Inbound Corruption and the UK Bribery Act

The UK Bribery Act, as hopefully everyone is aware by now, became effective last Friday, July 1. Most compliance practitioners are keenly aware of its application to UK based companies or subsidiaries for bribery of governmental officials and private parties. Many companies have understood that these types of activities are illegal under the Foreign Corrupt Practices Act (FCPA) in connection with foreign governments and foreign governmental officials and some companies focused on these types of schemes when they involve private, non-governmental actors. However, the Bribery Act prohibitions apply to inbound schemes that involve bribery as well. These include bribery of a UK company or subsidiary's employees. Most companies focus on the outbound schemes so we thought it might be a propitious time to review the different types of fraud schemes that that might be covered by the Bribery Act for inbound actions.

In her book "*Expert Fraud Investigation: A Step-By-Step Guide*" Tracy Coenen details several types of fraud investigations. In addition to the book as a useful tool for the fraud examiner, Coenen also provides the lay person with a general discussion of the types of corruption schemes a company may face and how best to prevent them. As well as outright bribery there are several types of inbound corruption; including kickbacks, extortion, conflict of interests, and related party transactions as examples of corruption which can involve a payment to obtain an advantage, receive preferential treatment, or force certain preferential actions.

Kickbacks

Kickbacks occur when a company overpays for goods or services and then remits all or part of the overpaid amount back to the perpetrator. This can be affected by the person in charge of the overall bidding process. However, it can extend down into any other employees involved in the approval process such as employees in production, engineering or quality control. So, similar to bribery, there can be more subtle forms of kickbacks and such forms can include the substitution of inferior components into an overall product while charging the higher price to the end-user/purchaser. Kickbacks can also include irregularities in pricing and quality throughout a project. Even if inferior quality goods are not substituted, an irregular price can inflate the cost of goods paid for by a company.

Extortion

Extortion is in many ways the mirror image of bribery. Whereas with a bribe, something of value is given to obtain a benefit, with extortion, a payment is demanded. While such demand can be made to obtain a benefit, such as to allow a company to go forward in a bidding process; extortion can also be made to prevent injuries to persons and damage to physical facilities. While not nearly as common as bribes, there are cases where extortions have been made and money paid based upon the threats.

Conflict of Interest

Many people do not think of conflicts of interest when considering a corruption scheme. Nevertheless, if an employee, executive, or owner of a company has an undisclosed interest in an entity with which his company is doing business, the situation can present a conflict of interest. In the conflict of interest scheme, the employee, executive, or owner may be able to influence the company decision making process in order to send business to the other entity. This conflict of interest may be broader than simply directly involving an employee, executive or owner; it can extend to wives, children and other family members who stand to benefit from any such undisclosed interest.

Related Third Party Transactions

Many compliance practitioners do not consider transactions with third parties as part of an overall fraud scheme. However, if the third party transactions are not conducted in an arms-length manner, this may well be indicia of an overall fraud scheme. Problems can arise when the related parties have a special advantage in doing business with a company and when that special advantage harms the company through increased costs, decreased revenue or other concessions.

In addition to the types of schemes listed in the categories above, Coenen lists several different types of such transactions. They include:

- Extending credit to a company which would not otherwise be so entitled;
- Writing off accounts receivables with no legitimate business reason;
- Doing business with a small or one-man shop with no physical assets or simply a post office box for an office;
- Engaging in consulting agreements where no substantive work is done for payments received;
- A consultant who engages in extensive 'market research' in foreign countries with little to no tangible work product; and
- Concealing the existence of direct or indirect ownership in entities with which a company is doing business.

So what can a company to do combat inbound bribery and corruption? The techniques will be familiar to the compliance practitioner; they include ongoing monitoring programs of both accounts and transactions, through robust internal controls. It is also recommended that there be an anonymous reporting hotline through which employees can alert management of such activities without fear of supervisor retaliation. However, the most important form is that management set the correct 'Tone at the Top" that such fraudulent activity within the company will not be tolerated.