

The Bribery Act 2010 - the headlines for you and your clients

The Bribery Act 2010 which comes into force on 1 July 2011 makes four new bribery offences:

1. Offering, promising or giving a bribe
2. Accepting a bribe
3. Bribing a foreign public official
4. Failure by an organisation to prevent bribery by employees or associates

The key to determining whether an act would constitute a bribe is “improper performance” of a relevant function. This is essentially an individual or organisation giving or receiving an unfair advantage due to the fact that a bribe has exchanged hands. This is largely a “what would the reasonable man think if he knew about the circumstances of this situation” test.

A bribe does not have to be money – it can also include excessive and disproportionate gifts or hospitality.

It does not have to happen in the UK – the legislation has extra-territorial reach. All that is required is for the bribery to involve a UK based organisation to trigger an offence under the Act.

The penalties for committing these offences include unlimited fines and ten years imprisonment, for those found guilty.

What you need to be aware of as a member in practice (MIP)

- Offers of hospitality potentially threaten compliance with the fundamental ethical principles of integrity and objectivity, and may also put you at risk of falling foul of the Bribery Act. Ensure you assess the risks when faced with offers of client hospitality. A cup of coffee and a biscuit with a client is unlikely to constitute a bribe; an all expenses paid trip to New York might well raise questions in your mind.
- These four new offences constitute predicate crimes for the purposes of anti money laundering monitoring. If you suspect that one of your clients has engaged in one of the above offences, you have a duty to report this to SOCA as with any other suspicion of money laundering your client base might give rise to.

What you need to be aware of as a UK business

For organisations, the implementation of this legislation is worrying; these are strict liability offences, so ignorance to the actions of employees and associates is not a defence. The only defence that an organisation has to an allegation of bribery is that it had adequate procedures in place to prevent the occurrence of bribery.

The Ministry of Justice has provided comprehensive detailed guidance on what this means in practice. To summarise, it advises all organisations to follow these six principles:

1. Conduct a full **risk assessment**- where do your bribery risks lie?
2. Continue to **monitor and review** your risks on a regular basis.
3. Show a **top-level commitment** one step of which might be to implement an Anti Bribery and Corruption (ABC) policy - making it clear what your organisation's stance is and endorsing it at senior level

4. **Communicate** the policy and supporting framework to employees and associates. This could be through training, revising contracts of employment or services, updating the company handbook, or a combination of all, based on the outcome of your risk assessment.
5. Conduct **due diligence** on new and existing clients – what risk to they pose to your organisation? For MIPs this will require moderate revision to existing due diligence mechanisms you already have in place to assess you anti money laundering risks. For your clients, you will be able to advise them of how to implement due diligence procedures based on your own experience.
6. Most importantly ensure the actions you take are **proportionate** to the risks you have identified. It is expected that a large corporate entity with a number of clients based overseas will have a far more extensive framework in place to avoid the occurrence of bribery than s small UK based company with two clients based in the same geographical location.

Further information

If you would like more information on the Bribery Act 2010, you will find the following resources helpful:

- Ministry of Justice Guidance
<http://www.justice.gov.uk/downloads/guidance/making-reviewing-law/bribery-act-2010-guidance.pdf>
- Ministry of Justice quick start guide
<http://www.justice.gov.uk/downloads/guidance/making-reviewing-law/bribery-act-2010-quick-start-guide.pdf>