

The Bribery Act 2010 – How will the new measures against corruption impact surveyors and the construction industry?

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Surveyors, and the construction industry as a whole, are not immune to corrupt practices, particularly when operating in jurisdictions where corruption is endemic. The significant fines recently levied against Siemens and Mabey and Johnson highlight the risks faced by this industry. With the introduction of new anti-corruption legislation in the UK, surveyors and construction businesses should be prepared for stricter scrutiny from the authorities.

The Bribery Act 2010

The Bribery Act 2010 (the "Act") will abolish the existing antiquated UK anti-corruption regime. Together with a series of recent high profile actions taken by the authorities, the Act is considered to be the beginning of an aggressive new stance by the UK on business misconduct. Whilst its introduction has been delayed, it is unlikely that the Government's review of the Act will result in changes of any significance. Accordingly, all businesses ought to be fully prepared for the increased risks and responsibilities that they will face under the new regime.

The Act under the spotlight

The key areas to which surveyors and construction businesses should pay particular attention include:

"Extra Territorial" scope of the Act

The Act casts a wide net and captures acts of bribery committed outside the UK. For example, an act of bribery committed by a UK based surveyor whilst working on a project abroad could expose them and their company to liability under the Act.

Moreover, the offence of failing to prevent bribery applies to *all* corporates, wherever incorporated, which carry on business in the UK. This marks a significant extension of the reach of the UK authorities.

Failure to prevent bribery carried out by "associated persons"

One of the greatest areas of risk for businesses is the new "corporate offence". Under the Act, UK corporates and those carrying on business in the UK will be guilty if they fail to prevent bribery committed by persons performing services for or on their behalf, anywhere in the world. Importantly, this offence may apply to joint venture relationships which are, of course, commonplace in the construction industry. The UK authority, the Serious Fraud Office, has announced that whilst it would be "*sympathetic*" to businesses operating in countries where corrupt practices are prevalent, they ought to be "*concerned about their responsibilities for what their partners do.*"

A defence to this offence will only exist where the corporate in question has "*adequate procedures*" in place to prevent bribery. The UK government is soon to publish high level guidance on what constitutes "*adequate procedures*".

Gifts and hospitality policies

Given the broad nature of certain offences in the Act, great care must be taken over corporate hospitality, particularly where public officials are concerned. In order to avoid triggering an offence under the Act, corporate hospitality, gifts or promotions must be reasonable, transparent and offered in good faith.

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Facilitation payments

Facilitation payments - the practice of paying small sums of money to officials in order to speed up processes - are considered routine in many jurisdictions. However, in contrast to the position taken in the US anti-corruption regime, facilitation payments are illegal under the Act.

How can you ensure compliance with the Act?

- **Assess and mitigate where your operational risks are highest**
- **Set up and maintain internal policies:** Ensure that your business has transparent internal policies in place to combat corruption.
- **Train and educate employees:** Provide training to all your employees and "*associated persons*"; both in the UK and abroad, on your business's anti-corruption policies.
- **Establish guidelines for corporate hospitality policies:** Ensure that hospitality policies include limitations and restrictions on the value of hospitality and procedures for senior management approval. Your policy should also differentiate hospitality provided to public officials and treat them with more caution.
- **Conduct due diligence and monitoring of third party relationships:** Review all existing relationships with third parties. If risks are identified, consider holding open discussions with "*associated persons*" to determine whether the risks can be minimized. For future relationships, ensure rigorous diligence processes in order to deal with anti-corruption issues.