

The Bribery Act: an unpleasant shock!

Recent surveys show that many businesses are not fully prepared for the implementation of the Bribery Act on 1 July 2011. Below, we have summarised the main features of the Bribery Act.

Our soundings reveal that certain businesses intend to rely on existing (i.e. out-dated) codes of conduct. Several US owned companies think (inaccurately) that their FCPA based policies are adequate in the UK. Others have raided the internet to copy and paste their way to Bribery Act compliance. A few are trusting to luck. If you are one of these businesses you may be in for an unpleasant shock.

'... it will be very unwise for companies to use a very technical interpretation of the Bribery Act in order to persuade themselves that they can continue to use bribery because they are not within the Bribery Act. They may have an unpleasant shock.' (Richard Alderman, director of the SFO)

The dilemma for business is identifying what amounts to illegal bribery and what is acceptable business practice. At what point is the line crossed?

The problem with the legislation is that it does not draw a perfectly straight line. For this reason, businesses themselves must introduce or refine policies so that their staff and associated persons understand where the line applicable to them has been drawn. If that line does not marry up to the objectives of the Bribery Act, or if there is no line, then Mr Alderman's unpleasant shock awaits.

That said, there is really no need to over-react. True, as from 1 July, businesses operating in the UK who fail to implement adequate procedures to prevent bribery face criminal liability punishable by unlimited fines, potentially in the tens of millions of pounds; but, the new crime of failing to prevent bribery also provides for a defence - companies which implement 'adequate procedures' to combat corruption will escape liability.

Organisations will be held liable for bribery committed by 'associated persons' (e.g. employees, agents, intermediaries and advisers) and your adequate procedures must apply to them all. Individuals found engaging in bribery are susceptible to unlimited fines and up to 10 years imprisonment. Any senior manager who connives in bribery is personally liable. Directors involved in bribery face disqualification

There are other grave consequences of being found guilty under the Bribery Act, e.g. confiscation under proceeds of crime legislation of the entire benefit obtained by the offender in addition to any fine imposed under the Bribery Act. Contracts obtained by bribery may be void on grounds of public policy. A person (including a company) convicted of a corruption offence faces automatic and everlasting exclusion from tendering for EU public contracts.

Notwithstanding press speculation, reasonable hospitality to network and improve relationships with customers is unlikely to attract criminal prosecution. For an offence to be made out there has to be an attempt to induce a person to behave improperly or to reward that person for improper behaviour

If undertaken wisely, establishing an anti-bribery programme should not require a vast budget, although some companies, presumably motivated by cost rather than value, may be tempted to cross their fingers and hope for the best. Most businesses should be gearing up to implement an efficient and relatively inexpensive programme of adequate procedures. The consequences of being convicted are just too momentous to do otherwise.

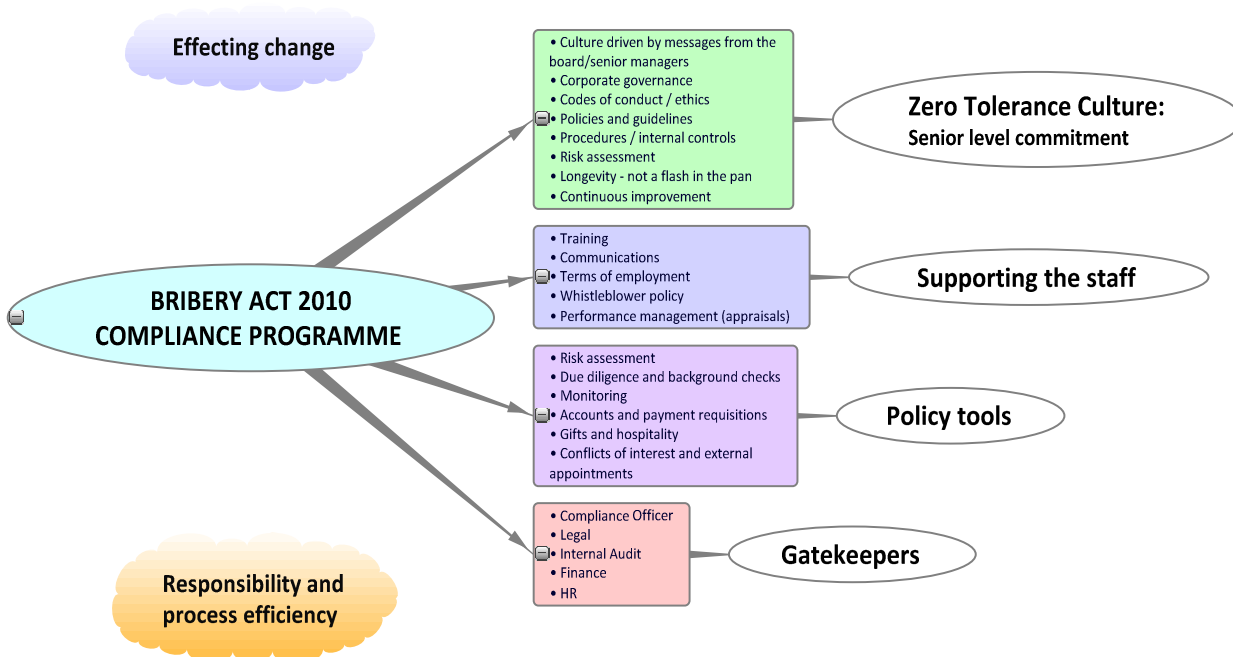


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10 steps that all clients should be taking right now:

- Demonstrate Bribery Act integrity. Senior management should be visibly and actively involved.
- Carry out a risk assessment and then develop policies to counter specific risks.
- Make a statement (from the board) committing to Bribery Act compliance addressed to both staff and associated persons as well as to suppliers and customers.
- Instigate a Bribery Act compliance programme for itself and all associated persons. Keep written records to evidence the programme as it is rolled out and implemented.
- Communicate the programme and educate staff and associated persons as to the impact of the Bribery Act. Appoint a compliance officer tasked with implementation of the programme.
- Review all HR and disciplinary processes, procedures, policies and contracts to ensure compliance e.g. whistleblowing policy
- Review internal procedures and controls e.g. accounting systems to root out bribery risks.
- Review existing contracts and standard form contract templates to ensure that Bribery Act compliance is covered.
- Undertake due diligence on all agents/joint venture partners/intermediaries – know who you are dealing with and how they approach bribery and corruption.
- Determine whether the Bribery Act compliance programme being implemented by your trading partners will impact upon your business e.g. will compliance with the Bribery Act be a pre-condition of doing business.

Gateley has developed a **compliance tool kit** which is available online. We can use this to assist you to devise and implement your anti-bribery programme.



For further information regarding our compliance tool kit please contact:
 Ruth Armstrong on 0121 234 0055 or by email RArmstrong@gateleyuk.com
 Simon Pigden on 0121 234 0153 or by email SPigden@gateleyuk.com