

The Bribery Act 2010 – In Force 1 July 2011

July 2011



The Bribery Act 2010 (the “Act”) came into force on 1st July 2011. On 30th March 2011 the Ministry of Justice published much anticipated guidance (the “MOJ Guidance”) on the scope and impact of the Act. The MOJ Guidance centres on the procedures which commercial organisations can put in place to prevent persons associated with them from giving bribes.

The MOJ Guidance sits along side the Joint Prosecution Guidance which has been issued by the Director of the Serious Fraud Office and the Director of Public Prosecutions and provides instructions to prosecutors as to the enforcement of the provisions of the Act.

Context

The Act creates a range of criminal offences for various types of bribery activities and applies to firms carrying on business in the UK regardless of the location of the bribery offence. The Act creates a strict liability corporate offence which will apply where a relevant commercial organisation fails to prevent a bribe being paid on its behalf by any associated persons. Whilst the strict liability nature of the corporate offence means that culpability is irrelevant, the Act provides for a defence whereby a company may escape liability if it can show that it had in place "adequate procedures" designed to prevent those persons performing services on its behalf from committing bribery.

The MOJ Guidance

The MOJ Guidance does not provide a prescription for the systems and procedures which can be adopted to ensure protection from the corporate offence. However, it provides firms with a greater level of detail in respect of the various elements comprised in the corporate offence.

The Scope of the Corporate Offence

The corporate offence applies to “relevant commercial organisations carrying on business in the UK” and carries an unlimited fine for firms found guilty of the offence. The MOJ Guidance details the criteria which will be used in defining these terms, although the courts will have the final say and will approach these issues on a case-by-case basis.

Associated Persons and Joint Ventures

The MOJ Guidance explores the extent to which suppliers, employees and contractors may be regarded as “Associated Persons” for the purposes of the corporate offence. The MOJ Guidance also deals with circumstances where a joint venture (“JV”) is operated through a distinct legal entity (e.g. limited company or LLP) the MOJ Guidance confirms that JV members will not necessarily attract liability because they benefit indirectly from a bribe made by an employee or agent of the JV vehicle. However, a JV party may be liable if the bribe was made to benefit their specific business.

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The MOJ Guidance also provides an overview of the application of the Act in the following areas:

- Corporate Hospitality and Promotion
- Facilitation Payments
- Public Procurement

Preparing Your Business

Firms should now be prepared to deal with the provisions of the Act and if they have not already done so, should immediately consider the implementation of policies and procedures which provide a credible culture of risk assessment and management within their organisations in order to show that adequate procedures regarding the prevention of bribery are in place.

The Six Principles on Adequate Procedures

The MOJ Guidance restates the six principles which should be borne in mind when implementing policies to deal with the Act:

1. Proportionate Procedures
2. Top-Level Commitment
3. Risk Assessment
4. Due Diligence
5. Communication (Including Training)
6. Monitoring and Review

Conclusion

The MOJ Guidance is framed in broad terms and should be considered to be a starting point. Given that no prescriptive set of procedures has been issued it may be difficult particularly for small and medium sized organisations to ascertain with any certainty the efficacy of the anti-bribery procedures which they may chose to implement. However, it is crucial that organisations assess the risk faced by them and that they move immediately to implement adequate procedures to prevent bribery and to establish an operating culture which mitigates any risk of bribery taking place.

If you are concerned about the impact of the Bribery Act 2010 on your business or if you require advice on the implementation of adequate procedures please do not hesitate to contact Jennifer Ebbage (j.ebbage@cfrlaw.co.uk) or Christopher Neill (c.neill@cfrlaw.co.uk).

(This article provides an update to our previous article on the Bribery Act 2010 which can be accessed [here](#))

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