

A large white circle is centered on the left side of the page, containing a smaller grey circle. Below the grey circle, the word "INDUSTRY" is written in blue, followed by a stylized blue and white logo that resembles a lowercase 'i' with a dot above it.

INDUSTRY

RISKY BUSINESS
Why the UK Bribery Act could prove
a positive influence on corporate
travel & meetings

Introduction



"Cases will be brought where they are in the public interest, which will require the personal agreement of the Director of Public Prosecutions or the Director of the Serious Fraud Office, I do not expect a large number of prosecutions and certainly not for trivial cases."

Justice Secretary Kenneth Clarke.

The UK possesses the toughest anti-corruption laws in the world, following the long-awaited arrival of the Bribery Act on July 1st 2011. The Act applies to all corporate entities, from start-up businesses employing one or two people, to PLCs.

The new legislation became law three months later than scheduled. This was due in part to long-awaited publication of guidelines from the Ministry of Justice that finally lay to rest the more alarmist predictions made when the Bribery Act was first announced in the Autumn of 2010.

At first, there were fears that even a complimentary night's stay in a hotel, or a lunch invitation from a prospective supplier could leave the beneficiary facing up to 10 years in jail.

It took until May 2011 for Justice Secretary Kenneth Clarke to confirm that although the Bribery Act makes it illegal to give, accept or allow "financial or other benefits" to win business, the Act does not outlaw corporate hospitality or stop companies from entertaining customers and contacts.

The May 2011 guidelines confirmed what all but the most sensationalist commentators had been saying all along. Offering small gifts "as a reflection of good relations" and paying "reasonable travel expenses in order to demonstrate goods or services" remain acceptable business practice.

The essence of the Bribery Act is that it's all a matter of scale. For example, organisers of, and participants in familiarization trips, educational events and hosted buyer programmes are safe from prosecution. But group travel or incentive buyers who accept rewards for booking a particular venue or destination could be at risk, especially if the reward is not related to the actual group movement.

Companies looking to take advantage of the 2012 Olympics being staged in London to woo clients with event tickets and corporate hospitality are safe too. "No one is going to try to stop businesses getting to know their clients by taking them to events like Wimbledon, Twickenham or the Grand Prix," says the Justice Secretary. "Reasonable hospitality to meet, network and improve relationships with customers is a normal part of business."

But although hospitality and promotional expenditure which are proportionate and reasonable are unlikely to fall under the Bribery Act rules, the onus is on all UK businesses to prove that no corrupt practices are taking place and to educate their employees accordingly.

They will have to create policies for, and keep records of the hospitality their staff receive and hand out. However small companies are permitted to communicate their anti-bribery policies orally to remain compliant with the new law.

Difficulties arise when hospitality is actually a cover for bribing someone. Under the new legislation the authorities can examine the level of hospitality offered, the way in which it is provided and the level of influence the recipient has on the business decision in question.

For business, the issue is whether the government will actually police the Bribery Act, and if so how. Like the Corporate Manslaughter Act before it, is the UK's anti-bribery legislation designed more as a deterrent, with prosecutions being brought in only the most extreme cases?

This paper examines the impact of the Act on procurement policies within the T&E sector. It sets out to consider where ownership of managing Bribery Act compliance should be vested, and which suppliers are best placed to implement and manage the processes.

Although the advice from most lawyers, accountants and other professional advisers is that common sense will see you through, and despite the publication of guidance, there is still a grey tinge to the Bribery Act. The problem is that one person's 'lavish' can be another's 'reasonable'; 88% of respondents to a 2010 survey by Grant Thornton acknowledged that corporate hospitality could constitute a bribe.

In the final analysis, government will be hoping that anti-bribery policies will be given the same priority in the boardrooms of UK Plc that 2007's Corporate Manslaughter Act prompted for Duty of Care policies. Whether this is achieved with the same lack of prosecutions, only time will tell.

“There is a clear distinction between being invited to a football match ‘to get to know the influencer’ and promising the same tickets if and only if the supplier is awarded the contract. You don’t need Ministry of Justice guidance to tell you this is both unethical and criminally wrong.”

John Fisher, FMI Group





Background

Before the introduction of the new rules, the UK's anti-bribery legislation dated back to the Prevention of Corruption Acts of 1889 and 1906. Under these laws it was very hard to convict a corporate entity of bribery unless it could be proved that a senior manager was the "directing mind and will" behind the offence. Additionally, a private transaction not involving a public official couldn't be prosecuted unless the bribe had been paid through a third party.

