

## Bribery Act 2010 – Guide for Directors

The Bribery Act 2010 presents real and significant liability risks to individuals, directors and companies. Falling foul of the legislation can result in fine and imprisonment for individuals and directors, with a maximum penalty of 10 years following conviction. Companies incorporated, or doing business in, the UK, face unlimited fines under the strict liability regime created by an offence of failing to prevent bribery should someone within the organisation pay a bribe. The only defence to this strict liability offence is that there were “adequate procedures” in place to prevent bribery. Guidance from the government around what “adequate procedures” may be, due for publication in July, are generally expected to set out only general principles for anti-bribery and not provide detailed descriptions of anti-bribery policies and procedures.

For a director, who has both personal and corporate liability to contend with, knowledge and understanding of the new Act is essential. You will need to know what the offences under the Act are, what exactly constitutes a bribe, what is meant by “improper performance” and “relevant expectation”, the jurisdictional reach, and your responsibility for the actions of others. Armed with that knowledge, you will be better placed to conduct a risk assessment of your exposure and put in place policies and procedures that truly mitigate it.

The general nature of the government guidance around “adequate procedures” means that it will be extremely difficult to adopt a “compliance to bribery act” based approach to policies and procedures. Basing them around international standards and best practice on ethical business practice, as advocated by Transparency International, OECD, and various other government and law enforcement bodies, is more likely to give you the protection you require.

Consider the following:

- Undertake upskilling for the senior management team
- Seek advice where appropriate
- Appoint a “champion” at the appropriate senior level to oversee your response to the new legislation
- Conduct a risk analysis looking at your operations, people, geographical spread, and structure
- Review and revise your policies and procedures ensuring an “ethical” as well as “compliance” approach
- Develop an action plan and implementation programme, including monitoring and review
- Ensure adequate training across the organisation