



## Introduction

- Came into force 1 July 2011 and replaces existing laws
- Accompanied by Ministry of Justice Guidance
- Act motivated by deficiencies in previous system
- The Act goes further than previous law and creates new offences

## Offences under the Bribery Act

- Four general categories of offence:
  - General offence of bribing another person (section 1)
  - General offence of receiving a bribe (section 2)
  - The specific offence of bribing a foreign official (section 6)
  - The corporate offence of failing to prevent bribery (sections 7 – 9)

## Penalties

- Maximum 10 years imprisonment for all offences for senior officers (except the corporate offence)
- Unlimited fine
- Director Disqualification for 15 years

## The general offences (Sections 1 and 2)

- These offences are committed when a person:
  - Offers, promises or gives another; or
  - Requests, agrees to receive or accepts
  - A financial or other advantage in connection with a person performing a function improperly.
- Various scenarios set out in the Act
- No need to show corrupt intent

## Bribing a Foreign Official (Section 6)

- Separate specific offence
- No requirement for the Foreign Official to perform “improperly”
- Offence even if the payment is permitted or expected by local law or custom (e.g. facilitation payments) unless permitted by written law
- Public Official broadly defined

## The corporate offence (Section 7)

- The failure of a commercial organisation to prevent bribery
- Applies to:
  - A company or partnership incorporated or formed in the UK irrespective of where it carries out business
  - Another body corporate or partnership wherever it is incorporated or formed which carries on part of its business in the UK

## The corporate offence

- Strict liability offence
- Organisations liable if:
  - A **person associated** with it bribes another person intending to obtain or retain business or an advantage in the conduct of business; and
  - There are no **adequate procedures** in place designed to prevent bribery



## Associated person

- Anyone who performs services on behalf of company/partnership
- Wide enough to include:
  - Employees
  - Agents
  - Intermediaries
  - JVs
  - Subsidiaries

## Adequate Procedures

- Adequate procedures provides full defence
- Not defined in Act but Guidance (non prescriptive) is based on six principles:
  - Proportionate Procedure
  - Top-Level Commitment
  - Risk Assessment
  - Due Diligence
  - Communication (including training)
  - Monitoring and review
- Risk based proportionate approach

## Adequate Procedure – Practical Steps

- “Top down” approach ensuring senior management and oversight of all policies
- Compliance Officer
- Risk Assessment
- Code of conduct
- Staff training
- Review existing procedure e.g. whistleblowing and disciplinary
- Standard clauses in commercial contracts

## Hospitality

- The Act does not criminalise hospitality
- Bona fide, reasonable and proportionate
- Industry norms are relevant
- Minimise risk with gifts and hospitality policies appropriate to the organisation

## Bribery risk “hot spots”

- Overall risk profile
  - Industry sector
  - Jurisdiction ([www.transparency.org.uk](http://www.transparency.org.uk))
  - Transaction type – public procurement
  - Business opportunity – no clear objective
  - Business partnership – Foreign Official involved

## Facilitation Payments

- Not defined but no exemption and no distinction between small or large bribes
- SFO Prosecution Guidance confirm all Facilitation Payments are illegal and if paid SFO will need to consider public interest factors for and against prosecution

## Facilitation Payments

- Organisations liable for bribery committed by associated persons (e.g .agents, suppliers)
- Adequate procedures can form basis of a defence to offence of failing to prevent bribery (section 7)
- *R and BAE Systems Plc*
- *Mabey Construction*

## Assess the other party

- Conduct due diligence
- Other party's approach to reducing bribery
- Serious Fraud Office indicators
  - Abnormal cash payments
  - Lavish gifts
  - Missing documents/records
  - Unusual payment patterns



## Minimising Risk in Commercial Contracts

- Direct obligations to prevent corruption
- Warranties – no offences committed under the Act
- Commit to their own or your anti-bribery policies
- Right to access information
- Right to terminate contract
- Indemnity – public policy rules
- Obligations to be imposed on sub-contractors

## In summary

- Response should be *proportionate*
- Put policies in place and communicate policies widely
- Risk managed “top down”/training provided

Thank You



## Contact Details



Rhian Brace  
DD : 029 2039 1734  
rhian.brace@geldards.com  
www.geldards.com

