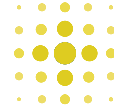

MacIntyre Hudson

THE FUTURE IS WHAT YOU MAKE IT®

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Face Facts Legal

MacIntyre Hudson LLP's Legal Sector publication for UK solicitors and law firms

The Bribery Act: a burden or extension of sensible working practices?

In 2010, an ACCA survey suggested that 69% of SMEs are likely to be confronted with bribery and corruption in the course of their business dealings. Since the Bribery Act came into force on 1 July, just what are the practical implications for companies dealing with a variety of suppliers and other third parties, particularly overseas, that might unwittingly expose them to corruption and subsequent prosecution?

The Bribery Act has been a welcome promotional tool for advisers for almost two years and while the implications of being prosecuted are indeed potentially catastrophic, we take the pragmatic view that compliance is not another burden to bear, it is sensible business practice. Indeed there are numerous examples of engineering and oil services companies prosecuted under FCPA (the US equivalent) that are much more competitive post-prosecution.

Potentially the most penal element of the Act is the offence of "failure to prevent bribery" which places responsibility squarely on your shoulders to actively minimise the risks of corrupt transactions committed by your staff, agents or subsidiaries. While the definitions around facilitation payments (illegal) and corporate hospitality (broadly permitted) have been cleared up, guidance is still a little vague.

The guidance does acknowledge smaller companies will likely have less sophisticated compliance procedures in place, but that the level of risk is not necessarily proportionate to size. The six principles remain:

- proportionate procedures
- top-level commitment
- risk assessment
- due diligence
- communication and training
- monitoring and review.

In our view, a "paper policy" will be insufficient and a business will need to demonstrate active steps taken to reduce exposure. These would typically include: policy reviews, dynamic training, systems and controls reviews, conducting due diligence from a number of perspectives – financial, legal, commercial and possibly reputational, and reviews of key third parties, agents and intermediaries.

Many of our clients have the perception that the Bribery Act will only impact their operations overseas in emerging markets. Whilst it is crucial to be mindful of international exposure, it is also extremely important to be on top of domestic activity as, in our experience, corrupt activity can unfortunately take place much closer to home.

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Lexcel update

The Lexcel accreditation scheme continues to attract practices of all types and sizes. There are currently over 900 accredited practices with almost 100 in the application process.

To ensure that Lexcel continues to support legal practices, the Lexcel standard and scheme are being reviewed to reflect relevant changes in law and practice management. This could change requirements for practices within the application and assessment processes. It will also result in enhanced support for promoting the scheme to legal services buyers to generate greater awareness and understanding.

As part of the revisions process, the Lexcel office will be consulting with a broad range of the legal profession, including:

- Sole practitioners - accredited and non-accredited.
- Small, medium and large law firms - accredited and non-accredited.
- In-house legal departments - accredited and non-accredited.
- Professional indemnity insurers and brokers.
- Solicitors' Regulatory Authority.
- The Legal Ombudsman.
- Business stakeholders and influencers.
- Lexcel assessors and consultants.

The Lexcel office is aiming to launch the new standard in October 2011. The launch will include educational events and materials to help practices understand any changes in requirements.

Get involved!
To register your interest in being part of the consultation process, please e-mail your contact details to: Lexcelv5@lawsociety.org.uk

Pensions – 'simplification' at last?

Over the years we have repeatedly been promised simplification measures to enable us all to plan our retirement with some degree of certainty.

The pensions maze
The backdrop to the pension changes in 2006, - 'A Day' - was a promise of a 'simplified' pensions arena. However, by the time 'A Day' dawned, Government paranoia of tax avoidance had ensured a regime that was anything but simple. Whatever residual claims to simplicity may have been made, they were entirely banished with the 2008 rule changes that sought to limit tax relief for pension contributions to basic rate for high earners. The introduction of these rules followed by repeated changes is perhaps one of the finest examples of the dangers of legislative policy being made 'on the hoof'.

Clear blue water
The coalition government made early promises that simplicity would be delivered and indeed on 14 October 2010, the announcement was made that various changes to the pension regime would be made with effect from 6 April 2011.

Key features included:

- The absurdly complex rules restricting the rate of relief for pension contributions would be withdrawn, allowing tax relief at your highest rate of tax.
- The Annual Allowance (AA) was reduced from £255,000 to just £50,000, with the capacity to carry forward unused relief from up to the previous three years, potentially allowing a lump sum contribution of £200,000 (gross).
- The Lifetime Allowance will be reduced from April 2012 to £1.5m (with transitional protection).
- Significant changes regarding the annuity purchase at age 75 creating considerably greater flexibility.

Many professionals will have taken the view that the Lifetime Allowance restriction is unwelcome but nevertheless, the capacity to make pension contributions of up to £50,000pa brought pension planning back onto the agenda. The Government's pledge of bringing stability to the taxation system combined with the capacity to carry forward unused pension relief, certainly gives room for the view that there was no need for action.

Back to the future?
Any confidence should have been dispelled by recent press coverage. It would appear that tax relief for pension contributions has again become a matter of scrutiny: limiting the relief for pension contributions for 40% and 50% taxpayers would earn the Treasury some £7bn pa and the scrapping of all tax relief would save £22bn pa.

Whilst the Treasury has pledged that the 2011 Budget represented the Government's intent and that there are no other plans afoot, any sanguinity regarding pension provision may carry with it a significant cost in lost tax relief for professionals.

Due to the complexity of the pensions regime we would recommend that legal professionals seek further information from your local office.

