

THE SOUR TASTE OF CORRUPTION: PART I

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Anti-Corruption Alert

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INTRODUCTION

In July 2014 the Serious Fraud Office (**SFO**) confirmed that it had launched an investigation into allegations of bribery concerning a former employee of property surveyor Sweett Group. The former employee was based in the Middle East and had informed a US-based firm of architects that it would have to pay a bribe of 3.5% of the value of the contract to a public official in order to win work on a hospital project in Morocco.

In December 2015 the property surveyor admitted that its staff had paid bribes to secure business in the Middle East. The company announced that it would plead guilty to the Bribery Act offence of "failing to prevent an associated person bribing another to obtain or retain business for the company." This will be the first UK-based company to be prosecuted for failing to prevent bribery under section 7 of the Bribery Act.

SFO SUCCESS

The plea by Sweett Group to the corporate offence of failing to prevent bribery marks another success for David Green's re-invigorated SFO. The triumph follows swiftly on the heels of the prosecutor's recent success in securing its first deferred prosecution agreement and, arguably, represents a more pertinent example of the kind of prosecutions that the Bribery Act was intended for (the first conviction under the Bribery Act was for a court clerk caught accepting bribes to remove speeding charges from court records).

HOW CAN COMPANIES AVOID PROSECUTIONS FOR FAILING TO PREVENT BRIBERY?

The Bribery Act (the "**Act**") recognises that no anti-bribery regime can always avert bribery. The Act is, therefore, designed to motivate organisations to implement effective anti-bribery and corruption measures to prevent bribery, including by those who perform services for or on behalf of the organisation, such as agents, joint venture partners or distributors. These measures may afford a company a defence to allegations of bribery and corruption and they typically involve risk assessments, policies and procedures responsive to the risk assessment, training across the company on the policies and procedures and a review of such programmes at appropriate time intervals. Being able to provide an audit trail of this is essential.

Businesses should be reminded that there is no standard template but it is important to bear in mind there are real benefits to engaging with the business during a risk assessment; done properly, aside from bribery and corruption risks, it could highlight areas of wasted costs, unnecessary duplication of suppliers or consultants, health and safety risks and the unethical use of cheap labour (see [here](#) for our Alert on the Modern Slavery Act 2015).

REPUTATIONAL HARM

As a recent case involving a construction company demonstrated, companies must also have in place effective procedures to respond to whistleblowing claims, which may arise from non-compliance with a number of regulatory frameworks, including anti-corruption and health and safety legislation. In a recent case, a whistleblower raised concerns internally using the company's whistleblowing procedures about inaccurate profit forecasts, which he alleged were instrumental in securing a contract with the Welsh Government. The whistleblower was subsequently bullied and resigned, making a claim for constructive dismissal. His former employer admitted the claim and was ordered to pay compensation of £137,000. It will be interesting to see if a criminal investigation into the allegations brought by the whistleblower will follow.

THE CORPORATE COST OF BRIBERY - THE COSTS TO DATE

Sweett Group launched an internal investigation into the allegations. These are understood to have cost the company around £3m so far. Initially, the company denied knowledge of the allegations and appointed its own independent investigator. Following the independent investigation it self-reported two corrupt contracts it had entered into in 2013. In December 2014, the company confirmed that for the six months to the end of September, it had incurred a pre-tax loss of £584k compared with a £59k loss in the same period of the previous year, mostly "as a result of the SFO probe". Following its admission of wrongdoing, the company explained that it was withdrawing from the Middle East entirely. Sweett Group's shares immediately fell 10.5% and are now worth less than a third of their peak prior to the allegations.

The impact of the SFO investigation on Sweett Group has been far-reaching. With forward-planning and the implementation of a proportionate and robust compliance programme, the impact of such an investigation may be mitigated. It will be interesting to see what further information comes to light once the company has been sentenced on 12th February 2016 at Southwark Crown Court.

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