



The Giant Awakens: Bribery Act 2010

The period of relative calm which followed the implementation of the Bribery Act 2010 (the “Act”) four years ago has ended. There have been three new, important, cases:

- *Brand-Rex* – a penalty has been imposed in relation to an offence under Section 7 of the Act, the “corporate offence”;
- *Standard Bank* – a Deferred Prosecution Agreement has been approved by the UK courts in relation to the Section 7 offence; and
- *Sweett Group* – a UK-listed corporation has admitted to an offence under Section 7 of the Act.

In this briefing, we summarise these cases, explain their significance and provide a reminder of some practical guidance to minimise the risk of organisations committing the corporate offence.

Settlement with Brand-Rex Ltd

On 25 September 2015, the Scottish Crown Office and Procurator Fiscal Service announced that it had reached a settlement with Brand-Rex Ltd, a developer of cabling systems for network infrastructure and industrial applications based in Glenrothes, Scotland, in relation to a breach of Section 7 of the Act.

The company had been operating a system called “Brand Breaks”, under which associated distributors and installers were given rewards (including holidays) as incentives for meeting or exceeding sales targets.

Although this scheme was not itself illegal, it came to Brand-Rex’s attention that one of its installers had offered travel tickets earned by him under the scheme to an employee of one of his customers, who was in a position to influence the customer’s decision-making.

Following an investigation, Brand-Rex self-reported to the COPFS, accepting responsibility for an offence under Section 7 of the Act. The COPFS agreed to issue a civil recovery order rather than initiate criminal proceedings. The company was ordered to pay £212,800, based on its gross profit related to the misuse of the incentives system.

This was the first time a penalty has been imposed in relation to the corporate offence. Although the self-reporting system

from which Brand-Rex benefitted does not exist in England and Wales it is broadly equivalent to a Deferred Prosecution Agreement, which played a major role in another landmark case relating to the corporate offence shortly afterwards.

Standard Bank Deferred Prosecution Agreement

On 30 November 2015, the SFO announced that the UK courts had approved the first ever DPA, reached between the SFO and ICBC Standard Bank plc (“Standard Bank”).

What is a Deferred Prosecution Agreement (DPA)?

- DPAs have been available in the UK since February 2013.
- They provide organisations with a means for potentially avoiding investigations and criminal prosecutions in relation to certain economic crime offences.
- In exchange for a prosecution being deferred, a company will need to comply with a set of conditions pre-agreed with the prosecuting authority. These may include the payment of compensation or a financial penalty, and/or cooperation with the future prosecutions of individuals.
- If the company breaches any of the conditions, the prosecution may resume.
- In the UK, DPAs must be examined by a court before they can be approved. The relevant considerations are whether it is in the “interests of justice” for the prosecution to be deferred and whether the terms of the DPA are “fair, reasonable and proportionate”.

This landmark DPA relates to another breach of the corporate offence. In 2012, Standard Bank failed to prevent a bribery committed by its Tanzanian subsidiary Stanbic Bank Tanzania Ltd, which paid US\$6 million in bribes to Tanzanian officials in order to obtain Government work. This ultimately generated US\$8.4 million in transaction fees.

Standard Bank began an internal investigation in April 2013, following reports from Stanbic staff of suspicious cash withdrawals. Shortly afterwards it self-reported the issue to the Serious and Organised Crime Agency and SFO.

As a result of the DPA, Standard Bank was required to pay a total financial penalty of US\$25.5 million, as well as compensation to the Government of Tanzania of US\$7 million and the SFO's costs. It also agreed to ongoing cooperation with and monitoring by the SFO, which includes giving them extensive access to its internal data.

Separately, Standard Bank has also been required to pay the US Securities and Exchange Commission US\$4.2 million in respect of related conduct.

It is clear that Standard Bank's prompt self-reporting and extensive and ongoing cooperation with the authorities helped it obtain a more lenient penalty. The court also took into account the fact that none of the Bank's employees knew about the bribery at the time it was being committed.

The agreement of this DPA provides companies with clearer guidance as to the mechanics of the self-reporting regime. This case provides an indication that companies may benefit from early engagement with the regulatory authorities; and that higher penalties may otherwise be imposed.

Sweett Group guilty plea

In another highly significant case, the SFO announced on 2 December 2015 that Sweett Group plc, a UK-listed provider of professional services for the construction industry, pleaded guilty to offences under Section 7 of the Act. This is the first time that a UK-listed corporation has admitted to an offence under Section 7 of the Act.

The SFO announced that it was launching an investigation into Sweett Group on 14 July 2014, following allegations in the US financial press that a Sweett Group employee had attempted to induce an American firm of architects to bribe a U.A.E official in order to obtain work linked to the building of a hotel in Morocco.

Following these allegations, the company also instigated an internal investigation, which uncovered further potential offences. These were promptly self-reported to the SFO.

Further to the company's investigation and its own, the SFO concluded that Sweett Group was guilty of an offence linked to its presence in the Middle East, albeit different to the one

reported in the press. It found that the Group had failed to prevent one of its subsidiaries from bribing an individual in order to secure a contract with an U.A.E. insurance company for project management services in relation to the building of a hotel in Dubai.

In the last year, Sweett Group has put an end to its activities in the Middle East. It is also understood that the employees linked to the bribery behaviour have left the company.

It is still unclear what penalties will be imposed on the company as these will be determined at a future hearing. Sweett Group has however publicly recognised that it faces an unlimited fine and has seen its share price tumble as a result.

Significance of these cases

The COPFS's settlement with Brand-Rex marked the first time a penalty had been imposed in relation to the corporate offence. The speed with which this succession of "firsts" followed is striking, in particular after the period of relative inactivity which came after the implementation of the Act.

These cases serve as a concrete reminder to companies that:

- The Act has created the most stringent anti-corruption regime in the world.
- The Act has international application. UK companies and persons effectively "carry" the Act wherever they operate in the world.
- The SFO and other prosecuting authorities have the power and the willingness to enforce it.
- The Section 7 corporate offence is a strict liability offence: companies can be held responsible for the actions of their contractors, subsidiaries and employees.
- It is crucial for companies to have measures and systems in place to prevent key bribery risks.

Practical guidance

We recommend that you take this opportunity to review and refresh your anti-bribery and corruption policies and procedures and check that your officers, employees and associated parties are sufficiently trained in them.

In particular, it is critical that you are able to demonstrate "adequate procedures" in place to protect against conviction under the Section 7 Offence. The adequacy of these procedures will depend on a number of factors, including your size, business activities and jurisdictions of operation.

To assist, the Ministry of Justice has produced Guidance and a Quick Start Guide. These documents can be found here:

<https://www.gov.uk/government/publications/bribery-act-2010-guidance>

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In addition, readers may find it helpful to refer to Burges Salmon's Self-Assessment Questionnaire and Bribery Act Factsheet. These documents can be used to identify key bribery risk areas and the measures needed to mitigate those risks:

http://www.burges-salmon.com/practices/disputes_and_litigation/publications/the_bribery_act_2010_health_check_adequate_procedures.pdf

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