



BAKER TILLY

Forensic Services

Bribery Act

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Scrutiny and enforcement steps up a gear in the UK and overseas

In March this year, three members of the Board of ALSTOM, a leading company in international transport and energy infrastructure, were arrested in the UK on suspicion of bribery and corruption, money laundering and false accounting. In addition, four executives at Rio Tinto were sentenced to between seven and 14 years on bribery and secrets charges in Shanghai.

The rise of corruption enforcement globally reflects the swift progress of the UK Bribery Act through parliament. Having had to play legislative catch-up with the rest of the developed world, it is widely accepted that the UK will experience increased enforcement action against UK companies and directors in the coming months.

Marcus McCaffrey, Forensic Services partner at Baker Tilly, examines the Bribery Act, its implications for UK companies and directors and the defences available to them if caught in breach, either deliberately or by error.

The Bribery Act ('the Act') will become a significant piece of legislation for anyone who does business with the UK, is a British citizen and/or conducts business in the United Kingdom or overseas. In essence, everyone who is involved in business in the UK will fall under the jurisdiction of the Act.

The Act is expected to broadly reflect the measures and penalties that the United States has famously made known through the Foreign Corrupt Practices Act – a piece of legislation that has defined and changed the way corporate America does business internationally over the last 40 years. Unlike the US legislation though, the UK is likely to make the Act a straight liability offence. Therefore, there will be no burden of proof required to demonstrate the circularity of a bribe – it will be enough to evidence either the payment or receipt of bribes but not both simultaneously, to secure

convictions. The penalties facing those caught in violation of the Act are significant – if tried on indictment, companies face unlimited fines and individuals up to ten years imprisonment. In addition, corporate offenders may be debarred from competing in public tenders.

What would constitute a violation of the Bribery Act?

Violations will stem from offering, receiving or failing to prevent bribery and will cover both corporate and individuals, even those who are only loosely connected with UK interests, in some instances. Violations will include such infractions as excessive corporate hospitality and facilitation payments during tendering processes, although there has been no indication yet of what constitutes 'excessive' and whether smaller facilitation payments will be considered violations or not.

Statutory defences for companies and individuals in breach of the Act

Usefully, the Ministry of Justice ('MoJ') has indicated it will issue guidance on what will constitute an adequate defence against corruption charges. Although not published yet, Baker Tilly has learned that the MoJ guidance will likely cover the following areas: top-level responsibility; risk management and assurance; policies and procedures, appropriate implementation, due diligence of business relationships and monitoring and review of compliance procedures. Clearly, the MoJ will not be able to produce specific procedures that can be implemented directly: each business will need to



determine the focus and context of their policy requirement and make them relevant to their own business activities.

It is worth noting, however, that the Lord Chancellor remarked that clause 7 of the Bribery Bill – the failure of commercial organisations to prevent bribery – will provide a total defence to both companies and individuals if addressed appropriately. This means that companies must carry out due diligence of sub-contractors, joint venture partners and international sales teams to ensure that they are not in currently breach. In addition, effective senior management

leadership on anti-corruption, a strong and well communicated policy environment will not only ensure compliance but may also crucially mitigate the risk from prosecution if the company finds that it is in breach.

Therefore despite an escalating appetite to enforce against corruption and the draconian penalties that will become available to prosecutors, company directors now have a clear opportunity to mitigate corruption risk. Act now and defence is ensured, ignore the risks and get caught in breach and expect severe sanctions.

For further information on the Bribery Act and Baker Tilly's anti-corruption compliance, advisory and investigation services, contact:

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Baker Tilly Forensic Services team

Our partner-led team of experienced forensic experts provide a range of advice including dispute, investigations and forensic technology services.

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