



# Beating bribery

A BSI whitepaper for business

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Bribery is a major issue for businesses, putting them at risk of criminal prosecution, commercial costs and reputational damage. But it is a risk they can now control through the anti-bribery management system standard BS 10500

## Executive summary

- Research shows that bribery is a major cause of concern for businesses.
- Bribery has long been a criminal offence, but there is now increased international pressure to stamp it out.
- In the UK, powerful enforcement bodies – including the National Crime Agency, the Serious Fraud Office and the City of London Police – are intent on investigating and prosecuting bribery.
- The UK Bribery Act 2010 has strengthened anti-bribery legislation, introducing a new area of corporate liability and extending the risk of prosecution to the heart of the organization, its directors and senior management.
- In the event of either an investigation or worse a prosecution under the Act, it is a key defence for an organization to prove that it has adequate procedures in place to prevent people associated with it from bribing.
- The onus is on businesses to take steps to protect themselves, not only to avoid falling foul of the law, but also because it is in their best commercial interests.
- Help is at hand: the anti-bribery management system standard BS 10500 takes account of the UK Bribery Act, turning legal requirements into practical measures.
- BS 10500 can provide companies with a strong adequate procedures defence, making them less vulnerable to criminal investigation, prosecution or conviction.
- Both large and small companies have already implemented BS 10500, maximizing the legal and commercial benefits of operating a robust anti-bribery management system.
- Companies can demonstrate best practice in this area through independent third party certification to BS 10500.

## Why bribery matters

“Bribery blights lives. Its immediate victims include firms that lose out unfairly. The wider victims are government and society, undermined by a weakened rule of law and damaged by a weakened rule of law and damaged social and economic development. At stake is the principle of free and fair competition, which stands diminished by each bribe offered or accepted.”

These words from Kenneth Clarke, Justice Secretary on the launch of the UK Bribery Act 2010, are an eloquent summary of the scourge of bribery.

The crime continues to take place globally on an almost industrial scale. It has been estimated that up to 50% of businesses pay bribes to secure or keep business, while according to the World Bank more than US\$1 trillion is paid in bribes annually. This matters because the payment of bribes erodes fair competition, and the World Bank has calculated that business grows an average of 3% faster where corruption is low. Separately, the United Nations (UN) has reported that bribery can add up to 10% to business costs.

Further authoritative research shows that bribery and corruption top the list of ethical issues that UK companies are concerned about. An in-depth study published in December 2013 by the respected Institute of Business Ethics (IBE) reveals that 80% of large UK companies regard bribery, corruption and facilitation payments as their most significant ethical issue.

## Anti-bribery pressure mounts

With bribery and corruption having such a negative business, economic and social impact, increasing moves are being made to stamp it out. Simon Webley, IBE's Research Director, says the Institute's recent findings "reflect growing international political attention on the topic and its appearance in the Leaders' Declaration following the G20 summit of the world's major economic powers in September 2013."

Webley adds, "Media reports of western companies being investigated for bribery, particularly in Asia, have also alerted companies to this risk."

Neill Stansbury, is the Co-founder and Director of the Global Infrastructure Anti-Corruption Centre (GIACC), which assists in the prevention of corruption in the infrastructure, construction and engineering sectors. He notes that bribery has been a criminal offence for well over 100 years in the UK, but until relatively recently there was little political will to bring prosecutions. "It was simply seen as an essential part of commercial life," says Stansbury. "The justification was, 'We have to do it because that's how business works and because everyone else does it too.'"

The mood changed in the 1990s as the international community, notably the United Nations (UN) and the

Organization for Economic Co-operation and Development (OECD), recognized the economic and social damage caused by bribery and corruption and marshalled member nations against it. In 2003, 165 countries signed the United Nations Convention against Corruption (UNCAC), the first global legally binding anti-corruption instrument. "The argument was won," says Stansbury. "Bribery and corruption were no longer seen as economic 'oil', but as economic evil that ultimately cause suffering and dying."

UNCAC and other international conventions obliged member nations to help create the conditions for free markets to flourish by bringing integrity and transparency to commercial transactions. In practice, this meant strengthening their anti-bribery laws and making more effort to bring prosecutions.

Britain has responded on both fronts: by passing the UK Bribery Act 2010, which came into force in July 2011, replacing existing anti-corruption statute and common law with more powerful legislation; and by tasking key enforcement agencies, including the newly-formed National Crime Agency (NCA), the Serious Fraud Office (SFO) and the City of London Police, to bring their full powers to bear in investigating and prosecuting bribery.

## What the law says

The UK Bribery Act 2010 covers bribery that takes place in the UK and overseas, by employees and third parties employed by an organization. It has strengthened previous anti-bribery legislation, making it easier to prosecute offenders and, crucially, introducing a new area of corporate liability. In short, it puts companies and their directors at greater risk of falling foul of the law.