Following international pressure, especially from Transparency International and the Organisation for Economic Co-operation and Development (OECD), whose purpose is to promote policies improving the economic and social well-being of people around the world, the UK Bribery Act received royal assent in 2010.

The Act is mainly intended to stop (British) companies bribing foreign public officials. Although a leading aerospace and defence organisation's dealings in Saudi Arabia, which cost the company a £30m settlement with the Serious Fraud Office (SFO), is probably the best known prosecution of recent years, there have been many more. In March 2010 Innospec pleaded guilty to bribing government officials in Indonesia and were fined US\$12.7m in a joint UK/US prosecution.



Overseas misdeeds are not the sole focus of the Act, as other prosecutions illustrate. In January 2009 Aon's UK subsidiary was fined £5.25m for failing to exercise necessary controls, and in 2008 Balfour Beatty was fined £2.25m for irregular payments and failing to keep accurate records. The new Bribery Act introduces the new corporate offence of "failure to prevent a bribe being paid".

Commentators have observed that the new legislation will be amongst the toughest anti-corruption laws in the world, and even more stringent than the US Foreign Corrupt Practices Act.

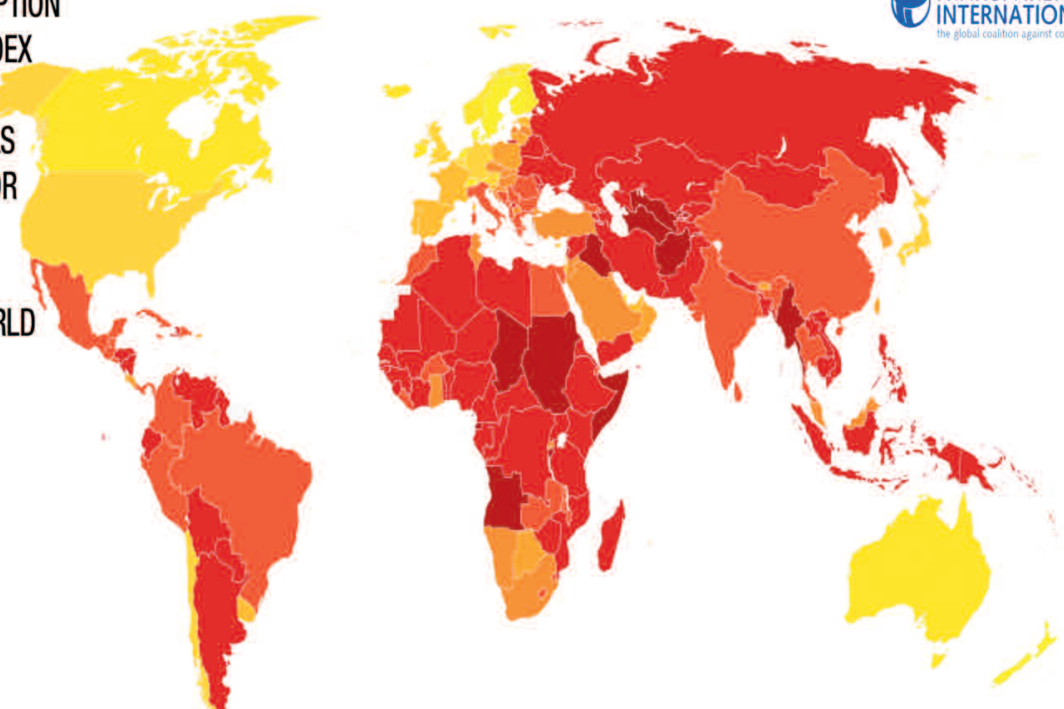
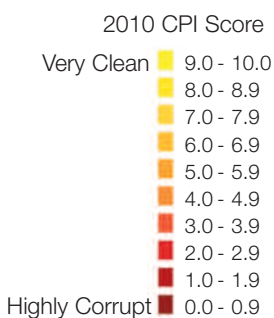
The introduction of the Act was widely welcomed by regulatory bodies and corporates alike. 88% of businesses polled by accountancy firm Grant Thornton in 2010 believed that – despite widespread criticism surrounding the delays in introducing the Act - it is a positive move.

“Corporate hospitality, networking and basic forms of incentive to reward sales in moderation are all completely legitimate in the eye of the law. They all have common commercial reasons which are perfectly justifiable in building client relations.”

