

Milbank

# Litigation

BEIJING FRANKFURT HONG KONG LONDON LOS ANGELES MUNICH NEW YORK SINGAPORE TOKYO WASHINGTON, DC

## AON SUBSIDIARY IS ORDERED TO PAY £5.25 MILLION

*Record Fine Highlights Risks for Insurers and Reinsurers Under Anti-Bribery Laws*

The U.K.'s Financial Services Authority last month imposed a fine of £5.25 million against Aon Ltd., a wholly owned subsidiary of Aon Corporation, for failure to maintain effective systems and controls to counter bribery and corruption risks.<sup>1</sup> The fine, reportedly the largest ever in the U.K. related to foreign corruption,<sup>2</sup> is notable also for highlighting that practices long considered routine present significant risks for insurers and reinsurers at a time when anti-bribery laws are being vigorously enforced in the U.S. and elsewhere.

According to a 20-page FSA decision of January 6, 2009, Aon Ltd. failed to establish effective systems and controls for payments to third parties who assisted in winning overseas business, particularly in countries considered high risk for corruption. Among other things, Aon Ltd. was faulted for insufficient due diligence prior to forming relationships with overseas agents and for failing adequately to monitor their activities once engaged. Payments described as "suspicious" amounting to approximately US\$7 million were made to firms and individuals in Bahrain, Bangladesh, Bulgaria, Burma, Indonesia and Vietnam between January 2005 and September 2007. In particular, the FSA found that business units within Aon Ltd.'s Energy and Aviation divisions paid overseas

<sup>1</sup> See FSA Press Release FSA fines Aon Limited £5.25m for failings in its anti-bribery and corruption systems and controls available at <http://www.fsa.gov.uk/pages/Library/Communication/PR/2009/004.shtml>

<sup>2</sup> See Press Report FSA fines insurer Aon £5.25m for corruption control available at <http://www.guardian.co.uk/business/2009/jan/08/insurance>

February 10, 2009

For further information about this Client Alert, please contact:

**Linda Dakin-Grimm**  
+1-212 530-5067 (NY)  
+1-213-892-4404 (LA)  
[ldakin@milbank.com](mailto:ldakin@milbank.com)

**Michael D. Nolan**  
+1-202-835-7524  
[mnolan@milbank.com](mailto:mnolan@milbank.com)

**Andrew E. Tomback**  
+1-212-530-5971  
[atomback@milbank.com](mailto:atomback@milbank.com)

**Dara A. Panahy**  
+1-202-835-7521  
[dpanahy@milbank.com](mailto:dpanahy@milbank.com)

**Elitza Popova-Talty**  
+1-202-835-7579  
[etalty@milbank.com](mailto:etalty@milbank.com)

You may also contact any member of Milbank's Litigation Group. Contact information can be found at the end of this Client Alert or on Milbank's website at: [http://www.milbank.com/en/PracticeAreas/LitigationArbitration\\_alpha.htm](http://www.milbank.com/en/PracticeAreas/LitigationArbitration_alpha.htm)

[www.milbank.com](http://www.milbank.com)

third parties to secure or retain reinsurance business from entities that were state owned or had government connections.

The FSA further faulted Aon Ltd. for failing to provide staff in business divisions having activities overseas with sufficient guidance and training on bribery and corruption risks and for failing to ensure that oversight committees received relevant information.

The £5.25 million penalty was imposed pursuant to Principle 3 of the FSA Principles for Businesses, which requires firms to take reasonable care to organize and control their affairs reasonably and effectively, with adequate risk management systems. Aon Ltd. agreed to pay the record fine at an early stage of the FSA investigation, thus qualifying for a discount of what the FSA said otherwise could have been a penalty of £7.5 million.

The FSA also noted as mitigating factors favoring a reduced fine that Aon Ltd. self-reported certain suspicious payments shortly after the Board became aware of them, promptly engaged a leading accountant firm to review its systems and controls, implemented training programs

and disciplined employees, among other actions.

