

## The Bribery Act 2010 – At what point does my Christmas gift become bribery?

Can I still accept corporate hospitality? Can I still invite people out to dinner?

## What is the Bribery Act 2010?

The Bribery Act 2010 ('the Act') will come into force on 1 July 2011.

The government published procedures guidance on 30 March to enable commercial organisations to become compliant with the new Act before it is law. The aim of the procedures guidance is to provide commercial organisations with guidance on how they can prevent bribery and put in place adequate bribery prevention procedures.

## Who will be affected by the Act?

All commercial organisations large and small should be aware of the serious implications the Act may have.

Some larger commercial organisations, which trade with the US for example, may already have policies and procedures in place to protect them from the existing anti-bribery law. However these policies will need to be reviewed in light of the Act and for the vast majority of smaller commercial organisations who have no such procedures and policies in place, they will need to implement new procedures which are robust enough to potentially provide a defence to an offence under the Act.

## What is bribery?

The Act sets out four offences:

- Bribing another person.
- Being bribed.
- Bribing a foreign public official.
- Commercial organisations failing to prevent bribery.

The last of these offences has caused the most concern for commercial organisations. It is committed where a commercial organisation fails to prevent bribery by one of its employees, agents or persons connected with it. The organisation does not need to be aware of the bribery for this offence to be committed. However there is a defence if the organisation can show they had in place adequate bribery prevention procedures. Therefore getting these procedures in place is vital.

The penalties for committing the offences include fines and imprisonment. Companies convicted of corruption may also be permanently debarred from tendering for public sector contracts which is potentially very serious if your organisation relies on public sector contracts. Organisations should also appreciate the impact of adverse publicity if they are prosecuted for an offence under the Act.

If you would like to discuss any issues raised in this information sheet or any other related matter please do not hesitate to contact our Team on:- 01279 755777 or email Sarah Miles on smiles@nockolds.co.uk

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## How does the Act affect corporate hospitality and gifts?

The government's response to corporate hospitality is *'to the extent that reasonable hospitality is a normal part of business, we are not seeking to discourage such practices...'*

Nevertheless businesses will need to give thought to giving and receiving gifts, including corporate hospitality. The appropriateness of these gifts should be considered. In particular the timing, value and the intention behind the gift should be borne in mind, especially where such gifts are given or received during the course of commercial negotiations or a tendering process. A business' bribery prevention procedures should include a policy for giving and receiving gifts. This should include guidance on refusing gifts where they are considered inappropriate.

## What can you do to protect your business?

The Guidance procedure sets out six principles for bribery prevention, which are listed below. Before the Act comes into force there are steps that you can take, in particular to ensure that the 'adequate procedures' are in place by 1 July.

**Risk assessment:** Commercial organisations should regularly and comprehensively assess the nature and extent of the risks relating to bribery, to which it is exposed.

**Top level commitment:** Top level management must be committed to preventing bribery and a culture whereby bribery is never acceptable should be established. This policy should be communicated with all staff and any external parties.

**Due diligence:** Commercial organisations should have due diligence policies and procedures for all business relationships. The risk of corruption should be identified before entering into any business relationship including the acquisition of another company or business, a joint venture, a service contract or the appointment of an agent.

**Clear, practical and accessible policies and procedures:** The policies and procedures for anti-corruption should be clear and practical and apply to the entire workforce. It should be published internally (on notice boards and in the employees' handbook) and externally (for example on the web-site).

**Effective implementation:** The policies and procedures must be properly implemented throughout the organisation. A strategy for implementation may be set out dealing with who is responsible for the implementation, how the policies will be communicated, training, internal reporting procedures, monitoring, penalties for breach and dates for review.

**Monitoring and review:** The policies and procedures need to be continually monitored for compliance and effectiveness.

## How can Nockolds LLP help?

We can help you prepare bribery prevention procedures and policies. Where required we can amend employment contracts to ensure that your organisation is protected in the event that an employee is in breach of the Act. We can review your business to identify any issues which need to be addressed in light of the offences under the Act.

If you would like any more information on the above or would like to discuss further please contact Sarah Miles on (01279) 712 584 or smiles@nockolds.co.uk

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