

Navigating the anti-corruption maze – decision time for retailers

The important questions your should be asking



Bribery Act - key risks for retailers

The retail sector – the most at risk?

The retail sector is potentially one of the most exposed to the risks of bribery and corruption. One of the primary areas of risk is the need to keep supply chains operating effectively. However, legacy common practices now create exposure under the UK's new Bribery Act, these include:

- paying freight forwarders to ensure shipment
- paying local brokers to induce officials to get delivery from factory to port
- inducing manufacturers to alter production schedules.

These common scenarios illustrate the difficult choices that retailers face every day. Depending on their approach to dealing with these risks retailers face breaching the new UK Bribery Act.

In the case of most retailers there are sufficient checks and balances in place to minimise the risks. However, when dealing with overseas joint ventures or using outsourced third parties, often in countries where bribery and corruption is perceived as high, how can a retailer be sure that bribes are not being paid by those associated with it?

The UK Bribery Act

The UK Bribery Act contains provisions to prosecute companies and individuals engaged in bribery for business gain. The legislation:

- introduces the new corporate offence of failure to prevent bribery by 'associated persons' working on a commercial organisation's behalf
- makes it a criminal offence to give, promise or offer a bribe and to request, agree to receive or accept a bribe either at home or abroad
- sets the maximum penalty for individuals for bribery at ten years imprisonment, with an unlimited fine, which also applies to companies.

Leaving aside excessive corporate hospitality the Bribery Act unfortunately catches retailers who operate under 'normal circumstances'. Some of the key risk areas, outlined in the Act, for retailers are:

- facilitation payments to local officials to secure provision of service
- joint ventures or third parties who are associated persons operating on behalf of the retailer.

Facilitation payments

The new Act maintains the prohibition on facilitation payments - small payments paid to low level officials to secure the provision of a service. The often cited example is the \$100 paid to a port official to ensure the timely unloading of a perishable cargo. In many low cost jurisdictions these sorts of payment are regularly reported as unavoidable - this poses risks for businesses operating in these markets.

Particular care must be taken when dealing with foreign public officials as a separate offence exists and the test of what constitutes a bribe is lower. The difficulty for companies is that, in countries such as China and Bangladesh, nearly all aspects of business life will involve contact with public officials and exposure to the demands for such payments to be made.

Associated persons

The law is drafted in such a way that a company can also be prosecuted if those associated with it pay bribes on its behalf. This might include subsidiaries operating in a different jurisdiction, joint ventures and consortia of which the UK company is a participant and even perhaps franchise arrangements.

A strategy for responding to the Act

As well as the severe penalties for companies that get it wrong, the impact on a company's reputation, as well as its share price, can also be devastating.

However, the new law provides companies with a defence if they can prove that they have in place so called 'Adequate Procedures' to prevent bribery. What counts as 'adequate' will depend on the bribery risk faced - typically large retailers operating in overseas markets where bribery is known to be commonplace, will have to do more to prevent bribery in their organisations.

Acknowledging the challenges in embedding an anti-corruption strategy Grant Thornton have included in this document a series of questions that should help an organisation to identify where in the process it is, in terms of ensuring procedures are adequate and that they don't unwittingly fall short of the law.



1. Tone from the top

Specific responsibility for an anti-corruption programme needs to be allocated to a board member or experienced senior manager who has the relevant authority to overcome any barriers encountered. Without this a clear tone from the top is unlikely.



2. Strategy

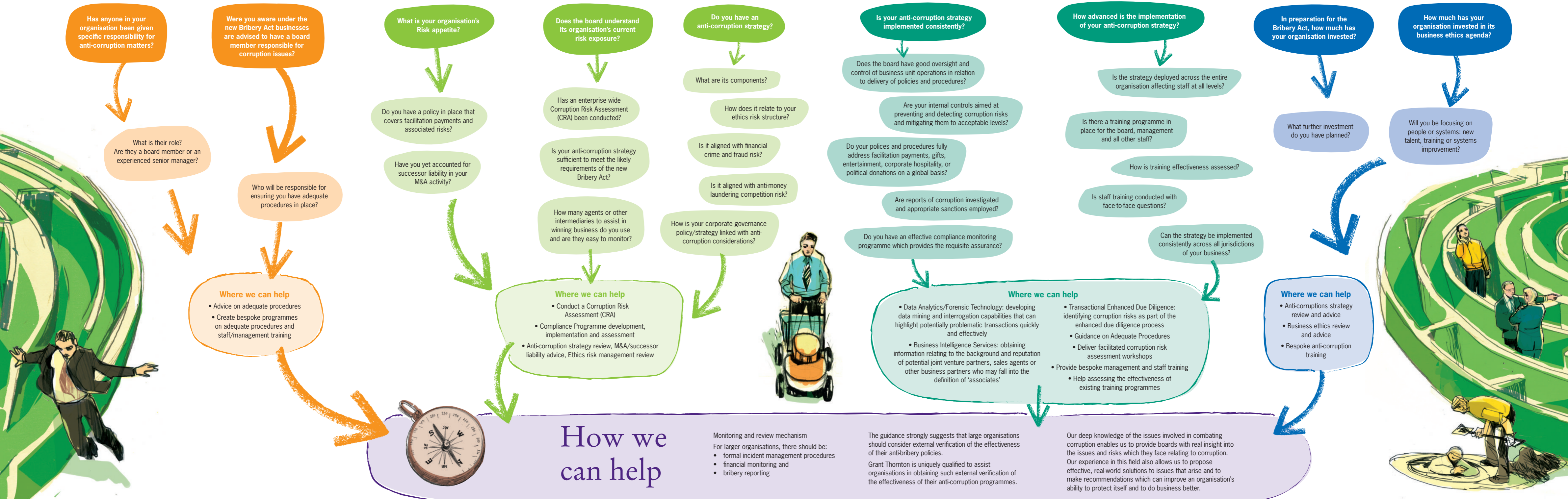
A board sponsored strategy needs to be established and should reflect a clear position on risk appetite as well as an accurate assessment of risk exposure.

3. Implementation

Once a clear strategy is in place, implementing it throughout the business across all staff and jurisdictions is critical to ensure success. Clear policies and procedures must be in place to ensure consistent application of the strategy.

4. Investment

Making the right levels of investment (in terms of budget and people) and aligning this to senior responsibility for anti-corruption matters is the final key decision for the board to make.



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