

# TRACE | *compendium*

## DIAGEO PLC

### INDUSTRY

Food and Beverage

### CORPORATE HEADQUARTERS

London, United Kingdom

### SUMMARY OF ALLEGATIONS

**Nationality of Foreign Officials:** India

#### Summary of Allegations:

The SEC charged Diageo plc ("Diageo"), the London-based global spirits producer with violations of the U.S. Foreign Corrupt Practices Act's ("FCPA") books and records and internal controls provisions in connection with USD 2.7 million in improper payments allegedly made through its subsidiaries in India, Thailand and South Korea to obtain sales and tax benefits relating to its Johnnie Walker and Windsor Scotch whiskeys, among other brands.

From 2003 to mid-2009, over USD 1.7 million in improper payments were allegedly made to hundreds of Indian government officials who were responsible for purchasing or authorizing the sale of Diageo's beverages in the country. Diageo earned more than USD 11 million in profits as a result of the increased sales resulting from these payments.

**Approximate Alleged Payments to Foreign Officials:** USD 1.7 million

**Business Advantage Allegedly Obtained:** USD 11 million profits from increased sales of beverages

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**Nationality of Foreign Officials:** Korea, Republic of

#### Summary of Allegations:

In South Korea, Diageo allegedly paid over 100 million won (over USD 86,000) to a customs official as a reward for his role in the government's decision to grant significant tax rebates to the company. Diageo also allegedly paid over USD 100,000 in travel and entertainment expenses for South Korean customs and other officials involved in the tax negotiations. Separately, the company routinely made hundreds of gift payments, totaling USD 230,000, to South Korean military officials in order to obtain and retain liquor business at military canteens.

Previously, in 2009, South Korean authorities prosecuted several Diageo employees for bribery and tax evasion in connection with the conduct at issue in South Korea.

**Approximate Alleged Payments to Foreign Officials:** USD 416,000

**Business Advantage Allegedly Obtained:** Tax rebates worth USD 50 million, along with increased sales

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**Nationality of Foreign Officials:** Thailand

#### Summary of Allegations:

From 2004 to mid-2008, Diageo allegedly paid approximately USD 12,000 per month (totaling nearly USD

600,000) to retain the consulting services of a Thai government and political party official who lobbied other high-ranking Thai officials extensively on the company's behalf regarding pending multi-million dollar tax and customs disputes. This lobbying contributed to Diageo's receipt of certain favorable decisions by the Thai government.

**Approximate Alleged Payments to Foreign Officials:** USD 600,000

**Business Advantage Allegedly Obtained:** Favorable tax and customs treatment

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## **ENFORCEMENT RESULTS**

**Agencies:** Republic of Korea: Unspecified

**Results:** Conviction, Prosecution of Individuals

**Year Resolved:**

**Compliance Monitor:**

**Ongoing:** No

**Details:**

On 30 August 2007 indictments against current and former Diageo Korea employees were issued for alleged bribes paid to a Korean customs official. Indictments against current and former Diageo Korea employees were issued on the same date for alleged tax evasion.

As stated in its 2009 Annual Report, several former Diageo Korea employees have been prosecuted and convicted in Korea.

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**Agencies:** Thailand: National Anti-Corruption Commission

**Results:**

**Year Resolved:**

**Compliance Monitor:**

**Ongoing:** No

**Details:**

In an interview with the media, in February 2017, former NACC commissioner Medhi Krongkaew disclosed that there were clear evidence that the bribe recipient from Diageo was an executive with the Thai Rak Thai Party during Thaksin Shinawatra's tenure as premier. Medhi claimed that although the NACC even knew the identity of the recipient, the agency is not investigating the case. Medhi added that although most NACC commissioners were committed to their jobs, the agency has shortage of personnel bilingual in English, thus making cross-border cases a challenge.

