Happy Birthday to The Bribery Act 2010

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But why the lack of happy returns for its users?

Rahman Ravelli examines why The Bribery Act 2010 has not yet given prosecutors reason to party.

As of July 2012, the Bribery Act 2010 has been in effect for one year. Back in 2010, the now former Serious Fraud Office Director Richard Alderman was hailing the Act as a powerful weapon against corruption. So how has it fared in its first year?

To date, one person has been prosecuted under the Act – a court officer who was jailed for a three years for accepting a £500 bribe to "get rid of a speeding charge". Hardly the results that many may have expected after 12 months of the Act being available as an anti-corruption weapon.

But perhaps the effect of the Act needs to be seen beyond the wins and losses scoreboard of the courtroom. Many SFO investigations are lengthy and complex, which could mean that many more Act-related cases could reach the courts in the future. Yet the Act's impact may come to be assessed by the number of cases not coming to court rather than the quantity that do go to trial. It is possible that the Act has provided the incentive – or the deterrent – for companies to clean up their activities so that they do not face prosecution. Whether viewed as a carrot or a stick, the Act's main effect could be preventative rather than punitive.

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Under the Act, it is an offence to bribe someone, receive a bribe, bribe a foreign public official or fail as a commercial organisation to prevent bribery. This last category makes it vital that any company with any UK links ensures that any of its staff, agents or third parties are not involved in bribery. The Act also makes it possible for a firm's senior staff to be personally liable for any bribery if they knew about it. Penalties can include up to 10 years in jail, unlimited fines, seizure of a company's and senior staff's assets and debarment from winning public contracts, which clearly puts an onus on a company's top people to ensure it is whiter than white. Punishments are likely to be most severe if the bribery appears to have been repeated and premeditated. One defence is that the firm had "adequate procedures" in place. Guidance on this from the Ministry of Justice stresses the need for risk assessment, due diligence, monitoring and review of procedures and a genuine commitment from the company's top brass.

One problem with the issue of adequate procedures, however, is the lack of court cases so far. Firms can instigate, enforce and regularly review and revise their procedures but until the provisions of the Act are routinely the subject of court cases, it will be difficult for companies to be sure exactly what is required of them.

At Rahman Ravelli, we have helped many companies and organisations devise and execute anti-bribery policies since the Act first looked like becoming reality. While many companies have had their own ideas about how such policies should be introduced, it takes an experienced business crime solicitor to make sure that everything possible is being done – and being seen to be done – to eradicate the potential for corruption. If the Act has done one thing, it has at least put the issue of bribery, and how to prevent it, on the boardroom agenda. For now, however, the impact of this increased awareness cannot be fully assessed. Many firms, I fear, may have only done the minimum to try and meet the Act's requirements. Others may have acted with the best of intentions but may fall foul of the Act simply because they did not take specialist legal advice before devising their procedures. In either case, it is vital such firms reassess their conduct. The Act may not have seen a flood of cases come to court yet but it has laid down what is required – and the flood could start at any time if it is not being followed thoroughly.

Previous events have shown that companies have to be thorough in their anti-corruption procedures. The 2011 Mabey and Johnson case saw three people given prison sentences for alleged kickbacks to Saddam Hussein's Iraqi regime. This prosecution was brought under the older less rigorous legislation - as the offences were committed before the July 1 2011, the start date of the new Bribery Act – and yet the punishments were still heavy. The Financial Services Authority (FSA) fined insurance broker AON £5.25M in 2009 and Willis Limited £6.8M just under a year ago. In both cases, the accused had anti-corruption policies in place but these were not judged sufficiently strong. With the SFO and FSA planning to work closely together to enforce the new Act, the three cases mentioned here should be a stark reminder that companies have to up their game if they are to be sure of avoiding any risk of prosecution.

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There may have only been one Bribery Act 2010 prosecution but it will not be the last. A survey of 1,000 middle managers recently by Ernst and Young showed that nearly one in four believed the Act was affecting British firms' global competitiveness, with 78% of those fearing they could lose business to firms that do pay bribes. But perhaps most alarmingly, only 15% of those surveyed had any training or guidance from their employers about the Act. As such people are likely to be the ones making decisions and being involved in situations where the issue of bribes may arise, this could be a clear indication that the courts may soon become busier as the Act is enforced. Richard Green, the new SFO Director, has started making clear statements about being tough on bribery and corruption.

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