

On 4 October 2012 Transparency International UK (TI-UK) published the Defence Companies Anti-Corruption Index¹ which scored BAE Systems Plc in the B category, implying it had good, publicly available evidence of having at least basic ethics and anti-corruption compliance systems in place, although significant variations between the band B companies were evident. TI-UK recommended that those in band B upgraded their website disclosure to band A levels.



In 2010, BAE reached a negotiated settlement with the Serious Fraud Office (SFO) and the U.S. Department of Justice (DoJ)² in what was described by the SFO “as a ground breaking global settlement”. It concerned BAE’s operations in Tanzania and led to the company pleading guilty to an offence contrary to s.221 of the Companies Act 1985³ admitting that it had failed to keep adequately accurate accounting records in relation to payments made in connection with its sale in 2002, of a military radar system to the Tanzanian government.

BAE accepted that it had engaged a local “marketing adviser” to assist with the negotiation and sale process and that \$12.4m had been paid to off-shore companies controlled by him after signature of the contract for the radar. The payments were incorrectly recorded in the BAE accounts under the heading “technical services”. Although the basis of plea was engineered to exclude the allegation that BAE was a party to an agreement to corruption, BAE accepted that there was a high probability that part of the \$12.4m would be used in the negotiation process to favour British Aerospace Defence Systems Limited.

The company agreed to pay £30 million, divided into a payment of a financial order determined by the Crown Court to be £500,000 plus £225,000 towards the SFO’s costs and the remainder as an ex gratia payment to the people of Tanzania. This was finalised earlier this year in an agreement that £29.5 million would be paid for use in educational projects in Tanzania. In consideration for this the SFO agreed not to prosecute any *person* in relation to the conduct, terminated all investigation into BAE and agreed that there would be no further investigations or prosecution of any member of the BAE Systems Group for any conduct prior to 5 February 2010; a blanket immunity to which the sentencing judge expressed surprise. The SFO took account of the company’s implementation of “substantial ethical and compliance reforms” in reaching the agreement and drew a line under the matters for which BAE Systems had come under investigation.

TI-UK’s recent study found that only 10% of defence companies had good disclosure of their anti-corruption systems. “*This is much more than it would have been ten years ago: the industry is changing*” but overall concludes that “*85% of defence company leaders do not publicly speak up enough on the importance of preventing corruption. Despite the importance of a consistently strong ‘tone from the top’, very few senior leaders actively engage both in public and within the company on corruption. In order to ensure that corrupt opportunity does not lead to corrupt actions, Transparency International UK recommends that CEOs actively promote a values culture, through speaking out against*

¹ <http://companies.defenceindex.org/report>

² Reported to be a \$400m settlement;

³ Now section 387 of the Companies Act 2006; an offence committed by every officer of the company who is in default punishable by up to two years imprisonment or a fine.

corruption both within the company and publicly across the industry. It also calls on Chief Executives, government defence procurement chiefs, and investors to demand that better systems be put in place.”

As a general observation, bad practices were reported to include the overuse of “legal jargon” in Codes of Conduct that were difficult to understand, or find useful. A “box ticking” approach to compliance and ethics which lacked conviction, meant it would be obvious to employees and a lack of transparency, in that as many as 90% of the companies surveyed had little on their websites about ethics and anti-corruption. Identified as being at the core of good practice was the need for executives to repeatedly emphasise to employees that corruption would not be tolerated. TI-UK also issued a call for leaders in business to speak out against corruption by engaging with the media and attending industry conferences.

Recommendations about the practical measures that should be taken included a periodic review of the organisation’s whole anti-corruption process and frequent review of parts of it, implementation of clear policies of anti-corruption, risk reviews and methodologies to ensure that each risk is prioritised with accountability being assigned to a senior person whose role is to mitigate it within set time frames. Due diligence at every stage was identified as key and particularly in relation to high risk intermediaries such as agents. The report did note that many companies already recognised this risk and had procedures in place to require formal justification of an agent’s role and the level of commission paid, which would need to be approved by senior management at headquarter level. Advice as to training was that a suitable balance between face to face and on-line training should be struck bearing in mind the time and resource implications of attached to it.

Author: Simon Morgan is the Managing Partner of Morgan Rose Solicitors and practices in Anti-Bribery & Corruption and Corporate Fraud.