Ian Conder, De Vere Venues

Bribery & Corruption - TI Corruption Risk Map 2010

THE 2010 CORRUPTION PERCEPTIONS INDEX MEASURES THE PERCEIVED LEVELS OF PUBLIC-SECTOR CORRUPTION IN 178 COUNTRIES AROUND THE WORLD



Sarbanes Oxley

The basic principles of the Bribery Act are nothing new. Since 2002, US-owned companies have been bound by the Sarbanes-Oxley Act (SOX), which set new or enhanced standards for all public company boards, management and public accounting firms.

The bill was intended to restore public confidence in corporate governance and was Capitol Hill's reaction to the Enron (amongst other) corporate and accounting scandals. In the corporate travel sector, Sarbanes-Oxley revolutionised expense reporting, forcing companies to re-assess their processes and adopt automated solutions.

What does the Bribery Act say?

Defining a bribe as "a financial or other benefit", the Act identifies four offences.

- Giving bribes either directly or through an intermediary, in the UK or abroad, to anyone in the private or public sector
- Requesting or accepting bribes
- Bribing a foreign public official to obtain or retain business
- The corporate offence of failing to prevent bribes being offered or accepted



A successful prosecution must demonstrate intent on the part of the person taking a bribe to act improperly in the performance of their duties, although there is no requirement to show improper conduct. What is “improper” is judged by the standards of a “reasonable person in the United Kingdom.”

The most significant provision is the corporate offence of failing to prevent bribery. This reverses the burden of proof by compelling companies to demonstrate they have taken all reasonable steps to prevent corrupt behaviour. Local custom is not an acceptable defence, but a company having “adequate procedures” in place is.

Where a company has not designated an individual with responsibility for preventing bribery, responsibility is deemed to rest with any senior officer. The ‘Corporate Offence’ as it is known, also applies to any person(s) “associated with it”, covering employees, agents, subsidiaries and those connected with joint ventures.

The scope of the Act is very wide. The corporate offence applies to any companies doing business in the UK and covers acts of bribery undertaken by those companies anywhere in the world. Any individual ordinarily resident in the UK – whether a British national or not – can be prosecuted for bribery offences committed anywhere in the world. The courts will view bribery as a serious offence and corporate fines are likely to be very high.

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What are ‘Adequate Procedures’?

The Ministry of Justice has laid down six principles for preventing bribery. Collectively termed ‘Adequate Procedures’, these are the only allowable defence against bribery prosecutions.

- Regular and comprehensive risk assessment
 - Companies must engage adequately skilled people to undertake risk assessments
- Top level commitment
 - It is senior management’s responsibility to establish a culture in which bribery is not acceptable
- Due diligence
 - Must cover all parties to a business relationship, including the supply chain, agents and all forms of joint venture

- Policies & procedures
 - o Must be clear, comprehensive (including training, audit controls and disciplinary action) and communicated to the entire workforce
 - o Must be applicable wherever the company operates in the world
- Effective implementation
 - o An implementation strategy must go beyond “paper compliance”, and must be communicated externally as well as internally.
- Monitoring and review
 - o These must be transparent, ensure compliance with the policies and identify issues as they arise

Key questions from enforcement authorities

In bringing a prosecution under the Bribery Act, the SFO would ask two key questions.

- Did the company effectively communicate its anti-bribery policy to all employees, representatives & business partners?
- Did the company effectively control and monitor compliance with this policy?