Broadly, the Act says a person is guilty of bribery where they offer or give a financial or other incentive to someone, with the intention of inducing that person or a third party to perform a function or activity improperly, or as a reward for doing so. In practice, bribes can take many forms from, at their crudest, cash exchanged in brown envelopes, to facilitation payments, inflated commissions, excessive

hospitality and holidays perhaps disguised as business trips.

Specifically, the Act contains two general offences covering the offering, promising or giving of a bribe (active bribery) and the requesting, agreeing to receive or accepting of a bribe (passive bribery). It also sets out two further offences that specifically address commercial bribery: Section 6 creates an offence relating to bribery of a foreign public official in order to obtain or retain business or an advantage in the conduct of business; and Section 7 creates a new form of corporate liability for failing to prevent people associated with the organization from committing bribery on their behalf.

Individuals in breach of the legislation face up to 10 years in prison, and companies risk unlimited fines. Further

to this, it is likely there will be recoveries ordered under the Proceeds of Crime Act too. But the intention is not to bring the full force of the criminal law down upon well-run companies that experience an isolated incident of bribery on their behalf. Section 7, therefore, offers a defence for an organization, if it can prove that, despite a particular case of bribery, it nevertheless has adequate procedures in place to prevent bribery by people associated with it.

This defence recognizes that no bribery prevention regime will be capable of preventing bribery at all times. It also encourages businesses to put procedures in place to prevent bribery by people associated with them, such as employees or agents acting on their own accord.

# BSI's response: BS 10500

The onus is on businesses to take steps to protect themselves, not only to avoid falling foul of the law, but also because it is in their best commercial interests to control bribery risks. In 2010, BSI was alerted to this emerging business concern and through its Anti-bribery Working Group took just 10 months to develop a specific anti-bribery management system (ABMS) standard, BS 10500, to respond to it.

GIACC's Stansbury, Chair of BSI's Anti-Bribery Working Group, says that whilst BS 10500 can be used anywhere in the world, it can be adopted by organizations in the UK to help turn the legal requirements of the UK Bribery Act into practical, cost-effective measures. The standard shows them how to implement the right controls across their business and supply chain.

Stansbury says that, while British Standards are not published specifically to give protection against national or international laws, in drafting BS 10500, the BSI Working Group paid very special attention to the UK Bribery Act and the 'adequate procedures' issue in particular. "The Act does not define the meaning of adequate procedures, so it is open to interpretation," he says. "But it does not require perfection. The authorities are unlikely to go after you if you show controls are in place and that you did your best to stop the offer of bribes."

City of London Police, which is currently investigating some 30 individual cases of bribery, says that, when using its discretion over whether to investigate and seek to prosecute an organization, it "takes BS 10500 into account" in assessing a company's efforts to have properly implemented adequate procedures to prevent bribery.

Dr David Hitchen, Global Scheme Manager at BSI and a member of the BS 10500 Working Group, says that, "If an organization does properly implement an ABMS that conforms with BS 10500, it will be good evidence it

## What the law requires

Official guidance to the UK Bribery Act specifies that, to combat bribery, organizations must adhere to the following six guiding principles:

- 1 Proportionate procedures** – Measures taken by an organization to prevent bribery by persons associated with it are proportionate to the bribery risks it faces and to the nature, scale and complexity of its activities. They are also clear, practical, accessible, effectively implemented and enforced.
- 2 Top-level commitment** – Top-level management of a commercial organization are committed to preventing bribery by persons associated with it, and foster a culture within the organization in which bribery is never acceptable.
- 3 Risk assessment** – The organization assesses the nature and extent of its exposure to potential external and internal risks of bribery on its behalf by persons associated with it. The assessment is periodic, informed and documented.
- 4 Due diligence** – The organization applies due diligence procedures, taking a proportionate and risk-based approach, in respect of persons who perform or will perform services for or on behalf of the organization, in order to mitigate identified bribery risks.
- 5 Communication** (including training) – The organization seeks to ensure that its bribery prevention policies and procedures are embedded and understood through internal and external communication, including training, that is proportionate to the risks it faces.
- 6 Monitoring and review** – The organization monitors and reviews procedures designed to prevent bribery by persons associated with it, making improvements where necessary.

has implemented adequate procedures as a defence under the UK Act. The standard of proof the defendant would need to discharge is 'the balance of probabilities'."

The UK Ministry of Justice Guidance to the Act, identifies six guiding principles for businesses wishing to prevent bribery from being committed on their behalf (see box: 'What the law requires'). Among them, it specifies that procedures should be proportionate to the organization's bribery risks, so whether they are 'adequate' depends on the nature, size and complexity of a company's activities. The risks are likely to be greater if the business operates overseas.

"The Act is accompanied by very good guidance," says Dr Hitchen. "But organizations need more meat on the bones. They need detail to ensure their procedures comply."

