



Bribery Act 2010: The Impact on U.K. Business

27 April 2010

The Bribery Act (the “Act”) received Royal Assent on 8 April 2010. This legislation introduces a new offence that makes corporations operating in the United Kingdom automatically liable for bribes paid on their behalf. Corporations now could face criminal sanctions if management fails to demonstrate that adequate procedures designed to prevent bribery have been implemented and are taken seriously.

The Act also introduces new statutory bribery offences for activities in the public or private sector and a specific offence for bribery of foreign public officials. Penalties are severe, including unlimited fines or imprisonment for up to 10 years. The new offences contained in the Act are expected to be in force before the end of 2010.

The Bribery Act is likely to have a major impact on how companies doing business in the United Kingdom operate. The legislation is also relevant to U.K. companies’ overseas activities, including those with respect to supply chains, intermediaries, agents, joint venture partners and other business relationships. The Act brings the United Kingdom into line with the Organisation for Economic Co-operation and Development’s (OECD) recommendations in dealing with bribery and corruption. However, it also goes a great deal further, creating some of the strictest regulations in the world.

The Act will enhance the ability of U.K. law enforcement, including the Serious Fraud Office (SFO), to take a much more robust approach to investigating and prosecuting corporations and individuals involved in wrongdoing both in the United Kingdom and abroad.

Below are some questions companies should be evaluating in light of the new legislation:

- Can your company distinguish gifts, hospitality and goodwill gestures from bribes? Would you know when a goodwill gesture could become interpreted as a bribe?
- Are your company’s officers aware of their personal statutory liability if a bribery offence has taken place in their company or on behalf of their company?
- Is the board taking tangible measures to prevent, detect, investigate and report bribery? Has it made a clear statement on this?
- Do your existing policies make a clear statement on bribery and corruption?
- Are your corporate governance and compliance procedures up-to-date? Would they cover the additional requirements to ensure fulfillment of SFO expectations? Even if they do, are your procedures regularly tested to ensure they work effectively to prevent bribery within the business?

- Do you have adequate levels of controls over the activities of employees, agents and third parties? Are such activities properly evaluated?
- Do you have measures in place to identify, prevent and investigate bribery? If so, how are they tested for effectiveness and compliance with minimum standards?
- Do you have suitable awareness training in place for your employees and agents?

The Bribery Act is significantly broader than the current U.S. Foreign Corrupt Practices Act (FCPA), and features stricter scrutiny and enhanced criminal penalties. It is important to note that U.S. companies with U.K. offices will be responsible for complying not only with the FCPA, but also with the Bribery Act. Consequently, U.S. companies will need to revise their FCPA compliance programmes to take into account the U.K.'s Bribery Act provisions.

Following are the key differences between the Bribery Act and the FCPA:

- The FCPA focuses on anti-corruption of foreign governmental officials whereas the Bribery Act also covers non-governmental officials (i.e., private citizens). The Bribery Act makes *any* bribery illegal – not just the bribing of a foreign government official (or the attempt thereof).
- Unlike the FCPA, the Bribery Act does not have a facilitation payments defence. Under the Act, certain types of corporate hospitality are prohibited if they are “intended to subvert the duties of good faith or impartiality that the recipient owes his or her employer.”
- The FCPA has no strict liability either written directly into the statute or interpreted by judicial review. The Bribery Act creates a new strict liability of corporate offence for the failure of a corporate official to prevent bribery.
- The FCPA has criminal penalties of five years per offence. The Bribery Act has penalties of up to 10 years per offence and unlimited fines for companies that fail to implement “adequate procedures.”
- The FCPA “books and records” provisions could be used to prosecute the bribery of private individuals as well as public officials. The Bribery Act has no equivalent provision (except insofar as companies are required to maintain accounts by the U.K.'s Companies Act 2006).

The information below is a high-level summary of the offences contained in the Bribery Act. Issues related to corporate hospitality, facilitation payments and offset arrangements have been raised by industry. Such activities will be judged against the “improper performance” test under the general offences, and subject to prosecutorial discretion.

The Bribery Act – An Overview

The Act introduces four categories of offences:

1. Bribing another person

It will be an offence to offer, promise or give an “advantage” to someone:

- With the intention of inducing that person to behave improperly;
- As a reward for that person to behave improperly; and
- Knowing or believing that the recipient’s acceptance of the “advantage” would constitute improper behaviour.

2. Being bribed (as the recipient of the bribe)

It will be an offence to receive a bribe if that person requests, agrees to or receives an “advantage” to act in an improper manner. It does not matter whether the recipient receives or accepts the advantage directly or through a third party or whether it is for the recipient’s benefit or that of another. It also does not matter, in most cases, whether the recipient even knows his or her acceptance constitutes a bribe.

3. Bribing a foreign public official

It will be an offence to bribe a foreign public official by offering an “advantage” to the official, which is not permitted or required by the written law applicable to that official, with the intention of obtaining or retaining a business advantage. Unlike the above offences, there is no requirement that the advantage offered or given was “improper.”

