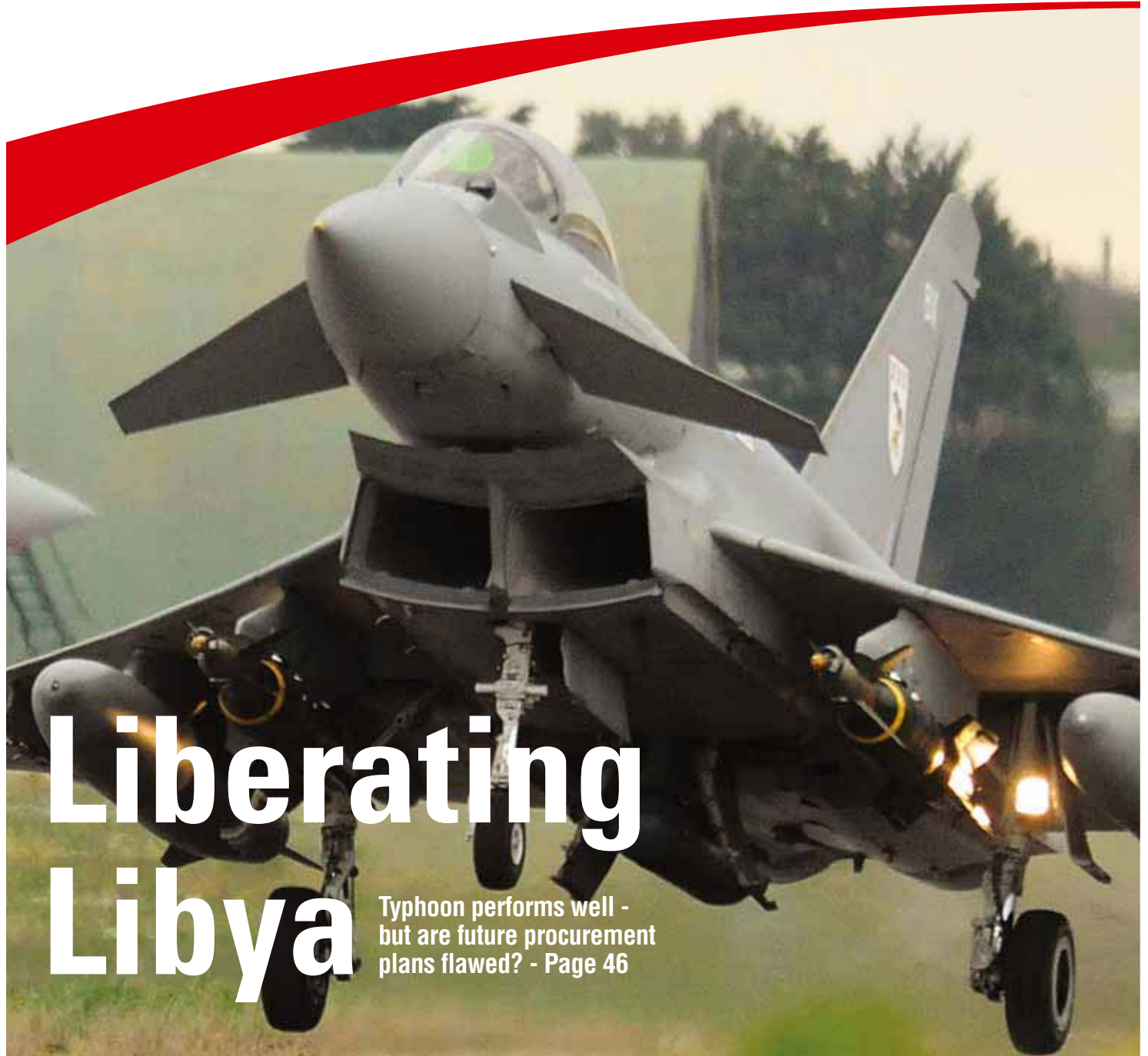


# ADVANCE

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# Why this bribery law must pay off...

*The arrival of the new Bribery Act means all companies – large or small – must now maintain ethical business practices or face prosecution.*

**Kelly Clark** reports.

**A**DS and its members have long been working to create an ethical business environment, both domestically and internationally in the aerospace, defence and security sectors. Under the Bribery Act 2010 that work must continue.

The Act, which came into force on July 1 2011, makes it easier to prosecute companies and directors for corrupt behaviour.

Rebecca Mason, of legal firm Holmes & Hills, explained: “The new legislation could extend to normal business conduct that many companies would not expect to be affected, but companies and directors unaware of the legislation will not be able to use this as grounds to defend themselves against claims.

“The new Act will have a significant impact on all UK businesses. First, it will make illegal the offering, giving, receiving or promise of bribes as a means to securing a contract or gaining other advantage.

“Second, there will be a new corporate offence of failing to prevent bribery by employees, agents, partners or subsidiaries regardless of whether the business knew of the bribe or not.

“Finally, it will make illegal the bribery of foreign public officials.”

The aims of the Bribery Act 2010 are fully supported by the aerospace, defence and security sectors in the UK.

Derek Marshall, managing director of policy at

ADS, said: “Our companies are working hard to create an ethical business environment, not only in the UK but also globally.

“ADS worked along with the European and US associations, AeroSpace and Defence Industries of Europe (ASD) and Aerospace Industries Association (AIA) of the USA, to create the global principles of business ethics for the aerospace and defence industries through the ASD International Forum on Business Ethical Conduct (IFBEC). This is an area which UK industry takes seriously and in which our sectors have played a leading role in recent years.”



The ADS Business Ethics Forum has worked with the Ministry of Justice, Department for Business, Innovation and Skills, Serious Fraud Office and non-governmental organisations such as Transparency International to encourage good practice.

