International Sign Association UK

B7 BRIBERY ACT 2010 – A PRACTICAL GUIDE

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1. TITLE

Bribery Act 2010
This Act came into force on 1st July 2011

2. WHAT IS UNLAWFUL?

The offer of any financial or other advantage with the intention of inducing another person to improperly perform their job.

3. IS CORPORATE HOSPITALITY NOW UNLAWFUL?

The Guidance that is issued in conjunction with the Act explains that conventional hospitality (e.g. tickets to the Six Nations or Wimbledon) is unlikely to be unlawful. However, in theory, it could be unlawful. All is determined by the intention of the offeror. Provided the hospitality is question is conventional, normal and proportionate, then there is unlikely to be evidence of an improper intention.

Example

(i) Frank offers a prospective client, Brian, a ticket to watch Wimbledon with him. This is unlikely to be viewed as anything other than a legitimate attempt to cement good relations.

(ii) Frank offers Brian and his wife two tickets for a world cruise costing circa £20,000. Immediately one can see the distinction from the previous example. This is excessive and disproportionate "hospitality". Frank is unlikely to be believed if he claims this was merely an effort to cement good relations. Of course, Frank might just be an incredibly generous man. However, if police investigations reveal that Brian was the decision maker regarding the award of a lucrative contract, the jury will require some persuasion.

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The Guidance seeks to give reassurance by stating a paragraph 26 the following:-

"Bona fide hospitality and promotional, or other business expenditure which seeks to improve the image of a commercial organisation, better to present products and services, or establish cordial relations, is recognised as an established and important part of doing business and it is not the intention of the Act to criminalise such behaviour. The Government does not intend for the Act to prohibit reasonable and proportional hospitality … It is, however, clear that hospitality and promotional or other similar business expenditure can be employed as bribes".

4. EMPLOYER'S LIABILITY FOR THE ACTS OF IT'S EMPLOYEES AND AGENTS

A commercial organisation will be liable if a person associated with it commits acts of bribery. However, the employer will have a full defence if it can show that, despite a particular case of bribery having occurred, it had in place adequate procedures to prevent bribery.

5. WHAT ARE "ADEQUATE PROCEDURES"?

This will vary from case to case. The Guidance talks about "proportionality". If the employer deals in a market where a high risk of bribery exists, then a lot of effort will be expected. Conversely, if the business sector is low risk, little effort will be required. The Guidance helpfully provides a number of concrete examples of steps which employers can take. These include the following:-

1. The publication of a bribery prevention policy;
2. Its endorsement from top level management;
3. Referring to bribery as an example of gross misconduct in disciplinary procedures and contracts of employment;
4. Actually taking disciplinary action against those found to be involved in bribery;
5. A "speak up" or "whistle-blowing" procedure allowing employees to anonymously report suspected bribery;
6. Training of staff on the Bribery Act 2010;
7. Periodic staff surveys; and
8. Identifying a suitably senior Manager to be a "point person" for queries.

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6. TRAINING

As referred to above, the Guidance talks of the importance of training to staff. Such training will obviously assist any employer in establishing adequate measures in its defence.

A copy of the Bribery Act 2010 guidance in pdf format can be downloaded from **https://www.gov.uk/government/publications/bribery-act-2010-guidance.**