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A Q&A WITH ERLING GRIMSTAD, BDO NORWAY PARTNER AND GLOBAL FORENSICS PRACTICE LEADER

How does Norway's anti-corruption and bribery legislation stack up against the rest of Europe? Against the U.S.?

Norwegian anti-corruption legislation is strict and goes beyond the minimum requirements set by the Council of Europe's Criminal Law Convention on Corruption, as bribes between private companies are also considered an offense in Norway. Norway has experienced an increase in the number of corruption investigations both in the private and public sectors since the new anti-corruption legislation came into force in 2003. From 2003 to 2015, approximately 40 major corruption cases were investigated, resulting in convictions of companies and individuals in Norwegian courts.

Further, Norwegian anti-corruption legislation does not distinguish between foreign and domestic public officials, and it covers all levels of employment, office or assignment for public and private employers and principals, irrespective of position. In the public sector, the offender may be a person who exercises public authority; a member of a directorate, administration, board, committee or other public body, a municipality, religious society or social insurance office; a member of the armed forces; a judge or other official in Norwegian or international court; anyone who exercises an arbitral assignment; or ministers, cabinet members and members of parliament.

A number of cases of corruption investigated by the police originate from whistleblowers and from self-reporting by companies involved in allegations of corruption. Norwegian law requires every enterprise to establish a whistleblowing system to encourage disclosure of ethical issues and corporate wrongdoing. Employees who report censurable conditions are protected from retaliation by law. The protection of whistleblowers has increased the likelihood of reporting suspicions of corruption and resulted in a heightened number of cases of corruption subject to prosecution. However, there is no legal obligation for Norwegian companies to disclose violations of anti-bribery laws or associated accounting irregularities. Unlike the Foreign Corrupt Practices Act in the United States, there are no specific sanctions for violations of accounting rules associated with the payments of bribes.

What government agencies enforce the foreign bribery laws and regulations?

Cases of corruption are prosecuted by the Norwegian Public Prosecution Authority and investigated by the Norwegian police. The National Authority for Investigation and Prosecution of Economic and Environmental Crime in Norway (ØKOKRIM) investigates and prosecutes the most complex and severe violations of the provisions in the Penal Code sections 387, 388 and 389. ØKOKRIM is both a police specialist agency and a public prosecutor's office with national authority. Within the ordinary police force, in several police districts, there are specific law enforcement teams or task forces consisting of financial crime and white-collar crime specialists. These specialist teams investigate and prosecute cases of financial crime, including bribery.

Still, challenges remain. Police and prosecutors' offices often lack the financial resources and specialization needed to adequately investigate allegations of bribery and corruption. Staff is limited and, while reforms are underway, in the near-term it is likely that these forces will continue to constrain the ability of investigators to respond to allegations.



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How is Norway evolving its rules and regulations surrounding bribery and corruption?

While Norway is often lauded as a good global citizen—ranked as the fifth “cleanest” country in the world by Transparency International—it is not without flaws. Just a few years ago, Norway faced criticism for its anti-bribery regulations and enforcement of relevant laws. The OECD Anti-Bribery Convention scored Norway as having “limited enforcement” when it comes to prosecuting Norwegian companies engaged in bribery in foreign nations.

The 2005 update to the Norwegian penal code, which became effective in October 2015, did not change any statutes related to bribery or corruption. But recent developments, including the Panama Papers data leak, and the Telenor and Yara cases, have incited new urgency to tighten regulations and close outstanding loopholes. The Norwegian government has stepped up scrutiny of how domestic firms operate abroad and is also working to forge closer connections with business leaders to generate consensus and cooperation in tackling corruption.

How do these rules impact Norwegian companies conducting business abroad?

It can certainly be a tricky situation to navigate. A few high-profile Norwegian companies have recently run afoul of anti-bribery laws while operating in regions where gifts or “grease” payments are an accepted practice and part of doing business. Norwegian anti-corruption legislation does not explicitly prohibit providing foreign officials with meals, gifts, travel expenses or entertainment, and it also stops short of stipulating a level or monetary amount at which an advantage is considered improper – leaving much room for subjective interpretation and sometimes arbitrary standards. Even a gift with no monetary value may represent an improper advantage under the law in certain circumstances. It all depends on the individual case, making it difficult to define bright-line company policies for officials acting abroad. Generally speaking, on one end of the scale are small representative or promotional gifts, which may be deemed acceptable, while on the other end of the scale, anything that could be construed a “grease” payment is typically in violation of the law.

Anti-corruption regulations equally apply to payments through intermediaries or third parties—and they apply to both companies and to individuals. If an individual engages in bribery or abets corruption, on behalf of an enterprise, then the business may also be held liable for the act and may face dissolution if successfully prosecuted.

Have Norwegian businesses been adapting their practices to reflect the increased regulatory scrutiny?

In the past, some businesses may have claimed naïveté about what constitutes a bribe, especially when operating in foreign markets. But in today’s environment, ignorance is no excuse for bad behavior, and Norwegian companies are now under the spotlight, as public pressure and international coordination have intensified. The ongoing VimpelCom investigation is one such example of increased information sharing between international regulators: The Norwegian company faces investigation by the U.S. Department of Justice, U.S. Securities and Exchange Commission, and Dutch and Swiss authorities.

Consequently, Norwegian companies are taking a close look at their anti-corruption compliance programs and strengthening internal controls. New money laundering rules—not only in Norway, but across Europe—are also requiring companies to adopt additional disclosure requirements and due diligence procedures when handling transactions. In June 2015, the Norwegian Parliament voted for establishing a beneficial ownership registry—well ahead of the Panama Papers. Norwegians are arguably ahead of the game when it comes to openness and transparency.

How can BDO help?

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