BS 10500 comes to the fore, by providing a practical framework for an ABMS. Implementation of the ABMS properly embeds the policies, procedures and controls that a company needs to put in place to prevent bribery [as set out in Section 7 of the UK Bribery Act 2010]. It ensures and demonstrates that the measures to prevent bribery are robust and adequate; for example, it incorporates a risk based approach and the conduct of an appropriate level of due diligence on third parties including business partners, supply chain and customers. If there is a failure in the ABMS, with a case of bribery taking place either against or on behalf of the company, then the system will ensure the company acts to investigate and deal with the incident, putting in place measures to ensure it does not recur.

# Business benefits of BS 10500

The advantages of implementing a robust ABMS based on BS 10500 go far beyond legal and regulatory compliance.

John Burbidge-King, CEO of Interchange, a consultancy specializing in anti-bribery and corruption compliance, points to direct financial savings. Burbidge-King explains “A bribery event can lower a company’s share price, lose it sales and may result in high investigation and defence costs and, if convicted heavy fines.” He cites two separate examples of costly corruption-related incidents involving: China’s largest drug distributor Sinopharm, which saw its share price drop 2% overnight after allegations of bribery; and a division of the UK insurer Jardine Lloyd Thompson, which was fined £1.8m by the Financial Conduct Authority for the “unacceptable” approach it took to bribery in overseas markets, despite no evidence being found that any illicit payments or inducements had been paid.

Burbidge-King highlights further business benefits of BS 10500. He says the standard:

- Allows organizations to monitor and manage bribery risk throughout their business and supply chain. By taking a risk-based approach, the ABMS helps organizations identify where their bribery risks lie and implement adequate anti-bribery risk management procedures and controls for their business.
- Better visibility in higher risk markets. Helps an organization improve its business confidence and decision making in addressing higher risk opportunities and knowing its customers.
- Reduces business disruption and loss of focus caused by bribery investigations. Bribery investigations can be long, drawn out and costly, taking the focus off business priorities. Organizations will also face the disruption and costs of external supervision following a successful prosecution.
- Potentially cuts the cost of corporate insurance premiums. The ABMS lowers an organization’s risk profile.
- Meets growing stakeholder demand for robust anti-bribery measures. In particular, UK-based companies operating globally need confidence that those they are working with overseas are adhering to the same high standard as themselves.

- Enhances internal and external reputation. Organizations that are seen to be ethical and well governed will find it easier to attract and retain staff and customers and to positively differentiate themselves from competitors.
- Rebuilds business trust. For those organizations that have received negative PR around bribery, BS 10500 may reassure stakeholders that the organization is committed to operating in an ethical manner.

BSI’s Dr Hitchen agrees that formal management systems have been shown to be effective in promoting good practice throughout organizations. “BS 10500 should help establish an anti-bribery culture in an organization and in promoting this to business partners,” he says.

## Key aspects of BS 10500

- Anti-bribery policy
- Communication
- Education, training and guidance
- Responsibility for compliance
- Resources to combat bribery
- Risk assessment
- Due diligence
- Employment procedures
- Gifts, hospitality, donations policies
- Facilitation payments
- Delegated decision-making
- Contractual controls
- Financial controls
- Procurement and commercial controls
- Raising concerns: whistle-blowing arrangements
- Investigation procedures
- Disciplinary procedures
- Internal audit
- Top management overview and tone

## A scalable standard

The introduction of the UK Bribery Act was accompanied by a flurry of legal and commercial advice creating confusion for many small and medium-sized enterprises (SMEs). One of the greatest areas of concern is the Act's broad extra-territorial reach. Organizations may be prosecuted under the Act if they are incorporated, formed or carrying out business in the UK, regardless of whether the bribery takes place in the UK or internationally.

This has led to many SMEs over-compensating or withdrawing from trading in markets they perceive as high risk, for fear of prosecution. Worse still, others are simply ignoring the Act – resulting in either inefficient or high-risk business practices.

BS 10500 overcomes these problems because it is scalable, allowing small organizations to implement the standard just as easily as large organizations. Companies – large or small – can either choose to adopt the standard and self-declare compliance to it, or be independently certified to it by BSI.

Global infrastructure business Balfour Beatty helped to create BS 10500 and has chosen to align to it. Following participation in a pilot study for BS 10500, the company concluded that the standard's requirements "are appropriate and consistent with anti-bribery best practice" and that it "works well in practice" for large and small companies across different sectors.

Andrew Hayward, the company's former Head of Ethics and Compliance, led the pilot in 2012 and was also a member of BSI's BS 10500 drafting panel. He says, "The way in which organizations of different sizes and in different sectors will implement an ABMS will vary, and the standard is suitably generic. Its requirements are prescriptive enough to be auditable, but not unduly so."

