

Forensic Focus

Combating Bribery risks with British Standard 10500

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Welcome to the seventh edition of Forensic Focus. This newsletter is designed to harness the knowledge of economic crime in India and worldwide.

In this edition we will discuss British Standard (BS) 10500 – a new Standard developed by the British Standard Institution (BSI) group and how it can facilitate the compliance requirements under Foreign Corrupt Practices Act, 1977 (FCPA), UK Bribery Act, 2010 (UKBA), India's Prevention of Corruption Act, 1988 (PoCA) and other anti-bribery regulatory requirements. The BS 10500, also called as Anti-Bribery Management Systems (ABMS) assists with corporate governance requirements under clause 49 of listing agreement for Indian companies.

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As always, we hope that you will find this edition of interest and welcome your feedback and suggestions for future topics. Please feel free to contact me at +91 (80) 4079 7002 or at vidya.rajarao@in.pwc.com

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Business without Bribery – An Introduction

Managing bribery risks remains a challenge for every organisation, both in India and worldwide. This is further emphasised by increased actions from regulatory and law enforcement agencies. The cost of bribery to any organisation is not only the financial loss but also includes stringent civil and criminal penalties. However, the collateral damage including reputational damage, loss of employee morale and customer confidence, investor scepticism and strained business relations go far beyond financial losses.

The UK Bribery Act 2010, which came into effect in July 2011, introduced anti-bribery laws including a new offence of “failure of a commercial organisation to prevent bribery”. A significant change in the regulatory landscape has mandated organisations to concentrate their effort on systems and standards that could act as a defence against corruption and bribery risks. This has resulted in BS 10500, released in November 2011.

India ranks 95 among 183 countries with a poor score of 3.1 on Transparency International’s Corruption Perception Index 2011; responsible organisations are increasingly seeing bribery prevention as a crucial measure, on the same lines as safety and quality control.

In this article, we will explore –

- A robust ABMS can assist organisations to take preventive steps through a well laid out process of implementing the requisite controls and
- Compliance requirements under the FCPA, UKBA or the PoCA can be mapped and an external certification on the same from BSI group can be obtained.

Need for ABMS

Given below is an indicative list of business dealings and transactions that can significantly increase the risk of bribery and corruption.

- **Government touch points**

Obtaining licence permits, filing forms, approvals, information memorandum, etc, as specified under different local legislations related to logistics, warehousing, etc. involve interactions with public officials that can expose local entities to the risk of anti-corruption violations.

- **Dealing with intermediaries**

In order to deal with various public agencies and facilitating contacts, local entities sometimes appoint third parties such as consultants and clearing and forwarding agents. This can lead to potential compliance issues and can affect local entities in several ways:

- **Non-compliance:** If any of the intermediaries abuse the code of conduct, a hefty fine may be levied against the main entity.
- **Defrauding customers:** Executing contracts at a higher value, charging inappropriate commission or fees, and payment of bribes by intermediaries can result in the non-compliance of anti-bribery provisions.
- **Kickbacks:** To generate extra cash, local entities may accept kickbacks from customers to execute the contract at a lower price.
- **Bribery:** Local companies may bribe government customers in order to execute the contract at a higher price. They might further charge inappropriate commission or royalty.
- **Conflict of interest:** Vendors may collude with employees at the time of the awarding of the contract, resulting in favouritism and unfair pricing.
- **Fictitious vendors:** Local entities might create shell companies in order to generate income through the reimbursement of fake expenses.

Combating Bribery risks with British Standard 10500

Through this edition, we have attempted to bring you an overview of the BS 10500. Until recently, there has been no objective standard, benchmark or test for anti-bribery and corruption procedures.

BS 10500 was created by the BSI group, a global independent business services organisation that develops standardised solutions to improve management practices and promote innovation. The most popular standards include ISO 9000 Quality Management System, ISO 27001 Information Security System and ISO 32001 Business Continuity Management System. All standards were part of BS before being adopted by ISO. A few examples include the following:

- BS 7799: Information security, currently known as ISO 27000.
- BS 25999: Business continuity management, currently known as ISO 22301.
- BS 5750: Quality management system, currently known as ISO 9000.
- BS 10500 is the new entrant in the basket of Standards and after 2 years this will automatically become an ISO standard.

With the help of BS 10500, an organisation can map control activities as required for FCPA, UKBA or PoCA and other corporate governance requirements including Clause 49 of the Listing agreement with Stock Exchanges in India. BS 10500 will also strengthen other certification management systems such as:

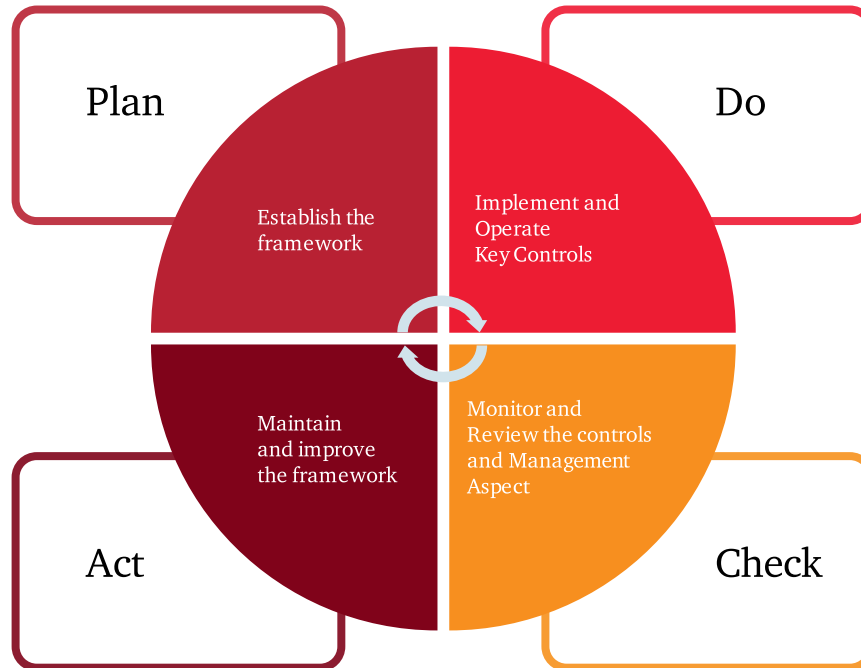
- ISO 9001 Quality Management
- ISO 27001 Information Security Management System
- ISO 32001 Business Continuity
- BS OHSAS 18001 Occupational Health and Safety Management

BS 10500 boasts of the following features:

- It is the only third-party certification in the world.
- It assists organisations to demonstrate the implementation of effective anti-bribery controls.
- It helps avoid bribery, thus ensuring the competitive advantage of compliance.
- It meticulously incorporates the requirements of global regulations like the UKBA, FCPA, PoCA and the Indian Penal Code (IPC) that prohibit payment of bribes, including grease or facilitation payments.
- An approach to the ABMS leading to certification from the British Standards Institution (BSI) includes the following:
 - Gap analysis (to cover review of Policy, Risk Assessment, Controls, Training and Monitoring mechanisms);
 - Plan, do, check and act (PDCA) approach;
 - Stage 1 (document review) by BSI India;
 - Stage 2 (controls review, discussion, sample testing) by BSI India; and
 - Certification by BSI India.

Implementing BS 10500

The BS 10500 is implemented with the PDCA approach as illustrated below:



PDCA (Plan, Do, Check, Act) in greater detail:

Plan: Establish the ABMS

- Define scope of the ABMS;
- Define an ABMS policy (to cover and map UKBA, FCPA, PoCA);
- Define a systematic approach to risk assessment;

Adapted from BSI 2011, "Specification for an Anti-Bribery Management System (ABMS)"

- Identify relevant bribery risks;
- Assess the risks;
- Identify and evaluate options for risk mitigation; and
- Select control objectives and related mitigation controls.

Do: Implement and operate the ABMS

- Formulate a risk mitigation plan;
- Implement the risk treatment plan;
- Implement controls;
- Implement training and awareness programmes;
- Manage operations;
- Manage resources; and
- Implement procedures and other controls for incident handling.

Check: Monitor and review the ABMS

- Execute monitoring procedures and other controls;
- Undertake regular reviews of the effectiveness of the ABMS;
- Review the level of residual risk and acceptable risk;
- Conduct internal ABMS audits;
- Undertake management review of the ABMS; and
- Record actions and events that could have an impact on the effectiveness or performance of the ABMS.

Act: Maintain and improve the ABMS

- Implement the identified improvements;
- Take appropriate corrective and preventive actions;
- Communicate the results and actions and agree with all interested parties; and
- Ensure that the improvements achieve their intended objectives.

Benefits of ABMS

Implementation of a robust ABMS is like the organisation's quality management system (QMS) or its information security management system (ISMS). Obtaining a certification from BSI who created the standard assists the level of comfort on the control practices to Audit Committee and Board of Directors. Further it improves the social accountability and governance quotient when they obtain a coveted certification. Some of the other advantages include -

- A third-party certification ensures that the controls are truly adequate, efficient and effective.
- A certificate from the BSI (that created the standard) ensures global credibility.
- Periodical reviews as required for the maintenance of standards assist the organisation in ensuring compliance to various anti-bribery provisions, thereby preventing penalty and reputation risk.
- Clear messages from the senior management that it operates a policy of zero tolerance to bribery and corruption.
- Risk assessments conducted by all businesses to identify, mitigate and control potential bribery and corruption risks.
- An anti-bribery and corruption clause to be included in third-party supplier contracts.
- Due diligence procedures conducted on third-party suppliers, with enhanced due diligence required to be conducted on those suppliers deemed to be high risk by virtue of the sectors or geographies that they operate in.
- Anti-bribery and corruption training for all employees annually with any additional training for employees deemed to be high risk by virtue of the sectors or geographies they operate in.
- Mandatory recording, in line with relevant thresholds, of gifts and hospitality given or received.

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