4. Failure to prevent bribery

A company or partnership will be automatically liable for any bribe offered or given in connection with its business unless it can effectively demonstrate that it has in place adequate procedures designed to prevent such bribery.

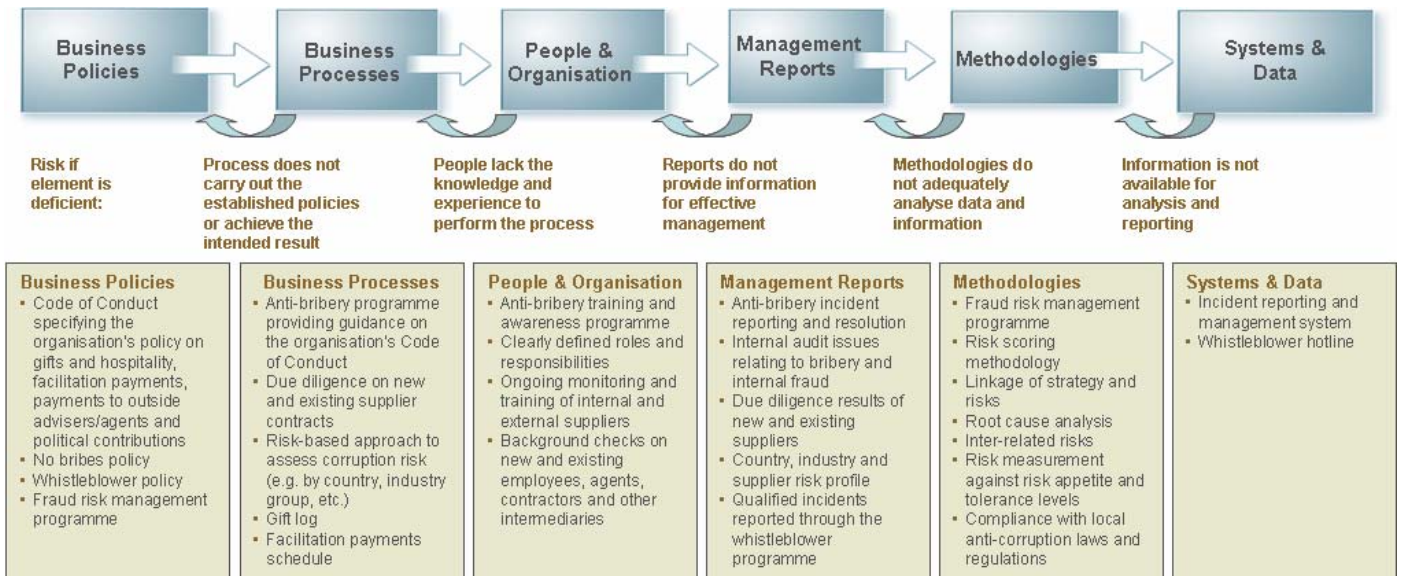
What Companies Need to Do

At present, it is unclear if the U.K. government will produce guidance; if it does, guidance is expected to be issued by summer 2010. Meanwhile, the SFO, which has primary responsibility for investigating and prosecuting corruption, already has indicated the types of policies and measures it expects to see when determining whether a business’s procedures are adequate. These include:

- A clear statement of an anti-corruption culture supported at the highest levels of management
- A code of ethics
- Clear and proper accountability
- Processes for auditing the anti-bribery programme
- Adequate training
- A system of reporting
- Investigation and disciplinary processes
- Suitable policies to define the organisation’s stance on gifts and hospitality, facilitation payments, payments to outside advisers/agents, and political contributions

