

A Guide to the Bribery Act 2010

Introduction

The new Bribery Act 2010 is due to come in to force in April 2011. The Act is intended as a wholesale reform of the old bribery laws which were a complicated and confusing combination of statutory and common law offences from more than 100 years development of law in this area. The need for reform was widely acknowledged, however, the final result may have alarming consequences for corporate entities operating in the U.K as many law abiding businesses could inadvertently break the new law if they are not careful.

Offences under the Act

The Act re-classifies the basic bribery offences of bribing another person and receiving a bribe whilst also introducing two new offences. The first of these is in respect of bribery of a foreign public official. Additionally the Act also creates an offence for corporate entities of failing to prevent bribery occurring within their organisation. The only defence to this is if the corporate entity has put in place "adequate procedures" designed to stop incidences of corruption. This offence applies to any corporate entity that carries on its business, or even part of its business, within the U.K.

The penalties can be extremely severe. Individuals could face a maximum penalty of ten years imprisonment and/or an unlimited fine if found guilty. Corporate entities may face an unlimited fine in respect of an offence under the Act.

Facilitation Payments and Corporate Hospitality

A facilitation payment is usually a payment to a government official to speed up a routine bureaucratic action. These are illegal under the Act. However the decision to prosecute will be at the prosecutor's discretion and he/she will consider various factors including whether it is in the public interest to prosecute.

Most concerning however is that prosecutorial discretion will also have to be relied on in respect of corporate hospitality, which may fall foul of the Act. It has at present been stated that "routine and inexpensive hospitality" will be permitted however "lavish or extraordinary hospitality" will not. What remains unclear is where this distinction will be drawn. Will a box of chocolates and a bottle of wine be acceptable? Will tickets to a football match? The result is that corporate entities in the U.K find themselves in the awkward position of having to guess what level of advantage provided by way of corporate hospitality is reasonable and what may result in prosecution.

Conclusion

In light of the Act, the need is now more urgent than ever for corporate entities to either commit to implementing systems to counter bribery or review their current anti- bribery procedures to ensure they will be effective in preventing bribery being committed on their behalf and to be able to rely on the "adequate procedures" defence in appropriate circumstances.

All corporate entities may wish to put in place staff training programmes and ensure they have written procedures that are readily available. It may additionally be worthwhile to incorporate such policies into employment contracts and allow the employer to terminate employment in the case of breach.

With such severe penalties under the Act, it has become crucial that the action that is taken does not merely have the effect of prohibiting bribery but that it actively seeks to prevent it where it might arise. For some businesses this will involve nothing more radical than an assessment of their existing policies however for others it could mean a complete overhaul.

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