

# THE CASE FOR REGULAR BRIBERY RISK ASSESSMENTS

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**The noisy newcomer.** When any law is introduced that impacts corporate activity, there is usually a burst of activity as companies scramble to prepare for it. Take the activity around the recent implementation of the GDPR: a 2018 Forbes report estimated that the FTSE 350 alone spent over £850m preparing for it, a figure that does not account for the ongoing cost of compliance. With fines of €20m per company or 4% of global turnover, whichever is higher, plus potential reputational damage, in many cases this expense will be justified, especially for companies that deal with individual consumers. Since the GDPR was implemented in 2018, fines for breaches of the Act have reached approximately €500m.

**Putting risk into context.** As companies have focused on the GDPR and as the noise around the introduction of the Bribery Act has subsided, it is perhaps easy to forget how much more severe the consequences of bribery can be. In 2019, the US alone imposed fines worth \$2.9bn for bribery and, in early 2020, Airbus agreed to pay €3.6bn to settle a bribery case with the UK, US and France. Fines for bribery can be unlimited, but there is also the potential criminal prosecution of individuals, the legal costs and disruption of investigations, reputational risks and the potential for debarment from involvement in government contracts to consider.

**Bribery risk is growing.** For many companies, especially those operating in high risk countries, using agents or distributors, dealing with foreign governments or operating in high risk industries (e.g. mining, oil and gas, building, defence or engineering), bribery risk could represent their biggest legal risk. It is also a growing risk for all companies. Enforcement agencies are increasingly well-funded and aggressive as governments see the financial and ethical benefits of their success (the SFO is a significant net contributor to the UK Treasury).

**There is only one defence – adequate procedures.** Under the Bribery Act's corporate offence, if anyone is caught bribing anywhere in the world on a company's behalf (whether that company is a UK company or has part of its business in the UK), that company's only defence is that it has adequate procedures designed to prevent the bribery happening.

**A cornerstone of "adequate procedures" defence is a regular bribery risk assessment.** The Ministry of Justice's (MoJ) guidance to the Bribery Act explicitly includes "**periodic, informed and documented**" risk assessments as an essential component of adequate procedures. This was reinforced by a parliamentary select committee report that highlighted that all but the smallest companies are likely to need some procedures tailored to their risk, but that it was essential that all businesses conduct a regular and properly documented risk assessment.

## What does a risk assessment need to consider?

A risk assessment should consider both the environment a company (or its affiliates) operates within and how it operates within that environment. External factors to consider include:

- How widespread is corruption in those territories the company is operating within?
- What industry is the company operating within? Some sectors are higher risk than others.
- What sort of transactions is a company doing? Certain types of transaction give rise to higher risks, for example, charitable or political contributions, dealings with government or state-owned industries. High value projects and projects involving many contractors or intermediaries are also higher risk.
- Who is the company partnering with? Relationships with agents, distributors or politically exposed people are higher risk.

Internal factors to consider include:

- How much training, skills and knowledge do the company's employees have?
- Is there a bonus culture that could potentially incentivise bribery?
- How clear are the company's policies on gifts and hospitality, promotional expenditure, political donations or charitable contributions?
- How robust are the company's financial controls (to what extent are payments subject to dual authorisation)?
- Is there a constantly reinforced anti-bribery message from the top?

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To find out how Temple Bright can help you complete a risk assessment and design, implement and embed pragmatic procedures to mitigate risk, you can access our information sheet [here](#) or contact **Nick Manassei**:

[nick.manassei@templebright.com](mailto:nick.manassei@templebright.com)

London office

M: +44 (0) 7771 646 366

T: +44 (0) 20 7183 6170



## QUICK TAKEAWAYS

- Bribery represents a large and growing risk for many companies.
- However it may have been some time since many companies have reviewed their bribery risk.
- Penalties under the Bribery Act can be very severe.
- Enforcement agencies are increasingly aggressive and well-funded.
- The only defence under the Act is the adequate procedures defence.
- Regular bribery risk assessments are the cornerstone of any adequate procedures defence.
- All businesses should conduct a regular and properly documented risk assessment.

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