

Bribery and corruption: Corruption clampdown - corporate Q&A

The Bribery Act 2010 - what new anti-corruption legislation could mean for your company.

I have no intention of paying a bribe. Why would this legislation affect me or my company?

Because the legislation imposes criminal liability on a commercial organisation that fails to prevent bribery committed by anyone providing services on its behalf. This is known as 'the corporate offence'. The penalty is an unlimited fine.

What if the bribe was paid overseas?

The bribe can take place anywhere in the world and still be caught by the legislation. Companies operating in jurisdictions susceptible to corruption therefore need to pay special attention.

Would my organisation be liable if a bribe was paid by an agent?

Quite possibly. Under the legislation, a company commits an offence if any person performing services on its behalf pays a bribe in connection with its business. That person may be the company's employee, agent or subsidiary, but "performing services" is not defined, and may, in appropriate cases extend to less proximate relationships.

What if nobody in my organisation knew that a bribe had been paid?

Lack of knowledge of the bribe is not a defence. As things stand, corporates will be strictly liable for bribes paid on their behalf.

My company is not registered in the United Kingdom. Do I need to be aware of the legislation?

Yes. The corporate offence captures all commercial organisations "conducting business" in England, Wales or Northern Ireland.

Are there any defences?

Yes. It is a defence for a commercial organisation to show it had in place 'adequate procedures' designed to prevent bribery being committed on its behalf. Businesses will need to consider how they can put 'adequate procedures' in place.

My company is compliant with the US Foreign Corrupt Practices Act 1977 (FCPA). Do I need to pay attention to the UK legislation?

Yes. The UK legislation is more stringent than the FCPA in a number of respects. In particular, the legislation is not limited to bribery of foreign public officials, there is no carve out to permit facilitation payments and the act of bribery does not have to have a connection to the jurisdiction. The UK corporate offence will apply to all corrupt payments, whether in the public or private sector, anywhere in the world.

Is there anything my company can do now?

Companies which start to consider now internal procedures to prevent bribery will be at an advantage when the corporate offence comes into force (which is expected during 2010). They will be well placed to demonstrate that they have "adequate procedures" in place to combat the risk of corruption.



Tony Lewis
Partner
t: +44 (0)20 7861 4940
e: tony.lewis@ffw.com



Alexandra Underwood
Senior Associate
t: +44 (0)20 7861 4666
e: alexandra.underwood@ffw.com