

COMMENTARY

The UK Bribery Act 2010

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Bribery is a criminal offence!

The UK law reform initiated by the Bribery Act 2010 has created new criminal offences relating to bribes that form an effective armoury against those responsible. Under the new Act, it is illegal to offer or receive a bribe. The focus for corporate organisations and their staff is to avoid the obvious offering of anything like a gift or money in return for influencing another party to perform their function improperly.

In today's highly competitive and economically stretched environment, those able to grant business contracts are also in a powerful position to demand significant benefits in return for their assistance.

Bribery had become commonplace and accepted across many industries. Under the new Act, this can no longer be the case and in future such actions, if detected, will result in criminal investigations, with both individuals and their employers potentially liable. Companies that fail to take appropriate steps to ensure that procedures and policies are in place to detect and prevent bribery will also be liable for the actions of their employees.

Avoiding criminal charges

Firms have to take a measured look at the different types of bribery they could be exposed to. In the financial services (FS) industry, the majority of firms have carried out risk-based assessments to address the compliance requirements of their regulator(s). These assessments will need to be revisited and extended with the new legislation in mind. If your organisation has systems and processes in place and these are sufficiently flexible then it should be more straightforward.

In some other non FS sector firms it is less likely that such a rigorous risk-based assessment will be in place. These firms need to conduct a risk-based assessment focused on putting in place controls to ensure that the bribery risks are mitigated and managed on a continuous basis.

Clearly once a risk assessment has been carried out and firms understand where their risks lie, there are a number of key elements to make sure that the ongoing management and mitigation of those risks occur to the levels demanded by the board and external bodies.

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Following the risk assessment, it is key that a policy document is agreed that reflects how the firm will identify and manage bribery risks to ensure compliance. This document should be a living document and subject to review and amendment over time. It is critical that all staff are aware of the policy and where to access it. A certain sense of proportionality is fundamental so that the amount of effort allocated to managing the risk reflects the threat to the firm.

Like all risk framework-related activities, you can never be successful in the medium to long term without board level sponsorship and an effort to embed awareness of the risks and their management from top to bottom throughout the business. Internal communication and ongoing training of staff ensure that the right measures are taken to ensure compliance.

The processes that are put in place to ensure that bribery risks are managed effectively must, as with all such control processes, be monitored and reviewed frequently to ensure that what seemed a fair assessment remains a fair assessment following either a change in the firm or a period of time.

How can a system help?

In addressing the challenges presented by the Bribery Act, organisations can deploy software applications designed specifically for such demands.

There are a number of applications that assist in the automation of tasks around governance, risk and compliance management within firms. However, where a system is already deployed it needs to be flexible enough to incorporate the processes and controls necessitated by the Bribery Act.

The system of choice needs to:

- be flexible enough to incorporate the different types of assessment data across organisational dimensions/business lines
- assist in the accurate communication of policies and procedures across all levels of the organisation, ideally assisting in the training effort and providing clarity
- encourage consistent understanding and repeatable good/responsible behaviours
- ensure that not only are the right processes being followed and frequently reviewed but also that outcomes provide the critical audit trail/system of record.

For all of this to happen, those within the organisation expected to provide input to assess, monitor and review progress need to be empowered to provide open and frank communication. A system that works with them can enhance the probability of regular usage and improved clarity in terms of the current status of all risks and threats to compliance objectives.

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