



### **Bungs and Bribes and all things (not) nice! -The Bribery Act 2010**

Up to now in the UK, bribery and corruption offences have only been prosecuted where very senior management were involved in the corruption and where there was a strong case for proving fraudulent intent or at least recklessness in turning a blind eye to a particular trading custom, eg extortionate corporate hospitality being offered or accepted in return for securing or granting valuable contracts. The USA has had the Foreign Corrupt Practices Act in place since the 1970's. The UK now has its own codification of the law, the Bribery Act 2010. Not only has the law been codified but it has been greatly widened in scope. It extends the crime of bribery to cover all private sector transactions (previously bribery offences were confined to transactions involving public officials and agents).

The Bribery Act 2010 changes the landscape entirely and will introduce "strict liability" for Companies and their senior Management in certain cases. The only defence available is to demonstrate that the organisation had in place "adequate procedures" to prevent bribery.

With approx 95% of all businesses being SME's, the Act will have an especially costly and time consuming impact on the great bulk of our businesses and will force SMEs to undertake due diligence on their trading partners, agents and resellers and make sure they "know who they're dealing with" because they are also responsible for ensuring the compliance of any agent or contractor connected with their business. Employment documentation and Commercial Agreements will have to be updated.

The offences contained in the Bribery Act carry criminal penalties for individuals and organisations. For individuals, a maximum prison sentence of ten years and/or an unlimited fine can be imposed; for companies, an unlimited fine can be imposed.

The Act creates four offences:

offering, promising or **giving** a bribe.

requesting, agreeing to receive or **accepting** a bribe.

bribing a foreign public official to obtain or retain business.

A new strict liability offence for failing to prevent bribery by those acting on their behalf. This covers acts of the Company's agents and distributors for example as well as the Company's employees. This is where the "adequate procedures" defence is crucial.

Measures that, if taken, will assist businesses to rely on this defence include:

- ensuring that high level management understands the implications of the new Act and is encouraged to foster a zero tolerance to corrupt or shady practices;
- drafting and ensuring adherence to an anti corruption policy, underpinned by updating contracts with employees, agents and distributors so as to build in anti-bribery provisions into employee handbooks and employment contracts for example;
- carrying out a risk assessment of the business. Some Countries and some industries are more susceptible to corrupt practices. Measure the risk objectively;
- carrying out due diligence on third parties at the beginning of the relationship such as with new agents and distributors;
- the provision of training to staff in relation to the Act and its implications for them.

Tyrer Law can assist you to prepare for the Act (which comes into force in April 2011) by educating Management and in updating policies and procedures and contracts with employees and others for whom you are responsible for ensuring compliance. For advice in this area, contact Andrew Tyrer of Tyrer Law by email or telephone.



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**November 2010**