

Bribery & Corruption? What do you mean!!!

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Introduction

- Bribery & Corruption? What do you mean? Not a one sentence answer for sure.
- We will explore Bribery & Corruption providing an insight to current legislation and the requirements placed on businesses.
- Having over 30 years experience in the Financial Service Industry my experience includes many of the problems we see today.

Topics

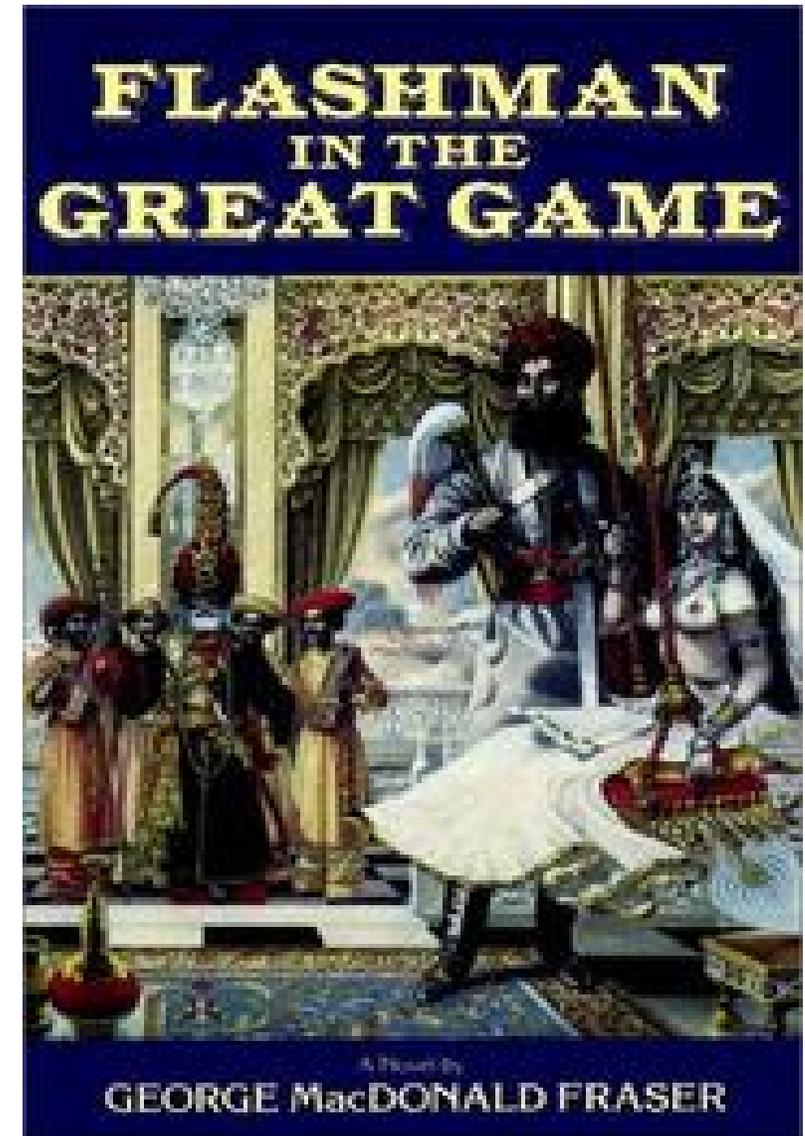
- What is Bribery?
- What is Corruption?
- The Law
- Awareness
- In the News

What is Bribery?

- “Bribery is giving or receiving a financial or other advantage in connection with the "improper performance" of a position of trust, or a function that is expected to be performed impartially or in good faith.”
- Bribery does not need to be in cash or an actual payment changing hands.
- Other forms include Gifts, Tickets to shows, Extravagant treatments during business trips and meetings.

Why Bribe?

- In order to secure or keep a contract
- To secure orders
- To gain an advantage over competitors
- Political Advantage
- Government Contracts
- Asking inspectors to sign off reports favourably
- Obtaining additional materials free of charge
- Any aspect of business or life can be affected



How do we combat Bribery?

- Educate yourselves and staff, ensure your Anti-Bribery and Corruption manual is updated and issued regularly
- Be vigilant
- Question out of the ordinary contracts / arrangements / and unusual payments
- Discuss with your colleagues if you are unsure and report to your Compliance Officer

What is Corruption?

