

## **Bribery Act 2010 - Guidance Published**

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The UK Ministry of Justice has recently published its [revised final guidance on the UK Bribery Act 2010](#) which is now scheduled to come in to force on 1 July 2011.

The Bribery Act's introduction is as a result of pressure to reform the law regarding bribery and corruption in the UK as the law was out of date, ineffective and not suitable for the modern global economy. The purpose of the legislation is to simplify the law on bribery and to allow a more effective response to bribery offences that occur either in the UK or abroad.

The publication of the guidance was delayed by the coalition government, amidst concerns raised by businesses in relation to the new corporate offence under section 7 of the legislation, which penalises the failure of organisations carrying on business in the UK to prevent bribery by persons associated to them. Some of the key concerns that were raised included: a lack of clarity as to the meaning of taking "adequate procedures" in defence of the offence; that the scope of "persons associated" was too wide; and whether hospitality and corporate entertainment would be considered as bribery under the new legislation. Some key issues addressed by the guidance are as follows:

### **“Adequate Procedures”**

The new guidance slightly amends the six guiding principles which assist businesses in satisfying the "adequate procedures" test. These are: (1) Proportionate procedures; (2) Top level commitment; (3) Risk assessment; (4) Due diligence; (5) Communication (including training); and (6) Monitoring and review. Businesses are encouraged to adopt a risk-based approach to prevent bribery - which approach will vary from business to business depending on the perceived risk of bribery in their respective markets.

### **“Persons Associated”**

The guidance acknowledges that the scope of "persons associated" is wide, but states that this is so as to cover all those who perform services for the company and therefore may be capable of committing bribery on the company's behalf. The guidance suggests carrying out due diligence exercises on contractors and suppliers on a risk-based basis, for example: informing them of anti-bribery policies; taking references; or simply, depending on the circumstances, conducting a personal assessment.

### **Hospitality**

The guidance clearly states that hospitality, such as taking clients out for dinner or providing tickets to sporting events, would not constitute an offence under the legislation - provided that the expenditure on such events is proportionate to, amongst other things, the size of the company, its market and its business needs.

### **Facilitation Payments**

These are illegal and the guidance suggests that businesses deal with facilitation payment demands by, amongst other things, communicating anti-bribery policies to those operating abroad on their behalf and by introducing clear policies to be followed if a facilitation payment is demanded.

### **Prosecutorial Discretion**

Prosecution under the new legislation is discretionary and the guidance states that there first must be sufficient evidence before proceedings are raised. Further, any prosecution must be in the public interest. It is hoped that this will create a flexible, just and fair operation of the new legislation particularly in relation to some of the concerns raised by business.

### **Commentary**

The guidance has received mixed reviews; some welcome it as being practical and user friendly, whereas others see it as weakening the legislation by giving pointers on how to exploit “loopholes”. Nevertheless, the compliance requirements are set out clearer than before and businesses should review their anti-bribery policies and practices in advance of 1 July 2011 so as to ensure that they fully comply with the new legislation.

***Valerie Surgenor is a Partner in the Compliance & Regulatory Group at MacRoberts, and advises on all aspects of the Bribery Act 2010. For further information, please contact [valerie.surgenor@macroberts.com](mailto:valerie.surgenor@macroberts.com)***

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