

LEGAL UPDATE: The Bribery Act 2010

The Bribery Act 2010 comes into force on 1 July 2011. The Act contains four offences: bribing another person, offences relating to being bribed, bribery of foreign officials and failure of commercial organisations to prevent bribery.

The Act has a wide territorial reach, capturing organisations formed outside the UK if they carry on business in the UK, the definition of that being 'a matter of common sense' and not simply, for instance, that its securities have been admitted to trading on the London Stock Exchange.

There is now an active obligation on companies to prevent bribery. A company will be guilty of the offence if a person who performs services on its behalf (an employee, worker or consultant) bribes someone to obtain or retain business for the company, or to obtain or retain an advantage for it. The offence can be committed in the UK or overseas. If a company is found guilty of corporate bribery, both the company and its directors could be subject to criminal sanctions, including fines. It is a defence for the company to show that it had in place adequate procedures to prevent their associates from paying bribes, defined as procedures proportionate to the risks the company takes, which are clear, accessible and enforceable, included in company training procedures, monitored and reviewed. The company should also periodically assess its exposure to bribery risks and document its assessment. The onus of showing that the procedures are adequate rests on the company.

Following concerns raised, the guidance states that corporate hospitality can only be caught under the Act if it is intended as a bribe, judged by what a reasonable person in the UK would think. Reasonable and proportionate hospitality intended to simply improve the company's image and establish cordial relations will not be caught.

For bribing a foreign public official, the guidance says that the prosecution must be able to prove a sufficient connection between the advantage given and the intention to secure business/an advantage, with significant factors being the type of advantage offered, the manner and form of its provision, and the level of influence the foreign official has over awarding the business. Small bribes paid to facilitate foreign Government action- 'facilitation payments'- can trigger an offence.

Clearly companies should now consider whether they need to put in place adequate anti-bribery procedures to protect themselves.

Our regulatory and litigation teams, headed by partners James Saunders ([link to profile](#)) and Stephen Gilchrist ([link to profile](#)) are experts on Bribery Act issues. Feel free to call them for an initial, no obligation discussion on 0207 632 4399.

