



## The Bribery Act 2010

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Company Commercial partner Max Hudson examines The Bribery Act 2010 which came in to force on 1 July 2011.

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The much-heralded laws to deal with corruption, set out in the Bribery Act 2010, came into force on 1 July 2011.

The new laws - replacing effectively pre-Great War legislation - were introduced under pressure from the OECD and other international institutions.

The "black letter" of the law is extremely strict and the latest Government Guidance therefore has sought to soften its implementation by giving assurances as to the fact that "reasonable" corporate hospitality will not give rise to problems. It is a fact that there are limited prosecuting resources available, so it is unlikely that the DPP and the SFI will be seeking to make an example of those who bought tickets to the Olympic Games - for reasons of self-interest if nothing else.

There has been much speculation and comment, including a statement by Ministers in the short form Guidance that there is no need for expensive legal advice and complex compliance structures. This may well be true but it is worth bearing in mind that the law is ultimately interpreted by the Courts and not by civil servants, Ministers or even Parliament.

All businesses operating in the UK come within the ambit of the Act, and it includes overseas activity. The rules are particularly strict in terms of dealings with overseas officials.

When considering the implementation of the Act, every business will need to go through the issues raised in the "Six Principles". For many businesses, there will, as the Ministry of Justice has said, be very little of relevance. Others, such as businesses that deal with the provision of information or the procuring of contracts on an international basis, will have a very significant amount of work to do in order to be seen to consider, review and implement the law. As one can tell from the wording of General Principles 2, 3 and 6, businesses are expected to deal with this on a continuing basis.

Members of the Firm are briefed on the new laws and the Firm is reviewing the impact of the legislation and we will be happy to help all clients on the issues raised for them on an individual basis.

For the sake of completeness, we set out below the Six Principles and the issues which each commercial organisation will need to consider on a case by case basis.

## THE SIX PRINCIPLES

### Principle 1: Proportionate Procedures

Commercial organisations need to prevent bribery by them and persons associated with them. The review process needs to be proportionate to the risk they face and to the nature, scale and complexity of the organisation's activities. They also need to be clear, practical, accessible, effectively implemented and enforced.

### Principle 2: Top-Level Commitment

The top level of management of the organisation needs to be committed to preventing bribery by persons associated with it. They need to foster a culture within an organisation in which corrupt practices are never acceptable.

### Principle 3: Risk Assessment

The organisation needs to assess the nature and extent of its exposure to potential, external and internal risks of bribery on its behalf by persons associated with it. The assessment needs to be periodic, informed and documented.

### Principle 4: Due Diligence

Suitable due diligence taking a proportionate and risk base approach needs to be implemented to identify the risks.

### Principle 5: Communication (including training)

The organisation needs to ensure that its procedures and policies are embedded and understood throughout the organisation through internal and external communication that is proportionate to the risk.

### Principle 6: Monitoring and Review

The organisation needs to monitor and review procedures designed to prevent bribery by persons associated with it and make improvements where necessary.

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If you would like further advice on the impact of the new law, please speak to your usual contact at this firm. Alternatively contact Max Hudson on 0207 465 4300 or email [mhudson@phb.co.uk](mailto:mhudson@phb.co.uk).

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