What the Bribery Act means for business

New laws aimed at cracking down on business bribery have come on stream.

The Bribery Act, which took effect as from 1 July 2011, has been designed to update legislation in some cases dating back as far as 1889 and to bring the UK into line with international laws on tackling corruption.

THE MAIN TERMS

Under the Act, it is illegal to offer or to receive a bribe or to ask for or to agree to receive a bribe (or inducement) that is a reward for acting improperly by way of gaining (or holding on to) business or a commercial advantage.

A new law of failing to prevent bribery is also introduced; this means that a company could commit a corporate offence if it does not prevent bribery being carried out by someone working for that company or associated with it. This covers agencies and subsidiaries as well as individual employees. A company can offer a defence if it is able to demonstrate that it has measures in place which are designed to stop bribery occurring.

The offences come with custodial terms of up to a maximum of ten years (up from seven years) and unlimited fines.

Both British and foreign companies with a presence in or engagement with the UK are subject to the new rules, which cover bribes made or received in Britain and overseas. The law includes bribes offered to foreign public officials. The Act is not retrospective, so excludes offences that may have been committed before 1 July 2011.

DELAY AND GUIDANCE

The Act had been planned to come into force in April 2011, but its implementation was delayed after business groups expressed concerns over the clarity of the law's position on corporate hospitality.

In new guidance on the status of corporate hospitality, the Ministry of Justice said: "Very generally, bribery is defined as giving someone a financial or other advantage to encourage that person to perform their functions or activities improperly or to reward that person for having already done so." Provided the hospitality offered is reasonable and proportionate – meeting clients and networking other firms – it won't fall foul of the Act.

Companies are expected to be able to demonstrate that they have adequate procedures in position to prevent bribery taking place.

Such procedures could include anti-bribery training for staff, risk assessments of the markets in which they are operating, and conducting due diligence on prospective business partners and customers.

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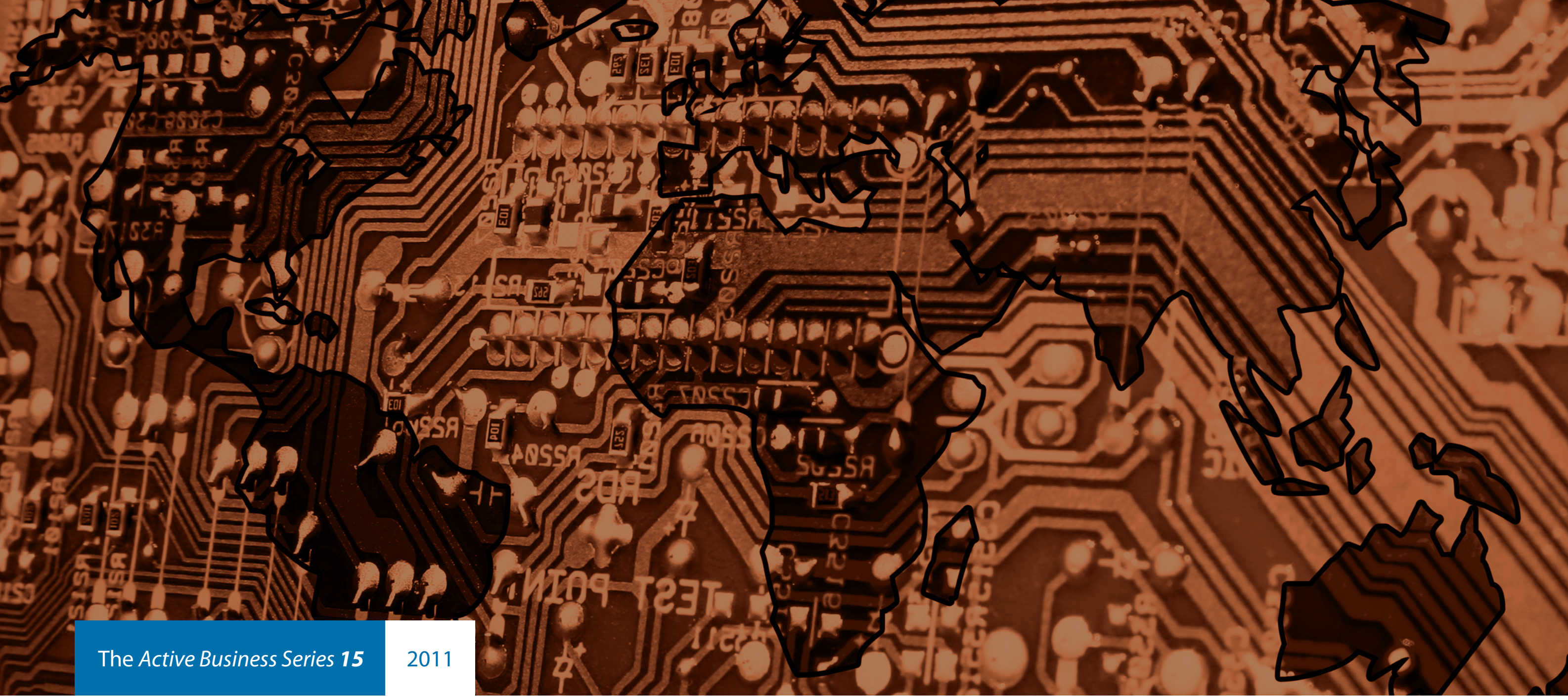

