



Private Equity Sound Bite

Anti-Bribery Procedures: What is 'Adequate'?

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The UK Bribery Act 2010 (the "Act") has been described as "the most draconian anti-bribery law in the world" and "the Foreign Corrupt Practices Act on steroids". It has far-reaching implications for any international business that comes within the very wide jurisdiction of the UK. Companies doing business in the UK, and British nationals or residents should be aware of its provisions. Given the multi-jurisdictional nature of private equity, the Act has particular relevance to the industry.

Since the Act came into force in 2011, there have already been prosecutions of individuals by the English courts. Senior company executives have recently been charged in connection with corporate bribery under the Act. We believe that there are several other cases against international companies in the pipeline.

It will be a defence to the corporate offence to show that the organisation has in place "adequate procedures" designed to prevent bribery. But adequacy is difficult to define and will vary from case to case. There is little doubt that businesses will need to have and operate a clear and comprehensive anti-bribery policy and procedures. The UK government has published guidance about the nature of such procedures. It endorses the following features:

- Top-level commitment
- Due diligence
- Proportionate procedures
- Communication (including training)
- Risk assessment
- Monitoring and review

It is impossible to prescribe ideal procedures in the abstract. However, a typical anti-bribery procedure will assess the risk of bribery in the business from the point of view of geography, the nature of customers, and the practices of a particular industry. The business will make clear that bribery is never acceptable. It will require checks on agents and representatives, limit and monitor expenditure on gifts or hospitality, monitor books and records, provide staff with appropriate training, and protect whistle-blowers who report concerns to management. The procedures should be properly resourced, robust and responsive to the assessed risk of bribery. They should be fully and visibly supported by senior management.

In our view, an effective anti-bribery procedure is characterised less by the specific details of the text and more by what happens in practice in the organisation. Procedures that are ignored as soon as they are inconvenient may be worse than useless.

If you have any questions or concerns regarding the validity of procedures within your firm or investee companies, or any other aspect of the Act, please contact Eoin O'Shea on eoshea@reedsmith.com.

Transaction Highlights

Recent Deals Across Our Platform

A cross-department London team, led by Perry Yam, has advised **Aquila Capital** on its agreement to purchase up to four wind farms based in Cumbria from **Stern Wind S.à.r.l.** Aquila is a leading provider of alternative and real asset investments, headquartered in Hamburg, Germany. This is the second wind deal on which the team has advised in the past six months, having advised another private equity investor on the acquisition of a wind farm in Scotland.

Our Paris team, led by Lucas d'Orgeval, advised 70 shareholders including **Sigefi Private Equity** (Siparex Group) on the sale of **Greenwich Consulting**, a French IT consulting group operating in Europe and in the United States, to leading international consulting group EY (formerly Ernst & Young).

Aquila Capital 


Siparex

New Team Member

Secondaries Counsel Franck Coudert Joins Paris Office



We are delighted to welcome Franck Coudert to the team. Franck joined our Paris office last month and has leading experience in secondary transactions as well as cross-border leveraged private equity transactions. In addition, Franck advises on buy-out and growth capital deals, and has built up a well-respected client base. He regularly advises on:

- Sale of (LP) interests or portfolio of (LP) interests in private equity funds
- Spin-off of managers (GP) of private equity funds
- Sale of portfolios of direct investments in portfolio companies

Franck will be spending time in the UK and in Germany as well as France, so do contact him on fcoudert@reedsmith.com if you would like to discuss how he can support your business and investments.

Abu Dhabi Office Event

Celebrating 35 Years in the Middle East



On 12 November Reed Smith is celebrating 35 years in the Middle East, with a reception to be held on the pavilion of the Rosewood Hotel, Abu Dhabi, just next to our new relocated offices.

The evening will be a chance for clients, alumni, friends of the firm and Reed Smith staff to relax overlooking the stunning waterfront and city skyline of Abu Dhabi.

With a very limited amount of places still remaining please contact Sam Austin, Middle East Business Development Executive, at saustin@reedsmith.com for further information.