

David Venus & Company Practice Note

The Bribery Act 2010

The Bribery Act 2010 (the 'Bribery Act') received Royal Assent on 8 April 2010 and is expected to come into force by the end of the year, reforming and replacing existing statutory and common law bribery offences.

The Bribery Act makes clear that an offence is committed where someone either offers or accepts a bribe, whether or not the activity takes place in the UK or abroad, the penalty for which is an unlimited fine and/or imprisonment for up to ten years.



Of particular note is Section 7 which makes it an offence for companies and partnerships registered in the UK and for overseas companies and partnerships registered elsewhere but carrying on business in the UK (referred to collectively as the 'organisation') to fail to prevent bribery. As a consequence the organisation could be found guilty where a bribery offence is committed by an employee, agent or subsidiary in an attempt to gain or retain business or advantage for the organisation.

The Bribery Act also contains a specific offence of making or offering a bribe to a foreign official.

It is therefore clear that organisations must ensure appropriate measures are in place to discourage and prevent bribery, a need which is further emphasised by Section 7(2) which specifically states that it will be a defence for an organisation to show that it had put in place adequate procedures to prevent bribery.

Whilst the Secretary of State will publish guidance to organisations on what constitutes 'adequate procedures' before the Bribery Act comes into full force and effect, this is likely to be fairly generic and so many organisations are already embarking on their own reviews ahead of this to determine what they have in place and what changes might be necessary. Such review is recommended and encouraged.

For many organisations, especially those operating in overseas jurisdictions, the potential for bribery has long been recognised as a significant business risk and it is expected that measures to prevent it will already form an important part of such organisations' risk management and internal control procedures. However, these organisations will still need to review the measures they have in place and how they might be improved, by carrying out a thorough review and checking that:-

- they remain appropriate in light of the Bribery Act;
- any policies containing anti-bribery measures, or referring to or affected by them, are brought up-to-date. These policies might include code of conduct, corporate ethics, corporate gifts and hospitality and whistle blowing policies and the employment handbook, etc.;
- the updated policies are communicated and understood by employees throughout the organisation, bringing particular attention to what constitute offences under the Bribery Act and that the giving or acceptance of bribes constitutes a disciplinary offence;
- any subsidiary companies have reviewed and implemented appropriate policies, procedures and internal controls to prevent bribery; and
- all agreements with agents and other third parties make clear that bribery is prohibited and include appropriate anti-bribery controls.

Whilst smaller companies are less likely to have formal written policies on anti-bribery, it is nonetheless important that they carry out a similarly thorough review as they also need to be in a position to demonstrate that they have adequate procedures in place. It might be that anti-bribery measures are embodied in code of conduct and corporate gift and hospitality sections in the employment handbook and these remain appropriate but need to be updated and expanded.

Should you wish to discuss the Bribery Act or require assistance reviewing your existing policies and procedures or with implementation, please contact James Kindell (james.kindell@davidvenus.com) or by telephone on 01372 465330).

July 2010

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