

The UK Government's New Anti-Corruption Plan

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White Collar

On December 18, 2014 the UK Government issued its long awaited "UK Anti-Corruption Plan" (available at <https://www.gov.uk/government/publications/uk-anti-corruption-plan>). The plan aims to set the strategic direction for anti-corruption activity in the UK over the coming year, and to ensure greater collaboration and consistency across the public and private sectors.

The plan aims to (i) demonstrate the breadth of the UK's current anti-corruption activities; (ii) to set out clearly the actions that the Government will take to tackle corruption in the UK; and (iii) to set out the Government's priorities for raising international standards and leading the global efforts to combat corruption.

The plan sets out over 60 action points for the Government and its partners, organized around four key themes of "Pursue", "Prevent", "Protect" and "Prepare". Implementation of these action points is being led by an Inter-Ministerial Group chaired by Matthew Hancock, Minister for Business, Enterprise and Energy and the Government's "Anti-Corruption Champion" (appointed by the Prime Minister). The plan gives the next 12 months as the timescale for delivering most of the planned actions, but we note that this period will include a general election (and possible change of government) in May 2015, which might affect implementation.

The proposed actions include:

- **The Ministry of Justice to examine the case for a new offence of a corporate failure to prevent economic crime and the rules on establishing corporate criminal liability more widely** (by June 2015) – Using as a starting point the corporate offence of failing to prevent bribery introduced by the Bribery Act 2010, the plan suggests that "there are likely to be other forms of economic crime for which it is appropriate to ensure that senior corporate actors are sufficiently accountable." Therefore, a new offence of corporate failure to prevent corporate crime is proposed.

If such an offence were to be created, and were it to adopt the scope of the "failure to prevent bribery" Bribery Act 2010 offence, it would mean that a company could be held criminally liable for a range of economic crimes committed on its behalf by its employees or associated parties, such as agents, even in circumstances in which its board or senior officers had no knowledge of the wrongdoing. Companies would presumably be afforded the same defence that is provided under the Bribery Act offence, namely that the company would not be guilty if it had put in place "adequate procedures" to prevent the particular economic crime offence that forms the basis of the charge.

It's no surprise that SFO's Director Green is a strong advocate of such an extension of the law on corporate criminal liability. He is keen to remove legal obstacles to corporate prosecutions, and the new model would presumably, in the same way as

the Bribery Act offence, extend the jurisdictional reach of the SFO -- for the economic crime offences to be specified -- to non-UK companies that carry on a business or part of a business in the UK.

While the plan suggests that the Government will examine the case for the new offence by summer 2015, it does not give an indication of whether there will be a public consultation. We think that there will be many hurdles to jump before any such offence finds its way on to the statute book.

- **The Home Office and Department for Business, Innovation and Skills (BIS) to consider what more can be done to incentivize and support whistleblowers in cases of bribery and corruption** (by October 2015) – In July 2014, the UK Government published the results of a public consultation on the country's whistleblowing framework. That consultation pointed out that although there was only limited support for financial incentives for whistleblowers, they should not be ruled out in all cases. The Home Office and BIS will continue to explore options in light of those findings.

There has been little appetite in the UK to introduce the type of financial incentives available to whistleblowers under U.S. law. The director of the SFO, David Green, has not been a supporter of such financial incentives, and has expressed his concern that paying for information could in some circumstances allow defense lawyers to attack the credibility of prosecution witnesses who had been paid.

- **Cabinet Office to take forward a review of the enforcement response to bribery and corruption more broadly** (by April 2015) – The plan suggests that the Government will invite industry to contribute to this review.

The review will include a consideration of anti-corruption structures in the UK. As part of that process, the plan also proposes that the Cabinet Office establishes a new cross-departmental unit on international corruption, which will provide a secretariat to the Anti-Corruption Champion and work closely with the Home Office (which will take the lead on coordinating domestic corruption policy).

It is inevitable that part of the remit of the review will be to consider the perennial question of whether serious and complex bribery and corruption continue to be handled by the SFO, or as part of a larger crime fighting agency such as the NCA. We do not see at present any real political appetite, from any party, to disband the SFO. The SFO's case for remaining a standalone elite crime fighting agency will only be strengthened if it continues to build on its recent string of successful anti-corruption enforcement actions.

