


Bribery Act 2010



The Bribery Act 2011 contains clauses that effectively mean that if a company has anti-bribery procedures in place, it will be treated more leniently if a case of bribery emerges (Singleton and CIPS)



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Introduction

The Bribery Act 2010 was published by the Ministry of Justice in March 2010, and came into force on 1 July 2011. The Act details general offences in relation to bribing another person or being bribed and a specific offence relating to bribing foreign public officials. It also covers bribery offences and attempts to influence decision-makers by offering benefits other than what can be legitimately offered as part of the tendering process (Ministry of Justice, 2010).

The Act creates a new offence under which organisations can be liable for actions taken by their members if they fail to prevent bribery (Ministry of Justice, 2010). For example, if a senior manager commits bribery to secure a deal, this offence can be attributed to the employer. The latter, however, can avoid liability if it offers sufficient proof of appropriate anti-bribery procedures were in place at the time of the offence by its employee. Therefore, it is recommended that all contracts with agents, subcontractors, distributors, consultants and other parties contain clauses addressing the issue of bribery.

It is very important for firms to think about how they can satisfy the requirements of the Act (Singleton and CIPS), since now certain practices considered to be common in the past can cause problems. Some of the important steps for companies to avoid liabilities are: holding regular meetings with managing directors and staff to talk openly about bribery risks that the business faces (e.g. where they may happen, what form they may take etcetera), writing a short statement and communicating that statement to all employees, setting limits for marketing and hospitality expenditures for every region (e.g. a limit of £100 for a meal per employee with higher authority approval for every expense above the limit), and making sure that all employees are aware of the procedures for bribery reporting (The Telegraph, 2011).

Following the Bribery Act 2010 UK firms also become liable for bribes committed abroad, even if bribes are common practice in the overseas market. Therefore it is important to communicate the company's bribery policies to all overseas partners (The Telegraph, 2011).

Definition

The purpose of the Bribery Act is to "reform the criminal law of bribery to provide for a new consolidated scheme of bribery offences to cover bribery both in the UK and abroad" (Bribery Act, 2010). Within the framework of the Act bribery is defined as "giving someone a financial or other advantage to encourage that person to perform their functions or activities improperly or to reward that person for having already done so" (Ministry of Justice, 2010:1).



Successful Application

In order to prevent acts of bribery within organisations, adequate procedures should be developed and implemented. A small UK-based organisation usually has no need for complex formal and written procedures as the existing controls over company expenditure, accounting and commercial or agent contracts are likely to be sufficient. If the potential risks are higher, companies can perform background checks of the people and organisations dealt with (Ministry of Justice, 2010).

Steps to Successful Application

- Conduct a risk assessment of risks of bribery to your organisation.
- Introduce and communicate a zero-tolerance policy for bribery.
- Gather information about the people you deal with or who will represent your organisation.
- Put in place specific anti-bribery procedures, for example using checklists.
- Train and support your staff to make sure all employees are aware of the concept of bribery and the procedures and risks associated with it.

Singleton and CIPS

Hints and Tips

- Nature, size, and complexity of the business have a direct influence on the choice of the correct procedures to prevent bribery. For example, very large organisations and those that do business overseas will need to do more to prevent bribery (Ministry of Justice, 2010).
- Top managers are in the best position to ensure that their organisation is bribery-free and to communicate clearly that bribery is not tolerated (Ministry of Justice, 2010).
- It is important to perform a due diligent background check on the people you allow to represent your company (Ministry of Justice, 2010).
- Bribery risks can change over time. Therefore, it is essential to constantly monitor external and internal environments (Ministry of Justice, 2010).

Potential Advantages

- Bribery Act 2010 modernises the previous bribery laws which were considered too antiquated and inefficient (Ministry of Justice, 2010; Thomas, 2011).
- Bribery Act 2010 represents the biggest effort to combat bribery so far, with a strong increase of maximum sentences for individuals from seven years to 10 years imprisonment, and unlimited fines for organisations (Singleton and CIPS).
- The Act has an extraterritorial effect, e.g. it is also applied to UK organisations if the business in question or the bribery case was abroad (Singleton and CIPS).

Potential Disadvantages

- Commercial organisations have no experience in developing and implementing procedures to avoid liabilities if a person associated with the organisation commits bribery (Singleton and CIPS).
- The legal burden of proving that an organisation has had anti-bribery procedures in place when bribery took place lies on the organisation itself (Singleton and CIPS).
- Critics and campaigners claim that the Bribery Act 2010 allows numerous loopholes for overseas bribes, and that powerful lobbies and business groups still have a lot of scope for paying bribes to foreign officials and politicians (The Guardian, 2011).

Case Studies

- The first person to be convicted after the new UK Bribery Act was a court clerk named Munir Patel, who worked at the Redbridge Magistrates Court. The clerk gave people advice about how to avoid being summoned to court for similar offences and failed to enter details of a traffic summons on court database in exchange for £500 (Bowcott, 2011).
- The new UK Bribery Act 2010 had a knock-on effect in Germany where German subsidiaries of AstraZeneca have announced that they will no longer pay for doctors to attend international conferences. Before the introduction of the Act it was common for AstraZeneca to cover conference participant travel, accommodation and other related costs as part of their global sales and marketing practices (BMJ, 2011).
- In 2010, Wojciech Chodan, a UK citizen and former commercial vice-president and consultant to a UK subsidiary of the engineering firm Kellogg, Brown & Root (KBR), pleaded guilty to conspiring to violate the Foreign Corrupt Practices Act (FCPA). The charges were for his part in a scheme to bribe Nigerian government officials to obtain engineering, procurement and construction contracts for building gas facilities in Nigeria worth US\$6bn. KBR was fined \$402m and incurred civil penalties (SupplyManagement.com, 2009; 2010).

CIPS Source Downloads

- Ministry of Justice: The Bribery Act 2010. A quick start guide
- Susan Singleton & CIPS: The Bribery Act
- CIPS: Use of lawyers in P&SM;

Further Reading/References

Web Resources

- [Impact of UK Bribery Act 2011 on best practice in global sourcing](#)
- [Department for Business, Innovation and Skills offers advice on bribery and Bribery Act](#)
- [BusinessLink: Anti-bribery policies](#)
- [The Crown Prosecution Service: Joint Prosecution Guidance](#)

Books

- Blackstones Guide to the Bribery Act 2010, Raphael, ISBN 978-0199579785
- The Bribery Act 2010, O'Shea, ISBN 978-1846611940
- The 2010 UK Bribery Act Adequate Procedures ISBN 978-0956619402
- Anti-Bribery Risk Assessment, Gruetzner, Hommel and Moosmayer ISBN 978-1849461290
- Bribery and Corruption, Loughman and Sibery ISBN 978-1118011362

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VIDEO

UK Bribery Act – Round table discussion -

https://www.youtube.com/watch?v=OdVa34T_vnY#t=43

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