Briefing Sheet

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Bribery Act 2010: what it means for your business

This legislation came into force on 1st July 2011. Among other things it creates a new corporate offence of failing to prevent bribery. The only defence is being able to demonstrate that a company has taken proper preventative steps. Fines are unlimited.

Bribery Act 2010: what it means for your business

This guidance outlines the new offences introduced by the Bribery Act 2010 and the penalties for committing them. It also highlights practical steps that your business can take to help avoid breaching the legislation.

What is bribery?

Transparency International (a non-governmental anti-corruption organisation) defines bribery as "the offering, promising, giving, accepting or soliciting of an advantage as an inducement for an action which is illegal or a breach of trust."

Why has the Bribery Act 2010 been introduced?

The Bribery Act 2010 was introduced to strengthen the existing bribery and corruption laws in the UK. The Organisation of Economic Co-operation and Development (OECD) has repeatedly criticised the UK system for being weak and ineffective compared with the more robust regimes in other countries, such as the US Foreign and Corrupt Practices Act.

What are the new offences?

Bribing another person

- A person will be guilty of this offence if they offer, promise or give a financial advantage or other advantage, to another person:
    - to bring about improper performance of a relevant function or an activity; or
    - to reward a person for the improper performance of a relevant function or an activity.
- The types of function or activity that can be improperly performed include:
    - all functions of a public nature;
    - all activities connected with a business;
    - any activity performed in the course of a person's employment; and
    - any activity performed by or on behalf of a body of persons.

  This is where the person performing the function is expected to perform it in good faith or impartially or is in a position of trust by virtue of performing it. The function will be covered even if it has no connection with the UK or is performed outside the UK.
- It may not matter whether the person offered the bribe is the same person that actually performs or performed the function or activity concerned.
- The advantage can be offered, promised or given by the person themselves or by a third party.

Being bribed

- The recipient or potential recipient of the bribe will be guilty of this offence if they request, agree to receive, or accept a financial or other advantage to perform a relevant function or activity improperly.

- It does not matter whether it is the recipient, or someone else through whom the recipient acts, who requests, agrees to receive or accepts the advantage. In addition, the advantage can be for the benefit of the recipient or another person.

Bribing a foreign public official

- A person will be guilty of this offence if they intend to influence an official in their capacity as a foreign public official. The offence does not cover accepting bribes, only offering, promising or giving bribes. It does not matter whether the offer, promise or gift is made directly to the official or by a third party.

Failing to prevent bribery

- A commercial organisation will be guilty of this offence if a person associated with it bribes another person, with the intention of obtaining or retaining business or a business advantage for the commercial organisation. The offence can be committed in the UK or overseas.

- A business will be able to avoid conviction if it can demonstrate that it had adequate procedures in place designed to prevent bribery.

What are the penalties for committing an offence?

- The offences of bribing another person, being bribed and bribing a foreign public official are punishable on indictment either by an **unlimited fine**, **imprisonment of up to ten years or both**. **Both a company and its directors could be subject to criminal penalties.**

- The new offence of failure to prevent bribery is punishable on indictment by an **unlimited fine**.

- Businesses convicted of corruption could find themselves **permanently debarred** from tendering for public sector contracts.

- Your business may also be damaged by **adverse publicity** if it is prosecuted for an offence.

Practical steps to help prevent your business breaching the Bribery Act 2010

Small and medium-sized enterprises will inevitably have fewer resources to counter bribery than larger companies. However, you can take some straight-forward measures to help prevent your business breaching the legislation.

Top level commitment

Make sure all senior managers and directors understand they could be personally liable under the Bribery Act 2010 for offences committed by the business. It is important that senior management lead the anti-bribery culture of your business, especially if it wants to take advantage of the “adequate procedures” defence to the offence of failing to prevent bribery.

Risk assessment

- Make sure you understand the risks your business may be exposed to. For example, certain industry sectors (such as construction, energy, oil and gas, defence and aerospace, mining and financial services) and countries present a greater risk, as employees are more likely to engage in bribery in these areas.

- Think about the types of transactions your business engages in, who the transactions are with and how you undertake the transaction. High-risk transactions include:
  - procurement and supply chain management;
  - involvement with regulatory relationships (for example, licences or permits); and
  - charitable and political contributions.
- Review how your business entertains potential customers, especially those from government agencies, state-owned enterprises or charitable organisations. Routine or inexpensive corporate hospitality is unlikely to be a problem, but you should put clear guidelines in place.
- If your business operates in foreign jurisdictions, always check local laws.

Implementing and communicating an anti-corruption code of conduct

You should implement a code of conduct setting out clear, practical and accessible policies and procedures that apply to your entire business. This should be effectively communicated to all relevant persons.

Due diligence when dealing with third parties

Your business will be liable if a person associated with it commits an offence on your behalf. You should review all your relationships with any partners, suppliers and customers. For example, if an agent or distributor uses a bribe to win a contract for your business, you could be liable. You must ensure that background checks are carried out on any agents or distributors before you engage them.

Proportionate policies and procedures

Review any existing policies and procedures your business has on preventing bribery and corruption and decide whether they need to be updated. If you do not have any policies or procedures in place, you should consider preparing them as a matter of urgency. Transparency International has written a guide aimed at small businesses for countering bribery, which includes model corporate anti-bribery policies and programmes (see *Transparency international: Business Principles for Countering Bribery*). The Ministry of Justice has also published a *Quick start guide*.

Effective implementation and monitoring

- You should consider introducing a compulsory training programme for all staff. If only a few of your employees operate in a high-risk area, make sure the training is targeted at them.
- Ensure anti-corruption policies and procedures are continually monitored for compliance and effectiveness, both internally and externally.

More information

If you have any questions about the content of this checklist, please contact **Jeff Taylor** on 01527 871641 or jrt@thomashorton.co.uk