



UK Passes Strict New Bribery Act

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Editor's Note: [John F. Savarese](#) is a partner in the Litigation Department of Wachtell, Lipton, Rosen & Katz. This post is based on a Wachtell Lipton client memorandum by Mr. Savarese, [Ralph M. Levene](#) and [David B. Anders](#).

Earlier this year, we noted that other countries, in addition to the United States, are increasing their efforts to combat international bribery and corruption. (See "[Increasing International Cooperation and Other Key Trends in Anti-Corruption Investigations](#)"). In a further reflection of this trend, on April 8, 2010, the United Kingdom passed the Bribery Act 2010 (read the act [here](#)). The Act is in many respects even broader in scope than the U.S. Foreign Corrupt Practices Act, including in its extraterritorial application. Thus, every company with ties to the U.K. should become familiar with the Bribery Act's provisions.

The Bribery Act criminalizes several different types of domestic and foreign bribery including: (i) offering, promising or giving a bribe (section 1); (ii) requesting, agreeing to receive or accepting a bribe (section 2); and (iii) bribing a foreign public official (section 6). However, section 7, which sanctions any failure by commercial organizations to prevent bribery, may be the most significant provision. Under that section, a corporation will be liable when a person "associated" with that company (defined in section 8 as a person who "performs services for or on behalf" of the company) pays a bribe for the purpose of obtaining or retaining business or to obtain or retain a business advantage. The company can defend itself *only* if it can establish that it "had in place adequate procedures designed to prevent persons associated with [the company] from undertaking such conduct." Thus, unlike in the U.S., where prosecutors apply their discretion in evaluating a company's compliance policies and procedures in the context of weighing charging decisions and potential leniency, the statute establishes strict liability in the case of a bribe being paid for companies that failed to implement adequate compliance policies and procedures.

The Bribery Act itself does not specify what procedures will be considered adequate. Pursuant to section 9, the U.K.'s Secretary of State is required to publish guidance "about procedures that relevant commercial organisations can put in place." However, we expect that such guidance will not be written in a vacuum. The U.S. Sentencing Guidelines for Organizations (section 8B2.1) and

DOJ's Principles of Federal Prosecution of Business Organizations(United States Attorneys' Manual 9-28.800) have for several years provided a framework for U.S. companies designing and implementing effective policies.

The Bribery Act contains other significant differences from the FCPA in addition to the new "failure to prevent bribery" offense. Unlike the FCPA, it applies to bribery transactions that do not involve public officials and applies to the recipient of a bribe. In addition, there is no exemption for "facilitating payments"—small payments made for the purpose of expediting the performance of a routine governmental action. Moreover, the "failure to prevent bribery" offense applies, by its terms, to any foreign corporate entity "which carries on a business, or part of a business, in any part of the United Kingdom." And section 12 of the Act specifies that a company may violate section 7 "irrespective of whether the acts or omissions which form part of the offence take place in the United Kingdom or elsewhere." This broad jurisdictional reach of the Act thus creates potential liability for any U.S. company with ties to the U.K. regardless of where a covered act of bribery takes place.

While DOJ's recent emphasis on the FCPA has made global compliance a high priority for companies doing business internationally, those companies must now consider more than the FCPA when they assess the adequacy of their policies and procedures. The passage of the Bribery Act underscores the importance for companies of taking affirmative steps to establish an effective anti-corruption compliance infrastructure, set an appropriate tone at the top to reinforce senior management's commitment to compliance, and give employees and supervisors adequate tools to understand and comply with applicable rules and regulations.

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