

SEC and DOJ Investigating Embraer for Possible Bribery

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The U.S. Securities and Exchange Commission (SEC) and Department of Justice (DOJ) have launched an investigation of Brazilian aircraft maker Embraer for possible violations of the Foreign Corrupt Practices Act (FCPA), which bars bribery of foreign government officials to secure business.

The SEC investigation is focusing on Embraer's activities in three countries, which have not been identified. Embraer has stated that it is cooperating with the SEC and DOJ and recently announced that it hired outside legal counsel to conduct an internal investigation, as is commonly done.

The aerospace industry has been in the FCPA spotlight since early 2010, when U.K.-based BAE paid \$400 million to settle FCPA and other charges with the DOJ. The BAE investigation involved sales to Saudi Arabia and other Middle Eastern countries.

The FCPA investigation of Embraer could signal a new round of attention by U.S. authorities. The SEC and DOJ will frequently examine multiple members of an industry once they find violations by one company and gain familiarity with an industry's structure and business practices.

Bribery issues are getting attention in Europe as well. In October 2011, the U.K. Serious Fraud Office was reported to be waiting for approval from the attorney general to conduct a full-scale bribery investigation into EADS, the European aerospace giant. The allegations involving EADS, like those in the BAE case, concern sales to Saudi Arabia and other Middle Eastern countries.

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The investigations by U.S. and U.K. authorities should be of interest to both aircraft manufacturers and suppliers, as well as purchasers. While the U.S. FCPA focuses on bribes of government officials and puts only the party offering the bribes at risk, the recently enacted U.K. Bribery Act is extremely broad in scope and subjects both the bribe-giver and the recipient to possible civil and criminal penalties. In addition, the U.K. Bribery Act covers all bribery, not just bribery involving public officials.

In this area, as is so often the case, an ounce of prevention is worth a pound of cure. A well-developed and actively employed compliance program, which need not be complicated or burdensome, will provide the first and best line of defense. Such a compliance plan can serve as a defense to a violation of the U.K. Bribery Act and is often treated as a significant mitigating factor by U.S. government authorities. Furthermore, companies with a compliance plan will be best positioned to identify problem areas and take remedial steps to mitigate any issues or risk that may exist. Our work with multiple defense-related industries has demonstrated the benefit of having a robust compliance program in place that is well-understood and actively used by all company employees.