

How does the Bribery Act 2010 affect your business?

The Bribery Act 2010 ('the Act') was due to come into force in April 2011, but the government has recently indicated that implementation will be delayed. When the Act is implemented, probably later this year, it will apply to sole traders, partnerships, and companies based in the UK.

The Act goes much further than the old bribery laws and most business organisations will need to review the way in which they and their employees and agents operate. Most people think of bribery as one person offering cash to another in order to gain a benefit. The Act makes clear that bribery has many facades and may include things like promises of future work, discounts, gifts, donations, offers of employment, facilitation (grease) payments; the list is endless.

The Act makes it an offence to:

- Give a bribe
- Receive a bribe
- Bribe a foreign official
- Fail to prevent a bribe

Perhaps of most significance to commercial organisations is the introduction of an offence of failing to prevent a bribe. The Act makes it an offence if a person associated with a relevant commercial organisation bribes another person intending to obtain or retain a business advantage. Under current legislation a company is only likely to be guilty of bribery if very senior management are involved in this. Under the Act, the company may be guilty even if no one within the company knew of the bribery because the Act makes it clear that it not only applies to employees, but also to agents and external third parties.

The Act does provide one line of defence to commercial organisations, which is if it can show it had adequate procedures in place to prevent bribes being paid. The government is required to give guidance on what amounts to 'adequate procedures'. However, this is likely to be principle based rather than prescriptive 'one size fits all' guidance. Organisations will be expected to develop and refine their own procedures appropriate to their circumstances and would be well advised to use the period before the Act comes into force to do so.

To prepare for the introduction of the Act most commercial organisations should:

- Undertake and document a risk assessment of bribery occurring within their business;
- Develop and publish internally and externally (perhaps on the company website) a Code of Conduct containing anti-corruption policies;
- Review employment contracts to include express anti-corruption obligations;

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- Review existing employee handbook procedures, such a disciplinary procedures;
- Introduce formal whistleblowing procedures for staff to report corruption;
- Have procedures in place to investigate and report on allegations of corruption;
- Undertake due diligence on new business relationships;
- Review terms of business and third party contracts to include anti-corruption policies;
- Require sub-contractors and agents to adopt its anti-corruption policies and procedures.

The penalties can be severe – up to a 10 year jail term for an individual or an unlimited fine for a company convicted of failing to prevent bribery.

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The content of this article is intended to provide a general guide to the subject matter. Specialist advice should be sought about your specific circumstances.