



The Bribery Act 2010

What does it mean for my business?

April 2010

The Bribery Act 2010 has now become law and will soon be in force. Do you know what it might mean for your business?

In a nutshell the new Act...

- completely replaces the previous laws on bribery and corruption;
- widens the definition of bribery, making future prosecutions more likely;
- introduces a new corporate offence, making an organisation liable for any employee bribery if it fails to put in place adequate anti-corruption procedures;
- has extra-territorial effect, requiring UK standards of propriety in business carried out in foreign jurisdictions;
- increases the maximum penalty for bribery from 7 to 10 years' imprisonment with an unlimited fine.

SCOPE

Why has this Act been passed?

- The aim of the Act is to reform the criminal law to provide a new and comprehensive scheme of bribery offences, enabling courts and prosecutors to respond more effectively to bribery both in the UK and abroad.
- The UK has been under pressure to reform its bribery laws for a considerable time. The Organisation for Economic Co-operation and Development (OECD) has applied pressure to the UK since its Anti-Bribery Convention 1997 which established international standards to criminalise bribery of foreign public officials in international business transactions.
- The 1997 Convention has been adopted by 38 countries and shortly after the Convention was established, review of bribery law in the UK began but it has taken until 2010 for reform to achieve cross party support. The new law was passed on 8 April 2010 and is likely to come into force later this year.

What is bribery?

- Money or an advantage needs to be passed from one party to another. An important new element of the

offence is that there must be improper performance as a result. This can be effected by the person receiving the bribe, or by someone else. Improper performance is a very wide concept under the Act and will cover any failure to meet a relevant expectation.

- In practice, this means that there is a very low threshold for demonstrating bribery. All that needs to be shown is that a person was influenced, in some way.
- Under the Act, UK standards of expectation for proper performance always apply, and local foreign practices will be disregarded.

Does this Act apply only in the UK?

- Companies have been used to complying with the US Foreign Corrupt Practices Act 1977 (FCPA). Complying with the FCPA does not necessarily mean that an organisation will comply with the new UK legislation as the Act is wider in many respects. The Act also has extra territorial reach and creates a discrete offence of bribery of a foreign public official in order to obtain or retain business.

- Facilitation or "grease" payments are not allowed in any circumstances. All payments, no matter how small or expected by local custom, are banned.

CORPORATE OFFENCE

What is the new corporate offence?

- The Act introduces a strict (automatic) liability corporate offence of failing to prevent bribery by persons working on behalf of a business. This makes companies liable for the acts of their employees and agents.
- The term agent extends, potentially, to a supplier or business partner. A business is potentially liable for the act of any person who performs services for it. It is, therefore, important to ensure that any person or company that carries out work for you is made aware of the Act and the expectations of your organisation.
- A business can avoid conviction for the corporate offence if it can show that it has 'adequate procedures' in place to prevent bribery.

ADEQUATE PROCEDURES

What will be considered 'adequate procedures' to prevent bribery under the Act?

- Adequate procedures are not defined by the Act. Guidance is due to be issued in the future by the Secretary of State.
- A letter from Lord Bach, sponsor of the Act, provides some hints as to what the Guidance is likely to be. Much will depend on the size and nature of the organisation. Some organisations, for example those that do business in jurisdictions in which corruption is more prevalent or who operate in certain more exposed market sectors, might be expected to have more sophisticated procedures in place. In general, higher standards will be expected from a large multi-national corporate than from a smaller more local company. Each organisation should carry out its own risk assessment and put appropriate internal procedures in place as a result.

Contents of the Guidance

- The following measures are likely to be helpful in demonstrating appropriate procedures are in place, some will be applicable to all organisations whilst others might only be more relevant for larger entities. In each case, it will be a matter of fact and degree:
 - The board of directors and chief executive should take the lead in establishing an anti-corruption culture and a senior officer should be made responsible for compliance and risk management.
 - Commercial organisations should have in place a code which contains an anti-corruption element and this code should be publicised internally.
 - New employees, business partners and agents should be properly vetted.
 - Organisations should have in place both gifts and hospitality and also supply chain management policies.
 - Organisations should have in place clear decision making procedures, financial controls and whistleblowing policies.
 - Employees should be aware of their code and trained in anti-corruption measures.

WHAT TO DO NEXT

What do I need to do now?

- Brief employees about the Act and consider whether existing policies need updating.
- Familiarise yourself with the new Guidance when issued by the Secretary of State.

Larger companies should also

- Check and update, if necessary, detailed procedures and policies on gifts, hospitality, facilitation payments, and vetting of external agents and suppliers.
- Explicitly include bribery in their corporate code of conduct.
- Ensure that senior management takes the lead in putting in place an anti-corruption culture.
- Train staff on existing and new procedures.
- Consider auditing for compliance.

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