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Stress testing

Leo Martin GoodCorporation

The new Bribery Act is one of the most stringent laws of its type in the world. But where do organisations need to concentrate their efforts in order to stay on the right side of the law? **Leo Martin** explains.

UK businesses will need to tighten up their anti-corruption policies under new bribery laws passed in April.

The Bribery Act 2010 will require companies facing prosecution to show that they had adequate procedures in place to prevent corruption from taking place within their organisation. Failure to do so will make companies liable to prosecution and result in possible jail sentences for board directors.

The introduction of 'adequate procedures' into the Bill has caused alarm. The good news for business is that if a rogue individual is caught engaging in corruption a company will be protected if adequate procedures were in place to prevent it. The worry comes for businesses that face prosecution but have failed to put adequate procedures in place. The new legislation will make clarity, traceability and strength of process essential if companies are to protect both their reputation and their directors from prosecution under this more robust legal regime.

Even so, businesses can still take action while the definition of 'adequate procedures' is debated. We have identified six key areas of weakness in current anti-corruption policies upon which organisations can take action now.

1 Management of agents and intermediaries

Top of the list is the management of agents and intermediaries used to finalise deals and negotiate on behalf of organisations.

Where agents are used to create a smokescreen for the payment of cash or other forms of 'incentive', businesses have been able to avoid prosecution and distance themselves from the transactions, often claiming that agents were 'exceeding their remit'.

Under the new rules, however, prosecutors will gain the upper hand. Businesses that are unable to show that rigorous steps have been taken to prevent agents from paying bribes of any form will now face prosecution. A clear and detailed agency remit with transparent contracts will be essential – and very few companies have these.

2 Facilitation payments

Under the new legislation, so-called facilitation payments will be properly regarded as bribes and prosecutions will be brought about for regular and routine payments to public officials to speed up or facilitate a process.

Corporations need to protect their staff by creating a reporting system for solicitations and intervening either through the local embassy or in conjunction with other businesses operating in the area. Where multinationals pool their anti-corruption efforts they can succeed in persuading local authorities to minimise the likelihood of bribe solicitation.

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3 Whistleblowing

For major corporations operating across multiple territories, it is genuinely hard to ensure that someone somewhere is not involved in corruption. An effective whistleblowing process, that employees are not afraid to use, is a crucial management tool.

Employees should know that it is their duty not just to decline external temptations, but to report any concerns to senior management. Companies must ensure that employees are not scared of reporting wrongdoing. Very few organisations have effective whistleblowing procedures, and yet they are crucial to identifying and stopping corruption.

4 Systems and processes

Most large businesses have a detailed code of conduct. However, audits show that these are not always properly understood or implemented.

Simply asking employees to sign that they have read and understood it is not enough. Businesses need to ensure that their principles are properly embedded in all procedures and working practices, that they are more than aspirational ideas floating around the boardroom.

To ensure that this is so, companies should audit their systems and carry out due diligence to test that their processes really are effective. Failing to do so may result in a failure to demonstrate that adequate procedures were in place.

5 Transparent tendering

Tendering is an area that is open to widespread abuse. Problems range from inside information as to the size of budget and project scope being exchanged unequally between organisations on either side of the tendering process through to payments made via agents or intermediaries in order to secure a contract. This conduct is unacceptable and will make a company liable to prosecution under the new Bribery Bill.

Companies that do not adhere to strict rules or keep detailed, full and clear accounts of each stage of the tendering process will be unable to demonstrate that adequate procedures were firmly in place should allegations of corrupt practices arise.

6 Gifts and hospitality

For many, gifts and hospitality are part of building client relationships. However, the line between building relationships and influencing business decisions is often blurred.

Businesses rarely spell out to employees what it is acceptable to give or to receive, nor do they review who receives what and what the ongoing business relationship entails. This may seem like the thin end of the corruption wedge, but it is one that is open to abuse.

Clarification here is easy to achieve and should be undertaken in order to protect staff and suppliers equally.

Leo Martin is a director of GoodCorporation, auditors of responsible business practice. They can be found online at www.goodcorporation.com.

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