



## The Likely Impact Of The Bribery Act 2010

**We all enjoy giving and receiving gifts. In the context of the workplace, a simple thank you gift or lunch to reflect your appreciation of a client's business is, and always has been, entirely appropriate.**

However, lavish gifts to clients and hospitality given or accepted as a bribe will be viewed by the Courts as serious crimes if and when the Bribery Act is implemented.

The new legislation was set to come into force in April 2011 although on the 31 January the Government announced its intention to postpone the start date due to its failure to publish guidance for those affected by the new provisions. The Act seeks to provide a new legal framework which is better able to combat bribery in both the private and public sectors.

Replacing the current disjointed provisions, the Act creates two general offences covering the offering, promising or giving of a bribe, and requesting, agreeing to receive or accepting of a bribe, and a distinct offence of bribing a foreign public official.

Most interesting, it creates an entirely new offence of failure by a commercial organisation to prevent a bribe being paid for or on its behalf. Companies will have a defence if they can demonstrate that they had adequate procedures in place to prevent bribery.

The Act has been criticised as creating liability for companies in absence of any intention to bribe, and what might be a severe punishment purely because of weak compliance processes. There has also been criticism that UK companies may be prejudiced when competing against foreign domiciled companies who operate within countries where anti-bribery laws are not as stringent or as rigorously enforced.

Unlimited fines and custodial sentences of 10 years show the seriousness with which these offences are viewed.

**Whilst guidance will be published in due course, ahead of its publication and the implementation of the Act, companies can and should prepare themselves now in the following ways:**

1. There must be a commitment made at board level to prevent bribery and establish a culture in which bribery is never acceptable. The board should discuss the topic and agree to these commitments.
2. The board should identify the most effective manner in which to communicate these commitments to all staff and relevant third parties, and the timing of such.
3. The board should ensure that a risk assessment is undertaken to identify the organisation's exposure to the risk of bribery. This should scrutinise the nature and extent of the risks relating to bribery across the whole of the organisation and its activities, including a review of work requiring engagement with foreign public officials. Going forwards, the board should ensure that such a risk assessment is undertaken at regular intervals to ensure it remains valid and comprehensive.
4. An anti bribery policy and procedure must be written which expressly applies to all relationships the organisation forms, including agents, intermediaries and joint ventures and to all markets in which the organisation does business. It should be clear and practical on what the company's policy is in respect of gifts and hospitality, and it should be accessible to all relevant people.
5. The policy and procedure must be embedded into the organisation's culture. Effective training and monitoring of compliance are essential.
6. The policy and procedure should be regularly monitored to ensure compliance, identify issues as they arise and implement improvements.

A one off memo and training session and a pristine policy which sits on the shelf gathering dust are unlikely to suffice should an inspector call.

Advice and assistance on compliance with the new legislation is available from Osborn Abas Hunt.