

How much is enough?

Defining “adequate procedures” in response to
the UK Bribery Bill 2009

“Society is entitled to expect of the corporates these days that they have adequate anti-bribery processes and that those processes are carried out throughout the corporation. If there is a significant failure, then it is a board level failure.”

Richard Alderman – Director of the Serious Fraud Office (SFO)

Context: new UK anti-bribery legislation

The UK Ministry of Justice published the draft Bribery Bill on 25 March 2009. This seeks to enhance the UK's anti-bribery legislation which is fragmented and has been subject to serious criticism internationally.

As well as proposing general and specific bribery offences relating to the bribery of foreign public officials, it also introduces a specific corporate offence of failing to prevent bribery.

2009 has also seen the first prosecutions brought in the UK against organisations for bribery and corruption abroad.

This ramping up of UK anti-bribery legislation, together with increasing enforcement, presents a real risk to organisations continuing to seek growth opportunities in challenging and diverse markets.

The recessionary environment is also exposing existing areas of non-compliance and some organisations' static approaches to risk management.

Aside from fines and criminalisation resulting from non-compliance, the associated reputational fall-out can damage an organisation's brand quickly, and sometimes irrevocably.

“Adequate procedures”: a suggested approach

The draft Bill introduces the concept of “adequate procedures” as a potential defence to the accusation of failure to prevent bribery. The term “adequate procedures” is not defined in the draft Bill, but it is clear that they must have been in place at the time of the alleged offence.

PwC has unique expertise in this area from direct experience of advising clients on some of the largest and most complex compliance and remediation programmes yet undertaken.

In our experience, the implementation of effective anti-bribery policies and procedures can take a considerable amount of time. This means that for the defence to be available by the time the Bill becomes law, organisations need to act now.

It is important to note that a Foreign Corrupt Practices Act (FCPA) compliance programme may not be sufficient to address the wider scope of the Bribery Bill. For instance, the FCPA has exemptions around facilitation payments which do not exist in the Bribery Bill.

This is an emerging area and practices will evolve, but from our practical experience we believe that approaching “adequate procedures” requires three key elements:

- Overarching principles
- Tailored procedures
- Effective implementation

The approach should be principles led, which will help an organisation design its response to the new regulations efficiently and effectively.

This should be supported by a robust set of procedures, tailored to the organisation's circumstances where consistency of actions throughout the organisation is paramount particularly in high risk areas.

Both principles and detailed requirements need to be effectively implemented, given the importance attached to what an organisation does “in practice rather than in theory”.*

*Parliamentary Joint Committee commenting on draft Bribery Bill

Overarching principles

We recommend using the principles outlined below as the basis for creating adequate anti-bribery procedures.

“Adequate procedures” should:

- 1 **Be consistent and universally applied** – to promote consistent and effective implementation throughout the organisation at all levels
- 2 **Be aligned to the organisation’s culture and values** – to make them easier to communicate, understand and embed
- 3 **Be proportionate to the organisation’s size, resources and risk profile** – to ensure that higher risk areas are prioritised and addressed
- 4 **Take account of existing and evolving industry requirements or practices** – to ensure that the programme operates at or above the minimum standards already expected and on a sustainable basis
- 5 **Be documented and monitored** – to evidence that procedures operate in practice, not just in theory
- 6 **Encourage openness and transparency** – to provide an overriding sense of the ‘right’ behaviour to everyone acting for, or on behalf of, the organisation.

Tailored procedures

There is no ‘one size fits all’ solution. Procedures will need to be tailored to the unique circumstances and risk profile of each organisation and achieve the right balance between preventative and detective anti-bribery measures.

In addition to satisfying the overarching principles, “adequate procedures” will also need to provide specific direction, where necessary, to increase consistency and certainty over required routines and actions.