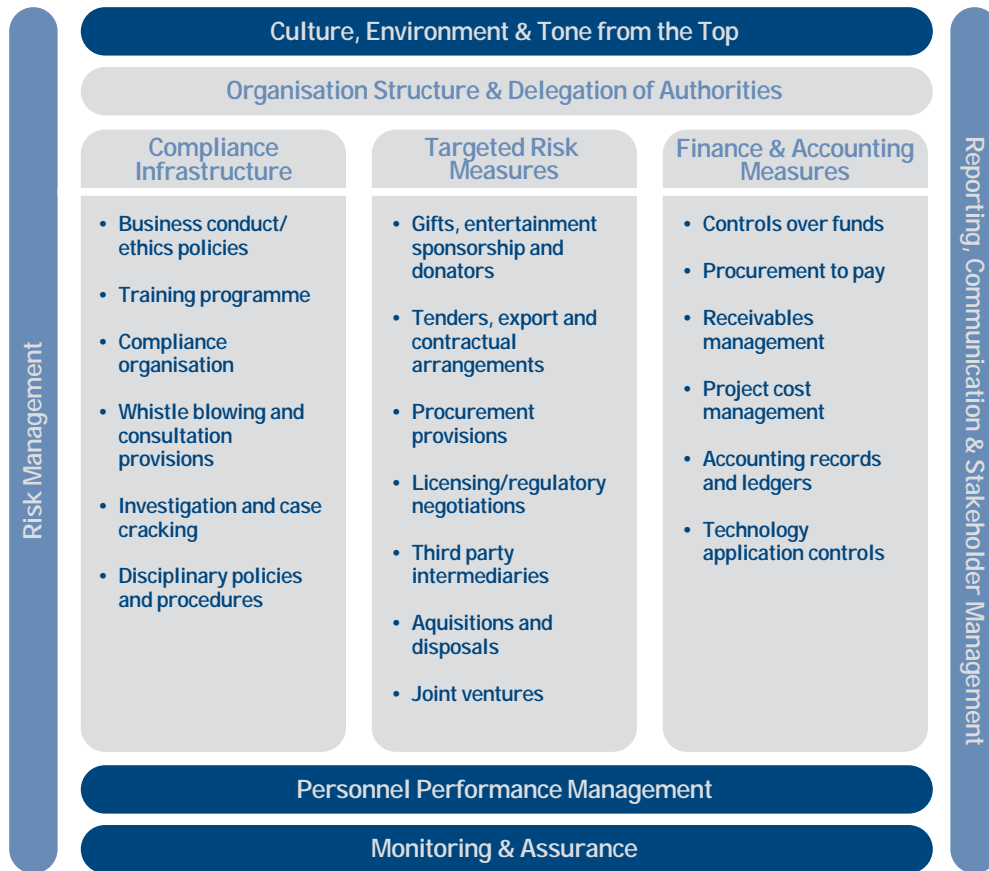
Source: Deloitte

Potential corruption issues

A typical assessment of corruption-related risk would include the following areas of corporate activity.

- Countries of operation
- Public sector relationships
- Agents
- Acquisitions, mergers & joint ventures
- Long term capital projects
- Procurement, tendering & sub-contracting
- Lobbying & political donations
- Gifts, entertainment & hospitality

Anti-bribery & corruption controls framework



Source: Deloitte

Risks

The risks faced by any business found guilty of offences under the Bribery Act are four-fold.

- Financial – unlimited fines
- Reputational – bad publicity
- Business – possible permanent ban from public sector tenders
- Prison – maximum 10 year sentence

“It is clear that...for an offence to be committed, the provision of hospitality and entertainment must be made with the intent of inducing the recipient to act improperly.”

Deloitte – implications for the oil and gas industry



“The Bribery Act will have little or no effect on corporate business.”

Ian Conder, De Vere Venues

What does it mean for you?

The close relationship between hospitality and corporate travel makes the Act highly relevant to travel buyers, bookers, agents and suppliers.

Companies must keep better records of the hospitality its employees give and receive in order to avoid prosecution under the new Bribery Act. Few do so currently.

All corporate hospitality must be recorded and monitored on a regular basis and even dropped during periods when major contracts are being awarded to avoid a charge of bribery being brought by a disgruntled employee or competitor.

The only defence in law is to have a transparent process for both offering and accepting services and gifts from suppliers.

All those involved need to be aware that linking any offer of complimentary services to ‘improper performance’, such as confirming a contract, needs to be clearly agreed and approved by the organisation before accepting hospitality offers.

This formalization of the giving & receiving of hospitality requires robust internal policies to be in place, together with absolute transparency.

Sterl Greenhalgh, forensic partner at Grant Thornton, says this should protect companies from prosecution under the Act. “Underlying this legislation is a clear driver for companies to increase transparency in their business dealings and from the perspective of every stakeholder it is in a company’s interest to have a robust framework of adequate procedures.”

With adequate procedures in place, the impact of the Act on daily corporate life in the travel & hospitality sectors should be minimal if, as Ian Conder, sales director of De Vere Venues confirms, common sense is applied. “The Bribery Act will have little or no effect on corporate business. Implementing a formal policy on how to tender for new business is a must and has to be communicated internally across the business to prevent exposure to bribery. Our industry regards this as standard best practice.”

