

UK Bribery Act: its scope in the Middle East



By Peter Hodgins and Iain Jones

The United Kingdom Ministry of Justice (the MoJ) has published the long awaited guidance (the Guidance) in relation to the *Bribery Act 2010* and has confirmed that the *Bribery Act* will come into force on 1 July 2011. The Guidance specifies the procedures and safeguards required to be put into place by commercial organisations in order to prevent bribery.

It is clear that UK prosecuting authorities intend to actively prosecute overseas corruption. Commercial organisations should immediately implement an extensive bribery risk assessment to facilitate the implementation of bribery prevention procedures that are appropriate to the size, nature and scope of their operations in the Middle East.

Brief overview

The *Bribery Act* replaces the UK's existing common law and statutory anti-corruption laws with four new offences: (i) a general offence of offering, promising or giving a bribe (Section 1, *Bribery Act*); (ii) a general offence of requesting, agreeing to receive or accepting a bribe (Section 2, *Bribery Act*); (iii) a distinct offence of bribing a foreign public official to obtain or retain business (Section 6, *Bribery Act*); and (iv) a new strict liability offence for commercial organisations that fail to prevent bribery by those acting on their behalf (their associated persons), where the bribery was intended to obtain or retain a business advantage for the commercial organisation (Section 7, *Bribery Act*).

The Guidance

The Guidance is non-prescriptive and it specifically notes that it is not a "one-size-fits-all" solution. It offers greater clarity on the following issues:

- *Hospitality* — The Guidance recognises that bona fide hospitality that is reasonable and proportionate is an important part of doing business and will not breach the *Bribery Act*.

- *Facilitation payments* — The Guidance confirms that there is no exemption under the *Bribery Act* for facilitation payments. The Serious Fraud Office and the Director of Public Prosecutions in the UK offer further guidance on the issues that they will consider when deciding to prosecute in relation to facilitation payments. Those issues include the value of the payment; whether the payment is an isolated incident or part of a systemic failure; and whether or not the payment is planned or premeditated.
- *Adequate Procedures* — The Guidance details six non-prescriptive principles which are intended to help organisations put in place policies and procedures to prevent bribery by persons associated with them:
 - (i) Proportionate procedures - procedures put in place by organisations should be proportionate to the bribery risk that the organisation will face.
 - (ii) Top level commitment – top level management should be committed to the design and implementation of appropriate risk assessment and bribery prevention procedures;
 - (iii) Risk assessment – bribery risk assessment that is proportionate to the organisation's size and structure, and the scale, nature and location of an organisation's activities;
 - (iv) Due diligence – organisations should carry out due diligence proportionate to the level of risk associated with persons who perform or will perform services on behalf of the organisation;
 - (v) Communication – organisations should ensure their bribery prevention policies and procedures are clearly and effectively communicated both within the organisation itself and externally. Regular training should be undertaken;
 - (vi) Monitoring and review – as with risk assessment, the bribery prevention policies and procedures should evolve and adapt to the changing nature, scope and location of the organisation's business.

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