WHAT FIRMS SHOULD DO TO MAKE SURE THEY COMPLY WITH THE LAW

The Act sets out a series of areas where companies need to take action to ensure they are in compliance with the new regulations.

RISK

It is important to assess the risk of bribery occurring and to act in proportion to that risk.

THE COMMITMENT OF DIRECTORS AND SENIOR MANAGEMENT

The top people in a firm need to be aware of the implications of the Act and must ensure a general corporate culture in which bribery and inducements are not acceptable actions.

CHECKING BUSINESS RELATIONS

Firms will need to be aware of the business relations it has with other organisations and will need to make sure such relationships are open and transparent. This due diligence should be carried out on a risk assessment basis: where the risk of bribery is negligible, a company may not decide to conduct such diligence; but where there is a higher risk, it may be necessary to make checks on or to research possible customers or business partners (including employees).

ETHICAL POLICIES

It might be necessary to set up a written anti-bribery policy, if one doesn't already exist, which makes it clear to all employees where the lines are drawn between acceptable, moderate hospitality and the giving and receiving of more lavish gifts, expenses and charitable contributions, for example. Training programmes in the new law may be appropriate. Terms and conditions in contracts should spell out the penalties employees could face if they are found to be in breach of the Act.

That anti-bribery policy should also be communicated to customers and clients, too, so that everyone understands what is expected in their dealings with the company.

New members of staff will need to be trained in the policy before they start work. It may also be prudent to cast an eye over a firm's existing disciplinary procedures, as well as terms and conditions, to see whether anything needs amending to fall in line with the Act.

Companies should also have a system in place so that any members of staff who suspect that bribery has been taking place know of a senior manager to whom they can report the matter.

PROPER USE OF POLICIES

A company's anti-bribery policies need to be part of the fabric of the business, woven into the way it operates, communicates, trains and recruits.

REVIEWS

A company will need to review its policies so that the way it monitors its finances, expenses and costs safeguards against bribery. Regular reviews of its policy will also help to take changing circumstances into account.

HOW FIRMS WILL BE AFFECTED

Firms that conduct business abroad and take on government contracts are most likely to be affected by the Act. Hospitality will need to be conducted in what is a proportionate manner: taking clients out to a restaurant should be considered acceptable, but expensive gifts may breach the terms of the Act.

Smaller firms that operate in areas where there is little chance of bribery happening will be less affected by the requirements of the Act.

If you feel that you need guidance and advice on the Bribery Act, it is essential that you consult with legal professionals.