

## Bribery...The Fast Track To Trouble

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**Formula 1 is at the centre of bribery allegations that could have serious implications for the sport. The episode is a clear reminder of why every company has to be wary of the risks associated with bribery.**

Formula One has always been one of those sports to divide opinion. To some it is the ultimate power display of man's invention and mastery of machinery. To others it is a gas-guzzling world tour of boredom whose main interest lies off the track.

Recent events certainly seem to give credence to the latter opinion – and may well have those of the opposite persuasion more than a little concerned about the fate of their multi-billion dollar pastime. In the latest twist in what has already been a long-running saga, Formula One boss Bernie Ecclestone is set to stand trial in Germany on bribery charges. A court in Munich heard this month that the allegations are linked to Mr Ecclestone's sale of a stake in his money-spinning motor racing empire.

German court officials have stated that the trial is likely to start in late April. And there is no doubt that the world's media will be watching. The allegations have been aired in public numerous times and were an element in the case that led to a German banker Gerhard Gribkowsky being jailed. Ecclestone, 83, is charged with bribing Gribkowsky to the tune of \$44 million to ensure the sale of a stake in Formula One to private equity firm CVC in 2006.

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But while the allegations are familiar to the world, the precise details of who did what and when – and their responses in court – are set to make it one of the trials of the year. Ecclestone has denied strongly any wrongdoing and has vowed in the clearest possible terms to fight the charges and clear his name. His central argument appears to be that Gribkowsky's testimony at his own trial that related to Ecclestone is incorrect

But perhaps the most fascinating aspect of this case – for both fans of motor racing and high-profile trials – is the effect it could have on Ecclestone's all-powerful position at the top of the money-making giant that is Formula One. The legal saga is making it hard to re-energise a stalled effort to launch an initial public offering of Formula One on the Singapore stock market. Added to this, Ecclestone has decided – or even been told by colleagues – to step down as director of Formula One's holding company until the trial is complete. A politely-worded statement made it clear that Ecclestone would still be involved and would run the company on a day-to-day basis "but subject to increased monitoring and control by the board".

What happens after the court case will no doubt depend on the outcome. But whatever the final verdict in the German court, there is no doubt Formula One's name has been sullied. The mere fact that its top man and most visible representative is being talked about in the same sentence as multi-million dollar bribes is bad enough. If the verdict goes against Ecclestone, the outcome for the sport could be devastating.

The statement issued by the F1 board takes a very neutral stance; stating that it held a meeting, that Ecclestone assured them of his innocence and that a few responsibilities would now be shared between other senior personnel. Its line about Ecclestone now being subject to increased monitoring and control is the one part of it that leaps out.

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Putting it in its bluntest possible terms, F1 realises it has a problem and does not want it to happen again. By “keeping an eye” on its top man (even if he is temporarily away from his position) it hopes to make sure there are no repeat embarrassments. No worldwide mega brand wants bad publicity, whether it is deserved or not.



At this point, motor racing fans are sitting and wondering what the huge bribery case will mean for the sport they love. Celebrity addicts will be watching to see what happens to the high-profile F1 chief with the media-hogging daughters. And the F1 board will be trying to get to the bottom of exactly what has or hasn't happened.

Business crime lawyers, on the other hand, will be wondering how an organisation as global and high-profile found itself in such a mess.

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It is not taking much of a stab in the dark to state that F1 will now be considering its compliance procedures. It could be argued that this should have been done earlier. In its defence, however, F1 could argue that its compliance is up to scratch, that the allegations against Ecclestone are inaccurate and that, as a global company, it has never failed to ensure it is reducing all possible risk of business crime. And yet some sort of compliance review could surely do F1 no harm.

The Bribery Act 2010 set new heights for all companies to reach concerning the behavior of everyone acting on their behalf. It covers the activities of anyone and everyone representing a company; from the highly-recognisable head of a huge organisation, such as Ecclestone, through to the lower levels of salesmen, agents and third parties working for companies far less well known than Formula One. The Act's punishments include unlimited fines and up to ten years' imprisonment, making it crucial for Formula One and every other company to have their compliance procedures up to the highest standard.

The Bribery Act 2010 makes a company liable for the corrupt actions of any staff, agents or third parties acting on its behalf, either in the UK or abroad. The offence does not have to be carried out in the UK but the person committing it must have a close connection to the UK; such as being a British citizen, national, subject or resident or working on behalf of a commercial organisation that does some of its business in the UK.

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Under the Act, it is an offence for anyone to pay, receive or request a bribe, either directly or indirectly, at home or abroad to perform a relevant function improperly. There is also an offence of using a bribe to influence a foreign official to gain a business advantage. Companies can commit an offence where a bribe has been paid on their behalf by an associate – an employee, agent or other party acting for it. In defending themselves, any company facing prosecution under the Act will have to show that it carried out all adequate procedures to prevent any of its representatives acting improperly. If such an offence has been committed with the consent or connivance of a senior officer of the company then that person can also be held liable and proceedings can be brought against them.

As an Act, its scope is wide. For companies, its significance is huge. One crumb of comfort for F1 is that the Act came into effect in 2011, five years after the events that have led to Ecclestone's prosecution. This means he and F1 cannot be punished under the terms of the Act. But, if nothing else, the legal proceedings in Germany should act as a swift reminder to F1 (and anyone else) to make sure their business affairs comply with the Bribery Act.

If the Ecclestone case prompts F1 to recognise and examine areas where its compliance could be improved, it will have at least protected itself against the possibility of future improper conduct by its representatives. Even if that were still to happen, it could then argue to the authorities that it did all it could to comply with the Bribery Act.

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To be able to claim this, however, a company must be careful to introduce the most appropriate compliance procedures; taking into account the nature of its business and the bribery risks associated with it. The geographical areas where it does business, the business sectors it is in, its agents and business partners and the relevant laws where it does business all have to be looked at in detail in order to identify all possible bribery risks. A policy of due diligence must be developed and extended to the “extras” in any deal, such as facilitation payments, hospitality and referral fees. Clear reporting procedures must be created and made known to all staff and associates.

Whatever the outcome, the F1 case has to be seen as an incentive for all companies to put the brakes on bribery.

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