### *An Era of Heightened Anti-Bribery Enforcement*

The FSA decision indicates the high stakes that insurers and reinsurers face for failing to fulfill their duties for anti-bribery compliance. Enforcement action pursuant to the U.S. Foreign Corrupt Practices Act, for example, is at an all time high. In 2007, the last year for which data is available, there reportedly were 29 new FCPA investigations and 68 ongoing from prior years.<sup>3</sup> DOJ and SEC officials have indicated that the trend of increasing investigations continued in 2008. U.S. enforcement authorities have increasingly focused on foreign corporations, with 13 of the 29 new investigations during 2007 involving foreign corporations.<sup>4</sup>

The FCPA prohibits U.S. companies, as well as their subsidiaries, officers, directors, employees, and agents from bribing foreign officials. The

FCPA also contains accounting provisions requiring books and records accurately to reflect all transactions, including corrupt payments. The FCPA applies to U.S. nationals, whether natural persons or corporations, foreign public companies with stock traded in the U.S. and non-U.S. persons committing relevant acts in the U.S.

In addition to investigations in the U.S., as the fine against Aon Ltd. illustrates, investigations in foreign jurisdictions under non-U.S. laws that criminalize foreign corrupt payments and impose similar bookkeeping and other compliance obligations have also increased. A company subject to investigation for corruption in one country is at risk of parallel investigation in other jurisdictions.

### *Lessons for Insurers and Reinsurers*

There are at least four factors that put insurers and reinsurers at particular risk with respect to the FCPA and other anti-bribery laws, a number of which are highlighted by the Aon Ltd. case:

<sup>3</sup> See Recent Trends and Patterns in FCPA Enforcement/FCPA Digest, by Danforth Newcomb, Philip Urofsky available at <http://www.shearman.com/fcpadigest/>, p. 3

<sup>4</sup> *Id.*

- Risk Associated with the Retention of Brokers and Agents: Insurance and reinsurance brokers pay third parties in a number of circumstances, such as paying co-brokers to assist with placements and consultants who provide client introduction or local market information. In the case of Aon Ltd., one of the suspicious payments was made by a former broker in relation to energy reinsurance business in Indonesia.
- Insurance and reinsurance involving government-related entities: Coverage often is provided to clients who are state entities or otherwise have government connections. The FSA found, for example, that Aon Ltd. paid money to overseas third parties which could have been used for payments to state-owned clients.

Notably, the FSA expressly stated that it did *not* find Aon Ltd.'s conduct to have been "deliberate" or "reckless". But the fine was nevertheless imposed because Aon Ltd. should have been aware as a result of routine interactions with state

connections, in countries with high corruption indices, that payments could be used for improper purposes.

- Uses of Foreign Companies for Local Coverage: Reinsurers frequently use local insurers to place insurance. Potential bribes can be hidden as payments made by the local companies to insureds or settlements costs.
- Entertainment Expenses: In their interactions with local government officials, insurers must observe the difference between legitimate entertainment to promote products and services and expenditures qualifying as bribes.

#### *What Companies Should Do*

Insurers and reinsurers may benefit from expert advice when engaging in transactions or practices that may put them at risk. As the Aon Ltd. investigation illustrates, insurance companies can take steps to minimize the risk of violations and subsequent penalties. Companies should proactively review their anti-bribery compliance procedures to

ensure that programs are robust and proactive, in line with the expectations of enforcement authorities. Companies also should provide regular training to personnel, especially those in high risk jurisdictions. Special attention should be given to relationships with third parties whose purpose is introducing business.

\* \* \* \* \*

This Client Alert is a source of general information for clients and friends of Milbank. Its content should not be construed as legal advice, and readers should not act upon the information in this Client Alert without consulting counsel. ©2009, Milbank, Tweed, Hadley & McCloy LLP. All rights reserved. Attorney Advertising, prior results do not guarantee a similar outcome.

For further information about this client alert, please visit our website at [www.milbank.com](http://www.milbank.com) or contact one of the Litigation partners listed below.

