



THE BRIBERY ACT 2010

Introduction

UK businesses have recently become subject to greater compliance pressure from Government legislation following the introduction of the Bribery Act as from the 1st July 2011. The Act covers the paying or receiving of bribes, bribing foreign public officials and the failure of businesses to prevent bribery.

The potential penalty for senior management is incurring personal criminal liability carrying up to 10 years in prison, or a fine or both and companies and businesses themselves face unlimited fines if they fail to prevent bribery.

It is not necessary to be a major corporation to be exposed to this new law, as it applies to all business conducted both within and outside the UK where bribery is involved and includes bribery by subsidiaries, agents, contractors, JV partners or intermediaries acting on the companies behalf and effectively outlaws "facilitation payments".

Despite the warnings in the press that normal corporate hospitality could fall foul of this new law, the ruling guide is proportionality so that as long as corporate hospitality, promotional expenditure and political and charitable donations are reasonable and not intended as a bribe, they will be permissible.



INDIVIDUALS CAN FACE UP TO 10 YEARS IN PRISON

WHAT DEFENCE IS POSSIBLE?

The only possible defence to a breach of the law, is to show that "adequate procedures" are in place which are proportionate to the size and resources of the business.

Guidance was published by the Government in March 2011 as to what is meant by "adequate procedures."

These procedures will then be considered against whether the company uses intermediaries and whether it operates in countries poorly rated in international corruption ratings.

WHAT ACTION SHOULD BE TAKEN?

To demonstrate to a Court that you have "adequate procedures" it is likely that you will need to show that you have a robust compliance process in place that is based on a risk-focused due diligence procedure, demonstrating that the company has made a concerted effort to identify and put a stop to improper payments.



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WHAT INSURANCE POLICIES ARE RELEVANT TO THE BRIBERY ACT?

A Directors & Officers Liability Policy is likely to be critical in mitigating the risks posed by this new legislation, by helping to cover the costs associated with the legal defence of the Directors for their failure in corporate governance duties.

A Directors & Officers Liability Policy will not however pay for criminal fines or penalties imposed upon a Director found guilty of bribery.

Similarly, where the company itself is charged, if entity cover is provided by the Policy, company defence costs will also be covered.

It is likely that in future Insurers when underwriting a Directors & Officers risk will pay more attention to a company's potential exposure to the Bribery Act and require more information as to the company's compliance with adequate procedures.

If you require any additional information please speak to your usual Tyser contact.

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