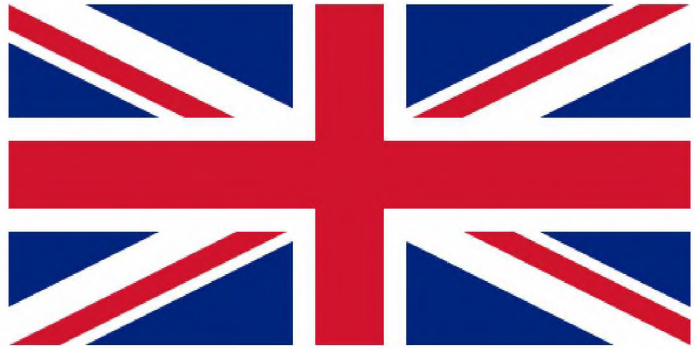


UK passes landmark *Bribery Act*



The *Bribery Act 2010* (c. 23) was introduced in the Queen's Speech to Parliament on 18 November 2009. With broad cross-party support, it was passed into the statute book on 8th April 2010, shortly prior to the recent general election, which in turn has raised some questions regarding the level of debate scrutinising the provisions it effects.

This is the country's first major overhaul of its bribery laws in over a century, putting UK companies under the most stringent anti-corruption regime in the world, outstripping the standards set by the US Foreign Corruption Practices Act (FCPA).

Jack Straw, the now former UK Justice Secretary, was appointed 'Anti Corruption Champion' in 2008, with a brief to reform the antiquated and underused UK legal framework relating to bribery, and more importantly to enact the Organisation for Economic Co-operation and Development's (OECD) Convention Combating Bribery of Foreign Public Officials in International Business Transactions. The 38 countries that have signed the OECD Convention are required to put in place legislation that criminalises the act of bribing a foreign public official. The UK Government had been heavily criticised for dragging its feet in enacting this treaty, which it signed way back in 1997.

The Act replaces a number of

offences in common law and in the *Prevention of Corruption Acts 1889-1916*; and defines four new criminal offences, namely:

- offering or paying a bribe
- requesting or receiving a bribe
- bribing a foreign public official. (A specific offence required to comply with the OECD Convention)
- a corporate offence of failing to prevent bribery being undertaken on its behalf.

The Act defines 'bribery' in wide terms, to capture the differing ways in which bribes are made or received. It sets out several scenarios, or "cases". The one which is expected to apply to most businesses is the offence of giving a bribe, specifically:

The defendant offers, promises or gives a financial or other advantage intending to induce another person to perform improperly one of their functions in their position of trust and responsibility, or as a reward for improper performance.

The legislation applies to all companies, partnerships and individuals based in England, Scotland, Wales and Northern Ireland, as well as foreign companies and individuals doing business in the UK. It has a global reach, applying to acts or

omissions taking place anywhere in the world.

To defend itself against claims that it was negligent in preventing bribery from taking place, organisations will need to show that they have adequate internal controls and compliance programmes in place.

Furthermore, unlike the FCPA, the *Bribery Act* makes no exceptions for making facilitation payments, prohibits bribery not only for officials but also private citizens, and imposes sentences of up to 10 years in jail for individuals and executives convicted under the new law.

For decades the US FCPA has been the most stringent piece of anti-corruption legislation in the world. That's no longer the case. UK companies are now to be under a level of scrutiny that no companies anywhere else in the world has ever experienced before, not even those across the Atlantic.

So, more than ever, UK companies need to ensure they have an effective and comprehensive compliance programme in place, that it is being adhered to in the local and far-flung markets in which they operate, and that its network of clients, suppliers, business partners, agents, and other third-party relationships operate to compliance, ethics and corporate governance standards that are at least as stringent as those which it imposes on itself. ●