

THE BRIBERY ACT 2010

Update



We reported previously on the key provisions in the Bribery Act 2010 ('the Act') and news of its progress. The Government has now announced that the Act will come into force on 1 July 2011 and published its [Guidance](#) and [Quick Start Guide](#).

The Act applies to UK citizens, UK incorporated companies (in relation to acts occurring anywhere in the world) and to companies incorporated anywhere in the world which carry on business in the UK. The Act creates a new offence of failure by a commercial organisation to prevent persons associated with them from committing bribery on their behalf (section 7). In defence, an organisation must show it has adequate procedures in place to prevent bribery. The Act requires the Government to publish guidance on 'adequate procedures' (section 9).

The Guidance

The key messages are risk assessment and proportionality, with 6 guiding principles to follow in deciding what an organisation may need to do differently:

- **top level commitment** – the top level management of a business (the board or equivalent senior roles) must demonstrate commitment to the prevention of bribery by, for example, board level statements, appointment of an anti-bribery senior manager and anti-bribery programmes for employees and associated businesses
- **proportionality** – businesses should take a risk-based proportionate approach to bribery prevention, tailored to the size of the business and the markets in which it operates
- **risk assessment** – businesses should demonstrate that they have assessed their risk areas, looking at the markets in which they operate and the people with whom they deal, especially contractors and suppliers
- **due diligence** – businesses should consider what levels of investigation of contractors, suppliers and business partners is required
- **communication** – a business must make known its policies and contractual terms, and carry out relevant training
- **monitoring and review** – those responsible for the anti-bribery procedures must ensure they are up-to-date and respond to any business changes

The Government has clarified its approach to the interpretation of some key parts of the Act, in particular corporate hospitality. The Guidance states that the Government does not intend that genuine client entertainment (including tickets to sporting events and dinners), promotional activity or gift-giving as a reflection of good client relations will be caught by the Act, provided they are reasonable and proportionate to a business. At the same time, the Serious Fraud Office and Director of Public Prosecutions have stated their Joint Guidance on the issue of how they will decide whether to bring a prosecution under the Act, ostensibly to make their approach transparent and to ensure consistency.

July 2011

Further information

For further information on any aspect of The Bribery Act 2010, please contact our Head of Dispute Resolution, Samantha McBain, at samanthamcbain@innovatelegal.co.uk

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