Cracking down on corruption
The introduction of a new corporate offence in the 2010 Bribery Act entails greater duties for directors.

For many years the UK has lagged behind other countries in the severity of its anti-bribery legislation but this is set to change when the new bribery act comes into force.

The 2010 Bribery Act received Royal Assent on 8 April, and although no date has yet been given for its enforcement, it is expected to come in within the next year.

The new act deals with four specific offences: bribing another person; being bribed; the bribery of foreign public officials; and the failure of commercial organisations to prevent bribery. This new corporate offence means a commercial organisation will be liable if a person associated with the organisation receives a bribe or attempts to bribe another person.

The penalties are harsh, with those convicted of offences potentially facing severe fines and between 12 months and 10 years imprisonment.

The bottom line for business
The legislation has important implications for businesses in all sectors, whether public or private, and creates a duty to act for directors and boards.

“It is potentially extremely significant, dependent upon the business of the company,” says Michael Veal, a Partner in Lester Aldridge LLP’s Regulatory team.

“It introduces a new tranche of quasi-regulatory law which will need consideration by corporate management. The businesses most likely to be affected are those, for example, who have a strong sales function or do cross-border trade.”

The primary defence to the corporate offence will be for companies to demonstrate that they have adequate procedures in place to prevent bribery. This is an area that will come up on the agendas of many board meetings in the coming months, and Veal recommends that businesses should plan ahead to cover themselves. “It is worth considering implementing an anti-bribery policy now so that, by the time the corporate offence comes into force, the infrastructure is in place,” he says. “A prudent business manager will take steps to put in place an anti-bribery policy to which its employees and sub-contractors are required to adhere.”

Veal suggests that directors should identify areas of the business where bribery could be an issue, such as procurement or sales, where official permissions or consents are required. Directors should also pay close attention to corporate entertainment. Companies can then produce a written anti-bribery policy for staff to adhere to.

Covering costs
Another sensible precaution is for companies to consider insurance cover. If a company is prosecuted for alleged bribery then such a prosecution clearly needs defending and this can be costly. Preparing a robust defence to prove innocence can easily run to tens of thousands of pounds before the case even gets to court.

“Businesses are unable to obtain public funding, and so insurance cover to cover legal costs generally, if the need arises, is a sensible safeguard to put into place,” says Veal.

Most good directors’ and officers’ liability policies now offer the option of entity cover, which protects the company by being triggered when the company is pursed. In the past this has typically been in the areas of corporate manslaughter or data protection breaches, but the bribery act creates a new exposure for the company to consider when structuring their directors’ liability programme.

An honest deal
In the long run, Veal believes the legislation will be useful in cracking down on corrupt business practices, but says companies will now have to be careful to ensure they stay within the law. “It goes without saying that the aim of the legislation is to prevent bribery,” he says. “On the one hand, that is positive in that it puts competing businesses on an equal footing. On the other, it does require some further thought by businesses in an increasingly regulated world.”

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