

Bribery Act 2010

The Bribery Act 2010 came into force in July 2011. It has been very controversial and its introduction was postponed to enable the Serious Fraud Office to publish guidance on how it intends to exercise its discretion to prosecute. It has done so and the Act has now become law. Charities operating overseas should pay particular attention to the offences which are discussed below.

The penalties are severe with up to ten years in prison and/or a fine. The first conviction under the Act has already taken place with a Court Clerk been given a three year sentence for agreeing not to record a driving offence in the Court records. A conviction can also disqualify an organisation for tendering for public contracts and this will obviously be of significance for organisations funded through public bodies.

There are four main offences:

- Bribery of foreign public officials. Importantly, the standard to be used for determining whether someone has committed an offence is the view of a reasonable person in the UK. The fact that such payments are usual or required under local custom and practice will not be a defence unless they are required by written laws. There is no minimum level of payment and this causes significant concern for organisations working in areas where corruption is endemic.
- The offence of paying bribes. There is no requirement that the offence takes place in the UK so an offence could be committed if carried out by a British person or company overseas.
- The offence of receiving bribes. The same provisions apply as for 2.
- An important offence for charities to be aware of is a failure to prevent a bribery. An offence will be committed where a person associated with an organisation bribes someone and the organisation fails to show that it has adequate procedures in place to prevent the payment of a bribe.

There has been a lot of debate about what constitutes “associated”, with many big companies in the UK particularly concerned about the potentially wide-reaching definition. It is wider than merely employees and covers people who provide services to the organisation. Organisations, therefore, have to show that they have adequate anti-bribery and anti-corruption procedures in place. The burden of proof is on the organisations to prove that they do have these procedures in place.

The sorts of procedures would include an appropriate code of conduct, nomination of a senior officer overseeing anti-corruption procedures and their implementation and monitoring, communication and training in the policies and procedures, whistleblowing procedures and clear written policies on gifts, corporate hospitality and facilitation payments. Obviously, the procedures will need to be tailored to the individual organisation.

A number of organisations have produced guidance notes, in particular:-

- Ministry of Justice:

<http://www.justice.gov.uk/guidance/making-and-reviewing-the-law/bribery.htm>

- Bond and Transparency International – Anti-Bribery Principles and Guidance for NGOs:

<http://www.mango.org.uk/Pool/NGO-Anti-bribery-Principles-and-Guidance-Final.pdf>

- Serious Fraud Office – Bribery Act: Prosecution Guidance

<http://www.sfo.gov.uk/press-room/latest-press-releases/press-releases-2011/bribery-act-prosecution-guidance-published.aspx>

For more information please contact:

James Sinclair Taylor

Partner

020 8394 6480

James.Taylor@russell-cooke.co.uk

Andrew Studd

Partner

020 8394 6414

Andrew.Studd@russell-cooke.co.uk

This material does not give a full statement of the law. It is intended for guidance only and is not a substitute for professional advice. No responsibility for loss occasioned as a result of any person acting or refraining from acting can be accepted by Russell-Cooke LLP.
© Russell-Cooke LLP January 2012

www.russell-cooke.co.uk