

## **The Bribery Act 2010 – An Employers Guide**

The Bribery Act 2010 (“the Act”) comes into force in April 2011. Whilst it embodies a major change in Criminal law relating to bribery and embracery offences, it also impacts on Employment law issues for individuals and organisations. Dippalli Naik of Sydney Mitchell Solicitors outlines the changes and key areas for employers to be aware of.

### 1. What is a bribe?

A bribe is not specifically defined in the Act other than being a financial or other advantage. However it is presumed that it will cover all monetary and non monetary bribes, no matter the size and whether a local custom and practice allows it, e.g. gifts, business opportunities, contributions to charities.

### 2. Offences under the Act

The Act has introduced 4 new offences of bribery:

- a) offering, promising or giving a bribe (section 1)
- b) requesting, receiving or accepting a bribe (section 2)
- c) Bribing a foreign public official (section 6)
- d) Corporate bribery whereby a company or organisation (both UK and non UK based) fails to prevent bribery by a person associated with it (section 7)

The last of these offences is of the most concern to employers and is likely to have a significant impact on how businesses are run and existing policies and procedures.

### 3. Who and what is covered by Corporate Bribery?

Section 7 is drafted widely to encompass as many potential bribery situations as possible and therefore has the potential to catch out many organisations. Not only can it cover acts of bribery committed in and outside of the UK with or without an organisation’s knowledge, but the definition of an associated person is broad enough to cover all manner of employees, agents and subsidiaries.

An Associated Person is someone who performs services for or on behalf of an organisation and who is intending to obtain or retain business or an advantage in the conduct of business for that organisation. In order to determine whether a person falls within this definition, all relevant circumstances will need to be considered as opposed to simply the relationship between the organisation and the individual. However it is envisaged that categories such as sub contractors, advisors and introducers will be included and in the case of employees the Act presumes that they will be acting on behalf of their employer organisation.

Whilst not expressly mentioned in the Act, corporate hospitality could also be classed as bribery depending on the timing of the hospitality in question, its lavishness and the intentions of the organisation in giving such hospitality. In this day and age such activity is

widespread and accepted but will now come under much more scrutiny and could affect how many organisations do business and attract new work.

4. Is there a defence to section 7 offences?

The Act does allow an organisation to argue a defence in section 7(2). If it can show that adequate procedures were in place to prevent bribery occurring it may escape liability. Therefore it is crucial that organisations ensure they have proper policies in place to avoid bribery occurring and disseminate the information to all levels of the company so that everyone is aware of the implications of committing an act of bribery.

5. What are adequate procedures?

The Act confirms at section 9(1) that the secretary of state will produce guidance for organisations about the types of adequate procedures that can be implemented to prevent bribery. Nevertheless this guidance will not be a fool proof list of procedures that organisations can simply pick from and action – they will need to think carefully about how to implement a policy which is bespoke and tailored to the business.

This guidance is still under review however there are steps employers can take from now to ensure they do not fall foul of the legislation:

- a) Make sure whistleblowing policies are in place and adhered to and if necessary extend the scope of the policy to cover other groups of people besides employees, e.g. contractors, casual workers and temps. It may also be prudent to include bribery as a specific issue to be reported.
- b) Assess whether an anti corruption policy should be introduced.
- c) Consider updating employment contracts to include a clause stating that bribery must be reported to management or a specific member of staff.
- d) Review recruitment processes to consider whether specific questions about bribery should be asked either in the application process or at interview.
- e) Amend disciplinary policies to include acts of bribery and introduce specific penalties if an act is committed.
- f) Hold training sessions with staff to ensure they understand the changes and know how to identify and avoid potential situations which could involve bribery.
- g) Ensure that any remuneration or commission schemes do not inadvertently promote, allow or imply acceptance of bribery.
- h) Regularly engage in risk assessments to assess the bribery risks the organisation may be exposed to and take action to minimise them.

## 6. What penalties could organisations face?

If a bribery offence is committed by an organisation with the consent or connivance of a director, manager or someone of similar office that person as well as the organisation will be found guilty of bribery under section 14 of the Act.

Section 14 states that an individual will face up to 10 years in prison and a limitless fine. If the individual is a director of an organisation he/she could also be disqualified from office for up to 15 years.

Organisations will face unlimited fines, confiscation of up to the gross benefit accruing from the bribe and possibly being barred from public sector contracts for up to 5 years.

## 7. Conclusion

It is clear that the Bribery Act will have far reaching consequences for those organisations that turn a blind eye to it. It is therefore essential that employers take action now before the Act takes effect to ensure they know their legal obligations and can avoid future difficulties both with their staff and other businesses.

If you are not sure how to deal with the above changes or need guidance to make sure you consider and carry out everything correctly, we at Sydney Mitchell are here to help. Our team of dedicated Employment Solicitors are on hand to walk you through any changes you may need to action as a result of the Bribery Act and can advise you on all aspects of Employment Law generally whenever you need it. For further information on the firm and the Employment Team please contact us on 0121 698 2200 or visit our website at [www.sydneymitchell.co.uk](http://www.sydneymitchell.co.uk).