

Briefing: why the UK's Bribery Act will be good for business

Michael Littlechild, chief executive of GoodCorporation, argues that corporate concerns about negative implications of the new legislation are unjustified

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In the final hours of the last British government, the Bribery Act was passed with cross-party support. It represented the first revision to the country's bribery laws in nearly a century, and was a sign that failed efforts to prosecute large companies involved in corruption scandals would be a thing of the past.

In the first few months of the new government, implementation of the Act has been delayed not once, but twice. Some have described this as disastrous. The OECD has threatened to blacklist UK exporters if the government prevaricates any further.

Others have breathed a sigh of relief, expressing concern that implementing the Act at a time when Britain needs to encourage growth is wrong. Much media coverage has been given to potential problems such as selecting and managing overseas agents, due diligence of suppliers, gifts and hospitality, and facilitation payments. But little has been said about how the Act can be good for business.

From the work that GoodCorporation has done in this area over the past ten years, I am keenly aware of the efforts being made by businesses, governments and NGOs to level this particular playing field. If the Act is implemented and properly scrutinized it will benefit British businesses for a number of reasons.

For a start, the Act provides the government with a weapon to pursue and prosecute foreign firms that are competing unfairly against UK businesses.

It also enables UK firms to demand that suppliers, agents and intermediaries in high-risk countries have stronger anti-corruption controls, making these companies less corrupt and easier to do fair business with.

Clarity in the legislation will help companies to resist demands for bribes and will put greater pressure on foreign governments and companies to operate clean procurement processes. Corrupt markets lead to insecure contracts and inflated costs that can reduce margins. Foreign companies with any link to the UK are already changing their procedures to comply with the Act – again helping UK businesses to compete fairly with them.

It seems to me the concerns expressed about the Act are exaggerated. Here are the four main worries about it, with my thoughts on how they can be dealt with:

- 'There are grey areas on giving and receiving': This problem is being blown out of all proportion. Entertaining clients can legitimately remain part of business life, but companies can ensure that hospitality is proportionate if they set out a clear and simple decision-making process (ethicalp.com/tree). There are always some grey areas in corporate hospitality, but this is not as complicated as some suggest.
- 'It's difficult to monitor the supply chain properly': A risk assessment to determine which suppliers to worry about should be the first step. Again, a step-by-step decision process enables businesses to decide when and how to undertake due diligence on their suppliers (ethicalp.com/tree).
- 'The Act will ruin our relationship with intermediaries': Intermediaries or agents are widely used to carry out business development or win contracts. GoodCorporation's Anti-Corruption Framework (see box) contains a set of rules that should be followed to ensure adequate procedures are firmly in place for selection and management of these intermediaries.
- 'We can't stop making facilitation payments': The Act firmly outlaws facilitation payments, which is causing some companies anxiety in certain markets. However, they are already illegal. The Bribery Act is not changing the basic law, simply creating an explicit offence of bribing public officials. Besides, a tolerance towards facilitation payments sends out a confusing message to employees, and makes it difficult to embed a clear ethical culture. It also runs the risk that some employees will misunderstand the distinction between 'allowable' and 'non-allowable' bribes.

It's clear, then, that the objections being raised to the Act are not insurmountable. The Bribery Act can and should be used to drive competitiveness. If prosecutors focus their efforts on cases where bribery is clearly distorting fair competition, then the legislation will promote rather than impede growth.

how to manage agents and intermediaries
 Make sure that:

- clear terms and conditions for intermediaries are in place
- compensation paid is appropriate and justifiable
- remuneration is made through bona fide channels
- there are clear rules and controls on the offer and acceptance of gifts and entertainment, so that they do not influence business decisions
- all appointed intermediaries follow the organization's policies on bribery and corruption
- there are clear rules that any intermediary lobbying does not have undue influence on government and customer decisions
- interactions by intermediaries on behalf of the company are recorded
- there are well-defined guidelines for carrying out major bids, ensuring that expenditure is devoted to the quality and communication of the bid only

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