

Isle of Man Bribery Act 2013

The Isle of Man's new Bribery Bill will come into force by the end of this year.

Many organisations carrying on business in the Isle of Man and UK will already have introduced procedures to meet the requirements of the UK Act that came into force in 2011. But what is essential now is to prepare for the new Isle of Man Act which will affect all businesses in the Island to ensure they have adequate procedures in place to prevent bribery

The new Isle of Man Act will replace the Island's Corruption Act 2008, and the main difference will be the introduction of a new corporate offence of failing to prevent bribery, based on the similar provisions of the UK Act.

This offence is committed where a person associated with a relevant commercial organisation commits a bribery offence intending to gain a business advantage, and the organisation cannot show it has adequate procedures in place to prevent the bribe. The effect is to place the burden on the organisation concerned to demonstrate that it has suitable anti-corruption procedures in place.

- An "associated person" can extend to not only employees, agents and contractors but also suppliers, subsidiaries and joint venture arrangements and other external third parties.
- A "relevant commercial organization" includes companies and partnerships, wherever formed, which carry on a business in the Island.
- A bribery offence is likewise widely defined to cover the offer or receipt of a "financial or other advantage" with the intention of inducing a person to "improperly perform" any "function of a public nature" or "activity connected with a business".

The new offence of failing to prevent bribery extends beyond the Isle of Man and a Manx resident (individual or corporate) may be prosecuted for an offence committed anywhere in the world.

It is a requirement of the Act that the Department of Home Affairs publishes guidance to advise businesses on what steps they should take to ensure they are trying to prevent bribery. It can be expected that it will be similar to that published by the UK's Ministry of Justice and is likely to

involve a common sense application of the following six principles, depending on the size and particular circumstances of the business:

- Proportionality – Organisations should adopt procedures and policies which are proportionate to the risks of bribery they face and to the scale, nature and complexity of their activities.
- Top-level commitment – senior managers need to make it clear throughout the business that bribery will not be tolerated, and they should be personally involved in making sure that proportionate steps are taken to prevent bribery and that adequate procedures are in place.
- Risk assessment – businesses should check the markets they operate in and the people they deal.
- Due diligence – it will be important to ask appropriate questions and carry out checks before engaging representatives.
- Communication – it is essential that staff know what procedures are in place. Training or awareness raising may be needed.
- Monitoring and review – to ensure procedures remain appropriate.

If an offence is committed the penalties are serious, involving imprisonment and potentially unlimited fines. However, in view of the practical nature of the above principles, their application should not be unduly burdensome for most organisations.

What is important is that businesses check that the above issues have been addressed and that where necessary appropriate procedures are put in place. To assist Simcocks has produced a document specifically for Isle of Man businesses outlining what should be included in their anti-bribery procedures. Anyone who wants further details should contact Alex Spencer by email at aspencer@simcocks.com or call 01624 690300.

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