Driving T&E compliance

Despite individual organisations being left to self-determine the extent of reasonable hospitality offered or received, BSI Managing Director Trevor Elswood does not believe that hospitality should be stigmatized.

He also believes that the immediate impact of the Bribery Act will differ from sector to sector. “The healthcare industry, for example, is already well ahead of others, and the Act will fit their culture of compliance well. Most large organisations, those with major brands and in the public sector are highly aware of reputational risk and already have good governance. The challenge facing smaller players is around awareness and translating this into action.”

Although no-one welcomes the additional red tape this legislation brings, by adding another level of internal validation, Elswood believes that the Bribery Act could ultimately benefit policy compliance in other areas of corporate life.

“The Act encourages compliance with preferred channels, and therefore represents good business governance” he says. “It brings the additional transparency sought by procurement and senior executives, and will therefore encourage the combat of maverick spend and processes” he says.

Owning compliance

In many organisations, responsibility for establishing and implementing the policies required by the Bribery Act has fallen to HR. This is as much due to the increased likelihood of internal disciplinary investigations and boardroom perceptions of being “an HR issue” as to the risks of company directors or senior management being imprisoned and prospect – however unlikely – of staff being dawn-raided.

Ironically, one professional services firm is considering creating an information pack for employees telling them how to react if dawn raided.

Currently, organisations are focused primarily on getting their houses in order before thinking about how the Bribery Act will affect them or how their agencies can facilitate and support them. However there is a natural synergy between corporate travel and anti-bribery policy compliance as the challenges arising in each category are very similar.



Trevor Elswood believes that the policing of anti-bribery policies should be part of corporate T&E policy because it helps to define parameters and thresholds within the organisation. He also argues that by combining the processes of recording and authorization with those of booking hospitality, the agency can become the perfect guardian.

Agencies can coordinate the acceptance of requests and capture usage data, and this discipline is even more applicable in delegate management. Here one of the agency's growing responsibilities is to ensure that corporations are not embarrassed by employees inadvertently or naively participating in any activity in the meetings and events world, that might lead to brand reputational damage. The same risk arises from breaches of the Bribery Act.

"Agencies are perfectly placed to inform employees, educate them about company policy and track their activity. HBAs and TMCs can be highly effective in applying governance to these policies" says Elswood.

He can also see HBA's becoming more involved in corporate hospitality where controls are needed. "Doing so will allow controls and governance beyond just the booking of corporate hospitality event and capturing spend to that of becoming an advisor of policy and ensuring the intent of corporate hospitality is maintained ensuring no parties would be compromised through ignorance to the wider considerations of reporting and recording hospitality activity"

Long term, this is an issue of corporate travel against corporate mobility. Companies need to think about the cost of travel associated with corporate hospitality and therefore the scope for cost avoidance. By charging the agency with responsibility for managing corporate hospitality, organisations have the opportunity to capture more data to help them understand more about why their employees are traveling.

How ready is UK Plc?

Grant Thornton's November 2010 survey demonstrates that British companies were initially slow to react to the implementation of the Bribery Act. 42% of those surveyed had not conducted any form of risk assessment or created a plan to revise existing policies.

- 59% of all companies surveyed believed that they faced little or no risk of prosecution under the act
- 50% of technology, media and telecoms companies claimed they were low risk
- 21% thought that they faced no risk at all.

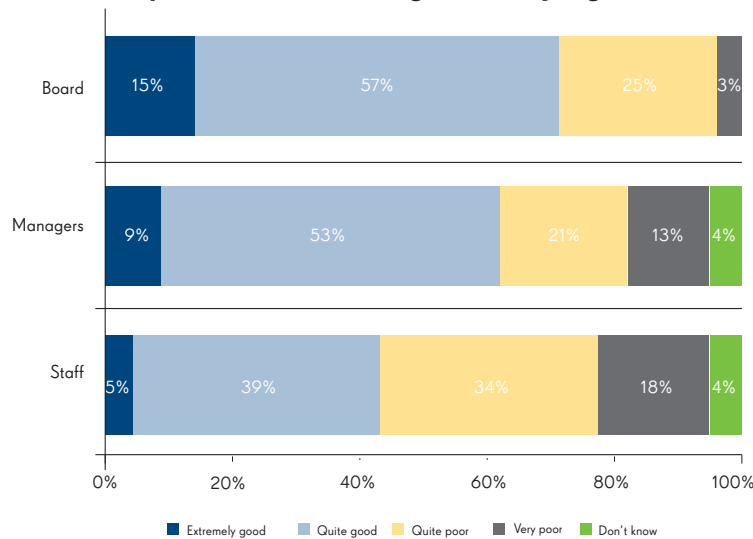


This was despite Macmillan Publishers UK Ltd agreeing a settlement with the World Bank over alleged improper payments to public officials in Southern Sudan and subsequently reporting itself to the SFO.

