



Progress

Madeleine Cordes assesses how companies have responded to the Bribery Act, the challenge of embedding it and the impact of recent developments.

In a recent report, *UK firms need greater board-level commitment to navigate Bribery Act*, following a survey carried out by Thomson Reuters, less than eight per cent of firms said they were fully prepared for the new Bribery Act and a worrying 39 per cent felt they were under pressure to meet the deadline of 1 July, or in fact thought they would not meet it at all. Only a third of firms had implemented new policies and a quarter were still not sure what the

report

Useful resources

The Bribery Act guidance, which covers the procedures that relevant commercial organisations can put in place to prevent persons associated with them from bribing, as well as a quick start guide detailing the key points, are available from the Ministry of Justice website, www.justice.gov.uk/guidance/making-and-reviewing-the-law/bribery.htm.

The Bribery Act itself is available at www.legislation.gov.uk/ukpga/2010/23/contents.

Thomson Reuters' survey on UK firms' Bribery Act readiness is available at accelus.thomsonreuters.com/news/press-release/thomson-reuters-survey-shows-uk-firms-need-greater-board-level-commitment.



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practical impact of the Act would be for them. As the summer draws to a close we should see these numbers rise rapidly, as companies get to grips with what they need to do to ensure the requirements of the Act have been fully integrated within their organisation.

Getting tough

As companies look to implement the requirements of the Bribery Act, we may well see a tougher environment developing, which focuses on the new corporate offence arising when commercial organisations fail to prevent persons associated with them from bribing another person on their behalf. In turn the focus will also be on the defence available against this offence, which requires 'adequate procedures' to have been put in place by an organisation to prevent persons associated with it from bribing in any capacity.

While it is unlikely that the Serious Fraud Office (SFO) will have the resources or the will to turn the spotlight on smaller listed companies in low risk industries and jurisdictions soon after the Act has been implemented, the environment is definitely getting tougher. Indeed, we have already seen the first prosecution under the Act, in addition to the recent Willis case brought by the FSA for anti-corruption systems failings. It is clear that the new corporate offence created

means and can identify and flag up potential corruption situations is a much harder task. Face-to-face classroom training has been the approach of choice for those working in higher risk areas, such as sales, procurement, property and planning, as well as for higher risk jurisdictions, or where there are substantial cultural difficulties.

Another option is online training for general staff, which has gained ground in recent years. This usually constitutes an interactive course, which requires employees to think about what they are reading and make judgements in order to answer practice questions and consider case studies. This learning format, alongside the fact that online training allows organisations to train large numbers of people across different sites and jurisdictions, in different languages, makes this method of training attractive. Having instant access to training at a time that suits the user is also appealing, as workforces become increasingly mobile and global, and different time zones need to be accommodated. In some cases smaller companies, which haven't experienced online training before, are initially reluctant to use the necessary technology, but become more comfortable with the process when they understand there is no need to purchase new IT systems. Instead, each user logs in securely to the online training provider's network.

The results of the online training, showing who has taken the course and who has passed/failed the end of course test, are recorded and become very useful management information. This information can then be communicated up

It is vital that companies have the right procedures in place.

by the Act has international reach, and that overseas companies with UK interests could find themselves criminally liable if they fail to prevent their employees, agents, subsidiaries, joint venture entities or other representatives from paying bribes on their behalf anywhere in the world. What constitutes 'adequate procedures' for a particular organisation will depend on the nature of its business and the corruption risks it faces as a result of that business. It will also be a matter for the courts to define over time. In any case, it is vital that companies are able to demonstrate that those procedures are in place.

Communicate and understand

In the course of the work that I have carried out with clients over the last year, it has become clear that effective training should be a key component of a company's adequate procedures framework. Producing or updating an anti-corruption policy and sending it to every employee, with a reinforcing message from the chief executive, is a relatively easy job to do. However, actually creating a 'culture of compliance' and ensuring that employees really understand what that

to the board, which can also task committees with monitoring the firm's anti-bribery policies and procedures. Any areas of weakness in understanding within the business can also be identified and acted upon.

Lessons to be learned

While the recent Willis prosecution was brought by the Financial Services Authority (FSA) and not under the Bribery Act, it related to failings in the company's anti-bribery and corruption systems and therefore is definitely relevant to all industry sectors, not just those in the regulated world.

Willis' weak due diligence procedures in respect of its use of overseas agents and intermediaries demonstrates that a system is only as good as the people operating it. A chain is only as strong as its weakest link and if procedures are side stepped and management turns a blind eye, and this continues over a long period, the robustness of companies' systems is heavily compromised. Willis has been asked to carry out retrospective due diligence on past payments and has of course tightened up its processes for taking on new agents

How does your Bribery Act action plan shape up?

- Is your board educated on the Bribery Act and actively committed to compliance with it?
- Have you identified your key corruption risks?
- Have you introduced or relaunched a Code of Conduct and other policies and procedures?
- Have you trained your staff effectively?
- Do you need to do additional work in particular jurisdictions to minimise the risk?
- Have you reviewed your agent relationships and contractual terms?
- Have you assessed your current agent due diligence process and arrangements for ongoing review?
- Have you appointed someone to report to the board on ongoing Bribery Act compliance and provide guidance to staff out in the field?
- Have you reviewed your gifts and hospitality policies to ensure that staff have clear guidance on what is acceptable and the escalation procedure in case of doubt?

internationally, as well as reviewing the ongoing use of those agents.

The first prosecution under the Bribery Act has now been brought by the SFO against Munir Yakub Patel who, according to the Crown Prosecution Service (CPS), accepted £500 for fixing a motoring offence that was being heard at Redbridge magistrates court in Ilford, East London. At the time of writing Mr Patel was due to appear before Southwark Crown Court on 14 October to answer a charge under Section 2 of the Act, for 'requesting and receiving a bribe intending to improperly perform his functions.' The outcome of this case will certainly give a flavour for the severity with which the Act will be enforced and will therefore be of interest to all organisations currently working towards compliance with it. ■

» About the author

Madeleine Cordes is a Senior Manager with Capita Company Secretarial Services. For details of the legal and practical support that Capita can provide on the Bribery Act, in association with Simmons & Simmons, as well as the e-learning anti-bribery course that Capita has developed in partnership with Thomson Reuters, contact Madeleine on 020 7954 9530 or e-mail madeleine.cordes@capita.co.uk.