- **“the abuse of entrusted power for private gain”**
- Corruption can be classified as serious, petty and political, depending on the amounts of money lost and the sector where it occurs.
- serious corruption consists of acts committed at a high level of government that distort policies or the central functioning of the state, enabling leaders to benefit at the expense of the public good.
- Petty corruption refers to everyday abuse of entrusted power by low and mid-level public officials in their interactions with ordinary citizens.
- Political corruption is a manipulation of policies, institutions and rules of procedure in the allocation of resources and financing by political decision makers, who abuse their position to sustain their power, status and wealth.

Why Corrupt? The Motivation!

- Voluntary – an act undertaken by the party with the deliberate intent of gaining a competitive advantage
- To level the playing field – an act undertaken in the belief that the competition will offer a bribe
- Extortion – pressure placed on a contractor to pay a bribe in return for favourable treatment.
- Normal business practice – conduct where mistaken belief that such practices – as inflation of claims, or withholding payments are normal business acts and do not constitute a criminal offence.
- Self-promotion and enrichment

Where bribery and corruption occurs?

Combating Corruption

- Assess your business for the possibility of corrupt practice
- Education at all levels in your organisation
- The right to information is vital for prevention of corruption
- Review internal policies and procedures
- Internal, and where appropriate external, audit

The Law

- Isle of Man Bribery Act 2013
- UK Bribery Act 2010
- USA Foreign Corrupt Practices Act 1977
- European Anti-Corruption Conventions (Several)

There are four distinct offences in the IOM BA

1. Offering, promising or giving a bribe
2. Requesting, agreeing to receive or accepting a bribe
3. Bribing a foreign public official
4. A corporate offence of failing to prevent bribery

The Law - Penalties

(1) A person guilty of an offence under section 7, 8 or 9 is liable — **on summary conviction**, to custody for a term not exceeding 12 months, or to a fine not exceeding £10,000, or to both; **on conviction on information**, to custody for a term not exceeding 10 years, or to a fine, or to both.

(2) A person guilty of an offence under section 10 is liable on conviction on information to a fine.

(3) A person guilty of an offence under section 14 or 15 is liable — (a) **on summary conviction**, to custody for a term not exceeding 6 months or a fine not exceeding £5,000 or to both; (b) **on conviction on information**, to custody for a term not exceeding 2 years, or to a fine, or to both.

What Else?

The Law – The Corporate Offence

- The corporate offence is committed by company “C” when a person associated with C bribes another person to get business for C or an advantage in the conduct of business for C.
- It is a strict liability offence and C’s knowledge is irrelevant, as is the location of the actual bribery. “Associated person” is defined widely and includes any person who performs services for or on behalf of C.

The Law - The Corporate Offence – The Defense

- Whilst we should not look at “The Defence” as part of a corporate strategy, it is good to know what is an acceptable defence.
- As with other Laws, there is usually a defence clause. That defence is usually your firms ethical and robust procedures.
- Provided you can demonstrate that you have:-

- Proportionate Procedures

A commercial organisation's procedures to prevent bribery by persons associated with it are proportionate to the bribery risks it faces and to the nature, scale and complexity of the commercial organisation's activities.

They are also clear, practical, accessible, effectively implemented and enforced.

- Top-level commitment

The top level management of a commercial organisation (be it a board of directors, the owners or any other equivalent body or person) are committed to preventing bribery by persons associated with it.

They foster a culture within the organisation in which bribery is never acceptable.

- Risk Assessment

The commercial organisation assesses the nature and extent of its exposure to potential external and internal risks of bribery on its behalf by persons associated with it.

The assessment is periodic, informed and documented.

- Due Diligence

The commercial organisation applies due diligence procedures, taking a proportionate and risk based approach, in respect of persons who perform or will perform services for or on behalf of the organisation in order to mitigate identified bribery risks.

- Communication (including training)

The commercial organisation seeks to ensure that its bribery prevention policies and procedures are embedded and understood throughout the organisation through internal and external communication, including training, that is proportionate to the risks it faces.

- Monitoring and review

The commercial organisation monitors and reviews procedures designed to prevent bribery by persons associated with it and makes improvements where necessary.

Training is specifically mentioned in a defence case.

If your business operates within the risk areas it is clear that all relevant personnel working on behalf of your organisation will require proportionate training to ensure that they are aware of and understand:

- The threats posed by bribery in general.
- The Bribery Act 2013 itself and how it may affect their organisation.
- The specific risks relating to the sector in which their organisation operates.
- The bribery prevention measures in place in their organisation.