Hayward adds, "It is an important tool in the fight against corruption, helping to promote and improve consistent best practice both nationally and internationally."

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## Key steps in implementing BS 10500

Gain top-level management commitment to the introduction of the ABMS

Allocate responsibility for planning of the ABMS to an appropriate leader

Appoint qualified staff to conduct an assessment of the bribery risks faced by the business

Assess how the ABMS should be implemented in the organization

Write the anti-bribery policy

Design or modify policies, procedures and controls for the ABMS

Determine the necessary resources to implement the ABMS

Prepare an implementation plan with clear responsibilities and timelines

## The 'gold standard': certification

Certification to BS 10500 offers companies an even stronger defence from prosecution under the UK Bribery Act because, by definition, it requires independent third party verification that their ABMS is operating to the requirements of the standard. Other advantages, include:

- Clear commitment to anti-bribery management
- Challenge a business's ABMS to reach greater levels of maturity
- Reduced time taken to comply with external audits of its ABMS

- Fulfilment of pre-qualification requirements for tenders
- Competitive advantage, opening up new markets and boosting growth

BSI's Dr Hitchen continues, "Independent certification provides confidence to existing and prospective business partners that the organization has established credentials in anti-bribery management and generally maintains adequate procedures as a due diligence defence with respect to prosecution under the UK Bribery Act."

### Certified to succeed: Digital Advanced Control Ltd

In October 2013, Digital Advanced Control Ltd (DAC), a supplier of electronic control equipment for lifts and escalators, became the first company in its industry to achieve independent third party certification to BS 10500.

Daventry-based DAC is a classic 'engine' of the UK economy, a growing SME that currently employs 25 staff, with a turnover of about £2.7m. The firm is 'thinking big', looking to expand at home and, in future, to export into new overseas markets. DAC places great value on professionalism and integrity when dealing with its employees, customers and suppliers. In addition, the company is naturally anxious to act within the legal and regulatory requirements of all markets in which it operates, so the UK Bribery Act has been a key catalyst for seeking certification.

BS 10500 supports DAC's anti-bribery stance, ensuring as far as is within its control that the company, its employees, representatives and any third party

are not involved in any cash or non-cash advantages or facilitation payments with either suppliers or clients.

Certification to BS 10500 provides a clear demonstration of compliance with the UK Bribery Act, but Co-founder and Technical Director, Yan Phoenix, sees benefits that go far beyond this. "We needed to show that we comply with the Act, but we also recognized that an effective anti-bribery policy is simply good business practice," he says.

He continues, "I really believe in our certification because it makes us so open and transparent. In the past, there have been occasions when we've won contracts because customers liked our product, but a few people have cast aspersions that we must have done something underhand to win the business. We can't be accused of that now."

Phoenix sees benefits to customers from the standard, giving them confidence they are dealing with an ethical, well-governed supplier.

Putting it bluntly, he says, with the standard in place customers' purchasing staff "wouldn't approach us for a bribe in the first place".

As for DAC's employees, "They've embraced it because it acts as a deterrent and makes life easier for them," says Phoenix, pointing to the theoretical example of suppliers trying to offer inducements to DAC's staff to sell their parts into DAC's manufacturing systems. "They're less tempted to try it and more likely to get found out if they do."

Phoenix says the cost of making DAC's anti-bribery management system compliant with BS 10500 is minimal when compared to the financial loss and damage to its reputation that could be suffered by an incidence of corruption. "People don't yet know enough about BS 10500. I think that eventually customers will require it and both large and small firms will have to have it. But we're the first in our industry and we're enjoying this advantage."

## Time for action

GIACC's Stansbury now chairs the International Organization for Standardization (ISO) Anti-Bribery Project Committee, where work is advanced on creating an international standard based on BS 10500. In the meantime, he urges companies to make the most of BS 10500, and perhaps steal a competitive advantage. "If you have a good ABMS, it makes sense to get it certified and give confidence to your stakeholders" he says.

Experts, business groups and law enforcers agree that the existence of an independently verifiable, certifiable, measurable standard in BS 10500 is a huge step forward.

City of London Police Commissioner, Adrian Leppard, sums up: "Bribery is the most insidious form of corruption. It permeates and destabilizes the social fabric of developing societies and denies communities their rightful aid. Good

business must be seen to identify and deter bribery, suffocating its opportunity to manipulate and debase transactions. Business needs systems to achieve this and the BS 10500 anti-bribery standard sets a benchmark for good business practice both domestically and internationally."

Howard Kerr, Chief Executive at BSI, concludes: "The ongoing threat of bribery-related corruption has undoubtedly triggered concern amongst British business leaders. The development of BS 10500 responds to this business concern. No organization is immune from bribery risk, but they can demonstrate that they have adequate procedures in place to prevent bribery and the financial and reputational costs associated with it."

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