- **BIS to implement a central register of UK company beneficial ownership information** (subject to Parliamentary timetable: as soon as practicable after the necessary primary and secondary legislation is in place) – UK companies that currently register information on their members at Companies House will be required to obtain and hold beneficial ownership information and provide it to Companies House, where it will be publicly accessible. Criminal penalties will apply for failure to provide information, or providing false information. The UK's intentions were initially outlined in the Government's response to the Transparency and Trust22 discussion paper, published in April 2014, and legislative provision to implement a 'register of people with significant control' is contained in the Government's Small Business, Enterprise and Employment Bill. According to the April 2014 document, the existing definition of beneficial ownership, as applied in the anti-money laundering context, will be used as the basis for the statutory definition of 'beneficial ownership.' This means that information on individuals who ultimately own or control more than 25% of a company's shares or voting rights, or who otherwise exercise control over the

company or its management, will need to be obtained and held by the company and provided to the central registry. Where a qualifying beneficial interest in a company is held through a trust arrangement, the trustee(s) or any other natural person(s) exercising effective control over the activities of the trust will be required to be disclosed as the beneficial owner of the company.

To reduce the burdens on business, however, the Government has signalled its intention to exempt companies who comply with relevant disclosure rules under the Financial Conduct Authority's Disclosure and Transparency Rules, or who have securities listed on a regulated market subject to equivalent disclosure requirements.

- **The National Crime Agency (NCA) to establish a national multi-agency intelligence team focused on serious domestic and international bribery and corruption** (by April 2015) – The plan identifies the need to improve intelligence-gathering on corruption, in light of the National Strategic Assessment of Serious and Organised Crime conclusion that “a more cohesive and consistent intelligence picture from the public and private sector is required to assess the full extent of corruption and help direct effective organizational control measures.” The plan suggests that, where appropriate, the NCA will release information directly to those individuals and organizations most likely to be affected, to help them to protect themselves from recognized corruption threats and vulnerabilities.

It is not yet clear if this process will create a channel for dialogue between the NCA and businesses wishing to seek guidance on specific anti-corruption questions, or if the plan refers more to general sectoral guidelines (i.e., in those sectors “most likely to be affected” by bribery concerns).

- **The Home Office and law enforcement agencies to develop a model for a single reporting mechanism for allegations of corruption** (by July 2015) – Citing polling data that indicates a vast gulf between public willingness to report corruption and knowledge of how to do so, the Government aims to make the procedure easier by introducing a single reporting mechanism.

It is unclear how this proposed development will impact upon existing channels for the lodging of complaints of fraud, including Action Fraud, and how the introduction of a single reporting mechanism for corruption across all agencies would affect – if at all – the existing efforts by agencies, including the Serious Fraud Office (SFO), to encourage self-reporting by corporates. The SFO is the lead agency tasked with investigating and prosecuting cases involving serious and complex bribery and corruption.

- **House of Commons to approve the proposed amendments to the Guide to the Rules relating to the conduct of Members** (by March 2015) – The Government intends to use the plan's proposals to build on a number of reforms already initiated in 2014 to improve transparency in Parliament, such as the establishment of a statutory register of consultant lobbyists and the lowering of reporting thresholds for the House of Lords. The proposed further revisions to the Guide to the Rules would extend the existing rules on registering gifts and benefits to (and make MPs personally responsible for) MPs' staff. They would also reduce thresholds for reporting most registrable interests and introduce a new specific threshold for financial holdings.

If these proposals go into effect, the greater due diligence burden placed on members of Parliament (including members of the House of Lords) might affect those individuals' relationships with businesses using them as paid consultants or speakers.

- **Home Office to consider further strengthening the financial investigation powers available to law enforcement** (by June 2015) – This follows work done by the Home Office alongside the financial sector, and could result in companies under investigation facing more extensive disclosure obligations.
- **Cabinet Office to arrange a regular forum for civil society and business leaders to engage with the Government on corruption and bribery issues** (by January 2015) – The proposals aim to strengthen anti-corruption dialogue between the public and private sectors by establishing a regular forum for discussion.

So far, there have been no details published about the makeup of such a forum, or how representatives of the private sector will be chosen.

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