

# THE BRIBERY ACT BRINGS CLARITY TO A MURKY AREA

**BRIBERY** New anti-corruption legislation is making exporters nervous. But with the right policies in place there's nothing to fear, discovers Rod Newing



■ Many companies have been concerned about entering certain overseas markets where bribery has traditionally been normal business practice, fearing that they would have to offer bribes or lose business. However, the United Nations and OECD have been very active in getting governments to fight corruption and what was acceptable in the past may now be illegal.

The government's contribution to the clean up was the Bribery Act 2010 which encourages exporters

to draw up proper policies and procedures, removing ambiguity and reducing risk.

"The UK has lagged behind in adopting the recommendations of the OECD Anti-Bribery Convention," says Michele Edwards, leader of the fraud practice at PRGX, a business analytics company. "The introduction of the Act has opened up UK procurement practices to an unprecedented level of scrutiny. It may leave a bitter taste but, like all the best medicines, it is for the good."

The Act applies to UK companies operating anywhere in the world. It is an offence not just to make or receive bribes, but to fail to prevent bribery, even by third parties acting on the organisation's behalf. Directors

**Businesses will escape penalties if they adopt suitable policies and procedures**

and employees face up to 10 years imprisonment and companies face unlimited fines.

"Bribery distorts markets and creates inefficiencies," says Howard Sklar, senior corporate counsel at Recommend, a compliance software company. "It's how business is done here, are the most dangerous six words in business."

Large multinational organisations have had appropriate procedures covering bribery for a long time, but such policies are new for many small and medium-sized companies. "Everybody thinks this is a high cost issue, but it is not," says John Burbidge-King, chief executive of Interchange, which advises on mitigating the risk of bribery, corruption and fraud. "Most companies that address the issue increase their exports."

Businesses will escape penalties if they adopt suitable policies and procedures, and implement them properly, both internally and with third parties. They must state that bribery is not tolerated and ensure that all payments are properly documented and approved.

An area of particular concern is corporate hospitality and promotional activity, so the government has made it clear that reasonable and proportionate levels are a normal part of building relationships with customers. Policies and procedures will demonstrate that hospitality is not intended to get some-

body to act improperly or against their employer's best interests.

Ellen Temperton, a partner at employment firm Lewis Silkin, says that taking a client to Twickenham is reasonable, but it would be questionable while the organisation is pitching to them for a major deal, as would inviting their whole family and putting them up in a five-star hotel.

Another difficult area is "facilitation payments": small undocumented cash payments routinely made to government officials. These must be banned under the policy and resisted. If made to safeguard life, limb or liberty, they must be recorded for reporting to the local authorities.

"Undocumented and unmonitored payments will be a very large red flag," says Barry Vitou, a partner at lawyers Pinsent Masons. "Regulators, courts and juries typically assume that lack of documentary evidence is intended to hide something untoward. It will be critical to show that a policy has been followed and that there is a clear paper trail - so make sure you get a receipt!"

With close attention to policies and procedures, exporters have little to fear from the Act and much to gain. "When businesses look at the issue strategically," says Burbidge-King, "they switch to better representatives who charge more realistic commissions or move to easier markets to operate in, where they find more lucrative contracts." ■

## Advance your UK Bribery Act compliance program.



To make sure that your firm measures up to the tough new bribery and anti-corruption regulations in the UK Bribery Act, you need a solution that not only helps you assess your risk but also facilitates the policies and procedures that will keep you compliant.

**Accuity's UK Bribery Act Compliance Solution** enables your firm to:

- **Focus risk mitigation efforts** by identifying relationships within your business that have higher potential risk for bribery and corruption.
- **Detect the ethical quality of transactions** by monitoring gifts and entertainment spending and facilitation payments.
- **Gain greater insight into employee activity** through consistently applied reporting workflows and processes.
- **Demonstrate compliance success** with powerful issue tracking and auditing capabilities.

**Accuity's UK Bribery Act Compliance Solution** will help you build a well-defined compliance program – a critical step to mitigating the risk of violation and minimising penalties.

Visit [www.accuitysolutions.com/briberyact](http://www.accuitysolutions.com/briberyact) and learn how we can help advance your UK Bribery Act compliance program today.

Only with **Accuity**