

UK Bribery Guidance Released: An Initial Look at the Quick Start Guide

The long awaited final Guidance on the UK Bribery Act was released today. It provides a wealth of guidance for the compliance professional whether a company is located in the UK, US or anywhere else in the world. This will be the first of several articles we will present on the Guidance. We will begin with the Quick Start Guide. Other releases today were the Guidance and Joint Prosecution Guidance.

The Quick Start Guide notes that the key points of the Bribery Act are:

- The Bribery Act only deals with bribery and not other forms of white collar crime.
- A company will only be vicariously liable for the acts of third parties if such illegal conduct was performed on behalf of a company.
- A company does not need to put anti-bribery procedures in place if it has no risk of bribery.
- Corporate hospitality is not prevented by the Bribery Act.
- Facilitation payments are still illegal Bribery Act, just as they were under prior UK law.

The Quick start notes that a company does not commit the offence of failing to prevent bribery if it can show that it had '*adequate procedures*' in place to prevent bribery. The scope and parameters of *adequate procedures* will depend on the bribery risks a company face and the nature, size and complexity of a business. So, a small or medium sized business which faces minimal bribery risks will require relatively minimal procedures to mitigate those risks.

The Quick Start lists six general guidelines designed to assist a company to determine what steps it will need to take to determine the scope of its *adequate procedures* decide what, if anything, a company need to do differently:

- 1. Proportionality.** The action a company should take should be proportionate to the risks a company face and to the size of a the business. So a company might need to do more to prevent bribery if it is a large organization, or if a company is operating in an overseas market where bribery is known to be commonplace, compared to what a company might do if it is a small organization, or is operating in markets where bribery is not prevalent.
- 2. Top Level Commitment.** Those at the top of an organization are in the best position to ensure their organization conducts business without bribery. A company will want to show that it has been active in making sure that all employees (including any middle management) and the key people who do business with a company understand that it does not tolerate bribery.
- 3. Risk Assessment.** Think about the bribery risks a company might face. For example, a company might want to do some research into the markets which it operates and the third parties it deals deal with, especially if a company are entering into new business arrangements and new markets overseas.

4. **Due Diligence.** Knowing exactly who a company is dealing with can help to protect a business from taking on people who might be less than trustworthy. A company may therefore want to ask a few questions and do a few checks before engaging others to represent a company in business dealings.
5. **Communication.** Communicating anti-bribery policies and procedures to staff and to others who will perform services for a company enhances awareness and helps to deter bribery by making clear the basis on which an organization does business. A company may, therefore, want to think about whether additional training or awareness appropriate or proportionate to the size and type of its business.
6. **Monitoring and Review.** The risks a company faces and the effectiveness of procedures may change over time. A company may want, therefore, to keep an eye on the anti-bribery procedures so that they keep pace with any changes in the bribery risks a company may face when, for example, a company enters new markets.

The Quick Start goes on to provide guidance on risk assessment, due diligence and the use of third party consultants in the creation of anti-bribery policies and procedures. Every practitioner needs to be aware of these releases and should review them to determine their impact your company.

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