

NED & Chief Legal Officer Network

Lessons on anti-bribery and corruption

Meeting date: 12th October 2018

With special thanks to **Deborah D'Aubney**, Director and General Counsel, Rolls-Royce plc; and **John Allkins**, Non-Executive Director, Nobina AB.

CONTEXT

Governmental regulation, and action, against corporate bribery and corruption has ramped up over the years. Non-executive directors and legal counsel alike need to embed a heightened awareness of these issues across all levels of their businesses to avoid falling foul of the law. At this meeting, attendees sat down with an experienced legal counsel to discuss the challenges when handling investigations, how to create a vigilant culture and best practice when dealing with authorities.

HANDLING INVESTIGATIONS

Organisations should take a 'no concern too small' approach when dealing with potential corruption or bribery cases. This means that if an allegation is made, publicly or not, organisations must take such allegations seriously no matter where it came from. If there are indications that there might be truth in the allegations, companies should immediately start their own internal investigation.

While allegations may only point to one section of the business, attendees recognised that problems may often spill over to other business units due to factors such as ingrained lax internal scrutiny. If one part of a business is deemed to be potentially affected by bribery and corruption, internal investigations should be carried over across to other business units as well.

Internal investigations should start with a comprehensive review of relevant data, such as information on who the intermediaries were, who dealt with them and where they sit within the company. Anyone potentially connected with the alleged wrongdoing, at any level, should be interviewed as part of the investigation to confirm or challenge the initial findings in the documents.

WORKING WITH AUTHORITIES

When enough material has been amassed pointing to potential wrongdoing, organisations need to have the courage to self-report to the relevant authorities such as the Serious Fraud Office in the UK. While this may initially generate immense pushback from the senior leadership, both directors and legal counsel need to emphasise the importance of proactive cooperation with authorities – by being up front and open, it will help the organisation generate goodwill and build trust with both the regulators and the general public.

Full and frank disclosure to the authorities also means volunteering information which they may not otherwise be aware of. Full co-operation should include volunteering information which would otherwise be privileged in order to help investigations go forward and build credentials with authorities.

Prosecuting authorities in different jurisdictions have different approaches to bribery and corruption cases. Some offer deferred prosecution agreements while some do not. Although authorities operate differently, organisations should endeavour to provide the same level of information and disclosure across geographies.

Early remediation is vital if organisations are to avoid prosecution and/or obtain a deferred prosecution agreement. This means that leaders have to initiate wide-ranging reform programmes that aim to fundamentally tackle the causes of breaches. Demonstrating that this has been carried out effectively may also obviate the appointment of a corporate monitor.

INSTILLING A VIGILANT CULTURE

While policies and procedures feature prominently in any remedial programme, ultimately it is the shift in culture and embedding of new workflows that count. New protocols of due diligence and reporting need to be publicised across the whole organisation. A culture of vigilance towards potential wrongdoing can be achieved through:

- **Scenario-based training:** some attendees publish monthly ‘dilemmas’ and invite colleagues to vote for the best response.
- **Principle-based training:** since no one can account for all the possibilities of corruption and bribery, training should focus on broad principles and encourage employees to make educated decisions.
- **Encouraging challenges:** employees need to be empowered to challenge any decision or contract that they find problematic.

OTHER TOP TIPS

- Leaders need to be extremely clear of their PR strategy from the very start (being as transparent as possible is the best), and have responses prepared for all kinds of potential outcomes.
- Employees may not like being ‘talked to’ by lawyers, and need to be assured that cooperation is the best way forward. Leaders also need to ensure dignified exits for those deemed unsuitable to stay.
- Data integrity and ease of data access is highly important, so that investigations will not be frustrated by the difficulty of accessing employee data.