

SUMMARY GUIDANCE ON THE BRIBERY ACT 2010

1. WHAT IS IT?

It is a law designed to reduce bribery and corruption within the UK and across the world.

2. DOES IT AFFECT ME?

Yes.

It applies to any company or partnership that is carrying on business or part of a business in the UK or was incorporated or formed in the UK.

It affects the partners, owners, directors, employees, agents, suppliers to and customers of those companies or partnerships.

It does not matter that the act of bribery takes place within or outside of the UK. It is where an organisation does business or was established that is important.

3. WHEN DOES IT APPLY?

It comes into force on the 1 July 2011.

4. WHAT HAPPENS IF I IGNORE IT?

Many suppliers and customers will require you to have in place anti-bribery policies and procedures. Without them you may find they will not or cannot deal with you.

There is the loss of reputation following a prosecution which could be more far reaching than a criminal fine.

The maximum possible criminal penalties for breaching the Bribery Act are:

- an unlimited fine for the relevant commercial organisation; and/or
- an unlimited fine and/or up to 10 years imprisonment for individuals working within a relevant commercial organisation.

5. IF IT DOES AFFECT MY BUSINESS WHAT SHOULD I BE DOING?

Initially top level management should:

- 5.1. in a similar way to a Health & Safety risk assessment, perform a risk assessment (on a sector, business structure and geographical basis) to consider and identify the bribery risks which the business faces. This is not easy and we can help;
- 5.2. create and implement policies designed to deal with those risks, internally and externally. For example:
 - 5.2.1 Internally - have practice booklets or a section in your staff handbook so employees are aware of what they should be looking for and what to do if they encounter a problem;
 - 5.2.2 Externally - add specific anti-bribery protection to your terms and conditions of trade;
- 5.3. have in place a management system to ensure the policies at 5.2 are working and are changed if they are not; and
- 5.4. educate employees, agents etc to ensure that the organisation is known (both within and outside the organisation) to have a strong anti-bribery stance. This links with paragraph 5.2 and internal courses and webinars are good for this.

6. A DIFFICULT AREA

Facilitation payments

Under US legislation there is an exemption to their anti-corruption legislation which allows payments to "expedite or secure... routine governmental action".

There is no such exemption under the Act and so facilitation payments are not allowed.

Many organisations whilst not making facilitation payments themselves may contract with local agents who do. Under the Bribery Act you could be prosecuted for the actions of the agent.

Putting in place the procedures and policies outlined in paragraph 5, knowing the agent and how they operate (and avoiding using them) and following pages 8 and 9 of the guidance of the Serious Fraud Office will lower the chances of any prosecution. Please click [here](#) for a link to the SFO guidance.

7. PROPORTIONATE ACTION

Any action you take under paragraph 5 above should be proportionate to the risks you face. What does this mean? What is proportionate to one organisation is not to another.

Each business will come across different problems with the Bribery Act because of the nature of the business it does, where it does it and who it transacts with. Providing you with general advice covering all these scenarios would not be practical or helpful.

For example:

Sector - which sector are you operating in? Shipping and mining are high risk areas.

Transaction - what are you doing? Obtaining licences and permits and transactions relating to public procurement are high risk.

Business Partnership - who are you dealing with? Use of intermediaries you know little about, in transactions with foreign public officials is high risk.

For us to assist you we need to understand your business and what you are doing in detail. We can then establish the extent of any risk and give specific guidance on what you need to do or the extent of any action. Spending a fortune covering your business from every angle may not be necessary.

Please contact **Alistair Latham** at ail@sjplaw.co.uk or on **01482 324591** for further information, or to arrange a meeting to look at the affect the Bribery Act may have on you or your business.

Further useful reading can be found in the Ministry of Justice Guidance. Please click [here](#) for a link to the guidance.

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