

## Anti-corruption

Time to get serious

The risk of serious damage to businesses as a result of corruption has increased significantly.

Globalisation has not only opened up opportunities for businesses but also exposed them to greater risks of corruption, whether due to the range of countries or market sectors they are operating in, or third parties and agents they work with. In addition, emerging market organisations investing or operating in the UK may bring their business practices with them.

Recently, there has been a dramatic increase in the number of corporate bribery and corruption investigations involving high profile companies such as Aon, AMEC plc, Balfour Beatty plc, BAE, Mabey & Johnson and Innospec. Until the advent of the Bribery Act 2010, the UK prosecution authorities had been much less pro-active than their US counterparts who have frequently investigated and prosecuted offences under the US Foreign Corrupt Practices Act. The reputational cost can also be dramatic and persistent.

One thing is clear: The Bribery Act 2010 means that the UK business community will now be forced to take anti-corruption measures very seriously. Companies will need to review their anti-corruption policies and ensure that they have 'adequate procedures' in place.

Guidance as to the type of procedures has been published by the Ministry of Justice



## **THE KEY ISSUES**

### **What is a "bribe"?**

Under the Act, bribery can occur in circumstances that may surprise many. Bribery will include giving a financial or other advantage where this is linked to improper performance of a work-related function. This includes giving an advantage in the knowledge that the acceptance of the advantage alone would be an improper performance of the work-related function. The scope is intentionally broad and applies not only to cash inducements, but also to gifts and other advantages.

### **New criminal offence**

The Act comes into force on 1 July 2011. It introduces a new criminal offence for any company that fails to prevent bribery committed on its behalf by anyone associated with the company. For this purpose "associated" means anyone who performs services for or on behalf of a company. This means that any business will be at risk, not only in relation to the acts of its own employees but also in relation to the acts of others who are considered to be associated with it under the Act.

A statutory defence for the company will only be available if it can show that it had adequate procedures in place to prevent those associated with it from committing bribery offences.

The Act also introduces an offence of bribing a foreign public official.

### **Liability of directors and senior officers**

Directors and other managers of a corporate entity may also face criminal liability if they are proved to have consented to, or connived at, the commission of a bribery offence by their company. They could face conviction if they turn a blind eye.

### **Jurisdiction**

The UK courts will have jurisdiction to prosecute under the Act if bribery takes place in the UK or the offence takes place outside of the UK but is committed by a person with a close connection to the UK. For this purpose UK nationals and companies incorporated in the UK are deemed to have a close connection to the UK.

Any corporate entity incorporated outside of the UK but carrying on business in the UK can also be guilty of the offence of failing to prevent bribery even if the bribery was committed outside of the UK.

Both UK and overseas organisations with a UK presence will need to take into account the extra territorial application of the Act when formulating their anti-bribery policies and procedures.

### **Public procurement**

For corporates who contract with public bodies, conviction of a bribery offence may prevent them from participating in future public contracts, by reason of the EU Public Procurement Directive.

# We can help you to identify areas of focus and key risks for your particular business.

## **PREPARING FOR THE NEW ACT**

The Serious Fraud Office, the main agency charged with enforcement of the Act, will be looking for evidence that anti-corruption procedures have been implemented within an organisation. Companies must not simply pay lip service to the requirements. All companies will need to ensure that they have adequate procedures if they need to take advantage of the statutory defence.

## **HOW NABARRO CAN HELP**

We offer a fixed fee consultation service on the immediate steps your business should take to prepare for the Act.

Following on from the fixed fee consultation service, we can also advise on and help implement a complete anti-corruption programme for your business including bespoke training, to embed a robust and sustainable anti-corruption culture in your organisation. This programme can be stand-alone or merged with programmes for other areas of regulation such as competition law.

If you would like more information on these services, please call the contacts named on this sheet or talk to your usual contact at Nabarro.





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