



Bulletin 184

October 2010

## CONSULTATION ON THE BRIBERY ACT 2010

The Bribery Act is due to come into force in April 2011. On 14 September 2010, the Ministry of Justice published its consultation paper in relation to draft guidance aimed at preventing acts of bribery within commercial organisations.

The Ministry of Justice will consult with various UK companies, in relation to the draft guidance, from 14 September 2010 until 8 November 2010.

### Corporate Offence - Failure to prevent bribery

Section 7(1) of the Bribery Act provides that a commercial organisation will be guilty of a criminal offence if a person associated with the commercial organisation bribes another person with the required intent (obtaining or retaining business or some other advantage for the commercial organisation). A person is associated with a commercial organisation if he performs services for or on behalf of it.

It will be a defence for a commercial organisation to show that it has "adequate procedures" in place to prevent acts of bribery when the act took place.

### Draft Guidance - Adequate Procedures

The Secretary of State has published guidance in the form of six broad management principles to help commercial organisations to introduce and monitor appropriate bribery prevention procedures.

- Principle 1: Risk Assessment

*"The commercial organisation regularly and comprehensively assesses the nature and extent of the risks relating to bribery to which it is exposed"*

- Principle 2: Top Level Commitment

*"The top level management of a commercial organisation (be it a board of directors, the owners or any other equivalent body or person) are committed to preventing bribery. They establish a culture within the organisation in which bribery is never acceptable. They take steps to ensure that the organisations policy to operate without bribery is clearly communicated to all levels of management, the workforce and any relevant external actors"*

- Principle 3: Due Diligence

*"The commercial organisation has due diligence policies and procedures which cover all parties to a business relationship, including the organisation's supply chain, agents and intermediaries, all forms of joint venture and similar relationships and all markets in which the commercial organisation does business"*

- Principle 4: Clear Practical and Accessible Policies and Procedures

*"The commercial organisation's policies and procedures to prevent bribery being committed on its behalf are clear, practical, accessible and enforceable. Policies and procedures take account of the roles of the whole work force from the owners or board of directors to all employees, and all people and entities over which the commercial organisation has control"*

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- Principle 5: Effective Implementation

*“The commercial organisation effectively implements its anti-bribery policies and procedures and ensures they are embedded throughout the organisation. This process ensures that the development of policies and procedures reflects the practical business issues that an organisation’s management and workforce face when seeking to conduct business without bribery”*

- Principle 6: Monitoring and Review

*“The commercial organisation institutes monitoring and review mechanisms to ensure compliance with relevant policies and procedures and identifies any issues as they arise. The organisation implements improvements where appropriate”.*

➤ **Practical Tips**

The above six principles are to be used as a “flexible guide” when determining what procedures are right for your organisation. You will need to tailor any anti-bribery policies to reflect the size, nature and structure of your business.

By way of example, you may wish to undertake the following:

- Draft and publicise a statement of commitment to counter bribery and a code of conduct setting out expected standards of behaviour for employees and other associated persons
- Allocate roles and responsibilities for implementing anti-bribery policies to persons within the business (led by senior members of management if possible) supported by a training plan
- Assess the risk of bribery in particular countries, in which you seek to form any business relationship, and consider whether the business can rely on any domestic anti-bribery procedures in that country
- Draft a policy and procedure for handling suspicious circumstances and incidents in the business
- Introduce a contractual provision into employment contracts and other contractual agreements with third parties which require the other party to agree to abide by your anti-bribery procedures and policies
- Provide clear guidance on making political and charitable donations, gifts, hospitality and promotional expenses
- Review and maintain anti-bribery policies and procedures, for example, through effective financial and auditing controls, and identify appropriate timescales / trigger events for their review.

If you would like to contribute to the consultation process, we will be pleased to forward your views on your behalf. Please email your comments to [emma.clarke@brabnerscs.com](mailto:emma.clarke@brabnerscs.com) before 6 November 2010.

If you require any specific advice in connection with the material contained in this bulletin, or on any other Employment Law issues, please contact: Paul Chamberlain in Manchester on 0161 836 8864, Andrew Cross in Liverpool on 0151 600 3062 or Kevin James in Preston on 01772 229847.

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