



Investigating an internal complaint

This is a case study for business owners on investigating and responding to an allegation of bribery raised internally.

Scenario

Sarah's business, MacNuts Pty Ltd, grows macadamia nuts on rural land in New South Wales. A senior employee, Andy, recently engaged a food distributor to distribute the macadamia nuts to supermarkets in a European country. Sarah is delighted as the European market is hard to break into.

A few months later, Sarah receives an internal email from the business's financial officer, Laura. Laura states that Andy's customs payments have increased substantially, even though the quantity of the orders has not changed. Laura queries the increase and recommends Sarah look into it.

When Sarah asks Andy about the customs payments, Andy responds:

“ The food distributor told me that government customs requirements are very complex in that country. Because of this, they usually refer suppliers to an intermediary business they are familiar with to arrange all the customs paperwork. They said customs can be very slow and using an intermediary is normal and will speed things up. I was worried about meeting the milestones required by the food distributor and meeting our sales targets, so I engaged the intermediary's services to avoid possible delays. There is a signed contract. It's nothing to worry about..

Sarah questions Andy further about the arrangement but his answers become defensive and evasive. Sarah reviews the contract with the intermediary and she is immediately concerned about costs described as 'service fees' under the agreement that are payable to the intermediary. The amount involved seems high for the relatively straightforward work involved for the services. She is worried these payments are being made to the intermediary to improperly obtain assurances from government officials or to speed up the importation of the macadamia nuts.

Sarah suspects that Andy, and by association, her business, may have engaged in bribery to secure their entry into the European market.



What should Sarah do next?

Sarah and the business should consider the following steps.

Step 1: Be proactive

At best, following up the concern will result in the arrangement being found to be a valid transaction. At worst, ignoring the red flag may result in the business being considered by a regulator as tacitly or expressly endorsing a potentially illegal arrangement.

Step 2: Undertake a risk assessment

Identify the common import standards in the country in question. This could include contacting Austrade or a relevant Chamber of Commerce. If the arrangement appears at odds with common standards, then that may be another red flag. In this case, it may be unusual that the service fee is conditional upon obtaining assurances from government officials to hasten the customs process.

Step 3: Investigate the arrangement

Again, this will help the business assess whether the arrangement is valid or not. In this scenario, the company should:

- Review communications between Andy, the distributor and the intermediary. Despite Andy's word that there is nothing to worry about, the business should assess for itself whether there is anything more to the arrangement that Andy has not disclosed; and
- Review the invoices, receipts and actual services provided by the intermediary to check if the intermediary is providing the services they are engaged for, or if they are doing something else. For example, if the intermediary is paid a 'success fee', this could raise more concerns than charging an hourly rate.

Read more [here](#).

Step 4: Consider the risk assessment and if necessary, terminate the arrangement

This may assist the business to avoid any suggestion that it did not comply with its own anti-bribery and corruption policies and that it approved the arrangement. In turn, these actions may reduce the risk of significant penalties by a regulator. Also, if the business makes a further payment to the supplier in circumstances where it knows, is reckless or negligent as to whether the payment will be used for an unlawful activity, each further payment can itself be a criminal offence.

Step 5: Consider legal advice

If the investigation reveals potential evidence that the intermediary made improper or corrupt payments, consider obtaining legal advice about reporting the issue to authorities and other legal issues that can arise.



Prevention is the best method to deter bribery

The business could have avoided the relationship with the intermediary in the first place by supporting employees at risk of exposure to bribery, like Andy, to be aware of when and where demands may be made and how to effectively recognise and respond to these.

Implementing an anti-bribery and corruption compliance program and providing ongoing training on the business's anti-bribery policies, systems and processes also encourages employees like Andy to escalate concerns internally and foster an organisational culture that is proactive about avoiding bribery issues. As part of a compliance program, the business can undertake a comprehensive bribery and corruption risk assessment of the market, including whether it is normal to engage an intermediary to enable trade. Resources from Austrade (access [here](#)) and Transparency International (access [here](#)) can be useful in making these determinations.

Where risks are higher, undertaking risk-based due diligence of third parties, particularly intermediaries who may have dealings with government officials, can help protect the business, directors, officers, and Andy. Due diligence can include checks into links third parties may have with politically exposed persons, or if they have had sanctions imposed on them. Find resources on due diligence [here](#).

Other things Sarah might need to know

If Sarah is a director or senior manager of the business, her obligations to act with care and diligence might require her to investigate these issues to minimise the risk of harm to the business.

Sarah should also consider the requirements of a whistleblower policy that might be in place. Such a policy will offer guidance on how to appropriately escalate the matter and ensure that Laura, as the whistleblower, is protected by confidentiality and from any adverse action against her. Whether or not a policy exists, Sarah should also be mindful that Laura might be entitled to whistleblower protections under Australian law. Sarah will not be able to tell Andy, or anyone other than a lawyer engaged to act for the business, that it was Laura who raised these issues. She certainly cannot take action against Laura for raising the issue. Read more [here](#). Also, see the [Implementing a whistleblower policy](#) case study.

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