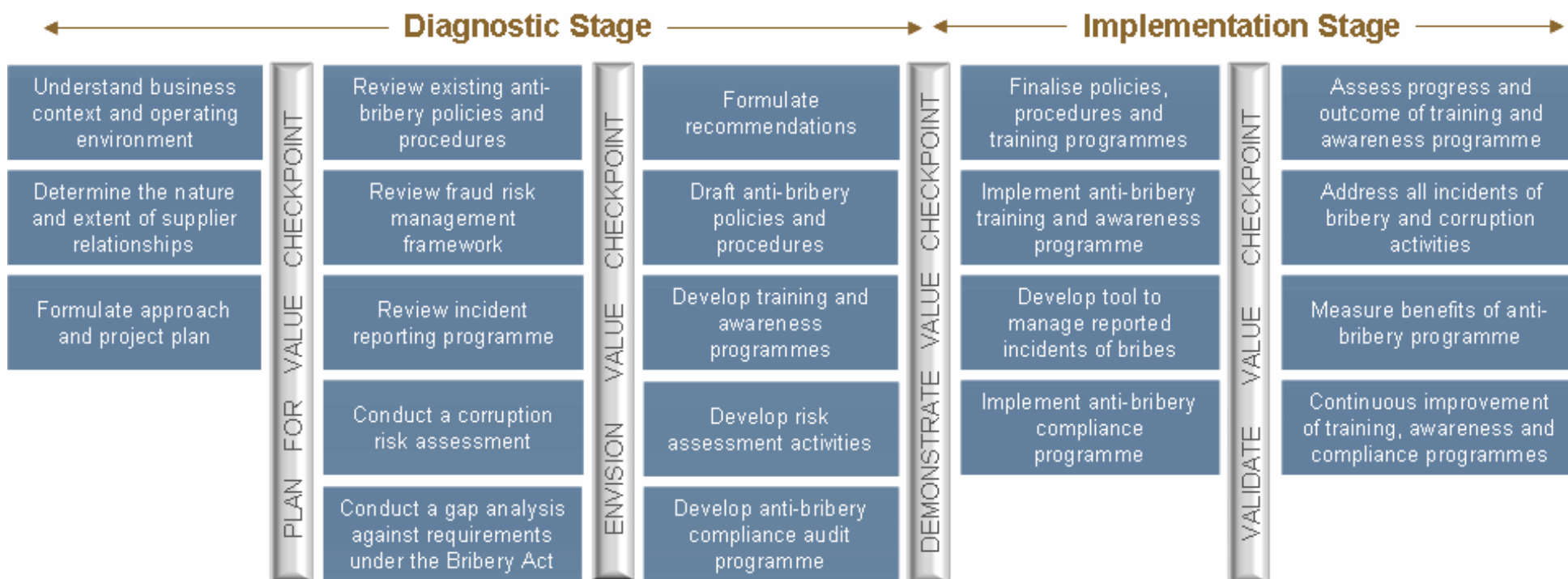
Protiviti's Six Elements of Infrastructure

Protiviti believes there are six key elements to any successful change programme and refers to these as the “Six Elements of Infrastructure.” The model below incorporates the SFO’s expectations in providing a benchmark for corporations to assess compliance with the Bribery Act.



Protiviti's Approach to the U.K. Bribery Act

In anticipation of the offences under the Bribery Act being brought into effect, Protiviti developed a risk-based approach to achieve compliance and promote anti-corruption practices within an organisation. This approach, which consists of five phases segregated into two stages, is outlined on the following page.



Headlines

Penalties for corrupt business practices and bribery are very much alive in both in the United Kingdom and the United States. Higher levels of responsibility and accountability are being placed on foreign public officials to conduct business in a non-corrupt manner. Following are several recent news reports about bribery activities and prosecutions:

Global defence company fined £256 million after pleading guilty to conspiring to make false statements to its government

A global defence company was fined by the U.S. Department of Justice relating to a claim that payments were made to a government official in the Middle East to secure a contract. A fine of £30 million relating to the U.K. subsidiary is a record for a criminal offence by a company in the United Kingdom. (Source: www.dailymail.co.uk)

Chemical firm Innospec admits bribing foreign officials

A multinational firm admitted paying bribes to foreign officials to boost sales of a chemical too poisonous to be sold to Britain's public. Cheshire, U.K.-based Innospec also admitted making corrupt payments to Indonesian officials to stop the dangerous chemical from being outlawed in that country. In a co-ordinated and groundbreaking prosecution by the U.K.'s SFO and the U.S. government, the firm also admitted paying kickbacks to Saddam Hussein's former regime and was fined US\$25 million by a U.S. court. (Source: www.guardian.co.uk)

Healthcare chief jailed for bribes

A former British senior healthcare executive who helped pay more than £4.5m in bribes to Greek officials to win contracts has been jailed for 12 months.

The former senior executive helped arrange for corrupt payments to be paid for use in bribing surgeons and doctors in Greece for their business. (Source: www.ft.com)

Landmark Bribery Fine

A manufacturing company pleaded guilty to paying bribes to officials in various overseas countries. The company was sentenced to pay fines, costs and reparations to the countries concerned, the bill coming in at £6 million. (Source: www.supplymanagement.com)

FSA Fines Company £5.25 million for Failings in Its Anti-Bribery and Corruption Systems and Controls

The Financial Services Authority fined a company £5.25 million for failing to take reasonable care to establish and maintain effective systems and controls to counter the risks of bribery and corruption associated with making payments to overseas firms and individuals. (Source: www.fsa.gov.uk)

Record U.S. Fine Ends Bribery Scandal

U.S. authorities fined a German engineering group a record US\$800 million (£523 million) to settle a long-running bribery and corruption scandal. (Source: www.guardian.co.uk)

About Protiviti

Protiviti (www.protiviti.co.uk) is a global risk and business consulting and internal audit firm composed of specialists in risk, advisory and transaction services. The firm helps solve problems in finance and transactions, operations, technology, litigation, governance, risk, and compliance. Protiviti's highly trained, results-oriented professionals provide a unique perspective on a wide range of critical business issues for clients in the Americas, Asia-Pacific, Europe and the Middle East.

Protiviti has more than 60 locations worldwide and is a wholly owned subsidiary of Robert Half International Inc. (NYSE symbol: RHI). Founded in 1948, Robert Half International is a member of the S&P 500 index.

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