

# UK Bribery Act – What To Watch For, What To Do

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## Enaction Imminent

As if doing business in the current economic climate wasn't difficult enough already. Having received Royal Assent, the **Bribery Act** comes into full effect in the near future and issues yet another harsh challenge to managers, owners and operators of businesses even peripherally linked to the UK.

## The future of anti-corruption legislation?

The **Bribery Act** replaces the tangled mess of old UK anti-bribery legislation and common law and forges an effective, broad and far-reaching weapon for anti-corruption enforcement:

- The Act applies to any corporate entity or partnership, wherever it may be incorporated, registered or conduct its activities, as long as any business, or any part of its business, is conducted in the UK
- It covers the activities of those businesses wherever in the world they occur
- It applies to bribe taker as well as bribe maker
- It punishes not only bribery, but also the failure to prevent bribery
- A company can be held liable for the corrupt actions of any person that 'performs services' on their behalf
- Whether an act was corrupt or not is judged not on the local customs of a foreign market (where such action may be common business practice) but on the basis of what is acceptable practice in the UK
- The Act is stricter on dealings with Foreign Public Officials but still applies to cases of **private sector bribery**

Companies can only defend against a charge of failing to prevent bribery if they can prove that they have 'adequate procedures' in place.

Individuals found guilty of bribery can expect up to 10 years in prison and the prospect of a big fine in their individual capacity.

## Zero Tolerance

It should be clear that business needs to grasp the potential impact of this legislation as soon as possible. Instilling a culture of zero-tolerance in an organisation doesn't happen overnight - nor does corruption-proofing procedures and installing controls in problem areas. Not only do companies have to be sure of exactly who they are doing business with (to understand whether that person is a Foreign Public Official or not, for example) but they also should know the moral character and history of those doing business on their behalf.

Smaller businesses often have fewer controls which are compensated for by tighter management scrutiny. They also may be more exposed to subtle suggestions of palm-greasing to help get their foot in the door against bigger competition. They will need to be particularly careful to demonstrate an effectively 'adequate' anti-corruption attitude.

## Get Ready

Those who may be feeling stung into action by the seriousness of the impending enactment might need to think about some of the following:

1. Educate yourself - culture comes from the top. Understand the implications of the **Bribery Act** for your organisation and make sure you set the tone of zero-tolerance for the company to follow. Understand that the **Bribery Act** goes further than other equivalent legislation in several areas - FCPA compliance is not enough.
2. Understand who you are really dealing with - if you're active in a high risk country or business sector, make sure your controls are robust enough to compensate. Vet all employees thoroughly if there is a chance they could be exposed to corruption and only engage third parties you know you can trust. Understand who your ultimate client is - if they qualify as a Foreign Public Official your controls around dealing with them have to go up a notch.
3. Educate your employees and associates - make sure employees have the necessary training, guidance and commitment to anti-corruption controls. This must extend to anyone that 'performs services' on your behalf, especially in high-risk jurisdictions or areas. Monitor compliance constantly.
4. Systems and controls - these must be immediately assessed for adequacy in the light of the risk profile of

your business and subjected to ongoing scrutiny. Document due diligence on employees and third parties in high risk areas.

5. Zero tolerance - given the current vagueness of the defence of 'adequate procedures', management has to make sure that the company stance on **bribery and corruption** is clearly led, communicated, executed, monitored and documented.

The **Bribery Act** effectively transfers a big part of the responsibility for the global fight against **bribery and corruption** onto company executives. The foolhardy few who still think it is business as usual are in for a shock.