Whilst over 70% of boards and 62% of managers claimed a high level of understanding of the Act's provisions, less than 50% of staff share that understanding. This demonstrates the scale of the task facing senior managements.

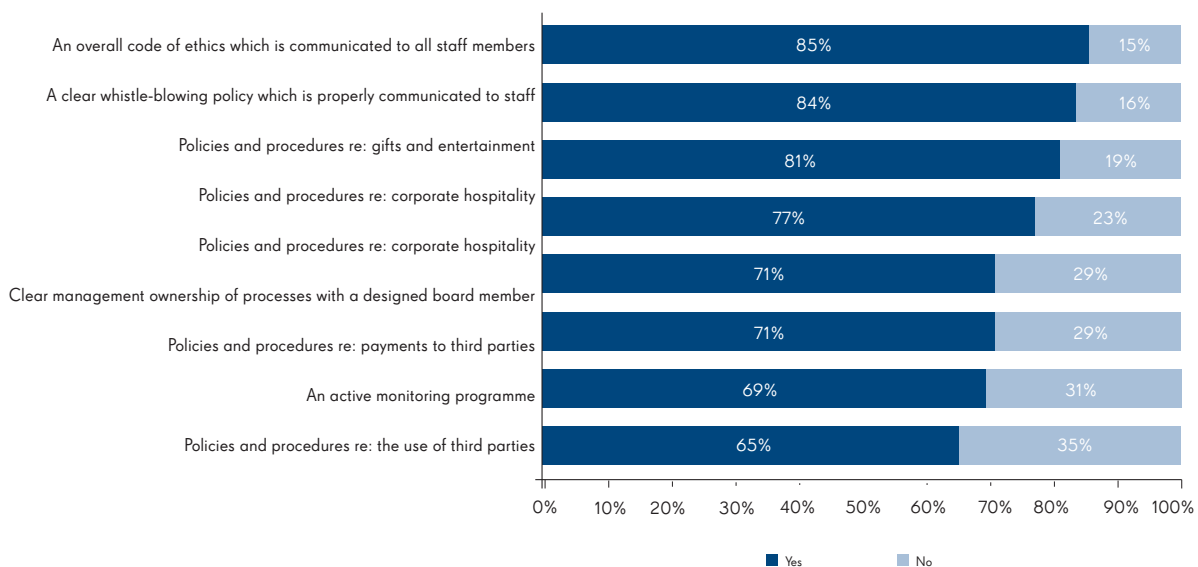
As with corporate manslaughter legislation, the speed of reaction to the Act amongst corporates has varied. Astra Zeneca introduced an integrity policy, whilst PwC created a clear set of rules that included any host offering hospitality being present at an event, and banning international events without a host.

Corporate understanding of bribery legislation



Source: Grant Thornton

Current corporate anti-corruption policies



Source: Grant Thornton

How will companies react?

Pragmatism dictates that the Bribery Act is likely to have a similar effect on British business as 2007's Corporate Manslaughter Act - lots of discussion but very few prosecutions due, not least to the problem of policing the legislation.

One man's business meeting is another's kickback, so industries with particular concepts of what constitutes lavish hospitality may continue to lobby government for exceptions.



What is certain is that the Act will not go away. The Serious Fraud Office believes the Act will revolutionise the way that the UK deals with corruption, and companies are already implementing procedures to avoid falling foul of the new offence of commercial organisations failing to prevent bribery by persons performing services on their behalf.

The Act will put anti-corruption onto boardroom agendas in the same way that the Corporate Manslaughter Act did for duty of care. Although some companies quickly set about undertaking corruption-related risk assessments, creating and implementing policies, others waited for the government guidance on the 'Adequate Procedures'.

Only time will prove whether the introduction of the Act will harm British export competitiveness. Already some firms are claiming that local embassies are failing to provide guidance on what to do when foreign officials demand bribes in return for business.

Internationally, a corporate anti-corruption culture will have to be complemented by greater government engagement with financial institutions to scrutinize the dealing of politically exposed persons (PEP's) if global corruption is to be tackled effectively.

