

## Briefing Note

# Bribery Act 2010 and its impact on commercial organisations



The Bribery Act 2010 is due to come into force in the United Kingdom in April 2011. It makes new provisions about criminal offences relating to bribery. The purpose of the Act is to update the outmoded existing law and to bring it into line with international norms. It also creates new offences, one of which relates specifically to commercial organisations.

### *Offences by individuals*

Sections 1 to 5 of the Act create a number of bribery offences and contain definitions relating to those offences. In summary, a person can be guilty of a bribery offence by offering, promising or giving a financial or other advantage to another person in return for the improper performance by that person of a relevant function or activity. A person can also be guilty of a bribery offence by requesting, agreeing to receive or accepting a financial or other advantage in return for the improper performance of a relevant function or activity.

A function or activity is relevant for the purposes of the Act if it is a public function, an activity connected with a business or an activity performed in the course of a person's employment.

These offences are therefore wide-ranging. For example, a person who is charged with appraising the performance of another person within an organisation would be guilty of a criminal offence if he or she accepted a financial or other advantage in return for giving that person an improperly favourable appraisal.

Everyone should therefore be aware of the potential impact of these offences in the workplace or in business or public contexts.

### *Offences by commercial organisations*

Commercial organisations such as companies, LLPs, partnerships and other corporate bodies are further affected by a provision which requires them actively to prevent persons associated with them from committing bribery offences. This has potential to add significant administrative burdens to SMEs.

Section 7(1) of the Act provides that

*"A relevant commercial organisation ("C") is guilty of an offence under this section if a person ("A") associated with C bribes another person intending-*

*(a) to obtain or retain business for C, or*

*(b) to obtain or retain an advantage in the conduct of business for C"*

Section 7(2) provides a defence:

*"But it is a defence for C to prove that C had in place adequate procedures designed to prevent persons associated with C from undertaking such conduct"*

The offence is not limited to activity in the UK. Associated Person is defined in section 8 of the Act as someone who provides services for or on behalf of C. An Associated Person may therefore be:

- an employee;
- an agent;
- a partner, member of an LLP or a joint venture partner;
- a subsidiary body corporate

Section 9 of the Act provides that the Secretary of State must provide guidance as to the measures that commercial organisations must put in place to provide protection under the Act. This has not happened as yet because of the recent change of government. However, it is highly likely that the guidance will impact on all companies and other corporate bodies engaged in commercial activity.

In particular, because of the wide definition of Associated Persons under the Act, the guidance will have to cover many different situations, including measures that commercial organisations will have to take to prevent or control bribery by:

- employees through contracts of employment, staff manuals, disciplinary procedures, procedures for controlling sales or provisions of services (perhaps to provide for monitoring of sales processes)
- agents through agency contracts
- partnership, LLP and joint venture partnership agreements.

The problem for commercial organisations will be reviewing and amending within a limited time frame the processes and documentation that may be required to be amended in order to comply with guidance once it is published. The draft guidance is due to be published by the Secretary of State in September 2010 for consultation, to be finalised in January 2011.

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**This note does not constitute legal advice but is intended as general guidance only**

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