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## litigation lawflash

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### UK Government Announces Changes to Bribery Regime

*Recent strategy paper sets out a new institutional structure for investigating bribery and proposes a reporting mechanism carrying financial incentives for whistleblowers.*

On 7 October, as part of its strategy document to introduce the new National Crime Agency (NCA), the UK government announced a number of changes to its antibribery/anticorruption regime.<sup>1</sup> The changes concern a new structure for investigating bribery as well as a proposed new reporting mechanism that incentivises whistleblowers. Although the implementation date has not yet been announced, companies based both in the United Kingdom and abroad should consider reviewing their existing anticorruption and whistleblowing procedures in advance of the changes being implemented.

#### Background

The UK law on bribery underwent a major overhaul with the introduction of the Bribery Act 2010 (the Act), which came into force on 1 July 2011. The Act replaced a regime based on common law and 100-year-old statutes, which was generally criticised for being outdated and not fit for purposes in the modern commercial world.

The Act created four main offences, including a strict liability corporate offence for failure to prevent bribery (section 7). Section 7 states that a relevant commercial organisation will be deemed to have committed a criminal offence if a person associated with it bribes another person with the intention of benefiting the organisation. However, no offence will be committed if the organisation can show that it had “adequate procedures” in place to prevent such bribery from occurring.

Under the current enforcement regime, the Serious Fraud Office (SFO) acts as the lead agency for investigating bribery and enforcing the Act with respect to both domestic and overseas corruption of UK businesses. The Crown Prosecution Service acts together with local police agencies to investigate and prosecute smaller and less complex cases. The UK Financial Conduct Authority is also involved in taking enforcement action where a corporation fails to adequately address corruption and bribery risk.

#### New Strategy

The changes announced by the UK government are aimed at improving the antibribery/anticorruption regime, which the government believes to be fragmented and hampered as a result of insufficient intelligence sharing between agencies and a lack of an effective reporting mechanism.

As part of the new developments, the Home Office will take control of all domestic antibribery and anticorruption policies. It will work together with the Cabinet Office and the Department for International Development to coordinate the investigation of corruption abroad.

The newly created NCA will be responsible for the assessment of bribery and corruption by organised crime. To fulfil this function, it will have its own investigators, including individuals in the Economic Crime Command. However, the NCA will also work together with other enforcement agencies, such as the SFO.

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1. View the government’s “Serious and Organised Crime Strategy” at [https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/248633/Serious\\_and\\_Organised\\_Crime\\_Strategy.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/248633/Serious_and_Organised_Crime_Strategy.pdf).

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The SFO will retain its role as the lead agency for investigating large and complex cases of corporate bribery and enforcing the Act with respect to corruption overseas.

The UK government has also put forward proposals for a new bribery reporting mechanism. This may involve rewarding whistleblowers, including the provision of financial incentives in addition to offering immunity from prosecution. The government is reviewing the mechanism in place in the United States, where qui tam provisions in the False Claims Act allow whistleblowers to receive a portion of the financial penalties levied on companies, but it remains to be seen whether a similar regime will be implemented in the United Kingdom.

## Implications

Overall, the changes to the enforcement regime seem to point to an increased appetite for antibribery enforcement by the UK authorities. These changes are perhaps not surprising given that there have been three successful prosecutions by the Crown Prosecution Service under the Act in the more than two years since its introduction and that the SFO launched its first prosecution in August 2013. This case is scheduled to go to trial in 2014. A move towards cooperation between multiple agencies, each with its own pool of resources, may therefore lead to an increased number of bribery investigations. On the other hand, these changes carry the risk of parallel inquiries and disagreements between agencies, which may, in turn, delay and obstruct the anticorruption effort.

The new reporting mechanism, if introduced, is likely to encourage bribery enforcement. Incentivising whistleblowers is well established in the United States, where whistleblowers can receive multimillion dollar payouts in return for insider information.

We will continue to monitor developments in relation to the UK government's strategy and will issue additional guidance once further details and implementation dates emerge.

## Contacts

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