Legal issues you need to know
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What this presentation is about
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Offences under the Act?

Which of the following constitute bribery offences under the Bribery Act 2010?

- A person or company offering money to someone to do (or not do) something
- A person or company accepting a bribe
- A company failing to prevent a rogue employee from bribing another person without that company’s knowledge
- Honouring an unwritten local custom in another country by paying money to an official so that you can open your office on a Sunday
The main offences

• Bribing another person (s.1)
• Being bribed (s.2)
• Bribing of a foreign public official (s.6)
• Failure to prevent bribery (s.7)

Activities that are offences under the Act

Offences occur when any role or activity:

• performed in a commercial or public sector environment
• by or for an individual employee / an organisation
• that would reasonably be expected to be performed with impartiality
• in good faith and
• by someone / a body in a position of trust
• is either not performed or is performed below the level reasonably expected.
Being bribed

Bribing a foreign public official

Defences
Failure of an organisation to prevent bribery

Defences

Having adequate procedures in place to prevent a person associated with your company from committing a bribery offence

“adequate procedures” not defined in the Act

• Adequate policies & procedures in place
• A compliance culture
• Training and education for staff at all levels
Please vote now using your keypad.

What is the maximum prison sentence for a bribery offence?

1. 1 year
2. 5 years
3. 10 years
4. 15 years

Answer

3. 10 years
What is the maximum fine for a company?

1. £50,000
2. £5,000,000
3. £50,000,000
4. £500,000,000
5. Unlimited fine

Answer

5. Unlimited fine
What you need for Bribery Act compliance
Richard Brown, Veale Wasbrough Vizards
28 January 2015

Introduction
- Veale Wasbrough Vizards
- Aerospace & Defence Team
- West of England Aerospace Forum
- MOJ Quick Start Guide
- MOJ Guidance
- VWV Compliance Toolkit

Do you know the answer (1)?

Company A is a company incorporated in England and employs Mr Tipper (a US citizen) who is ordinarily resident in Bristol. Mr Tipper travels to Spain and pays a bribe to a Spanish official. No relevant acts take place in the UK. Can Mr Tipper be prosecuted for bribery?

1. Yes
2. No
3. Don’t know
Can Company A also be prosecuted under the BA10?

1. Yes
2. No
3. Don’t know

Can Mr Berlusconi be prosecuted under the BA10?

Company B is based in Italy and has a subsidiary in the UK. Mr Berlusconi is an Italian citizen who works in Company B's Milan office. He travels to India and pays a bribe to help obtain business for the Italian company. His conduct has no connection with the UK. Can Mr Berlusconi be prosecuted under the BA10?

1. Yes
2. No
3. Don’t know

Can Company B also be prosecuted under the BA10?

1. Yes
2. No
3. Don’t know
When will the Bribery Act apply?

- BA10 will apply if:
  - Act takes place in UK; or
  - Individual resident in UK; or
  - UK citizen; or
  - Company incorporated in UK; or
  - Company has a “close connection” with the UK
  - Corporate offence of failing to prevent applies to operations anywhere.

Corporate offence

- S7 corporate offence of failing to prevent bribery
- Relevant commercial organisation or a person associated with it
- Corporate body in UK (Question 1) or
- Foreign corporate body that carries on business in UK (Question 2)

Key documents

- MOJ Quick Start Guide
- MOJ Guidance
- VWV Compliance Toolkit
MOJ Guidance

- S7 corporate offence
- Strict liability unless “adequate procedures” in place
- What does “adequate procedures” mean?

MOJ Guidance: Adequate Procedures

1. Proportionate policies
2. Top level commitment
3. Communication
4. Due diligence
5. Risk assessment
6. Monitor and review

Principle 1: Proportionate procedures

- Embedding an anti-bribery ethos in day to day policies and procedures
- Staff and associated persons
- Cover all relevant risks
- What to do and where to get help
- Implications of a breach
Principle 2: Top level commitment

- Board of Directors/shareholders
- Appoint senior compliance officer
- Reporting item on management agenda
- Training for senior managers

Principle 3: Risk assessment

- Exposure to internal and external risks of bribery by associated persons
- Risk assessment questionnaire
- Risk assessment report
- Prioritise risks and remedial action

Principle 4: Due diligence

- Knowing who you do business with
- Supplier questionnaire
- Due diligence report
- Prioritise risks and remedial action
- Anti-bribery terms and conditions in contracts
Principle 5: Communication and training (1)

- Internally and externally: ensure your anti-bribery message is understood
- Ensure there is awareness and buy in to your anti-bribery policies and procedures
- Ensure “speak up” procedures are well known and accessible
- Training will be key

Principle 5: Communication and training (2)

- Tailored staff training
- Publish policies and statements eg:
  - Code of Ethics
  - Anti-corruption and bribery policy
  - Corporate hospitality policy
  - Expenses policy
  - Supplier Code of Conduct

Principle 6: Monitor and review

- Bribery risks change over time
- Monitor effectiveness of controls
  - Spot checks
  - Complaints
  - Questionnaires/surveys
  - Regular reports to senior management team
  - Review risks
10 steps to compliance

1. Raise awareness
2. Appoint someone to take charge
3. Assess risks
4. Check out suppliers and agents
5. Issue policies
6. Update existing policies
7. Train staff
8. Have checks and balances
9. Monitor risks
10. Review risks

VWV Compliance Toolkit

- Covers staff, risks and corporate risks
- Compliance programme
- Memo to Board of Directors
- Risk assessments
- Policies and procedures
- Recruitment checklists
- Supplier questionnaires
- Terms and conditions for contracts

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