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**Agencies:** United States: Department of Justice

**Results:** No Action

**Year Resolved:** 2008

**Compliance Monitor:** N/A

**Ongoing:** No

**Details:**

In its Form 20-F filed with the US Securities and Exchange ("SEC") on 17 September 2007, Diageo disclosed that the company had previously voluntarily reported the Korean allegations to the US Department of Justice ("DOJ") and the SEC.

In its Form 20-F filed with the SEC on 15 September 2008, without mentioning whether the DOJ is investigating the matter, Diageo disclosed that the SEC has commenced an informal investigation into the matter and Diageo is in the process of responding to the regulators' inquiries.

Diageo's subsequent SEC filings do not disclose an investigation by the DOJ.

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**Agencies:** United States: Securities and Exchange Commission

**Results:** Civil Penalty, Conviction, Disgorgement, Prosecution of Individuals

**Year Resolved:** 2011

**Compliance Monitor:** N/A

**Ongoing:** No

**Details:**

In its Form 20-F filed with the SEC on 17 September 2007, Diageo disclosed that the company had previously voluntarily reported the Korean allegations to the DOJ and the SEC.

In its Form 20-F filed with the SEC on 15 September 2008, Diageo disclosed that the SEC has commenced an informal investigation into the matter and Diageo is in the process of responding to the regulators' inquiries.

On 27 July 2011, without admitting or denying the SEC's findings, Diageo consented to the entry of a cease-and-desist order prohibiting the company from future violations of the FCPA's books and records and internal controls provisions. Diageo agreed to pay USD 11,306,081 in disgorgement, a prejudgment interest of USD 2,067,739, as well as a USD 3 million civil penalty.

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## ENTITIES/INDIVIDUALS INVOLVED

- Diageo plc ("Diageo")
- Diageo India Pvt. Ltd. (Mumbai-based wholly-owned indirect subsidiary of Diageo)
- Diageo Moet Hennessy Thailand (Bangkok-based joint venture between Diageo and Moet Hennessy)
- Diageo Korea Co. Ltd. (Seoul-based wholly-owned indirect subsidiary of Diageo)

## DETAILS OF HOW CONDUCT WAS DISCOVERED

**Discovery Method:** Voluntary Disclosure

**Details:**

Diageo described the (at the time ongoing) investigation as follows in its SEC Form 20-F filed on 14 September 2010:

"As previously reported, Diageo Korea and several of its current and former employees have been subject to investigations by Korean authorities regarding various regulatory and control matters. Convictions for improper payments to a Korean customs official have been handed down against two former Diageo Korea employees, and three current and former Diageo Korea employees have been convicted on various counts of tax evasion. Diageo had previously voluntarily reported the allegations relating to the convictions for improper payments to the US Department of Justice and the US Securities and Exchange Commission (SEC). The SEC has commenced an investigation into these matters, and Diageo is in the process of responding to the regulators' inquiries. Diageo's own internal investigation in Korea and elsewhere is ongoing. The US Foreign Corrupt Practices Act (FCPA) and related statutes and regulations provide for potential monetary penalties, criminal sanctions and may result in some cases in debarment from doing business with governmental entities in connection with FCPA violations. Diageo is unable to quantify meaningfully the possible loss or range of loss to which these matters may give rise."

**Country:**

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## KEY TAKEAWAYS

- Improper payments made to secure favorable tax or customs treatment, or other regulatory advantages, constitute violations of the FCPA just like payments made to obtain increased sales.

## RELATED DOCUMENTS

[Diageo plc: Form 20-F \(17 September 2007\)](#)

[Diageo plc: Form 20-F \(15 September 2008\)](#)

[Diageo plc: Form 20-F \(11 September 2009\)](#)

[Diageo plc: Form 20-F \(14 September 2010\)](#)

[SEC: Press Release \(Diageo plc\) \(27 July 2011\)](#)

[SEC: Cease-and-Desist Order \(Diageo plc\) \(27 July 2011\)](#)

[Press Release: "Settlement of SEC investigation â€” Diageo Statement" \(27 July 2011\)](#)

[Nation: "Ex-NACC official urges probe of Diageo-Thaksin govt bribery case" \(16 February 2017\)](#)