---

New York

Wayne M. Aaron	212-530-5284	<a href="mailto:waaron@milbank.com">waaron@milbank.com</a>
Thomas A. Arena	212-530-5328	<a href="mailto:tarena@milbank.com">tarena@milbank.com</a>
Sander Bak	212-530-5125	<a href="mailto:sbak@milbank.com">sbak@milbank.com</a>
Jeffrey Barist	212-530-5115	<a href="mailto:jbarist@milbank.com">jbarist@milbank.com</a>
James N. Benedict, <i>Chair</i>	212-530-5696	<a href="mailto:jbenedict@milbank.com">jbenedict@milbank.com</a>
George S. Canellos	212-530-5174	<a href="mailto:gcanellos@milbank.com">gcanellos@milbank.com</a>
James G. Cavoli	212-530-5172	<a href="mailto:jcavoli@milbank.com">jcavoli@milbank.com</a>
Christopher E. Chalsen	212-530-5380	<a href="mailto:cchalsen@milbank.com">cchalsen@milbank.com</a>
Scott A. Edelman	212-530-5149	<a href="mailto:sedelman@milbank.com">sedelman@milbank.com</a>
David R. Gelfand, <i>Practice Group Leader</i>	212-530-5520	<a href="mailto:dgelfand@milbank.com">dgelfand@milbank.com</a>
John M. Griem, Jr.	212-530-5429	<a href="mailto:jgriem@milbank.com">jgriem@milbank.com</a>
Douglas W. Henkin	212-530-5393	<a href="mailto:dhenkin@milbank.com">dhenkin@milbank.com</a>
Michael L. Hirschfeld	212-530-5832	<a href="mailto:mhirschfeld@milbank.com">mhirschfeld@milbank.com</a>
Lawrence T. Kass	212-530-5178	<a href="mailto:lkass@milbank.com">lkass@milbank.com</a>
Sean M. Murphy	212-530-5688	<a href="mailto:smurphy@milbank.com">smurphy@milbank.com</a>
Michael M. Murray	212-530-5424	<a href="mailto:mmurray@milbank.com">mmurray@milbank.com</a>
Stacey J. Rappaport	212-530-5347	<a href="mailto:srappaport@milbank.com">srappaport@milbank.com</a>
Richard Sharp	212-530-5209	<a href="mailto:rsharp@milbank.com">rsharp@milbank.com</a>
Alan J. Stone	212-530-5285	<a href="mailto:astone@milbank.com">astone@milbank.com</a>
Errol B. Taylor	212-530-5545	<a href="mailto:etaylor@milbank.com">etaylor@milbank.com</a>
Andrew E. Tomback	212-530-5971	<a href="mailto:atomback@milbank.com">atomback@milbank.com</a>
Fredrick M. Zullo	212-530-5533	<a href="mailto:fzullo@milbank.com">fzullo@milbank.com</a>

Washington, DC

David S. Cohen	202-835-7517	<a href="mailto:dcohen2@milbank.com">dcohen2@milbank.com</a>
Robert J. Koch	202-835-7520	<a href="mailto:rkoch@milbank.com">rkoch@milbank.com</a>
Andrew M. Leblanc	202-835-7574	<a href="mailto:aleblanc@milbank.com">aleblanc@milbank.com</a>
Michael D. Nolan	202-835-7524	<a href="mailto:mnolan@milbank.com">mnolan@milbank.com</a>
William E. Wallace, III	202-835-7511	<a href="mailto:wwallace@milbank.com">wwallace@milbank.com</a>

Los Angeles

Linda Dakin-Grimm	213-892-4404	<a href="mailto:ldakin-grimm@milbank.com">ldakin-grimm@milbank.com</a>
Gregory Evans	213-892-4488	<a href="mailto:gevans@milbank.com">gevans@milbank.com</a>
Jerry L. Marks	213-892-4550	<a href="mailto:jmarks@milbank.com">jmarks@milbank.com</a>
Daniel Perry	213-892-4546	<a href="mailto:dperry@milbank.com">dperry@milbank.com</a>
Mark Scarsi	213-892-4580	<a href="mailto:mscarsi@milbank.com">mscarsi@milbank.com</a>

London

David Perkins	44-20-7615-3003	<a href="mailto:dperkins@milbank.com">dperkins@milbank.com</a>
---------------	-----------------	--

Offices Worldwide

Beijing Frankfurt Hong Kong London Los Angeles Munich New York Singapore Tokyo Washington, DC