

FAILURE TO PREVENT BRIBERY

Bribery Act 2010

BACKGROUND

The Bribery Act 2010 (UKBA) has been in force since July 2011 and was the first in a series of UK legislation creating corporate failure to prevent offences. The act impacts UK organisations and associated persons irrespective of location, as well as non-UK based organisations doing business in the UK. To that extent it has extra territorial reach. Senior management and compliance professionals within all UK organisations need to ensure they have appropriate anti-bribery policies and procedures in place, so as not to fall foul of this offence.

OFFENCE AND DEFENCE:

Pursuant to section 7 UKBA, an organisation commits an offence if an “associated person” (employee, agent, subsidiary) with it provides an advantage to a person, with the intention of influencing that person to carry out their favourable treatment in the case of a public official. This is a strict liability offence, meaning there is no need for the authorities to prove management knowledge or involvement; the only defence is that the organisation had adequate procedures in place to prevent bribery.

WHO IS CAUGHT?

- ✱ Unlike failure to prevent fraud/tax evasion offences, this offence covers all UK companies regardless of size/turnover.
- ✱ UK subsidiaries of overseas entities.
- ✱ Foreign companies doing business in the UK, again regardless of size or turnover.

GOVERNMENT GUIDANCE: REASONABLE PROCEDURES

The UK Government issued guidance for the failure to prevent bribery offence which outlines six key principles to guide what “reasonable prevention procedures” looks like in practice:

1. Risk assessment
2. Top-level commitment
3. Proportionate and risk-based procedures
4. Due diligence
5. Communication and training
6. Monitoring and review

CONSEQUENCES OF NON-COMPLIANCE

- * Unlimited fines for the organisation
- * Reputational harm
- * Director liability for related offences
- * Debarment from public contracts



OUR EXPERTISE

Spencer West supports clients in managing risks related to fraud, bribery, tax evasion and wider corporate crime. We offer a one-hour briefing session on relevant “corporate risk and response” to help legal and compliance teams identify immediate priorities and where we can deliver the greatest value within your budget. Our advice is practical and client focused, with a suite of “key principles led services” including:

- * Anti-bribery risk assessments
- * Training and workshops
- * Policy drafting and implementation
- * Undertaking broader compliance reviews including internal investigations if necessary
- * Monitoring plan and review timelines
- * Advice on self-reporting, resisting enforcement action, and executing crisis and defence strategies to proactively manage and resolve connected commercial disputes risks



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