VAT update for your clients

Fees charged by medical professionals

Following the Barratt Goff and Tomlinson (BGT) case earlier this year, the First Tier Tribunal has clarified the VAT treatment of fees charged by medical professionals for providing medical records and reports for litigation purposes. HM Revenue and Customs (HMRC) had argued that obtaining medical reports was fundamental to litigation services delivered by BGT and should be subject to VAT. However, the Judge found in favour of BGT who had challenged HMRC's decision. They proved that the medical reports they produce are done so as agents on behalf of the client and the fees are borne by the client (under the "in his own name and on his own account" test), therefore exempting them from a VAT charge.

Given the potential wider impact for the legal profession, this case was unique in that it saw intervention and backing from the Law Society.

Golf course visitor fees

The First Tier Tribunal has released its decision in The Bridport & West Dorset Golf Club Limited case (Bridport) concerning the VAT treatment of visitor green fees. Green fees charged to visitors and visiting golf societies are usually a significant source of income for such members clubs which are classified as non-profit making. The Tribunal has held that this income source should be exempt from VAT whereas previously, the exemption entitlement was only applicable to subscriptions and green fees paid by members.

For clubs which have not previously made a claim, the opportunity to make a retrospective 4 year claim for overpaid VAT, plus interest, should be given due consideration as the upsides should outweigh the downside of the additional VAT exempt income.

For further advice on these or any other VAT issues, please contact your local office.

Revisions to the Solicitors' Accounts Rules – proposed implementation date 6 October 2011

The SRA board gave final approval of the new Handbook in March 2011.

The Handbook sets out the new regulatory arrangements due to come into force on 6 October 2011 with the introduction of outcomes-focused regulation. A summary of the main changes to the Solicitors' Accounts Rules is given below:

- Application of the rules to "you" rather than "solicitor" – the rules will apply equally to all those who carry on work in a firm and to the firm itself.
- Under the SRA Authorisation Rules, all firms must have a Compliance Officer for Finance and Administration (COFA) who will have equal responsibility with other managers of the firm for ensuring that the firm complies with the SAR. The COFA must report any breaches of the accounts rules to the SRA as soon as reasonably practicable. It is unclear as to whether 'all' or only 'serious' breaches need to be reported.
- A new definition for 'out of scope money' has been introduced which is money received by a multi disciplinary practice in relation to those activities for which it is not regulated by the SRA.
- New rules have been introduced in relation to damages and costs monies (made payable to the client) received under the Law Society's Conditional Fee Agreement and paid into client account. The costs element must be transferred within 14 days.
- Changes to the authority required for withdrawals from client account. The list of authorised persons set out in rule 23 will be removed and the revised rules will allow authorisations by an appropriate person or persons in accordance with the firm's procedures for signing on client account. A firm's procedures should set out who is an appropriate person to authorise such transactions.
- The new rules will allow electronic signatures for withdrawals from client account subject to there being appropriate safeguards and controls in place.
- The detailed rules in relation to interest paid on client money will be removed. Under the new rules interest must be paid to clients on amounts held in client account (or on money that should have been held in client account but was not) when it is fair and reasonable to do so. There must be a written policy on the payment of interest which seeks to provide a fair outcome. The terms of the policy must be drawn to the attention of the client, which is usually at the outset of the retainer. The revised rules also allow a firm to retain interest earned on separate designated client accounts that is over and above the amount calculated as 'fair and reasonable' under its interest policy.
- Rule 32 in relation to accounting records will allow electronic versions of bank statements to be retained but the firm must save a copy within its computerised accounting records in a format which cannot be altered.
- The new rules include Part G - rules 47 to 52 – which relate to the overseas practices (firms having offices outside England and Wales).
- The guidance notes will no longer form part of the rules, although some of the guidance notes in the existing SAR will become rules in the revised SAR.

Further information is available from: www.sra.org.uk/handbook

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Offshore disclosure facilities

As of 6 April 2011, penalties for offshore non-compliance tax and capital gains tax can now be linked to the tax transparency of the countries involved. Penalties can be as high as 200% of the undeclared tax and will apply to both businesses and individuals who under-declare income and gains from territories which do not automatically share tax information with the UK.

Disclosure opportunities presented by HM Revenue & Customs (HMRC) can offer favourable terms to taxpayers who are able to take advantage of them. One such scheme that is still available is the Liechtenstein Disclosure Facility (LDF) which was introduced in September 2009 to help those UK taxpayers who have undeclared investments in Liechtenstein to come forward and get their past and future tax affairs in order. Under the LDF, HMRC has made the following special terms available:

- A 10% fixed penalty on the underpaid liabilities (full interest will have to be paid).
- No penalty where an innocent error has been made.
- Assessment period limited to accounting periods/ tax years commencing on or after 1 April 1999.
- The option to choose whether to use a single composite rate of 40% or to calculate actual liability on an annual basis.
- Assurance about criminal prosecution.
- A single point of contact for disclosures.

Unfortunately, the 10% fixed penalty is not available for income and gains arising after 5 April 2009, but is still available in respect of earlier years, and in some situations, may be available in respect of undeclared income and gains that have arisen in offshore territories outside of Liechtenstein.

As with any disclosure to HMRC, care must be taken to ensure it is complete and correct and that opportunities, where available, are taken advantage of. For further information on how we can assist your clients and to assess whether their non-Liechtenstein offshore accounts can be brought within the LDF, please contact your local office.

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MacIntyre Hudson LLP has offices and associates across the UK. We are a founder member of MHA, a fast growing UK wide association of independent accountants and business advisers. We are also a member of Morison International, with independent member firms worldwide.

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