



## Bribery Act

The Managing Director and Senior Team at Sovereign Security UK adhere to the Bribery Act and under no circumstances does the companies MD allow any members of staff to not adhere to this act, the act in which we follow is,

The Bribery Act 2010 was introduced to update and enhance UK law on bribery including foreign bribery in order to address better the requirements of the 1997 OECD anti-bribery Convention. It is now among the strictest legislation internationally on bribery. Notably, it introduces a new strict liability offence for companies and partnerships of failing to prevent bribery.

The introduction of this new corporate criminal offence places a burden of proof on companies to show they have adequate procedures in place to prevent bribery. The Bribery Act also provides for strict penalties for active and passive bribery by individuals as well as companies.

The Bribery Act creates four prime offences:

- Two general offences covering the offering promising or giving of an advantage, and requesting, agreeing to receive or accepting of an advantage;
- A discrete offence of bribery of a foreign public official; and
- A new offence of failure by a commercial organisation to prevent a bribe being paid to obtain or retain business or a business advantage (should an offence be committed it will be a defence that the organisation has adequate procedures in place to prevent bribery).

### **IMPLICATIONS FOR COMPANIES, BOARDS AND MANAGEMENT**

The Bribery Act is legislation of great significance for companies incorporated in or carrying on business in the UK. It presents heightened liability risks for companies, directors and individuals. To avoid corporate liability for bribery, companies must make sure that they have strong, up-to-date and effective anti-bribery policies and systems.

The Bribery Act unlike previous legislation places strict liability upon companies for failure to prevent bribes being given (active bribery) and the only defence is that the company had in place adequate procedures designed to prevent persons associated with it from undertaking bribery.

Transparency International UK has produced comprehensive guidance on good practice procedures for corporate anti-bribery programmes.

### **JURISDICTIONAL REACH OF THE BRIBERY ACT**

The Bribery Act has extra-territorial reach both for UK companies operating abroad and for overseas companies with a presence in the UK.

#### **UK companies doing business overseas.**

Companies registered in the UK must take note of the extra-territorial reach of the Bribery Act. A company can commit an offence under section 7 of failure to prevent bribery if an employee, subsidiary, agent or service provider ('associated persons') bribes another person anywhere in the world to obtain or retain business or a business advantage.

A foreign subsidiary of a UK company can cause the parent company to become liable under section 7 when the subsidiary commits an act of bribery in the context of performing services for the UK parent. If the foreign subsidiary were acting entirely on its own account it would not cause the UK parent to be liable for failure to prevent bribery under section 7 as it would not then be performing services for the UK parent.

However, the UK parent might still be liable for the actions of its subsidiary in other ways such as false accounting offences or under the Proceeds of Crime Act 2002.

#### **Foreign companies with operations in the UK**

The Bribery Act has important implications for foreign companies which do business in the UK as its territorial scope is extensive. The corporate offence set out in Section 7 of failure to prevent bribery in the course of business applies to any relevant commercial organisation defined as a body incorporated under the law of the United Kingdom (or United Kingdom registered partnership) and any overseas entity that carries on a business or part of a business in the United Kingdom.

A foreign company which carries on any part of its business in the UK could be prosecuted for failure to prevent bribery even where the bribery takes place wholly outside the UK and the benefit or advantage to the company is intended to accrue outside the UK. The Bribery Act does not define what constitutes 'or part of a business' and until this is clarified in the law courts, a company should exercise caution. A representative office or UK agent may be sufficient to engage the Act. The company's only statutory defence would be to prove the existence of adequate systems and controls.

### **FOREIGN CORRUPT PRACTICES ACT**

Companies must recognise that although their anti-bribery programme may be compliant with the Foreign Corrupt Practices Act (FCPA) this does not ensure that it constitutes adequate procedures under the Bribery Act. The Act differs in several respects from the FCPA. A full comparison of both Acts is given on page 12 of the TI-UK publication on Adequate Procedures.