

UK Bribery Bill – Consequences of failing to prevent bribery

Andrew Gordon, partner, PricewaterhouseCoopers comments:

On 18 November 2009, the Queen's speech contained a brief mention of the Bribery Bill, which has been through consultation and is now waiting to make its way through Parliament.

It has been a long road for this piece of legislation. The Government signed the OECD Convention, committing itself to provide adequate and appropriate legislation in this area, in 1997. Twelve years on, we are still waiting; but probably not for much longer.

A little history is necessary. The UK's record on bribery is at best patchy and at worst, a cause for international embarrassment. Our anti-bribery rules are seen as antiquated based as they are, on a patchwork of Victorian and Edwardian laws not designed for today's global marketplace. The resources applied to their enforcement are widely considered to be inadequate, with insufficient specialist investigators within the ranks of our prosecuting authorities. As a result, we lag behind many of our peer countries in terms of the numbers of criminal prosecutions. For these and other reasons, there are real questions hanging in the air as to whether there is genuine political will to sponsor change.

All of these factors may have lulled UK businesses into a false sense of security. However there is a big beast lurking within the current Bribery Bill that could soon jump out and give many businesses a terrible shock. This is the proposal that companies and individuals will soon be criminally liable for a failure to prevent bribery. This is a corporate, not an individual, offence, but there can be no doubt that individuals with responsibility for the prevention of bribery will feel the collateral consequences of any violation. Alongside this, there is the introduction of a specific offence of bribing foreign public officials. Taken together, these should be cause for sober reflection and review of current policies and practices within UK companies.

The new rules, which could be enacted before the next election, will put many UK business leaders firmly on the hook for bribery and corruption within their businesses and sales channels. All UK companies will find themselves exposed to the risk of unlimited fines and all the reputational damage that comes with being shown to run an operation that sanctions corruption, albeit by omission.

It may be an unpalatable fact to many, but if you are running a major organisation across multiple territories and markets, your business is probably paying or taking bribes somewhere along the line. Of course, it would be grossly inequitable and unworkable for directors to be held personally responsible for every breach so the bill proposes a defence where the company can show that it has implemented 'adequate procedures' to prevent bribery. And this is where it gets interesting.

The legislation will not be retrospective, but neither will any scramble to throw a few internal policies together to avoid liability or achieve mitigation. 'Adequate procedures' implies a continuum of culture and behaviour; a process, not a one-off event. It is important that business leaders think about this now because, if they don't, then they can kiss the 'adequate procedures' defence goodbye – and for quite a long period of time. A multi-national could need at least twelve to eighteen months to build adequate and robust anti-bribery procedures from the ground up.

For bribery, the head-in-the-sand approach will not work any longer. That is precisely the behaviour the new legislation is designed to stamp out. The message is clear for directors and other senior management whether they are new-in-post or seasoned board members and chairmen who think they have seen it all – 'Be warned. Real change is on its way. Scalps will be taken. Don't let one of them be yours.'

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