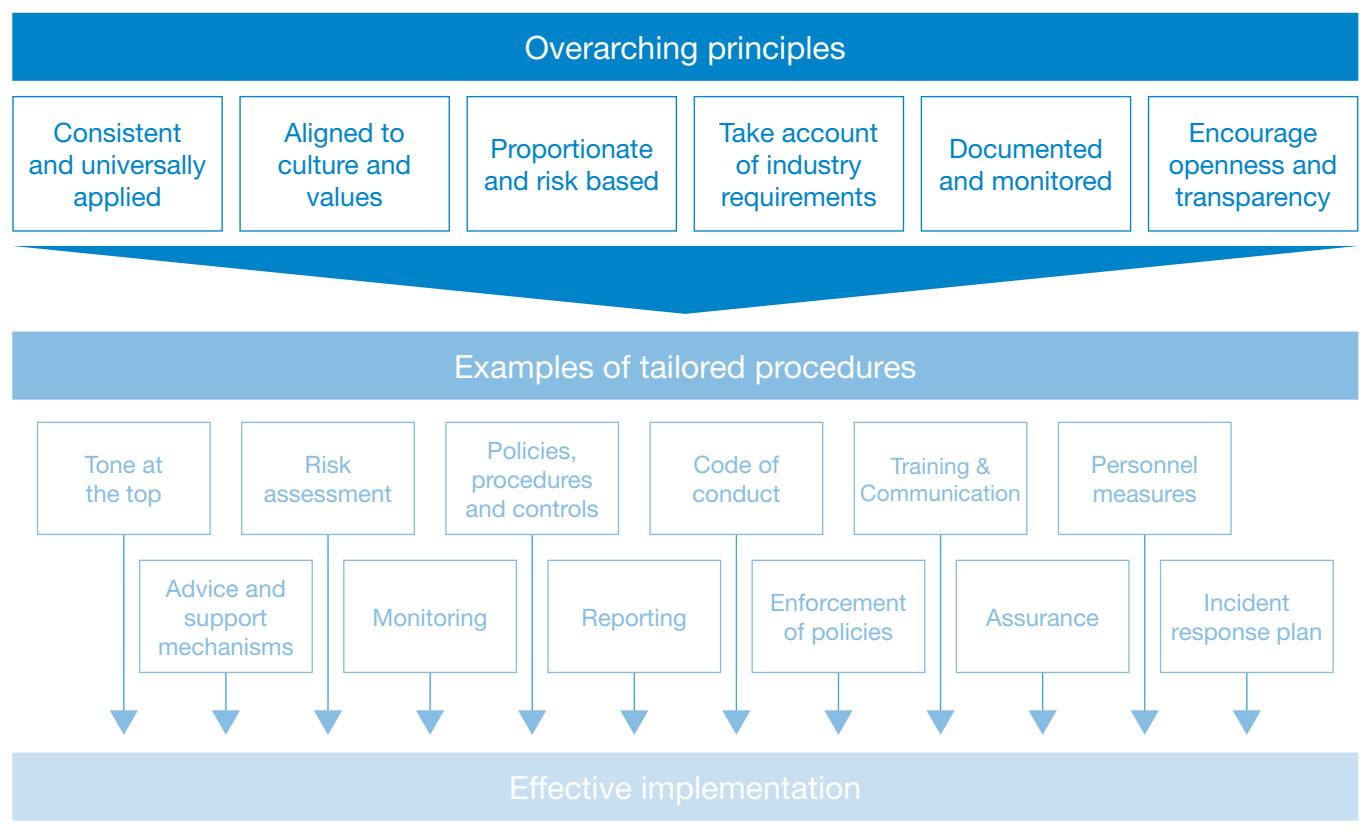
Effective implementation

The key to success is not just designing bespoke procedures but also implementing these effectively such that they are fully embedded within the organisation.

In our experience some organisations can become overly process focussed when addressing bribery and corruption risks. When designing and rolling out effective anti-bribery procedures, consideration also needs to be given to the impact these will have on people’s behaviour and whether the culture in the organisation supports their implementation.

The guidance issued by the SFO emphasises the importance that “the processes really reflect what is happening in the corporate”. How can you be sure that your people will ‘walk the talk’?

Adequate procedures



Examples of implementation challenges

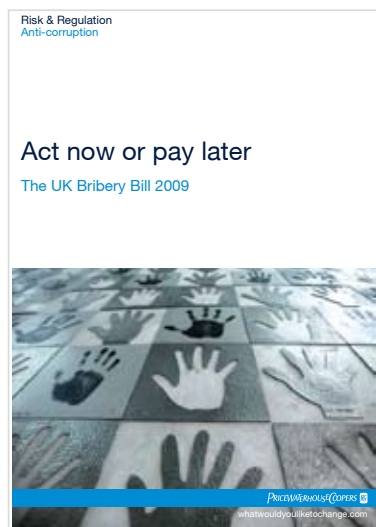
Developing an effective Code of Conduct

- Has the Code got the right balance between principles and rules?
- How will the Code be brought to life?
- Have cultural issues been considered prior to rolling out the Code?
- How will awareness of the Code be raised in remote locations?
- Have practical issues such as translation been fully considered?
- Is it clear who an employee can consult on judgemental issues?
- How can the effectiveness of the Code be measured?
- How will compliance with the Code be sustained?

Enforcement of anti-bribery policies

- Are sanctions able to be applied in different business locations?
- Will sanctions be enforced when a major contract is on the line?
- How would turning down business be regarded?
- Will examples of enforcement be publicised?
- To what extent can third parties be expected or be required to comply with the organisation’s anti-bribery policies?
- Will enforcement stimulate behavioural change?

Further information on the Bribery Bill can be found in the following publication:



pwc.co.uk/briberybill

If you would like to discuss the implications of the Bribery Bill for your organisation please contact:

Consumer & Industrial Products (CIPS)

Steve Osei-Mensah +44 (0) 20 7213 1892

Chris Buxton +44 (0) 20 7804 2101

Simon Perry +44 (0) 20 7213 4242

Will Kenyon +44 (0) 20 7212 2623

Technology, InfoComms, Entertainment/ Media & Energy (TICE)

John Higgins +44 (0) 20 7804 4669

John Tracey +44 (0) 121 265 5783

Financial Services (FS)

Mark Hunter +44 (0) 20 7804 5320

www.pwcfraudacademy.com

This publication has been prepared for general guidance on matters of interest only, and does not constitute professional advice. You should not act upon the information contained in this publication without obtaining specific professional advice. No representation or warranty (express or implied) is given as to the accuracy or completeness of the information contained in this publication, and, to the extent permitted by law, PricewaterhouseCoopers LLP, its members, employees and agents do not accept or assume any liability, responsibility or duty of care for any consequences of you or anyone else acting, or refraining to act, in reliance on the information contained in this publication or for any decision based on it.

© 2009 PricewaterhouseCoopers LLP. All rights reserved. "PricewaterhouseCoopers" refers to PricewaterhouseCoopers LLP (a limited liability partnership in the United Kingdom) or, as the context requires, the PricewaterhouseCoopers global network or other member firms of the network, each of which is a separate and independent legal entity.

Design by Hamilton-Brown: hb05037