



EVERYTHING MATTERS

## **MLROs Toolkit Conference Two**

# The UK Bribery Act 2010

Issues for MLROs

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Previous legislation - outdated collection of laws:



- Public Bodies Corrupt Practices Act 1889
- Prevention of Corruption Act 1906
- Prevention of Corruption Act 1916
- Anti-Terrorism Crime and Security Act 2001
- Common law offence of bribery

After April 2011: The Bribery Act 2010

## Case examples: UK

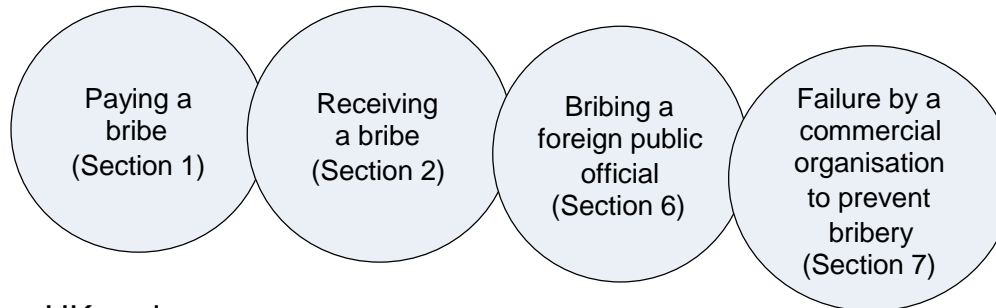


- CBRN Team Ltd [October 2008]
- Balfour Beatty [October 2008]
- AON Ltd [January 2009]
- Mabey & Johnson [September 2009]
- AMEC plc [October 2009]
- Innospec [March 2010]
- Robert Dougall (De Puy International executive) [April 2010]

## Bribery Act 2010



- Bribery Act passed April 2010 - comes into force April 2011
- All types of bribery covered:



- UK and overseas
- Penalties:
  - Individuals: up to 10 years' imprisonment and/or unlimited fine
  - Corporates: unlimited fine

## Section 12: Jurisdiction



Bribery Act has a broad scope and extraterritorial reach (broader than the FCPA):

- any individual ordinarily resident in the UK (whether or not a British national) can be prosecuted for bribery offences committed anywhere in the world;

AND

- any partnership or corporate (whether or not incorporated in the UK) can be prosecuted if it does business in the UK (e.g. through a permanent establishment, subsidiary or other operation), even if the offence was committed outside the UK

## Section 14: Senior officers



If a corporate commits an offence under sections 1, 2 or 6, a senior officer may be guilty of the same offence;

- if he or she consented to or connived at (turned a blind eye to) the commission of the offence; and
- he or she has a "close connection" with the UK (e.g. a British citizen or ordinarily resident in the UK)



UK:

- No exemption for facilitation payments - considered nothing more than small bribes
- "Small bribes paid to facilitate routine Government action ... are likely to trigger the Section 6 offence and the Section 1 offence (where there is an intention to induce improper conduct, including where the acceptance of such payments is itself improper)"



Europe:

- Same position in Austria, Belgium, France, Germany, Greece, Italy, Liechtenstein, Luxemburg, Netherlands, Sweden

- "Reasonable and proportionate hospitality or promotional expenditure which seeks to improve the image of a commercial organisation, better to present products and services, or establish cordial relations, is recognised as an established and important part of doing business"
- Offence committed only where an intention to influence improper behaviour
- "Under section 6 there must be an intention for a financial or other advantage to influence the official in his or her official role and thereby secure business or a business advantage"

## Corporate Hospitality (2)



- What is reasonable is to be left to prosecutorial discretion. Prosecutors will decide:
  - what is legitimate and illegitimate corporate hospitality within the scope of the Act;
  - whether there is sufficient evidence for a reasonable prospect of a conviction; and
  - whether or not it would be in the public interest to prosecute.

## How is corruption discovered?



- Whistleblowers
- Change of management
- Audit
- Change of regime overseas
- As a result of overseas investigation
- As a result of another investigation e.g. money laundering
- Specific intelligence gathering
- International cooperation
- Self-reporting

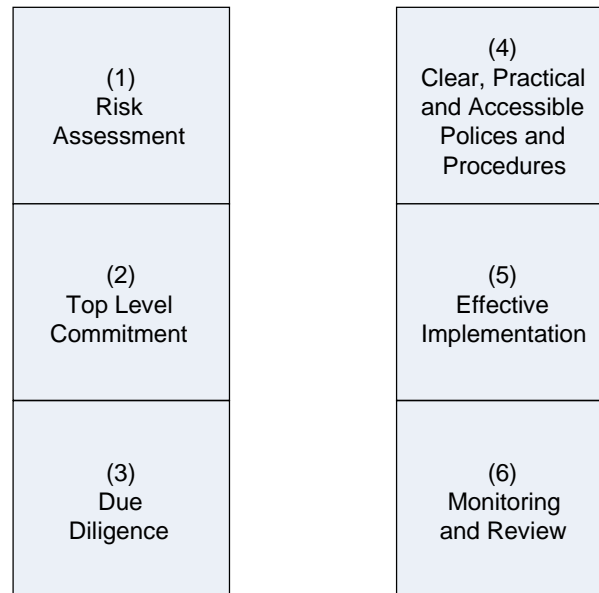
- Similar issues to AML Systems and Procedures
- Resources
- Requirement to adopt a risk based approach
- Risk assessment
- MLRO or Compliance Officer?
- Senior Management responsibility
- Processes and procedures
- Management Information
- Monitoring