Awareness

- Provided your organisation adheres to Law, your staff should be more than aware of the subject matter.
- Continue Professional Development is essential in modern business.
- Educate even the most junior of staff.
- Continue to Monitor

Awareness – Organisations

- Transparency International - www.transparency.org
- Global Infrastructure Anti-Corruption Centre – www.giacentre.org
- Institute of Chartered Accountants – www.icaew.com
- GOV.UK - www.gov.uk/anti-bribery-policy

IN THE NEWS

Unexplained Wealth Orders - 2018

We have seen this new tool within the Criminal Finances Act. Very simply “where and how did you amass your wealth”.

We are often asked this question when we open accounts or relationships.

Recording the response by the asker is often considered to be intrusive by the new client. BUT we have a duty to prevent funds and assets derived from Bribery and Corruption to move freely in society.

September 2018 – London. *“Conflicts of nature in the NHS are a serious corruption risk that, if left unaddressed, can at best lead to the wasting of taxpayers money and at the very worst damage the quality of care provided to patients by the NHS. The NHS Counter Fraud Agency estimates £1.25 billion is lost every year to fraud. Corruption within healthcare can very often be a matter of life and death.”*

September 2018 – Sao Paulo Brazil *Petróleo Brasileiro SA will pay an \$853.2 million fine to settle charges that former executives and directors of the state-run Brazilian oil company broke U.S. anti-corruption laws by bribing politicians and then seeking to conceal the payments, the U.S. Justice Department (DOJ) said on Thursday.*

August 2018 - London. Comments after the UK Foreign Secretary calls for sanctions against Russia . *“Mr Hunt rightly points to the rule of law and adherence to international standards as fundamental to global peace and prosperity. That also means the UK needs to act against those oligarchs and others who break the rule of law and ignore international standards. They use the UK as their playground and London property as a safe haven for the proceeds of corruption.” “If the UK government is serious about Russian sanctions, it is time to stop letting corrupt oligarchs and cronies of the world’s corrupt autocrats launder their money and reputations through the UK and its **Overseas Territories and Crown Dependencies.**”*

September 2018 - London - *A former Gunvor employee said he paid bribes to the president of the Republic of Congo via a presidential aide and Belgian firm Semlex to win Congolese oil contracts, according to a Swiss prosecution document. \$15 million to secure Congolese oil deals. The payments were made to Congo's president and his family members via intermediary companies.*

*Three men including former **Barnsley FC assistant manager** Tommy Wright have pleaded not guilty to bribery offences. Mr Wright, 52, of Dark Lane, Barnsley, denied two counts of accepting a bribe between April and September 2016. Football agent Dax Price, 47, from Sittingbourne, and Giuseppe Pagliara, 62, from Manchester, denied two counts of paying and facilitating a bribe. All three were bailed at Westminster Magistrates' Court to appear at Southwark Crown Court on 22 October.*

The men were charged last month after a Daily Telegraph investigation into English football and the activities of players' agents.

Amazon is investigating claims that its employees accepted bribes in exchange for leaking confidential sales data. Independent sellers were also allowed to delete negative reviews and restore banned accounts for payments of between \$80 (£61; €69) and \$2,000, according to allegations in the Wall Street Journal.

Amazon said it had "zero tolerance" for abuse of its systems and that it was conducting a "thorough investigation". "We hold our employees to a high ethical standard and anyone in violation of our Code faces discipline." an Amazon spokesperson said.

July 2018 - London. *A draft bill, published today by the Government, that will require all overseas companies buying UK property to reveal the identities of their real owners is a welcome step in the fight against corrupt money being laundered through the UK, and the Government must now push forward and deliver a register that truly works.”*

September 2018 . *Russian money laundering investigation was ordered to stop by a Foreign Office official, says former head of corruption unit.*

May 2018. UK government caves in over dirty money hidden in UK tax havens. *“Names of super-rich who launder funds in British Virgin Islands and Cayman Islands will be revealed, in 'humiliating climbdown”*

December 2004. *The chief Minister of the Isle of Man resigned yesterday after being arrested and questioned by police over a corruption allegation.*

If we care to read business journals, there are plenty of cases in the news.

As a well loved Law Enforcement Officers stated: -

“Hey, let's be careful out there.” - "Sergeant Phil Esterhaus – Hill Street Blues”

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