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United States Ratifies Major International Anti-Corruption Measure

On October 30, 2006, the United States ratified the United Nations Convention Against Corruption (“UNCAC”), the most significant multilateral anti-corruption measure in the last decade. The UNCAC is more ambitious in scope than the U.S. Foreign Corrupt Practices Act (“FCPA”) or the Organization of Economic Cooperation and Development’s Convention on Combating Bribery of Foreign Public Officials in International Business Transactions (“OECD Convention”), as it encompasses corruption-related activities involving both national and foreign public officials, as well as private sector corruption. Specifically, the UNCAC addresses bribery of public officials, embezzlement, misappropriation, trading in influence, abuse of function, illicit enrichment by public officials, and money laundering. To date, 139 nations have signed UNCAC, committing to bring their own local laws in line with its provision.

A significant achievement of the UNCAC is the implementation of increased measures for international enforcement cooperation. UNCAC provides for states to provide mutual legal assistance to train enforcement personnel and to investigate and prosecute offenses. It also makes UNCAC crimes extraditable offenses. Another feature of UNCAC addresses the recovery of assets illegally paid to or received by public officials. States also are required to implement provisions to enable the return of confiscated property to the requesting state or to a prior legitimate owner.

Businesses must be mindful of the global reach of the UNCAC and specifically determine whether operations (e.g., by subsidiaries, affiliates or joint ventures) are being conducted in UNCAC member states. Secondly, U.S. and non-U.S. businesses alike should consider whether existing company anti-corruption policies and procedures need to be revised to reflect the UNCAC implications. Furthermore, companies and individuals should undertake periodic monitoring of local anti-corruption laws where they do business and have operations to ensure they are up-to-date with local implementation of UNCAC requirements. Finally, when undertaking new international transactions or new business relationships (e.g., with representatives, agents or distributors), companies and individuals must adhere to national, enhanced due diligence requirements, as applicable, to ensure compliance with anti-bribery provisions in UNCAC member states, particularly those previously not party to any multilateral anti-corruption regime such as the OECD Convention.

While it remains to be seen how the signatory nations will implement UNCAC under their national laws and enforce its provisions, it is significant that so many countries have committed on the world stage to curb and punish bribery in international business dealings.



A summary of the national laws requiring implementation by UNCAC members, if not otherwise in existence, is provided, below:

- Criminalize international bribery of domestic and foreign public officials and officials of public international organizations;
 - Criminalize solicitation or acceptance of undue advantage by public officials;
 - Criminalize embezzlement or misappropriation of funds by public officials;
 - Criminalize money laundering acts, including conspiring, attempting, aiding and abetting;
 - Establish and maintain national independent bodies to implement anti-corruption policies;
 - Establish transparent and competitive public procurement systems;
 - Improve transparency of government functions;
 - Prevent corruption in national judicial systems;
 - Enact measures to prohibit off-the-books accounts, false records and intentional destruction of documents;
 - Establish comprehensive regulatory and supervisory systems for banks and financial institutions in order to detect and deter money laundering and closely scrutinize accounts of persons who hold or have held prominent public positions;
 - Enact measures to permit court actions by other states to recover proceeds from an UNCAC offense;
 - Grant domestic authorities the ability to confiscate or freeze property when requested by another state; and
 - Prohibit tax deductions for bribe payments.
- In addition, UNCAC member states are encouraged to implement national laws to accomplish the following activities:
- Criminalize abuse of position by public officials;
 - Criminalize illicit enrichment by public officials;
 - Create and operate merit-based civil service employment systems incorporating adequate pay and training;
 - Implement criteria for elected public office, as well as election campaign and political fundraising and financing;
 - Establish codes of conduct for public officials to include reporting of outside activities and financial interests;
 - Establish systems to monitor cross-border flows of cash and negotiable instruments; and
 - Impose requirements on financial institutions and money transfer services to gather and maintain information on originators of electronic funds transfers.



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