

PREVENTION IS BETTER THAN CURE

The Bribery Act 2010 - What this new law means to West Yorkshire businesses.

The Bribery Act 2010 is effective as at 1 July 2011. Businesses in West Yorkshire that choose to ignore the new law face substantial fines and individuals face imprisonment if convicted.

Any Developers and Contractors working in conjunction with Local Authorities, and in the public sector also risk being permanently debarred from future tendering of public sector contracts under the Public Contracts Regulations 2006.

The new law has enormous implications and means players in the Yorkshire Commercial Development, Construction and Engineering Sectors (including Utilities) need to ensure they have put internal safeguards in place to prevent such draconian measures being taken against them in an industry which by its very nature may fall foul of the new law.

Offences under the Bribery Act

There are 4 main offences that Companies should be mindful of are:

1. Bribing another person (S1).
2. Being bribed (s2).
3. Bribing a foreign public official (s6).
4. The key new corporate offence of Commercial organisations failing to prevent bribery (S7).

The key to not inadvertently falling foul of the new S7 corporate offence of Bribery is for companies to put in place before the new law comes into effect, a series of adequate procedures. Only adequate procedures suitable to the type and size of business will act as a full defence against prosecution.

Key Principles

There are 6 key principles to help West Yorkshire businesses decide what is adequate for their size and type of company. These principles are:

1. proportionality to the risks and size of the business
2. top level commitment to ensuring the procedures are in place
3. carrying out a risk assessment to consider the specific types of bribery risks
4. due diligence (know your customer/client)
5. communication to staff
6. monitoring and reviewing the adequate procedures over time.

Guidance

The Secretary of State published on 31 March 2010, substantial practical guidance and illustrative case studies on the adequate procedures defence including extensive information regarding corporate hospitality, effectively drawing a line in the sand as to what constitutes acceptable, proportionate and reasonable corporate hospitality. A

Quick Start Guide to the Bribery Act 2010, was also published to accompany the guidance which offers businesses further guidance.

Seminar Service

Shulmans Construction Team is offering a seminar service on the new Bribery Act 2010 in June 2011, before the legislation comes into effect. The seminar will be held at their Leeds offices and will be open to local businesses on practical steps for Businesses in preparing for the new legislation. The seminar date will be announced shortly and can also be provided in-house at clients request.

Consultancy Service

In addition, the Team is also providing a new consultancy service “**PREVENT**” which involves 6 steps in setting up adequate procedures as a defence to the Section 7 offence: Plan, Review, Educate, Visit, Encourage, and Train employees. The Prevent training programme will be conducted, face-to-face within businesses and by way of separate advice and assistance.

However, it is important to stress that there is no express duty in the Bribery Act 2010 for companies to engage lawyers or other professions to help businesses assess the risks of bribery that the company faces. The Act does not require any type of independent verification of any bribery prevention measures that it is taking.

Ten Top Tips

Ten useful tips for Companies on adequate procedures for protecting their business from the impact of the Bribery Act are as follows:

1. Businesses should begin by compiling a list of all their Employees, including any consultants or other agents, or members of a joint venture by the firm.
2. The key parts of the business should be represented in a committee or forum including representation from HR, Finance and Sales to consider effective preventative adequate preventative procedures.
3. A risk assessment of all the key areas of the firms including the operations of key employees should be carried out with the results considered by the Bribery Committee.
4. All employees should have at least the minimum of compulsory training on the implications of the Act, with high risk employees having further specialist training.
5. A clear whistle-blowing procedure should be set up.
6. Any members of the accounts team should have additional training to help them to recognize any payments including in the area of corporate hospitality.

7. Companies need to keep records of any and all steps they are taking before the Act becomes effective on July 1st, 2011.
8. Once the adequate procedures are set up, all new employees should receive training on their induction to the company.
9. The Anti-bribery adequate procedures and policy should be kept under review and updated at least on an annual basis.
10. An internal record system should be set up to record all actions, however small that could lead a reasonable person to suspect a breach of the Bribery Act 2010.

If businesses in West Yorkshire follow these tips, and put in place adequate procedures which are suitable for their business size and type, before the 1 July 2011 deadline, they will be protected against any inadvertent breach of this important new law.

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