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A Briefing Guide to

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# Bribery And Corruption - Responding To National And International Investigations

RAHMAN RAVELLI

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The nature of business means that many companies and individuals may find themselves coming face to face with the issue of bribery. It is important that they know how to prevent it and how to react to it whenever it appears.

Everyone in business must be aware that they face risks regarding requests for improper payments anywhere in the world where they trade or are looking to trade. Should they become involved in bribery they can face heavy penalties – wherever in the world they are trading.

The UK's Bribery Act, which came into effect in 2011, makes it possible to prosecute any company with a UK connection for any bribery committed anywhere in the world. The United States' Foreign Corrupt Practices Act 1977 (FCPA) takes a similarly tough line regarding the corrupt activities of companies that have a US link. And many other countries are now becoming increasingly aware of the problems of bribery either committed within their borders or carried out elsewhere by companies doing business within their jurisdiction.

Failing to be aware of the law regarding bribery wherever you are based or wherever you are trading can have hugely damaging implications. The law

enforcement agencies in many countries are increasingly focusing on the need to identify and prosecute bribery.

At Rahman Ravelli, we have assembled a team of bribery experts that have amassed decades' worth of expertise in this area of law: an area that has gained in importance over the past decade. As a result, we have become the first stop for companies of all sizes and for individuals who find themselves involved in a bribery investigation, believe they may be about to be the subject of such an investigation or want to take the necessary steps to ensure they never face such a situation.

We are the ideal firm to come to in all of these situations.

Bribery – and the risk of bribery – can affect all types of companies. We represent clients trading in all parts of the world and in all manner of business sectors; including those that have been shown to run the highest risk of bribery such as mining and the extractive industries, aviation and defence,

construction, energy, pharmaceuticals, financial services, transportation and logistics. Our track record of success includes some of the most significant bribery cases around the globe.

Whatever the nature of your business and the continent in which it is being conducted, Rahman Ravelli has the expertise and the international reach to swiftly devise an intelligent, appropriate and properly-conducted and co-ordinated defence. We do this no matter how complex the case or how many countries or agencies it involves. We are here to react quickly and appropriately to any bribery allegations as and when they arise.

Reacting to bribery allegations will usually involve dealing with investigating authorities. Knowing how and when to challenge their allegations and when to negotiate with them are essential skills in such situations. Investigating of any allegations either before or after the authorities have become involved can also be of vital importance. Rahman Ravelli ensures the right steps are taken at the right time at all stages of a bribery investigation.

## **Co-ordinating the Right Response to an Investigation**

The increasingly global nature of business means that bribery allegations may often prompt an international investigation. Any corporate or individual facing such an investigation will require legal advice from solicitors who can put together and co-ordinate an international defence case:

solicitors who have knowledge of business crime law in a number of countries and the skills needed to conduct negotiations with investigating agencies from various nations.

We provide that co-ordination and expertise. We have the experience of dealing with all the law enforcement agencies that investigate business crime and the proven ability to devise and manage a defence case that crosses borders.

Responding to each agency in the most appropriate, timely way and knowing when to challenge and when to negotiate can be hugely important in securing the most favourable outcome. We co-ordinate such responses to maximise your ability to gain the best possible conclusion to an investigation.

## **The Implications of the UK's Bribery Act**

The UK's Bribery Act 2010 is regarded as the strictest and most far-reaching anti-bribery legislation in the world.

Under the Act, it is an offence to offer, promise or give a bribe or to request, agree to receive or accept a bribe. There is also a separate offence of bribery of a foreign public official. But, most notably, Section 7 of the Act creates a strict liability offence for companies and partnerships of failing to prevent bribery: if bribery is committed in a company's name, its only defence is to show it had what could be considered adequate procedures in place to prevent bribery.

The Bribery Act is of huge importance as it means that companies, directors and individuals can all be held liable for bribery. It

covers UK companies trading in the UK and abroad and any company with a UK connection doing business anywhere in the world. A company can commit an offence under Section 7 if an employee, subsidiary, agent or service provider bribes another person anywhere in the world to obtain or retain business or a business advantage. The international reach of the Act means that any foreign company that does any business in the UK could be prosecuted for failure to prevent bribery - even if the bribery was committed outside of the UK and any benefit from it was never brought to the UK.

Penalties under the Bribery Act can be as severe as ten years' imprisonment and unlimited fines.

## The Effect of the United States' Foreign Corrupt Practices Act

While not identical to the Bribery Act, the US' FCPA is also a strict piece of anti-bribery legislation.

Under its anti-bribery provisions, individuals can be fined up to \$100,000 per violation and face five years' imprisonment. Under the accounting and record-keeping provisions, individuals can be fined up to \$5 million per violation and face 20 years' imprisonment. And under the Alternative Fines Act, the actual fine can be as much as twice the benefit that the defendant sought to obtain from making the corrupt payment. The Securities Exchange Commission may also

seek to impose civil penalties of up to \$10,000 per violation and use penalties such as injunctions, forfeiture of assets, disgorgement of profits and bans or suspensions from doing business with the government.

