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The UK Bribery Act 2010

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New UK Legislation - Background

- Passed House of Commons April 2010
- Replaces legislation stretching back to 1889
- Consultation closed November 2010
- Final guidance issued March 2011
- In force 1st July 2011

Who is responsible for the UK Act?

- Ministry of Justice (MoJ)
- Serious Fraud Office (SFO)

UK Legislation - Highlights

- **Applies to public & private officials**
- Increases penalties - 10 years jail and/or unlimited fines for individuals, companies & partnerships
- Offences
 - Offering, promising or giving an advantage
 - Requesting, agreeing to receive or accepting an advantage
 - Bribing a foreign public official
 - Failure to prevent bribery
 - Accepting or giving a bribe

Failure to Prevent Bribery – s.7

“Failure of commercial organisations to prevent bribery

- (1) A relevant commercial organisation (“C”) is guilty of an offence under this section if a person (“A”) associated with C bribes another person intending—*
- (a) to obtain or retain business for C, or*
 - (b) to obtain or retain an advantage in the conduct of business for C.*
- (2) But it is a defence for C to prove that C had in place adequate procedures designed to prevent persons associated with C from undertaking such conduct.....”*

What is “persons associated”?

Purposely wide definition and will include:

- Suppliers
- Contractors
- Employees
- Agents
- Franchisees

Is there any guidance?

- MoJ guidance
 - Consultation process closed November 2010
 - Final guidance issued March 2011
 - Changed substantially from draft guidance
- Joint prosecution guidance
 - Issued March 2011
- MoJ Circular 2011/05
 - Issued June 2011
- Ken Clarke: *“combating bribery is about common sense, not bureaucracy”*

New UK Legislation – Geographical Reach

The offences of giving and receiving bribes and bribing foreign public officials apply to

- UK corporate entities, even if they are foreign owned
- British citizens
- Individuals ordinarily resident in the UK regardless of where the relevant act occurs
- Non-UK nationals & entities if an act or omission forming part of the offence takes place within the UK

Key Differences with FCPA Policies

- ‘Foreign Public Official’
- Hospitality
- De minimis levels
- Facilitation payments
- “Clear, practical, accessible and enforceable”

Hospitality and Promotional Expenditure

- *“Hospitality and promotional expenditure can employed improperly and illegally as a bribe”*
- SFO say *“used.. to groom employees.. into a position of obligation and thereby prepare the way for major bribery”*
- Key concerns:
 - Professional education often a cover
 - ‘Lavish’
 - Different standards for different industries
 - F1
 - Olympics
- MoJ want to trigger a review of hospitality standards
- Remember: accepting a bribe as well as giving one is an offence

Facilitation Payments

- Banned under UK legislation (and under old UK legislation)
- Permitted under some circumstances by FCPA
- OECD say facilitation payments ‘corrosive’
- SFO feel often a cover for more widespread corruption
- SFO interested in cross-sector initiatives
- SFO say prosecutorial decisions likely to be taken on:
 - Amount
 - Systemic or not?
 - Strength of policies & procedures

Directors, Senior Officers etc.

Section 14 specific offence

- Any “senior officer” will be guilty of the same offence as the company if he or she has consented to or connived in the commission of the offence
- Senior officer includes “a director, manager, secretary or other similar officer of the body corporate”

MoJ Guidance

Six principles for Bribery Prevention

1. Proportionate procedures
2. Top level commitment
3. Risk assessment
4. Due diligence
5. Communication (including training)
6. Monitoring and review

Resources

- Briefing – www.bit.ly/kenspik
- Bribery Act 2010 - <http://bit.ly/bribelaw>
- MoJ guidance – <http://bit.ly/mojguide>
- Prosecutor's guidance - <http://bit.ly/prosguide>
- MoJ circular - <http://bit.ly/iLO2xe>

Questions

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