

*A version of this article first appeared in **Director of Finance**, 21 February 2012.*

The Bribery Act – One Year

1st July 2012 marks the one year anniversary of the Bribery Act 2010 coming into force. It is therefore perhaps surprising that to date, the only person caught by the legislation has been a local court clerk. The Serious Fraud Office ('SFO') continues to bring prosecutions against directors of larger corporations like the Innospec executives David Turner, Dennis Kerrison and Paul Jennings, under the old regime. Add to this the fact that, according to the Bribery Payers Index 2011, global perception is that bribery in the UK has actually increased in recent years. The corporate and legal spheres might therefore be wondering whether this Act really has any teeth. One year on, has the Bribery Act really made any difference to corporate practice in the UK?

To be fair, there are always teething problems with the implementation of any new regime. One cannot blame the SFO for favouring sticking to tried and tested ground over venturing into unfamiliar territory. The acquittal of Harry Redknapp is a sharp reminder of the backlash faced by prosecuting authorities when bringing risky prosecutions.

Nonetheless, the impact of this legislation should not be underestimated. Few, if any British based organisations will not by now have in place clear anti-bribery policies. In the past year, board rooms across the UK have implemented a number of measures to ensure that their organisations are 'Bribery Act compliant', including further training, vetting of agents and suppliers, and establishing contractual obligations. It certainly got directors hot under the collar for a while.

The Act's potential force has also been compounded by the recent civil case of Mabey and Johnson Ltd, in which the SFO successfully sought a High Court Order for the recovery of sums paid out as dividends to a shareholder, which were found to have derived from contracts won by the company unlawfully. This is no longer just a board room issue, but an issue for investors as

well, and it exerts further pressure on companies to ensure that they are Bribery Act compliant, or risk losing investment. Nor should it be forgotten, that that local court clerk received a sentence (prior to discount for his guilty plea) of four to five years. That is almost half the maximum sentence under the legislation. This should serve as a stark warning of the intense deterrent element which will be shoring up sentences passed under this legislation. When it finally does bite, it will bite hard.

So what is the outlook following the first year under the Bribery Act? Although it is taking time to gain momentum, it is likely that the Act will gain strength as the evidential burden on both the Prosecution and the Defence is tested in the Courts. However, it is predicted that the prosecuting authorities will continue to test the legislation in smaller prosecutions of individuals like Munir Patel, until they are surer of their footing. Having said that, there is nothing to stop them from bringing a prosecution where there is a clear cut case of bribery. It is only on that occasion that we will be able to test, and even set the threshold for 'adequate procedures' under the Act. In the meantime, the SFO continues to bring successful prosecutions under the old legislation for activity occurring prior to the Act coming into force, a reminder that there is no reprieve.

It may be that the SFO are allowing organisations something of a 'grace period' in which to familiarise themselves with their obligations, and fully implement their procedures. The question is, how long will it last? The SFO has recently announced the launch of SFO CONFIDENTIAL, a confidential service for reporting financial crime, to allow individuals (and potentially disgruntled competitors) to report on other individuals and organisations. Could this be an indicator of a shift towards a new regime?

In the meantime, organisations should continue to follow the voluminous guidance being published. The Ministry of Justice has now published two guides, with one tailored to the needs of SMEs in particular. The SFO has published the hefty 'Serious Economic Crime: A boardroom guide to prevention and compliance', as well as joint guidance with the Crown Prosecution Service. The British Bankers' Association has published its own guide for the banking sector. Also available are independent publications such as the BPI, to guide you when assessing risks within your organisation.

It will not pay to rest on our laurels moving forward. The safest approach is to be alive to the risks of bribery and to be responsive. In the absence of any real indication of the Courts' and the SFO's treatment of this Act, the best way forward is to let sleeping dogs lie. There is no way to know what is going to happen when they wake up.

If you would like to talk to us about the issues raised by this note, please contact:

Anil Rajani

Telephone 01895 207832

Email anil.rajani@ibblaw.co.uk

IBB Solicitors

Capital Court

30 Windsor Street

Uxbridge Middlesex UB8 1AB

Tel: 08456 381 381

Fax: 08456 381 351

www.ibblaw.co.uk

This briefing note is only intended to provide general guidance and is not intended to constitute legal advice.

© IBB Solicitors 2011