

The UK Bribery Act Turns One Year Old — Lessons Learned and Next Step

June 28, 2012



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Agenda

- Introduction
- Presentation
- Questions and Answers — (anonymous)
- Slides — now available on front page of Securities Docket
 - www.securitiesdocket.com
- Wrap-up



Panel



Vivian Robinson QC

Partner, McGuireWoods London



Adam Greaves

Partner, McGuireWoods London



Julian Glass

Managing Director, FTI Consulting





The UK Bribery Act Turns One Year Old-- -Lessons Learned and Next Step

Webcast, 28 June 2012

Presented by: Vivian Robinson QC, Partner

McGUIREWOODS

A Short Recap

- **UKBA OFFENCES**
 1. Active Bribery
 2. Passive Bribery
 3. Bribing a FPO
 4. Failure of commercial organisation to prevent bribery
 5. Consent or Connivance of a Senior Officer
- **DEFENCE OF ADEQUATE PROCEDURES**
- **GOVERNMENT GUIDANCE ON ADEQUATE PROCEDURES (published in March 2011)**

Events over the Past Year

- Only one case (Munir Patel)
- Could more have reasonably been expected?
- What may be in prospect?

FCPA & UKBA

- Complement each other but some essential differences
- Scale of financial penalties
- Whistle Blowing rewards
- DPA initiative in UK

BUSINESS REACTION

- What change has the UKBA engendered in the business community?
- What matters need clarification?

Adequate procedures

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Julian Glass

UK Ministry of Justice Guidance

6 Principles of an Effective Compliance Program

1. Proportionate Procedures – policies and procedures to prevent bribery that are proportionate to the risk faced.

2. Top Level Commitment - The company's top level management are committed to preventing bribery by persons associated with it.

3. Risk Assessment – Assess the nature and extent of the exposure to potential external and internal risks of bribery.

4. Due Diligence – Apply proportionate and risk based due diligence procedures to mitigate identified bribery risks.

5. Communication (Including Training) - Program must be effectively communicated throughout the organisation to ensure policies and procedures are embedded and understood.

6. Monitoring & Review - The program's effectiveness should be monitored and reviewed and improvements are made where necessary.

What companies have been doing during the last year

- Risk assessment
- Tone from the top and messaging
- Policies (general anti-bribery, gifts and hospitality, sponsorship and donations, third parties and consultants)
- Procedures written and introduced
- Basic awareness level training

What companies need to think about going forward

- Monitoring and review
- Updated and more thorough training
- Third parties

Monitoring and review

- Compliance is an ongoing task
- Assessment of effectiveness of existing framework
- Gap analysis and planning for the future
- Appropriate response to whistleblowing or red flags

Updated and more thorough training

- Refresher training
- Training for new joiners
- Enhanced training for specific roles, including realistic scenarios
- Face to face, small group training for very high risk groups
- Tailored training for particular functions

Third parties

- Business case for use of third parties
- Tiered approach to due diligence depending on risk
- Fair Market Value assessment of services
- Rights of audit
- Contract clauses – standards, training, termination
- Appropriate approval

SELF-REPORTING

- What needs to be self-reported?
- Will DPAs make companies more inclined to self report?

FACILITATION PAYMENTS

- What is the up-to-date thinking?

GIFTS & HOSPITALITY

- The Olympics as a practical example

MULTI-JURISDICTIONAL ISSUES

- Who to report to and when
- The Double Jeopardy problem

Questions or Comments?

Vivian Robinson

Q.C., Partner

vrobinson@mcguirewoods.com

Blog: www.briberylibrary.com

McGuireWoods Anti-Corruption Group

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Questions?



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