



BRIBERY ACT 2010: THE INSURANCE IMPLICATIONS



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THE INSURANCE IMPLICATIONS



Introduction

The Bribery Act 2010 finally came into force on 1st July 2011 and imposes significant potential liabilities on businesses and those who run them. Businesses need to ensure that they are adequately protected by their Directors' and Officers' Liability policies as a result.

The Act will have ramifications for many businesses with those that trade overseas potentially being at greater risk where local practices and cultures may differ from the UK view.

New corporate offence

Whilst bribery has always been a personal crime, the Act has created a new corporate offence of 'failing to prevent bribery'. The penalties for this offence include unlimited fines, imprisonment and personal liability for directors. The Act extends to encompass agents and/or contractors working on your behalf.

A defence will be available where a business can demonstrate that it has adequate anti-bribery procedures and policies in place. What constitutes 'adequate' is likely to be unique in each particular set of circumstances.

'Adequate Procedures'

To clarify the position The Ministry of Justice published its 'Adequate Procedures' guidance for companies reinforcing the original six principles approach of the Act, albeit amended slightly from the original draft guidance. These are: Proportionate Procedures, Top-Level Commitment,

Risk Assessment, Due Diligence, Communication (including Training) and Monitoring and Review.

Scope of cover

The introduction of the Proportionate Procedures' aspect enables businesses to adopt a risk based approach allowing them to review each aspect and adopt procedures which are appropriate to the level of risk.

The scope of cover under a Directors' and Officers' Liability Insurance policy will vary from insurer to insurer, however as the offence has now become a criminal one, any fines or penalties imposed will be explicitly excluded under the scope of a standard cover.

Typically, where a Director denies any knowledge or guilt the Directors' and Officers' Liability policy covers costs associated with defending the position up until the point that guilt is proven. A small number of policies require those costs to be paid back at the time that guilt is shown.

Care must be exercised where an internal investigation or interview under caution is undertaken, as an admission of liability could compromise the insurance coverage as a result of a breach of the claims conditions.

The new corporate offence could mean that those businesses

without Entity Extensions under their Directors' and Officers' Liability policies, would be left uninsured in the event of a claim of this nature. Given the relatively modest cost involved in extending cover on this basis it would seem a prudent position to arrange this cover.

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