

CIPFA CATS Seminar

The Bribery Act

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Agenda

- Introduction
- Key aspects of the Bribery Act
- Public sector considerations
- Applying the Guidance
- Questions

Key aspects of the Bribery Act

Key aspects of the Bribery Act

- Received Royal Assent on 8 April 2010 and came into effect on 1 July 2011
- It is among the toughest anti bribery legislation in the world
- Applies globally – a UK citizen or commercial organisation can be prosecuted regardless of where in the world bribery occurs
- ‘Senior officers’ can be held personally liable if they consent or connive to an act of bribery

Key aspects of the Bribery Act

Specific offences

- Active offence - offering, giving or promising a bribe or inducement
- Passive offence, accepting or agreeing to a bribe or inducement
- Bribery of a foreign public official
- Corporate offence of failure to prevent bribery – only applies to active bribery.

Key aspects of the Bribery Act

Scope of the Act

- Can apply to organisations and individuals
- Can lead to imprisonment and/or potentially unlimited fines
- No minimum value for a bribe
- A bribe can take any form of inducement – it does not have to be cash

Guidance

- From the Ministry of Justice to help organisations prepare for the Act

Key aspects of the Bribery Act

Penalties

Individuals

- 10 years imprisonment and / or an fine
- Personal liability for a senior officer (i.e. a director, manager or secretary) who “consent or connive” at offence by corporate entity
- Disbarment from directorship
- Civil actions
- Reputational damage

Commercial organisations

- Unlimited fines
- Potential debarment from tendering for government contracts
- Reputational damage
- Professional fees and management costs of defending an investigation
- Investor confidence

Public sector considerations

Public sector considerations

Which offences apply

- Active bribery – yes
- Passive bribery - yes
- Bribery of a foreign public official - yes
- The Corporate offence - unlikely
- Senior officer liability if they consent or connive - yes

Public sector considerations

Key considerations

- The first **prosecution** under the act was of a public sector employee – a court clerk
- **Compliance** with laws and regulations
- **Protect officers** who might inadvertently become exposed
- Demonstrate that public sector organisations have good corporate governance and are an effective '**corporate citizen**'
- Reputation

Public sector considerations

Discussion

- What impact has/will the act have on your organisation?
- What actions are your organisations taking in response to bribery?
- Who has overall responsibility for bribery risk?

Applying the Guidance

Guidance on procedures to prevent bribery

The Ministry of Justice issued guidance in March 2011 to help organisations prepare for the Act

The Act applies to ‘commercial organisations’

- It will not be clear until the law is tested to what extent it applies to public sector and third sector organisations
- However, the term ‘commercial organisation’ implies a private sector focus

Guidance on procedures to prevent bribery

The potential defence for an organisation against the corporate offence of failing to prevent bribery involves having 'adequate procedures' in place

These adequate procedures are not defined, and in practice will become clearer as we see case law

Six key principles are set out as the framework within which to demonstrate adequate procedures

Six key principles:

- Principle 1: Proportionate procedures
- Principle 2: Top-level commitment
- Principle 3: Risk assessment
- Principle 4: Due diligence
- Principle 5: Communication (including training)
- Principle 6: Monitoring and review

1. Proportionate procedures

Procedures to prevent bribery should be:

- Proportionate to the bribery risks an organisation faces
- Proportionate to the nature, scale and complexity of the commercial organisation's activities.
- Clear, practical and accessible
- Effectively implemented and enforced.

2. Top Level Commitment

Tone from the Top

The top-level management of the organisation:

- Is committed to preventing bribery by persons associated with it; and
- Fosters a culture within the organisation in which bribery is never acceptable.

3. Risk Assessment

Know where you stand – scope your response

- **Guiding principles:**
 - Focus on inherent risk
 - Ignore controls until you know the risks
 - Avoid preconceptions

- **Risk elements can include:**
 - Nature of business activity
 - Organisational culture
 - Third parties and JVs
 - Existing level of awareness and training

4. Due Diligence

Who do we deal with – who acts on our behalf?

- If anybody, what do we know about them – how well do we know them?
- Consideration of this should be proportionate and risk-based
- Could include anybody, from subcontractors to professional advisers. The Act refers to “Associated Persons”.

5. Communication and training

Anti-bribery elements of policies should:

- Be embedded and understood throughout the organisation by way of internal and external communication and training
- Be proportionate to the risks the organisation faces.

6. Monitoring and Review

Key Elements

- Critical to sustainability of the programme
- Scoping and design of these procedures should focus on high risk activities
- Clear responsibilities and reporting structure to achieve adequate oversight
- Robust and efficient information gathering and reporting
- Higher risk third parties
- Effective reporting to enable continuous improvements

Any questions

More details can be found at:

www.pwc.co.uk/briberyact

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