

Stamping out bribery & corruption: An Oman perspective

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Major companies and public officials, it seemed, were all within the reach of the prosecutor in a major drive by the Sultanate to eradicate what is seen as an ill of any developed society. There is a strong suggestion that more prosecutions are forthcoming.

In this article we look at what is meant by bribery, the standards imposed by the international community on countries like Oman and how private sector companies can protect themselves in this area of their business.

What is bribery?

The concept of a bribe is generally well understood. In its basic form, bribery involves a payment made to a person in a position of authority to entice that person to behave in a way which will place the payer in a favourable position.

High profile cases involving senior officials of private companies in Oman paying bribes of between OMR200,000 to OMR400,000 (approximately USD520,000 to USD1.03 million) to public officials are well covered in the media but it is the fines and jail terms which have attracted heightened attention. Fines imposed have been around the OMR1 million (USD2.59 million) mark, with jail terms ranging from 3 to 23 years. These are aggressive signs on the part of the Courts that corruption will not be tolerated in any form and will be punished severely. While it may appear from the above figures that only substantial improper payments are likely to attract punishment, there is no minimum amount to classify a corrupt payment as a bribe.

The law on bribery and corruption in Oman rests with the Penal Code, which was drawn up in 1394 AH (1974 AD). Bribery is covered by Chapter II, Book II of the Penal Code but deals only with the bribery of public officials. Although the relevant Penal Code provisions focus on the crime from the perspective of the party being bribed, the person bribing a public official can be held criminally liable under the accomplice provisions in the Penal Code. The sentencing options for bribery under the Penal Code include imprisonment from three months to ten years, a fine equivalent to the amount of the bribe and dismissal from public office. Attempted bribery attracts imprisonment for a period of between one month and two years.

The United Nations Convention against Corruption

In January 2014, Oman joined over 120 other countries by acceding to the United Nations Convention Against Corruption ("UNCAC"). UNCAC gives the following definitions of private and public sector bribery:

"The promise, offering or giving, directly or indirectly, of an undue advantage to any person who directs or

works, in any capacity, for a private sector entity, for the person...in order that he or she, in breach of his or her duties, act or refrain from acting.”

“The promise, offering or giving, to a public official, directly or indirectly, of an undue advantage, for the official himself or herself or another person or entity, in order that the official act or refrain from acting in the exercise of his or her official duties.”

Using an agent to make the payment is also outlawed by the words “directly or indirectly” and it is therefore important for businesses that make use of agents to ensure that those agents are not involved in corrupt practices.

As with the Penal Code, there is no requirement under UNCAC for the bribe to be above a specific monetary level – a bribe is a bribe. It is the nature and consequences of corruption that are being targeted and countries that accede to UNCAC are required to criminalise such practices.

What has Oman committed to do under UNCAC?

UNCAC imposes obligations, on those countries that have ratified it, to take measures to prevent corruption involving the private and public sectors and to provide effective and proportionate penalties for failure to comply with those measures. Oman must ensure that private enterprises have sufficient internal auditing controls to assist in “preventing and detecting” acts of corruption and that the accounts and financial statements of such private enterprises are subject to appropriate auditing and certification procedures.

Other than through the recent criminal prosecutions, it is not clear how this obligation has been communicated to the private sector community in Oman. Given the length of time since the bribery provisions in the Penal Code were enacted and the relatively recent requirements under UNCAC’s uncompromising stance on corruption, legislative changes in Oman on bribery and corruption are likely, particularly to criminalise corporate bribery.

What are the obligations of a private sector business?

Best practice, in addition to the threat of prosecution for acting as an accomplice in the bribery of a public official, requires businesses operating in Oman to have proportionate systems and processes in place to prevent and detect corruption. Certain industry sectors are clearly more prone to bribery and corruption and may be exposed to any or all of the following:

inflating the true cost of a contract value on an infrastructure project, with a portion of such contract value being diverted away from the project;

payments made to “grease the wheels” (often referred to as facilitation payments);

payments made to “level the playing field” in a competitive situation; and

a requirement to pay a certain sum to obtain the benefit of a contractual right e.g. an extension of time for delays not caused by that party or simply, upon achieving a contractual milestone.

While any of the above may be commonplace or necessary in certain sectors or parts of the world, UNCAC imposes an obligation on Oman to eradicate these practices. Businesses in these sectors are likely to encounter a dilemma of being uncompetitive if they want to prioritise compliance with the law. Non-compliance however is likely to result in severe criminal sanctions coupled with catastrophic reputational damage.

How can I minimise the risk to my business?

As part of any risk assessment for a private sector entity, it would be advisable to adopt proportionate

systems and processes. Proportionality is by reference to the size of the business, the sector and the countries in which it conducts business.

Anti-bribery and corruption policy

Businesses should consider committing to a written anti-bribery and corruption policy. Commitment to anti-corruption and bribery must start from board level and all employees should be required to adhere to it with appropriate disciplinary procedures for those who do not. The policy does not need to be long but must convey the message that the board of directors does not tolerate bribery in any form.

Ethics and compliance manager

A senior executive, with direct access to the board, should be appointed to oversee compliance with the policy. This person would be responsible for educating employees and senior members on the business's obligations under local and relevant international laws.

Compliance programmes

A business may consider adopting policies on giving gifts and corporate hospitality. Where such practice is not commonplace the policy could simply state that the practices are only acceptable with written permission from the board of directors.

Due diligence on third parties and general risk assessment

Sufficient due diligence should be carried out on all counterparties, business partners, agents and suppliers to assess their likely risk to the business. Due diligence could involve reinforcing existing "know your client" procedures, the use of third party research and intelligence services, obtaining references and requesting the counterparty's anti-bribery policy.

Risk assessment

Certain countries are notorious for their relaxed approach to preventing corruption. Enhanced procedures should be in place if a business conducts activities in those countries. Certain types of high risk transactions, for example relating to public procurement, should be covered by appropriate procedures.

Financial and accounting procedures

Businesses should have systems in place to ensure the maintenance of fair and accurate books, records and accounts to ensure that they cannot be used for the purpose of bribery or hiding bribery. Accounts must be transparent and entries accurate.

Reporting procedure and transparency

Businesses may wish to encourage the following:

- reporting incidents of bribery;
- recording corporate hospitality and promotional expenditure;
- recording payments made to third parties; and
- management of all suspected incidents of bribery, including internal investigations and public disclosure.

Legal documentation with counterparties

Contracts with third parties should be capable of being stress tested. For example, the proportionality of services rendered against fees paid, destination of fees paid and whether anti-corruption covenants were sought (especially from partners to a joint venture). Termination should be an option if corruption is discovered.

The future

The business community, governmental and non-governmental organisations have all worked together to bring anti-corruption measures into sharp focus and highlight the problems that corruption causes. UNCAC requires countries like Oman to reinforce legislation and implement measures to ensure that corruption is completely eradicated from society. This is likely to lead to even more aggressive action by prosecutors around the world; the risk of criminal prosecution is likely to remain high for businesses which do not take action to mitigate this risk.