

## Bribery and corruption risk On your radar?

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Prosecutors and regulators across the globe are becoming increasingly active in enforcing anti-corruption legislation.

The number of enforcement actions, the number of jurisdictions within which enforcement actions have been brought, and the size and nature of fines and penalties have all increased significantly over the last few years.

Transparency International recently reported that, amongst the OECD signatory countries, there is significant enforcement action being brought by governments in Argentina, Australia, Belgium, Denmark, Finland, France, Germany, Hungary, Italy, Korea, the Netherlands, Norway, Spain, Sweden, Switzerland and the United States. Many of these actions are against companies and individuals who are foreign to those jurisdictions. Pressure continues to grow on other OECD signatory countries to bring corruption related enforcement actions, as well as on other major exporting nations including China, Russia and India.

The US government continues to lead the way, with 33 enforcement actions being brought in 2008 under the Foreign Corrupt Practices Act ("FCPA").

Record levels of fines and other penalties were imposed together with a significant number of actions being brought against individuals. The largest penalty levied by the US was, as widely reported, the US\$ 800 million that Siemens agreed to pay to settle actions with the Department of Justice and Securities and Exchange Commission.

Significant fines and penalties are, however, not limited to the US. As widely reported, Siemens settled allegations of corruption with the Munich prosecutor and paid resultant fines and penalties totalling €596 million. In the UK, a major construction company has agreed with the Serious Fraud Office to pay £2.25 million in restitution and costs as a result of accounting entries relating to payment irregularities in connection with a construction project in Egypt.



In another recent case the UK's Financial Services Authority imposed a £5.25 million fine on a leading global insurance broker for failing to take reasonable care to establish and maintain effective systems and controls to counter the risks of corrupt payments being made.

Penalties may not be limited to monetary fines and disgorgement of profit. Regulators will in many instances require an independent assessment of an entity's anti-corruption policies, procedures and controls with appropriate remedial action being implemented and reviewed. The appointment of independent monitors is also becoming an increasingly common element of settlement agreements.

It is of note that in the UK it is possible that a new corporate offence of negligently failing to prevent bribery by an employee or agent may be introduced following a review of extant legislation by the Law Commission.

Penalties and sanctions are not limited to those imposed by government agencies. The World Bank debarred a multi-national company convicted of corruption in connection with a contract on the Lesotho Highlands Water Project, making it ineligible to be awarded World Bank-financed contracts for a 3 year period.

## Are you at risk?

OECD Convention compliant legislation prohibits the payment or attempted payment to a foreign government official in order to obtain or retain business or otherwise gain an improper advantage in the conduct of business. Certain enacting legislation, for example the Anti-terrorism Crime and Security Act in the UK, does not however draw a distinction between the bribery of government officials and private individuals, outlawing both.

### Some questions you should consider:

- Are you conducting business in countries with a high perceived risk of corruption?
- Have you developed a corruption risk map covering your global operations?
- Do you conduct business with government agencies or entities in which a foreign government has an ownership interest, or otherwise interact with Politically Exposed Persons (PEP's)?
- Do you have an anti-corruption compliance programme which includes employee training, an employee hotline, policies, procedures and controls embedded into operational and financial processes, and regular audits of their effectiveness?
- Do you conduct business through the use of sales agents, joint ventures or other business partners? Do you have agreements with these parties that prohibit them from paying bribes? Do you have policies and procedures in place to monitor the reputation and activities of your business partners?
- Do you perform appropriate due diligence designed to identify potential corruption risk when considering acquisition or joint venture opportunities in foreign jurisdictions?

## Our solution

The anti-corruption specialists at Deloitte and other Deloitte Touche Tohmatsu (DTT) member firms have helped some of the world's leading companies navigate corruption risk. Our clients seek our assistance on a broad range of corruption-related matters, including:

- **Compliance Programme**

- **Implementation and Assessment**

- We can assist with the development and refinement of ethics and compliance programmes that can help protect against the risk of anti-corruption legislation violations.

- **Transactional Due Diligence, whether buying or selling**

- If buying, we can assist in investigating the acquiree to help identify potential corruption risk issues. When selling, we can help avoid surprises by testing existing anti-corruption compliance policies, procedures and controls.

- **Forensic Accounting Investigations of alleged violations of anti-corruption legislation**

- Our forensic accounting specialists effectively and efficiently analyse electronic and hard copy financial, e-mail and other records in order to investigate any potential issues and assist clients and their legal advisors in conducting interviews of relevant personnel. We are experienced in meeting with regulators and prosecutors in order to explain our findings and their potential implications.

- **Business Intelligence Services**

- Our intelligence specialists are able to obtain information relating to a subject's background and reputation. We conduct extensive online research using subscriber and internet databases, as well as discreet interviews with relevant sources. Our professionals research, analyse and report relevant information to help clients make informed decisions about the individuals with whom they are negotiating or conducting business.

### Experienced team

Deloitte forensic professionals have been engaged by our clients to assist on some of the largest and most sophisticated anti-corruption enforcement actions.

Anti-corruption specialists in the DTT team across the globe include former government prosecutors, accountants, internal control specialists, certified fraud examiners, business intelligence professionals and computer forensics specialists.

Deloitte professionals are armed with deep technical know-how, local knowledge as well as proprietary software and cutting-edge methodologies.

Our typical approach to an assignment is to use a multi-disciplinary and multi-jurisdictional team tailored to the particular requirements of the project. Our deep experience of corruption issues, coupled with our global coverage, ensures relevant knowledge and skills can be brought to bear quickly, effectively and economically in order to produce an expedient solution.

Engagements are co-ordinated through a central team that provides our clients with a single point of contact, while ensuring that issues and findings are quickly and clearly communicated.

# Primary contacts

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