Domestically, the impact on the UK public sector will be minimal – no hospitality budget means minimal risk after all. Meanwhile the business community will be looking to standardise business practice. Although most large organisations – especially those that are US owned or have US subsidiaries - will already have robust procedures in place. Those that do not will set to project teams to create the necessary policies, procedures, risk assessments and employee training.

Summary

The Bribery Act has brought corporate policy compliance into the public eye. Created as a response to the changing business ethics climate overseas, the resulting legislation (as defined by the May 2011 guidelines) simply makes mandatory what has been regarded in any large company as best practice.

The Act puts the onus on companies to close any loopholes and to take the necessary steps to eradicate maverick behaviour. The corporate travel sector has been dealing – successfully - with that challenge for the last 10 years, and therefore has the expertise and the systems to monitor and report on compliance.

The true impact of the Bribery Act will be upon corporate culture. It is now a fundamental responsibility of every employer in the UK to protect staff and suppliers from the risk of prosecution for bribery, and as such is an extension of the employer's duty of care.

“There is considerable debate over the question of whether the UK regulators will strictly enforce the commercial bribery prohibitions of the UK Act, and, if they do, how aggressively.”

David Simon, Foley & Lardner

“The mandate is to stamp out grand scale corruption in high risk countries.”

Brent McDaniel, the head of anti-bribery and corruption, KPMG

“It will come down to judgment calls to define the limits, particularly when dealing with foreign government agencies.”

Geoff Nicholas, co-head of Freshfields' global investigations practice

“We are not looking at... a box ticking exercise.”

Richard Alderman, Director of the Serious Fraud Office, December 2010

Advice to Buyers

- Ensure all aspects of your travel, accommodation & meeting programmes are fully risk assessed for corruption
- Ensure your travel, accommodation & meetings programmes are included in all corporate anti-bribery policies
- Ensure you have effective controls in place governing the acceptance of gifts, entertainment & hospitality, including travel
 - o Define thresholds and limits
 - o Create clear and practical guidelines to support gifts and hospitality policy implementation
 - o Ensure expense approval procedures are robust and transparent
- Create a register to record all gifts & hospitality received

Advice to Hotels & Venues

- Ensure you have effective controls in place governing the offering of gifts, entertainment & hospitality, including customer travel
 - o Define thresholds and limits
 - o Create clear and practical guidelines to support gifts and hospitality policy implementation
- Create a register to record all gifts & hospitality offered
- Ensure that adequate controls are in place to ensure that corporate sponsorship is appropriate and properly authorised
- Keep copies of who has approved acceptance of hospitality within the client organisation
- If you are part of a consortium or employ external sales agents, ensure that due diligence is completed before engaging them and monitor their activities robustly.

Acknowledgements & Sources

Addleshaw Goddard	Meetpie.co.uk
CMS Cameron McKenna	Ministry of Justice
Daily Telegraph – 15.11.10	Organisation for Economic Cooperation & Development
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Freshfields Bruckhaus Deringer	Serious Fraud Office
Grant Thornton	Theregister.co.uk
Hansard	Transparency International
Law-less-ordinary.co.uk	
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About Travel Intelligence Network

Travel Intelligence Network is a specialist marketing communications company for suppliers, intermediaries and media owners in the business travel and meeting industries. TIN specialises in creating thought leadership solutions through events, white papers, and conferences. In the meetings & events sector TIN writes and publishes the annual Meetings Industry Report and has run the annual Meetings Industry Forum since 2008.

In the transient sector, TIN writes and publishes the Global Serviced Apartments Industry Report, helped create and launch Business Travel Market and has worked with a number of industry suppliers including Accor Hotels, the Hotel Bookings Agents Association, ITM and MPI UK. TIN has also created the industry's first interactive jargon-buster, www.traveljargon.org, with users in over 130 countries.



About the Author

Mark Harris has been a communications specialist in the business travel industry since 1990 and is a partner in Travel Intelligence Network (TIN). A former Marketing Director of Expotel and First Option, from 2003 to 2008 he combined the role of Head of Marketing at the Institute of Travel Management and launching TIN with Maggy Sainsbury.

Mark was voted the Business Travel Industry's Personality of the Year in 2006. He is also chairman of Witton Albion FC and the Evo-Stik Football League.



For more information or to discuss how BSI can provide the perfect accommodation & meetings solution for your organisation, please contact Stuart Tandy, Business Communications Manager.

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