

The United Kingdom Issues Much Anticipated Consultation on Guidance for the Bribery Act's "Adequate Procedures" Defense

In April 2010, the United Kingdom passed the *Bribery Act*, which created several new anti-corruption offenses. Of particular note, the *Bribery Act* included a new "strict liability" offense that imposes liability on any company with ties to the U.K. that fails to prevent persons performing services on its behalf (including employees, agents, subsidiaries, and possibly subcontractors and vendors, among others) from engaging in bribery. Provided the government can prove the underlying offense, the only way to avoid liability is to establish an "adequate procedures" defense.

Last week, the U.K. Secretary of State, through the Ministry of Justice, released its much anticipated "Consultation on Guidance," setting forth its views on what constitutes "adequate procedures."¹ As a procedural matter, the draft guidance provides a public comment period that will close on November 8, 2010 and forecasts that final guidance will issue in early 2011, in advance of the *Bribery Act* becoming effective in April 2011.

Substantively, the draft guidance consists of "six broad management principles" that are designed to help companies determine what specific procedures they can put into place to minimize the risk of bribery. In the guidance, the Secretary of State notes, however, that these six principles "do not propose any particular procedures in themselves," but instead should "be used as a flexible guide to deciding what procedures are right for an organisation." The six principles for bribery prevention specified in the guidance are:

- **Risk assessment** – this is about knowing and keeping up to date with the bribery risks you face in your sector and market;
- **Top level commitment** – this concerns establishing a culture across the organisation in which bribery is unacceptable. If your business is small or medium sized this may not require much sophistication but the theme is making the message clear, unambiguous and regularly made to all staff and business partners;
- **Due diligence** – this is about knowing who you do business with; knowing why, when and to whom you are releasing funds and seeking reciprocal anti-bribery agreements; and being in a position to feel confident that business relationships are transparent and ethical;
- **Clear, practical, and accessible policies and procedures** – this concerns applying them to everyone you employ and business partners under your effective control and covering all relevant risks such as political and charitable contributions, gifts and hospitality, promotional expenses, and responding to demands for facilitation demands or when an allegation of bribery comes to light.
- **Effective implementation** – this is about going beyond "paper compliance" to embedding anti-bribery in your organisation's internal controls, recruitment and remuneration policies, operations, communications and training on practical business issues.

¹ [Consultation on guidance about commercial organisations preventing bribery \(section 9 of the Bribery Act 2010\)](#)

- **Monitoring and review** – this relates to auditing and financial controls that are sensitive to bribery and are transparent, considering how regularly you need to review your policies and procedures, and whether external verification would help.

The consultation on guidance continues, offering recommendations under each of the six principles, and setting forth the factors companies may be expected to consider and actions companies may be expected to take to prevent bribery.²

In light of this guidance, companies with ties to the U.K. should consider implementing the procedures described above as a part of their global compliance programs. Given the strict liability nature of the offense, your company's compliance program may be its sole, best defense.

If you have any questions about the *Bribery Act* and its effect on your business activities, please do not hesitate to contact your Ropes & Gray attorney.

² *Id.* at 11