

# Response to Bribery Act Consultation on guidance about commercial organisations preventing bribery

## **Our contribution to tackling the issues posed by corruption**

Working with colleagues in other member firms, we apply our practical experience of investigating corruption issues on a global basis to enable us to take a very pro-active stance to assist clients mitigate corruption risk. We are currently advising several FTSE 100 companies on their response to the Bribery Act, as well as many SMEs. We have also conducted monitoring and assurance assignments to provide comfort to boards that their anti-bribery procedures are operating as they intended. We therefore believe that our comments come from a position of wide exposure to the various issues faced by companies in trying to comply with the Act.

## **Our response**

### **Question 1:**

#### **Other relevant principles**

Whilst we fully support the six principles set out in the draft guidance, in our view, there is insufficient weight attributed overall to the concept of management oversight and

supervision, but most notably in Principle 6 - Monitoring and review. The exercise of management oversight and supervision is not just the responsibility of the Board of Directors but that of all management throughout an organisation; it forms a secondary and pervasive control. In recognition of this, a phrase is emerging around the 'Tone from the middle' to augment the 'Tone from the Top' found in Principle 2. Effective governance, striving to embed an ethical culture where all staff know the 'right thing' to do, both require the cascading of knowledge and responsibility for dealing with corruption to all tiers of management within the organisation.

In our experience of implementing effective programmes in large companies crafting policies and procedures is the easy part; however, successfully implementing an anti-corruption programme across an organisation requires effective communication to explain why it is important for both the organisation and the employee. We often refer to this as being able to satisfy the 'what's in it for me?' question. In doing so, we are of a view that

phrases such as 'compliance programmes' can undermine the efforts to establish ethical cultures, as compliance programmes are often seen as back office, or legal dogma, constraining sales efforts.

We consider it is essential to involve all levels of management but especially middle management, many of whom will be at the cutting edge working abroad. Any adequate procedures framework which does not include and emphasise the role of middle management and clearly identifies their responsibilities is, in our view and experience, doomed to fail and is in grave danger of becoming another compliance, box ticking exercise.

Whilst we accept that management oversight and supervision are implicit in the six principles as set out, our view is that the role of management overall is so critical it should be explicitly stated, ideally in Principle 2 on the basis that while Tone at the Top as regards the principle of monitoring is important, ensuring all managers are aware of and discharge their responsibility as regards monitoring their staff is critical.

### **Question 2:**

#### **Other procedures**

One of the most challenging areas for UK businesses is when making acquisitions abroad. Corruption, as evidenced by the experience of the US FCPA cases, is most frequently discovered on acquisition or shortly thereafter.

A common question we are asked by our clients is if there is a mechanism whereby they can flag such issues to the regulator (as they can in the US) in advance of making the acquisition. One factor is that often these issues are mere suspicions and in the pre-acquisition period full access to the books and records of the target is often not possible to enable a proper investigation to be undertaken.

### **Question 3:**

#### **Format of the draft guidance**

The focus of the draft guidance, typified by the illustrative scenarios, is on international operations. This may give the impression that issues only occur when conducting international business and when doing so with developing countries in particular.

There will be issues with business to business relationships in the UK and between UK organisations and those in other leading trading partners. An example covering this area would help to give balance.

Much of the comment that we have received on the scenarios included in the guidance is that they do not provide guidance but serve to highlight the issues that businesses face in trying to comply with the Act.

#### **Question 4:** **Applicability to SMEs**

Grant Thornton is a lead adviser to this sector. Our experience of working with SMEs is that one individual often has multiple responsibilities and responsibility for dealing with corruption issues will only be one of many that the individual has to deal with. They also do not have the resources to be able to refer their business issues and policies to specialist advisors such as firms of lawyers or accountants. At present the guidance is fragmented, it is a patchwork quilt of advice, some guidance is issued by the MoJ, the SFO, BIS and yet more by regulators such as the FSA. Resource constrained SMEs want one

authoritative source of guidance to be issued by Government.

The illustrative scenarios focus on large corporations - it would be useful to see, by example, how the requirements are modified to reflect a smaller enterprise. At present the guidance states that smaller enterprises may adopt different procedures, implying less is required for a smaller organisation. No guidance is provided on what a smaller entity may omit.

#### **Question 5:** **Enhancement to guidance for SMEs**

The guidance could be improved by the provision of some specific examples including smaller enterprises highlighting the different procedures or approaches that may be appropriate in each case.

There are some procedures which must be conducted irrespective of the size of the commercial activity to be undertaken. Performing due diligence in order to ascertain the identity of business partners must be carried out and to the same level as would be required by a large corporate. Either the identity of those business partners is known or further work is required. The guidance does not spell out the minimum that an SME must achieve.

#### **Why Grant Thornton?**

In addition to our practical experience of working with clients, in March this year we undertook a comprehensive survey of 166 senior executives in the UK seeking their views on the then Bribery Bill. The majority of those surveyed (61%) have an annual turnover of between £50 million and £1 billion. The findings were extremely illuminating, particularly in respect of their attitudes to the anticipated guidance with 76% of respondents claiming that they would not make any preparation for the Act until final guidance is issued by the Government. A copy of the report is available on our dedicated [anti corruption website](#).

We are also a founding member of the World Bank Institutes' working group on Fighting Corruption through Collective Action. The group aims to address both the supply and demand side of corruption by encouraging companies to do business differently by engaging in collective action. Further information on the group and its work can be found on the [World Bank website](#).

Our offer to the market is great in depth expertise, delivered in a distinctive and personal way. Through proactive, client centric relationships, our teams deliver solutions to problems, not pre-packaged products or services.

