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Foreign Corrupt Practices Act

UPDATES

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New U.N. Convention Reflects Increased International Focus on Corruption

After several years of drafting, the U.N. Convention Against Corruption was completed late last year and now has been signed by almost one hundred countries, including the United States. Countries that become Parties to the Convention are required to enact or amend their domestic laws to prohibit a wide range of corrupt activities in both the public and private sector. The Convention further requires Parties to devote substantial regulatory and law enforcement resources to ensure that the anti-corruption laws are observed and that there is international cooperation in investigating and prosecuting corrupt activities. Although it is not immediately clear what new laws, if any, the Convention will require in signatory countries, the Convention reflects the increasing worldwide focus on corruption.

Requirements of the Convention

Parties to the Convention are required to, among other things, criminalize bribery of public officials, embezzlement of public funds, obstruction of justice, and the concealment or disguise of the proceeds of illegal activities. Parties also are required to ensure that their laws enable them to freeze and confiscate the proceeds of crime.

Additionally, Parties to the Convention are required to establish transparent and competitive procurement systems, codes of conduct for public officials, and comprehensive anti-money laundering regulatory schemes for financial institutions.

The Convention also states that Parties “shall consider” a variety of other anti-corruption measures, including prohibiting embezzlement and bribes in the private sector.

Beyond requiring the adoption of certain anti-corruption laws and suggesting the adoption of others, the Convention establishes rules and mechanisms for international cooperation in fighting corruption. Parties to the Convention are required to render to other Parties assistance in investigations, prosecutions, and judicial proceedings concerning offenses covered by the Convention. And Parties also are required to devote sufficient resources to ensure observance of the domestic laws and international cooperation required by the Convention.

Impact of the Convention

The Convention will enter into force after thirty countries ratify it. A country that signs an interna-

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tional convention typically begins the ratification process by referring the convention to a legislative body – in the United States, for example, international conventions must be referred to the Senate.

A legislative body generally must approve and implement the Convention by enacting or amending domestic legislation. In the case of the Convention Against Corruption, however, it is unlikely that new U.S. laws will be necessary to bring the United States into compliance with the Convention. The United States historically has been a leader in enacting anti-corruption laws, and existing laws – such as the Foreign Corrupt Practices Act, the Racketeer Influenced and Corrupt Organizations Act, the money laundering statutes and related USA Patriot Act and Bank Secrecy Act, and myriad other laws – likely will be deemed to satisfy the requirements imposed by the Convention. Nevertheless, the United States will become a Party to the Convention only when the Senate ratifies it, and the Convention will bind its Parties only when a total of thirty countries have ratified it.

But even in advance of ratification, the signing of the Convention by almost one hundred countries reflects the increased international focus on preventing corruption, and businesses engaged in foreign commerce should ensure that they are in compliance with the anti-corruption laws of all the countries in which they operate.

Especially when engaged in commerce in a country that is a signatory to the Convention, businesses should be aware that changes to anti-corruption laws or enforcement practices may be forthcoming. Signing the Convention signifies a country’s intent to bring its domestic anti-corruption laws and enforcement of those laws into compliance with the Convention, so businesses should pay attention to changes on the horizon in signatory countries.

Countries that signed the Convention as of the end of 2003 are as follows:

Signatories to the U.N. Convention Against Corruption Act

Albania	Germany	Panama
Algeria	Greece	Paraguay
Angola	Guatemala	Peru
Argentina	Haiti	Philippines
Australia	Hungary	Poland
Austria	Indonesia	Portugal
Barbados	Iran (Islamic Republic of)	Republic of Korea
Belgium	Ireland	Romania
Benin	Italy	Russian Federation
Bolivia	Japan	Senegal
Brazil	Jordan	Serbia and Montenegro
Brunei Darussalam	Kenya	Sierra Leone
Bulgaria	Kuwait	Slovakia
Burkina Faso	Kyrgyzstan	South Africa
Cameroon	Lao’s People’s Democratic Republic	Sweden
Cape Verde	Libyan Arab Jamahiriya	Switzerland
Chile	Liechtenstein	Syrian Arab Republic
China	Lithuania	Thailand
Colombia	Luxemburg	Timor-Leste
Comoros	Madagascar	Togo
Costa Rica	Malaysia	Trinidad and Tobago
Côte D’ Ivoire	Mali	Turkey
Croatia	Mauritius	Uganda
Cyprus	Mexico	Ukraine
Denmark	Morocco	United Kingdom of Great Britain and Northern Ireland
Dominican Republic	Namibia	United Republic of Tanzania
Ecuador	Nepal	United States of America
Egypt	Netherlands	Uruguay
El Salvador	New Zealand	Venezuela
Ethiopia	Nicaragua	Vietnam
Finland	Nigeria	Yemen
France	Norway	Zambia
Gabon	Pakistan	

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