Marshall said: “The ADS Business Ethics Toolkit offers guidance to industry, particularly smaller firms which may not have the in-house legal resources necessary to cope with such complex legal issues and ensure good practice is followed.

“This work will continue to make the UK a good country in which to do business and enhance the reputation of the UK in global markets.”

The only defence open to firms against a

bribery allegation is if “adequate procedures” were in place to prevent bribery occurring.

The ADS Business Ethics Toolkit, originally compiled to help companies implement anti-corruption standards, has just been updated to take into account the new Act and offers clear guidelines on what companies should be doing to protect themselves.

John Burbridge-King, of Interchange Solutions, is a member of the Business Ethics Forum and submitted evidence to Parliament’s Joint Committee on the Draft Bribery Bill. Instrumental in putting the toolkit together, he said: “It was reviewed in 2009 and has now been rewritten entirely geared to the Bribery Act. It features the adequate procedures companies need to think about putting into place to mitigate corruption risk.

“The concept in the first toolkit and this one is that companies should not be frightened; they should see this as an opportunity to do business in a much better way. The whole toolkit is structured so they can export safely and improve sales channels and routes to market. It will give them new ideas of how to appropriately implement adequate procedures in their companies.”

Burbridge-King believes the majority of larger companies have already organised themselves to meet the requirements of the Act. But, he fears, there are numerous smaller operations taking a risk by not implementing new measures.



He said: “The problem is, anti-bribery enforcement is now very joined up around the world and it is more likely smaller companies will be caught up in a chain of events so it is important that they take this seriously, too.

“They should take particular note of how they appoint and manage agents, the way they record commission payments and the way they handle gifts and hospitality. No company should be fearful of taking clients out to dinner, but they need to make sure they stay on the right side of the law. The basic rule in all of this is, if it doesn’t seem right, then do not do it. It is pure common sense.”

He added: “With aerospace, defence and security budgets in the UK and America


shrinking, many of our members are going to be seeking to export and it is plain that not being prepared will see them fall foul of this Act. They should also be aware this is not just law in the UK; there is the Foreign and Corrupt Procedures Act in the United States and any company trading in US dollars could be prosecuted under that Act if they have bribed. Many other countries are also tightening up in their own jurisdictions.”

Martin-Baker manufactures ejection seats and related equipment to safeguard the aviator

throughout the escape, survival, location and recovery phases.

Dealing with 90 countries around the world, the small company is highly exposed to the risks of bribery and corruption.

John Buckler, head of commercial, has worked closely with Burbridge-King in preparing for the change in law. He has written the company’s code of ethics and is about to embark on a programme of training staff on the implications of the Bribery Act.

He said: “I feel it necessary to train the 80 employees we have here who often come into contact with clients and suppliers, or who travel regularly, as they are the ones most open to the risks of bribery and corruption. 

## CONTINUED FROM PAGE 17

The training programme will explain to them what is in the new Act and what they should be aware of. Basically, though, if they would be ashamed to tell their family something, then it is something they should not be doing.

“Aside from this, the new Act has not been a major exercise for us; relatively few changes have had to be made. It has been more a case of ensuring all of the practices and procedures we already follow are written down and staff are aware of the risks out there.

“As we are a privately-owned company, every decision is run through the two owner/managing directors anyhow. In reality, I am not able to bribe anybody, as I would not get the authority from them to do it.”

While it is relatively easy for companies to fall in line with the Act, Buckler admitted he could appreciate the risks and hurdles others may face.

He said: “We are in the fortunate position of having little competition. So, if we found ourselves in a situation that conflicted with the Act, it would be easy for us to walk away.

“We have few competitors for the supply of ejection seats so people would have to deal fairly with us or not have the product. We can afford to be strong and hold our ground. It would be much more difficult in an area where there is high competition.

“I wish every country in the world would

comply with this Act. Eventually, they will. But, at the moment, there are still countries where it is difficult to avoid bribery and corruption risks.”

Defence electronics company SELEX Galileo is looking forward to increased opportunities around the world as a result of the Act.

Kate Jones, head of legal at the company, which promotes its strengths in airborne mission critical systems, said: “We know there is a global desire to reduce corruption. A key strategic drive for us is to increase our presence in foreign markets such as the emerging BRIC nations (Brazil, Russia, India and China).



“These export markets are increasingly questioning the ability of prospective suppliers to act ethically as key decision criteria when deciding from whom to buy.

“What this means is, in the future, companies will be unable to compete effectively in the international marketplace if they can’t prove they are acting in an ethical manner.

“SELEX Galileo strongly believes firms must behave ethically wherever they operate around the world, and we continue to hold ourselves to a high standard of behaviour. As governments increasingly seek to do business with companies that will behave ethically, the new

Bribery Act is an opportunity for companies such as ours to compete more effectively in the global marketplace.”

To prepare its workforce for the arrival of the Act, SELEX Galileo implemented two types of training – online across the business and face-to-face courses for customer-facing employees. Further than that, it also extended the training to include contractors and consultants, as well as advisors and suppliers.

Ms Jones said: “We have for many years had as one of our core values the underlying principle of conducting business with integrity and, as such, we already had in place policies and procedures addressing the ethical conduct of business in compliance with all relevant legislation and the high standards we set for ourselves.

“In advance of the Bribery Act we reviewed every area of the business potentially affected and, as a result, have further enhanced our policies and procedures as required.

“We have backed this up with our senior management re-emphasising the tone and standard for the whole business and we have carried out extensive training across the business to ensure all of our employees are fully informed and understand both their own obligations and those of our business under the Act.”

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