



Reform of UK Bribery Law

Background:

Reform of the UK's bribery laws is moving closer. The draft Bribery Bill (the "Bill") was published in March 2009 and is intended to modernise the current law on bribery when it comes in to force.

After a period of consultation in England, Wales and Northern Ireland, a Joint Parliamentary Committee published its recommendations on the Bill.

The Scottish Government is seeking views (by 22nd October 2009) on the reform of bribery and corruption law in Scotland based on the same Bill published by the UK government in March.

Summary of the Bill:

The Bill creates new offences that may be committed by individuals under sections 1, 2 and 4. For companies, sections 5 and 6 are the important parts of the Bill, creating a new corporate offence of "negligent failure to prevent bribery" by persons working on behalf of a business. Section 11 provides for penalties in respect of both individuals and companies.

New Offences:

The Bill will introduce the following new offences:

- Promising or offering a bribe.
- Requesting, agreeing to receive or accepting a bribe.
- Bribing a foreign public official.
- A new corporate offence of negligently failing to prevent bribery by persons working on behalf of a business. BUT companies can avoid conviction if they can demonstrate that they had good systems in place to prevent bribery.

New Penalties:

The maximum penalties for the new offences are severe:

- Individuals face imprisonment for up to 10 years.

- Companies face an unlimited fine. Note that a company and its directors could be subject to criminal penalties.
- Convictions may also bring other serious consequences such as director disqualifications, winding up orders, Serious Crime Prevention Orders (which may include onerous financial reporting requirements) and exclusions from government procurement contracts.

Recommendations:

Prudent companies operating in Scotland and the rest of the UK will therefore note the impending legislative changes and take immediate steps to:

- (1) Prohibit bribery in any form (direct or indirect) by or of the company; and
- (2) Update their risk assessments, training programmes, systems and controls accordingly.

(1) Prohibition of Bribery

In this regard, it is recommended that you:

- Review the adequacy of your internal anti-bribery procedures.
- Put in place staff training and ensure you have written procedures available to staff/consultants. Consider incorporating these into contracts of employment and service and enable termination of employment/engagement in the case of breach.
- Consider including standard clauses in your commercial contracts prohibiting bribery and corruption.
- Carry out due diligence before entering into arrangements with other parties.
- Ensure that appropriate checks are carried out during the processing of payments.
- Consider how you would deal with an allegation of bribery or corruption made within the company or in public. In particular, for a public allegation, consider how you might effectively reduce potential damage to reputation.

(2) Systems, Controls and Procedures

For larger companies and PLCs in particular, it is important that you implement detailed anti-bribery systems and procedures into your business. It is recommended that these procedures have regard to the following:

- A statement of values.
- A code of conduct.
- Detailed policies and procedures, including, for example, policies on gifts, hospitality, facilitation payments, vetting outside agents and advisers, lobbying and political contributions.
- Risk management procedures, for example, regular auditing of compliance.
- Training and guidance.
- Internal controls.
- Oversight.
- Monitoring and assurance.
- Whistleblowing procedures.

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