bribery are already hanging over Uganda's oil sector, despite the fact that oil production has yet to begin. Below are a few of the allegations that were recently made public:

- Thanks to Wikileaks, we know that Tullow Oil representatives approached U.S. diplomats in Uganda about rumors that the Italian oil company, Eni, had attempted to bribe officials within the Ugandan government in order to gain access to Uganda's oil market. (Back in 2009, Eni was attempting to override Tullow Oil in a bid to buy out Heritage's exploration rights in the Albertine Rift).³

A report from the research and consulting firm, Ernst & Young, suggests that the U.K.'s new Bribery Act will likely hit the oil and gas industry hardest.

- An additional Wikileaks cable alleges that in 2009, at least two high profile Ugandan officials were attempting to use their public and private connections to orchestrate a joint venture with Iran to build an oil refinery in Uganda. The Ugandan officials in question were said to be financiers of an oil services company, which, according to the leaked cable, may "want to corner the market on the production and distribution of Ugandan's future oil products."⁴

³ U.S. Department of State (December 9, 2009). "TULLOW SEES CORRUPTION IN OIL SALE" (09KAMPALA1401, UGANDA). Wikileaks. Available at: <http://www.wikileaks.ch/cable/2009/12/09KAMPALA1401.html>.

⁴ Butagira, Tabu (March 15, 2011). "Uganda-Iran oil deal angered US—leaked cable." Daily Monitor. Available at <http://mobile.monitor.co.ug/News/-/691252/1125202/-/>

- In early 2011, the British-based Telegraph detailed serious allegations of influence peddling between the British government and two oil companies operating in Uganda, Heritage and Tullow. The origins of the scandal involved a capital gains tax dispute between Heritage and the Ugandan government, into which Britain intervened. According to the Telegraph, members of the British government pressured the Ugandan government to acquiesce to the interests of both oil companies, and forgo Uganda's claims to the tax money. Two officials lobbying on behalf of the companies were Britain's foreign minister and foreign secretary, both members of the U.K.'s Conservative Party, which was the recipient of sizable campaign contributions from the chief executives of both Heritage and Tullow.⁵

While none of these allegations have been substantiated in a court of law—and while the Wikileaks cables are not, in themselves, proof of any wrongdoing—the appearance of improper conduct by so many parties is nevertheless a worrying sign. No doubt, as the Ugandan government seeks to investigate such rumors, the U.S. FCPA and the U.K. Bribery Act may well come into play, although importantly, companies cannot be held liable under the U.K. Bribery Act for any evidence of wrongdoing committed prior to July of 2011.

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⁵ Watt, Holly and Heidi Blake (February 10, 2011). "William Hague 'lobbied strongly' for oil companies run by Tory donors." The Telegraph. Available at <http://www.telegraph.co.uk/news/politics/william-hague/8314345/William-Hague-lobbied-strongly-for-oil-companies-run-by-Tory-donors.html>.

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