

RAHMAN RAVELLI

SOLICITORS



Prevention is better than cure

When it comes to complying with the Bribery Act, businesses need to be prepared. Seeking professional advice to ensure that your company is fully compliant will ease the process – and help to avoid costly, even criminal, mistakes

When the Bribery Act comes into force this autumn, businesses of all sizes will need to be prepared. As well as criminalising the act of bribery itself, the Act will make it an offence for companies to fail to prevent acts of bribery being committed by an employee or associated persons, which will include agents, contractors and sub-contractors. The Act relates to all aspects of business, whether with a third party or within the organisation.

There has been widespread criticism that the Bribery Act is too vague and not clearly enough defined to be properly enforced. "This often happens when new legislation is implemented which changes the landscape," says Aziz Rahman, Senior Partner at international law firm, Rahman Ravelli. "The Human Rights Act 1998 and the Proceeds of Crime Act 2002 are examples of legislation which, in parts, led to concerns about enforcement. In both cases the Acts have survived and flourished."

Rahman Ravelli is currently working on a number of high-profile bribery and

corruption cases, both in the UK and overseas. These cases, many involving billions of pounds, span governments as well as companies of all sizes and from many industry sectors. When it comes to the new legislation, if companies want to avoid their own costly and damaging court cases down the line, it is essential that they have a clear picture of what is being asked of them.

There will be some guidance produced by the government, explains Mr Rahman. However, this is unlikely to answer all questions. "No doubt this guidance will be in broad terms and no doubt there will be plenty of fact-specific scenarios where business people are left wondering what the right thing to do is under the new Act. But generally speaking, there is no doubt that the Act can and will be enforced."

ACT NOW

Small to medium-sized enterprises (SMEs) in particular, says Mr Rahman, need to take action now. "Parliament had the opportunity when

creating the Act to limit its impact to bigger firms – it did not do so. There is no reason to think that the Act will only apply to big corporate bodies. Implementation of the Act has been delayed but it is expected that it will come into force in the autumn. There will then be a three-month period before the Act starts to bite – in that period firms are expected to take heed of the guidance published under section 9 of the Act. In fact, because of the delayed implementation, there is already a draft version of that guidance available, which was published in September 2010."

Everyone will need to comply with the new regulations, but the current draft guidance is broad in scope. Companies are told to implement "adequate procedures" to ensure compliance – but what does this actually mean? Many are still scratching their heads.

"All businesses should read the draft guidelines that have been published," says Aziz Rahman. "A risk assessment should be carried out by a senior mem-

ber of the business, who should then decide what action to take. This should be done at the highest possible level." Procedures need to be put into place and strictly enforced, which will require training, but it would also be wise to enlist professional help to ensure that all bases are covered. "The Act is drafted in a way that does make it difficult for the non-lawyer to understand," Mr Rahman confirms. "It cannot be assumed that because the guidelines have been followed there cannot be prosecution. Hindsight will be applied. The question will be 'were the procedures in place adequate in the circumstances in which this company did business?' This will take into account the structure of the company, its type of business and the level of supervision of, and commitment to, the procedures."

EXPERT ADVICE

Professional agencies such as Rahman Ravelli offer 'health checks' to organisations of all sizes. Specialising in business crime, fraud, civil recovery and regulatory matters, Rahman Ravelli is helping to steer a number of companies through the process and ensure full compliance. But this needs to be achieved in plenty of time.

"There is no one-cap-fits-all solution," explains Remi Stumpfenhusen of Rahman Ravelli's International Risk and Defence Coordination Department. "The key message is: don't wait. Companies need to be fully prepared before the Bribery Act comes into force, not wait until it's too late." If companies seek expert advice to ensure they are fully compliant, they have far less chance of making a costly – and criminal – mis-

take. And, should anything go wrong, being able to prove that a credible, expert firm has audited them will go a long way to demonstrate that 'adequate procedures' were in place. With so many grey areas, it would be easy to overlook activities that, before now, were not considered criminal in nature.

Mr Rahman agrees in turn that: "The range of activities that could amount to an offence is not restricted to gifts or payments." He asks: "how many firms give work experience to the children of customers and clients? What if an insurance broker pays for referrals? In a redundancy situation, what if the HR manager is in a relationship with a person in the redundancy pool?"

Any disgruntled former employee or competitor could trigger an investigation, whether out of malice or because they think that there is justified cause."

The message is unequivocal: whether a large corporate or an SME, the time to act is now. "Any owner or manager of an SME who thinks that this does not apply to them is deceiving themselves," Aziz Rahman concludes. "Any person who does not prepare for the introduction of the Act needs to start saving to pay their legal fees."

For further information, visit www.rahmanravelli.co.uk