

## FCPA/Antibribery Alert

### Draft Guidance Issued for UK Bribery Compliance

October 25, 2010

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On September 14, 2010 the U.K. government issued draft guidance for public consultation about procedures that commercial organizations can put in place to prevent bribery on their behalf. This follows enactment in the UK of the new Bribery Act in April 2010.

The Bribery Act makes it critical for companies which “carry on business or part of a business” in the U.K. to establish by the time the new law comes into effect in April 2011 and maintain effective internal controls to prevent acts of bribery. The offense of failure to prevent bribery by “an associated person” will apply on a strict liability basis, and a company will be liable unless it can demonstrate that it had in place “adequate procedures” designed to prevent bribery. In order to prove that a company has such adequate procedures, it has to show not only that it has adopted appropriate policies, but also that it has taken appropriate steps to apply and enforce them.

The Act does not define what “adequate procedures” mean. However, the draft guidance lists six principles:

- risk assessment
- top level commitment
- due diligence
- clear, practical and accessible policies and procedures
- effective implementation
- monitoring and review

For each principle, the draft identifies the sorts of procedures that companies might introduce, but does not indicate what may be “adequate” in any given case. In short, that is left to the judgement of individual companies according to their own circumstances.



The Act and the draft guidance also leave significant uncertainty as to the range of parties that could qualify as “associated persons”. However, the draft suggests that the U.K. government considers that not only affiliates, intermediaries and agents may be caught, but also others such as joint ventures, consortia, contractors and suppliers.

Ultimately, it falls to the U.K. courts to interpret the Act, but the approach taken by the SFO in enforcement (so-called “prosecutorial discretion”) will have considerable practical importance.

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