Companies face criminal fines of up to \$2 million per violation. Under the accounting and record-keeping provisions they may face criminal fines of up to \$25 million per violation. As with individuals, under the Alternative Fines Act the fine can be up to twice the benefit that the company sought to obtain from making the corrupt payment. The company can also be subject to the same SEC penalties as an individual.

## The Benefits of Negotiation

As we have said, how and when you respond to bribery allegations is of vital importance. The correct response can mean an investigation is dropped or that the authorities come to accept that a negotiated settlement would be a better outcome for them than deciding to prosecute. Even if the authorities do prosecute, the right response at each and every stage will always make a conviction less likely.

While challenging allegations can be an important part of any response to an investigation, an ability to negotiate with the authorities is a tool that can be of huge value in securing the best possible outcome. Examining the circumstances surrounding the allegations, explaining and emphasising any mitigating factors and taking a calm yet informed and persuasive approach will bring better results in any country than a confrontational attitude.

With all the possible complexities that can accompany a national or international bribery investigation, negotiation can be an invaluable way of obtaining the most favourable result. It can involve knowing when to accept what could be a lenient penalty and using various approaches to ensure that, if there has to be a punishment, it is a civil penalty rather than a criminal prosecution. Such negotiation should only be conducted after assessing every aspect of a case, including the evidence available, the authorities involved and the counter-arguments that can be made to them.

Logical, persuasive and informed negotiation with the authorities can be as important as any other aspect of a defence case when looking to obtain the most favourable outcome. At Rahman Ravelli, we recognise the strength of each client's case but we also identify the areas where the authorities may be prepared to take a more lenient approach – and we then seek to gain the maximum possible advantage in those areas.

## Internal Investigations

The punishments for bribery can be heavy. But a lenient approach may be taken by the authorities if they are convinced that a company had done all it could to prevent bribery – which is where negotiation skills can be important.

But companies can also increase their chances of receiving less harsh treatment by taking the right action if they suspect

they have become involved in bribery. Conducting a thorough internal investigation into any suspicions not only helps a company identify what, if any, illegal behaviour has gone on. Reporting any findings of wrongdoing to the authorities before they are aware of them is likely to lead to a less severe punishment than if the powers that be find them without any assistance from the company.

It is important, however, that any internal investigation is carried out in a way that will maximise the chances of obtaining the truth without alienating staff. The decision on if and when it is necessary to contact the authorities is one that should only be taken after seeking advice from those with legal expertise in business crime. Great thought must also be given to if and when to inform customers, trading partners, third parties, investors, insurers and the banks that an internal investigation has commenced.

For these reasons it is often best to have an investigation conducted by “outsiders” who have expertise in all relevant legal and personnel issues.

An internal investigation may reveal a clear need for the authorities to be notified so that a criminal investigation into bribery can begin. It may also highlight a desperate need for anti-bribery procedures, controls and training to be introduced and explained to staff in a way that ensures they see themselves as being a part of the solution rather than the cause of the problem. Conducted properly, an internal investigation can be a valuable tool in identifying or preventing bribery.

## Deferred Prosecution Agreements

When it comes to leniency regarding bribery, one alternative to prosecution available to the Serious Fraud Office (SFO) and the Crown Prosecution Service is the deferred prosecution agreement (DPA). Having been introduced to the UK under the provisions of Schedule 17 of the Crime and Courts Act 2013, a DPA is an agreement reached between a prosecutor and an organisation that could be prosecuted. It is finalised under the supervision of a judge and allows a prosecution to be suspended as long as the organisation meets certain specified conditions; such as the payment of fines or compensation or major changes to working practices.

We write at length about DPAs elsewhere on this website. But it is worth saying here that a company that self-reports its bribery has a stronger chance of obtaining a DPA; although self-reporting should not be seen as a simple, one-off escape route from prosecution. The self-reporting and the subsequent negotiations with the SFO have to be conducted carefully; which is why they must be overseen by those with legal expertise and experience of such situations.

The amount of work a company has undertaken on an internal investigation, how much access to its findings it gives investigators and the quality and quantity of the records of such efforts can all be factors in determining whether a DPA is granted. No DPA will be offered as an alternative to a bribery prosecution if the SFO feels that it has not been given all the information it needs. And a DPA is unlikely if the SFO believes an internal investigation has tipped off potential suspects, prompted the deleting of valuable potential evidence or has not examined the role of a company's senior figures in any suspected bribery.

The introduction of DPAs has given the authorities the opportunity to impose conditions on a firm rather than prosecute it for bribery. The UK has so far only seen a small number of DPAs. But having been heavily involved in them we are fully aware of how to obtain one for a client accused of bribery.

DPAs are just one of a number of reasons why anyone facing allegations of bribery should seek advice from those with all the relevant knowledge and experience. Rahman Ravelli is such a firm.

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