



UK Bribery Act 2010

Introduction

With effect from 1st July 2011, the UK Bribery Act is being implemented which is designed to update and consolidate all existing bribery legislation in the UK.

The Ministry of Justice has produced guidance on how this impacts on firms, and specifically on the type of measures that firms could be expected to take to avoid the risk of an organisation being used for bribery.

This note provides a summary of the legislation being implemented and the guidance produced. It also outlines some steps that firms should now take as part of this implementation.

Background to the Act

The Act is a UK provision impacting on all commercial organisations (as defined by the Act) and so does not just impact on financial services firms. All UK firms need to identify how this works in practice especially where they operate within groups of companies and in different global locations. Any local laws may also need to be taken into consideration for global companies.

It replaces all existing UK legislation on bribery. There are four new offences, which are criminal offences, and criminal sanctions arise from breaches of this legislation.

Offences and sanctions

The four new offences are:

- bribing another person
- being bribed
- bribing a foreign official
- failure of a commercial organisation to prevent third parties paying bribes on its behalf

Of these four, the first three can be committed by individuals, and the fourth is a corporate one - although it will include acts carried out by staff, people working on the firm's behalf, for example by an 'associated person'. For individual sanctions, (i.e. 1 - 3) the penalty can be imprisonment for a term of up to 10 years. For the fourth offence, this can result in unlimited fines for the commercial organisation.

Corporate Defence

A company could be found guilty even if no-one in the company knew about this or even if there was no intention to bribe. A defence is that the firm had 'adequate procedures' to prevent bribery.



Guidance

The guidance stresses 'proportionality' as a core principle and the Act does not prohibit 'reasonable and proportionate' activity which could be seen as normal corporate hospitality arrangements in the UK, as long as that activity is not intended to bribe individuals. Extra care however should be taken where these arrangements could involve foreign officials.

There are six high level Principles which are:

- proportionate procedures
- top level commitment
- risk assessment
- risk based due diligence
- communication
- monitoring and review

The Ministry of Justice guidance also contains case studies of the above six Principles in the context of the Act.

Adequate Procedures - Regulated Firms

The type of procedures that a firm may have which could act as a defence under the Act include such things (but is not exclusive to):

- carrying out a regular review of the firm's bribery risks
- having an inducements/gifts and entertainment policy
- having a senior manager responsible for controls on financial crime
- having a conflicts of interest policy
- ensuring that no staff ever accept cash in any circumstances
- that no remuneration structures could be seen to encourage this
- having whistleblowing procedures
- having appropriate controls for the sign off of third party payments
- carrying out appropriate due diligence on new staff and third party suppliers
- ensuring that staff disciplinary procedures specifically cover Bribery Act offences
- ensuring there is appropriate management and staff awareness of the issues

For those organisations that are regulated by the FSA or a Designated Professional Body, although this is not purely a regulatory issue, such firms should already have a number of the above procedures in place which can demonstrate this. However, they will need to ensure that it is appropriately documented how they comply and that firms can evidence these things happening in practice.

Certain documentation may need to be updated (for example the Compliance Manual, Staff Handbook, employee contracts etc). Any relevant policies should be reviewed prior to implementation to ensure that they make reference to the Bribery Act and also take any Ministry of Justice guidance into account on content. The firm's monitoring arrangements should also be updated to include reference to monitoring Bribery Act requirements.



Implementation and next steps

Although regulated firms should generally have relevant 'adequate procedures', all firms should ensure that they consider the firm's compliance with the above Act and in advance of 1st July 2011. This consideration should be evidenced for the records.

Risk Assessment

Firms should undertake a 'bribery' risk assessment of the firm, identifying the type of risks that the firm could be exposed to and the level of risk this could present. This can also document any mitigating actions.

Gap analysis and procedures review

Firms should carry out (and document) a gap analysis on existing policies and procedures taking the Ministry of Justice guidance into account. This should consider whether existing policies and procedures documentation will be considered adequate to comply with the arrangements or if not, that any such gaps are addressed with either new or updated procedures.

Communication and training

Communication or training should be provided to all senior management, employees, contractors, and temporary staff of the firm on the Act including the offences and sanctions, personal responsibilities and how the firm complies. This communication should come from and be endorsed by the senior management of the firm. This should also be provided to any new staff as part of the firm's induction and recruitment procedures.

Monitoring and ongoing review

Once the above initial review has taken place, the firm should monitor its compliance with the Act including reviewing its 'adequate procedures' defence on a regular basis. It should also carry out and document a regular assessment of the firm's bribery risks.

Please follow the attached links to the Ministry of Justice Guidance for UK organisations:

Full Guidance

<http://www.justice.gov.uk/guidance/docs/bribery-act-2010-guidance.pdf>

Quick start Guide

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

This briefing note is intended as a summary only and is not full and/or firm specific advice. For further information and assistance on how you can comply with the Bribery Act, please contact Gillian Gallacher for further guidance.