



NEWS ARTICLE

UK's new Bribery Act stirs debate



The new United Kingdom Bribery Act received Royal Assent on April 8 this year. In an effort to provide a new consolidated body of bribery offences, the Act replaces the offences in previous legislation, and introduces the discrete offence of “bribery of a foreign public official”, as well as a new offence where a commercial organization fails to prevent bribery. The Act has generated considerable discussion as it has implications not only for individuals and commercial organizations operating inside the United Kingdom, but also for

British and foreign companies engaging in business transactions on an international scale. Although not yet in force, it is expected that the Act will become law in 2011.

The Act generally characterizes as bribery the following: (1) giving, promising, or offering a bribe in the public or private sector (active bribery), or (2) being bribed either by requesting or agreeing to accept a bribe in the public or private sector (passive bribery).

In addition to active and passive bribery, the Act specifically addresses two further categories of bribery offences: bribing a foreign public official (FPO) (whether actively or passively), and bribery arising from a company’s failure to prevent those performing services on its behalf from paying bribes (whether actively or passively).

Although a comprehensive analysis of the Act is beyond the scope of this article, considering the latter two offences may assist in introducing a more localized understanding of the Act and its applicability.

Section 6(5) of the Act defines an FPO as an individual who: (i) holds a legislative, administrative or judicial position (whether appointed or elected) of any kind of a country or territory outside the UK; (ii) exercises a public function for or on behalf of a country or territory outside the UK or for any public agency or public enterprise of that country or territory; or (iii) is an official or agent of a public international organization.

Section 6(3) of the Act refers to bribery as the offering of “any financial or other advantage”. Significantly, the definition of a “bribe” is not limited to the offering of a financial benefit, but includes anything that may be perceived by the FPO as beneficial or of value thereby inducing specific behavior.

According to Section 6(3)(a) the bribe may be made directly to the FPO, or to another person at the FPO’s request, or with his assent. Furthermore, Section 6(3)(b) states that the provision of an “advantage” will be considered to be a bribe if the foreign public official “is neither permitted nor required by the written law...to be influenced...by the offer, promise or gift”. For the purposes of Section 6(3) (b), “written law” includes the law or territory in relation to which the official is an FPO.



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Interestingly, in relation to bribing an FPO, the Act is only concerned with the offering, promising, or giving of a bribe, rather than the acceptance of such bribes. Furthermore, it is not necessary for the bribe to be paid in advance of any act being undertaken by the FPO; it is sufficient to promise to provide an advantage at a future date.

As mentioned before, the Act is not limited to individuals but also applies to commercial organizations that fail to prevent bribery. Section 7 makes a commercial organization liable for acts of bribery, undertaken anywhere in the world, by a person associated with the commercial organization if that person intends to obtain or retain business/a commercial advantage in the conduct of business for the commercial organization.

Commercial organizations can be prosecuted where an offence would have been committed by an associated person but for the fact that such person does not have the requisite “close connection” to the United Kingdom so as to come within the scope of the Act. A person will be deemed to be “associated” with a commercial organization if they perform services for that commercial organization in any capacity.

Pursuant to Section 14(2) of the Act, the directors, officers, company secretary and management of a body corporate who has a close connection to the United Kingdom may also be prosecuted if it can be demonstrated that they consented to, or connived in, the bribery of a foreign public official.

To avoid falling foul of the Act, individuals and companies will be required to review the way in which they operate to ensure that their dealings with FPO’s would not be construed as offering a bribe or other advantage in return for the commission of an act or omission by that FPO. Although this appears to be an obvious point, the Act is sufficiently broad to warrant a re-evaluation of the way in which individuals and companies who are subject to the Act do business in other countries.

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