## Section 9: Adequate procedures guidance

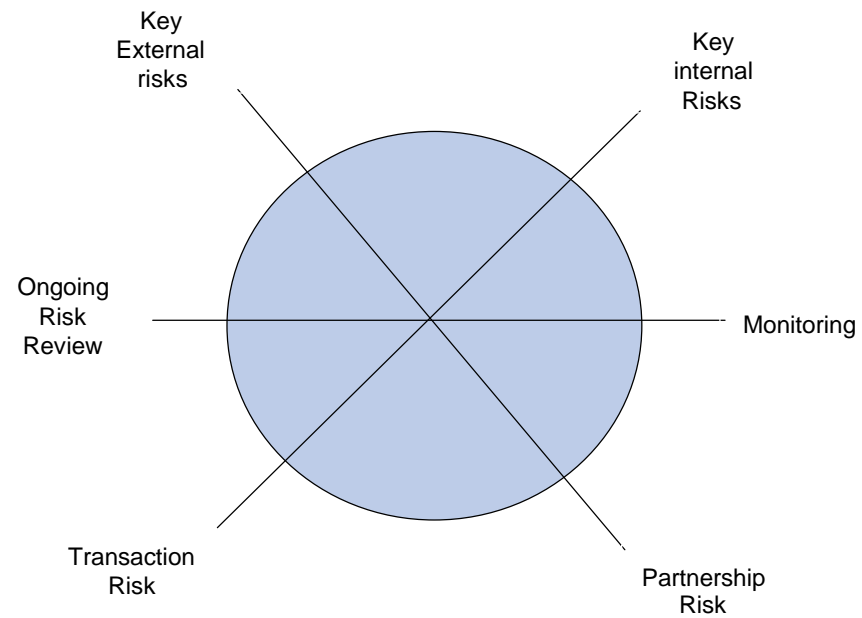


**Consultation period 14 September - 8 November 2010**

6 Principles of Bribery prevention



# (1) Risk Assessment



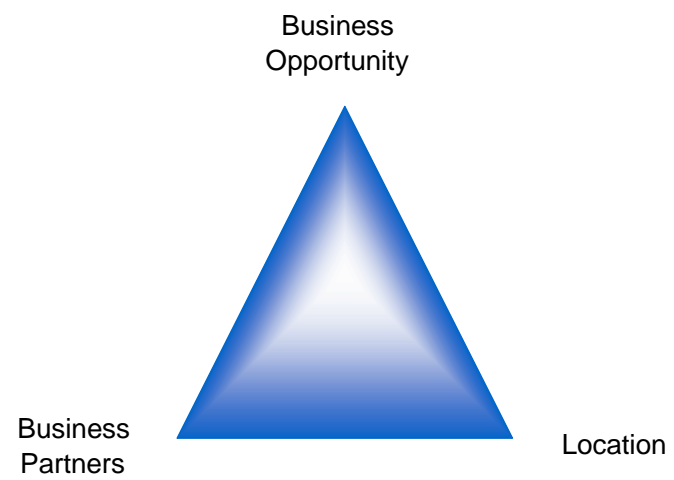
## (2) Top Level Commitment



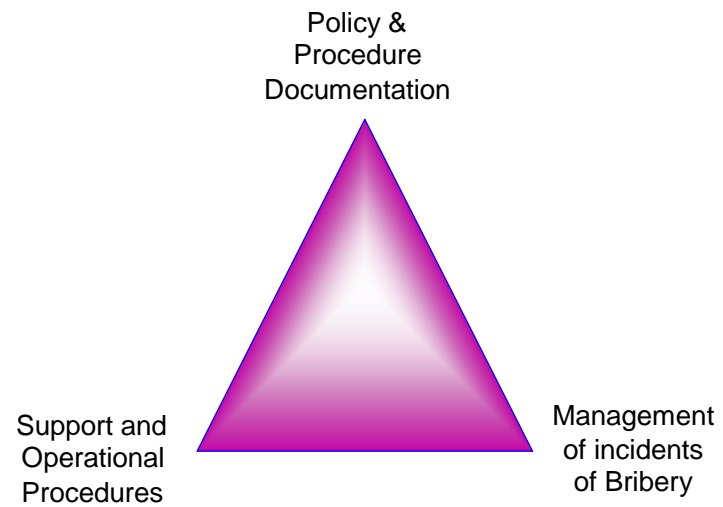
Statement of Commitment

Embedding Anti-Bribery Culture

## (3) Due Diligence



## (4) Clear, Practical and Accessible Policies and Procedures



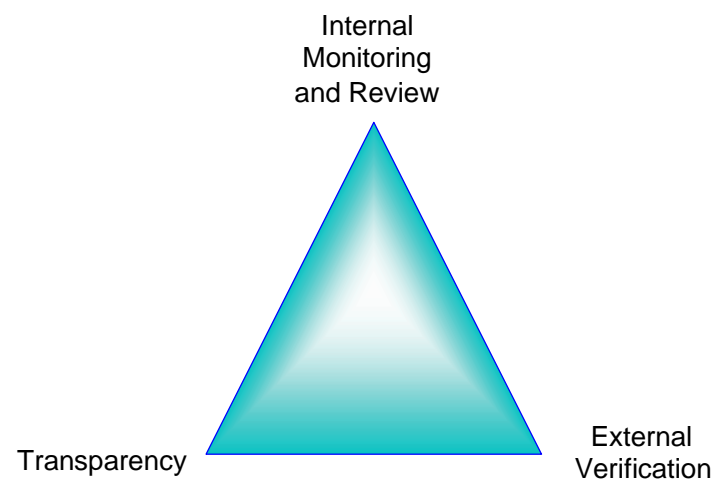
## (5) Effective implementation



### Implementation Strategy

- Who is responsible
- Training
- MI
- Monitoring
- Penalties for breach
- External communications

## (6) Monitoring and Review



**ANY QUESTIONS?**

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