

## SUMMARY OF THE BRIBERY ACT 2010

The Bribery Act 2010 came into force on 1 July 2011. The Bribery Act has become the primary piece of anti-corruption legislation in the UK, and is arguably one of the most far-reaching Acts of its kind in the world. It created four new offences, which are summarised below.

The offences:

### 1. Paying or Receiving a Bribe (2 Offences)

An offence will be committed if person A offers person B a financial or other advantage if B is carrying out a function on behalf of an organisation where B is in a position of trust, good faith or expected to act in an impartial way and A has the intention of getting B to perform his function in an improper manner. It does not matter whether or not person B accepts the bribe that is offered for an offence of paying a bribe to be committed.

An offence will also be committed if person B requests a financial or other advantage from person A in return for the improper performance of a function. Again, it does not matter if person A agrees to pay the bribe for an offence to be committed.

### 2. Bribing a Foreign Public Official

An offence will be committed if a person offers a foreign public official a financial or other advantage with the intention of influencing the official and obtaining an advantage in the conduct of business. There is no requirement for the official to perform his function in an improper way.

### 3. Corporate Offence of Failing to Prevent Bribery

A company will commit an offence if a person associated with it bribes a person with the intention of obtaining or retaining business or obtaining an advantage for that company, but it is a defence if the company can demonstrate that it had put adequate procedures in place to prevent such conduct from occurring.

#### Will This Affect Me?

All companies who conduct business in the UK whether incorporated here or not should be aware of the issues but in particular those:

- With an international aspect to the business
- Those who conduct business with large international companies or public authorities
- Work in a sector or country with high levels of corruption.

#### What needs to be in place?

##### Adequate Procedures

A company has a defence to the offence of failing to prevent a bribe if it can show that it has put in place adequate procedures to prevent bribery. What is considered adequate will depend on what was proportionate given the facts and circumstances of the company and the bribery risks that it faces.

##### What are Adequate Procedures?

There are six principles of adequate procedures to prevent bribery.

- Proportionate procedures – the procedures adopted should be proportionate to the risk faced
- Top-level commitment – the company should adopt a culture of zero tolerance through a commitment by senior management
- Risk assessment – the company should identify its bribery risks and priorities its actions in high-risk areas
- Due diligence – the company should take appropriate care when entering into relationships or markets with a risk of bribery

- Communication – the company's policy should be clearly communicated to all relevant parties, supported by appropriate training and "speak up" procedures
- Monitoring and review – the procedures put in place should be reviewed and updated as the company's risks change over time.

### **Corporate Hospitality**

A "financial advantage" could include disproportionate corporate hospitality. The statutory guidance suggests that it will not amount to a bribe provided that the hospitality: has a legitimate business aim (including developing relationships) is reasonable, proportionate and appropriate in the circumstances (including with reference to what is normal in the particular industry).

### **Facilitation Payments**

It is an offence to make what are also known as grease payments, or facilitation payments, to foreign public officials that in some countries are the normal way of doing business. There are exceptions e.g. if the person making the payment does so under threat of violence. In such cases you are recommended to comply to avoid coming to harm, and then to seek advice (consular or otherwise) after the fact. That you were under threat of violence is therefore a mitigating circumstance for engaging in the criminal payment, rather than excusing it.

### **Jurisdiction**

- The Act covers both private and public activities
- UK courts have jurisdiction over bribery outside the UK if it involves a person or business that has some link to the UK

### **Penalties**

- Up to 10 years imprisonment and an unlimited fine
- Company failing to prevent bribery is punishable by an unlimited fine
- Company director may be disqualified.