

UK Bribery Act Guidance: the Six Principles of a Non-Skewed Compliance Program

The UK Bribery Act guidance is out and the reaction has been across the board. Here is just a sampling of it. Mike Volkov, in the FCPA Blog brought up Yogi Berra by noting, *“If you don't know where you are going, you might wind up someplace else.”* He used this quote to lead into a piece entitled, *“Life after Guidance: No Change”*. This complimentary use of an American icon, whose use of the English (American version) language is legendary stands in contrast to Bill Waite, a founder of The Risk Advisory Group, also writing in the FCPA Blog, went further and termed the guidance *“questionable”*. Jim McGrath, writing in his Internal Investigations Blog, says that companies subject to the Bribery Act had better *“put on a (crash) helmet”* for it may well be a bumpy ride. Even the Wall Street Journal got into the act, with an article entitled, *“Britain Backpedals on Bribery Act.”*

However all of these pundits pale next to the skewering given the Guidance by our colleague Howard Sklar, who is working through the Case Studies on his OpenAir Blog. They make for great reading by the way, so head on over to the Open Air Blog with a tall *“cool one”* and watch him skewer the Case Studies and then enjoy *“Bar-Be-Que Case Studies ala Howard”*. You should note that Howard has promised that *“I'm going to write my own version of the Guidance. The guidance as it should have been written.”* That, my friends will be well worth the wait.

However we do not feel that the Guidance deserves quite so harsh a judgment and indeed welcome the Guidance. The reason is that we welcome any interpretation of new legislative from one of the world's strongest anti-bribery and anti-corruption regimes; as it puts into the hands of compliance professionals information on current best practices of an anti-bribery and anti-corruption program. We believe that the Guidance fulfills that mission. In this posting we will set out the Six Principles and in subsequent postings we will discuss each Principle in detail.

The Guidance provides valuable information on not only what the UK Ministry of Justice considers a best practices program but it is also a benchmark by which any US compliance practitioner can use to assess their company compliance program. Further they are not, as Lanny Breuer has suggested, *“formulaic”* but are intended to be *“flexible and outcome focused.”* With this in mind, we set out the Six Principles listed in the Guidance.

- I. Proportionate Procedures**-A company's procedures to prevent bribery by persons associated with it should be proportionate to the bribery risks it faces and to the nature, scale and complexity of the commercial organization's activities. They are also clear, practical, accessible, effectively implemented and enforced.
- II. Top-Level Commitment**-the top-level management of a company, be it a board of directors, the owners or any other equivalent body or person must be committed to preventing bribery by persons associated with it. They foster a culture within the organization in which bribery is never acceptable.

- III. **Risk Assessment-** a company should assess the nature and extent of its exposure to potential external and internal risks of bribery on its behalf by persons associated with it. The assessment is periodic, informed and documented.
- IV. **Due Diligence-**a company should apply due diligence procedures, taking a proportionate and risk based approach, in respect of persons who perform or will perform services for or on behalf of the organization, in order to mitigate identified bribery risks.
- V. **Communication (including training)-**a company should seek to ensure that its anti-bribery and anti-corruption policies and procedures are embedded and understood throughout the organization through internal and external communication, including training, that is proportionate to the risks it faces.
- VI. **Monitoring and Review-**a company should monitor and review its procedures designed to prevent bribery by persons associated with it and makes improvements where necessary.

So there you have it. Is it useless, good only for a bar-be-que or make you want to put on a crash helmet? I hope not but even if it does, please stay tuned for out next couple of segments on the Guidance.

This publication contains general information only and is based on the experiences and research of the author. The author is not, by means of this publication, rendering business, legal advice, or other professional advice or services. This publication is not a substitute for such legal advice or services, nor should it be used as a basis for any decision or action that may affect your business. Before making any decision or taking any action that may affect your business, you should consult a qualified legal advisor. The author, his affiliates, and related entities shall not be responsible for any loss sustained by any person or entity that relies on this publication. The Author gives his permission to link, post, distribute, or reference this article for any lawful purpose, provided attribution is made to the author. The author can be reached at tfox@tfoxlaw.com.

© Thomas R. Fox, 2011