

The Bribery Act 2010

– a new ethical code for business

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The Bribery Act 2010 was passed in the UK on 8 April 2010 and is likely to come into force later this year.

The Act replaced the common law offences of bribery and 'embrace' and some out-of-date 19th and early 20th century legislation.

The Act creates four new offences – offering bribes; receiving bribes; bribing foreign officials and failure on the part of commercial organisations to prevent bribery.

The first three of these offences are extensions of the existing law. The interesting new departure is the Section 7 offence (failure of commercial organisations to prevent bribery) which is an offence of strict liability.

A 'relevant commercial organisation' can be liable under Section 7 if one of its associ-

ates commits bribery for the benefit of the relevant commercial organisation and whether or not authorised by the relevant commercial organisation to do so. The organisation will, however, have a defence where it can demonstrate that it had 'adequate procedures' in place at the time of the alleged offence which were 'designed to prevent persons associated with [the relevant commercial organisations] from undertaking such conduct [i.e. bribery]'.

The Government is to issue general guidance on what such "adequate procedures" are but the guidance is likely to worded be in such broad terms as not to constitute a clear "safe harbour" of protection for relevant commercial organisations. Such organisations will

need, therefore, to apply this guidance to the circumstances of their particular case.

All four offences will have extra-territorial effect outside the UK, though the defendant party in each case will need to have had some kind of link with the UK. The Act provides for criminal penalties of up to ten years imprisonment and unlimited fines.

The Act will need to be taken very seriously by affected businesses who will need to review their detailed strategy, whether in relation to corporate hospitality, facilitation payments or otherwise.

The Act gives no "safe harbour" for what businesses may currently consider to be "normal" commercial practices and leaves it open for such practices to be challenged. ■



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