

CLIENT ALERT

UK Bribery Act – Ready or Not, Here It Comes

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The much-discussed and long-awaited United Kingdom Bribery Act became effective on 1 July 2011. Perhaps the world's most aggressive anti-corruption legislation, the Act will have far-reaching implications, both for individuals and entities who have a close connection to the UK or do business in the UK, regardless of whether the individual or entity is domiciled in the UK. The Act substantially revises the existing UK framework for combating bribery in the public and private sectors. Importantly, the Act holds entities strictly liable for failing to prevent the payment of bribes on their behalf. Significantly though, the Act provides a safe harbor from criminal liability for companies that have in place "adequate procedures" to prevent bribery.

Who is covered?

- Any person (individual or entity) who has a "close connection" with the UK;
- Any entity that has operations in the UK, with respect to bribery that has taken place anywhere in the world.

What is covered?

- Giving a bribe;
- Receiving a bribe;
- Bribery of a foreign public official in order to obtain or retain business;
- Failing to prevent bribery on behalf of a commercial entity.

What is at stake?

- Individuals face up to 10 years imprisonment;
- Entities are exposed to unlimited fines.

While many entities already have policies and procedures in place for compliance with the US Foreign Corrupt Practices Act ("FCPA"), those procedures are not necessarily sufficient to ensure compliance with the UK Bribery Act. The Bribery Act covers a broader range of conduct than the FCPA. For example, as noted above, the Bribery Act prescribes strict liability for any bribery that occurs on behalf of a company and provides no exception for facilitation payments. The Bribery Act provides, however, a safe harbor defense if the company can show it had "adequate procedures" in place to prevent its employees, agents and contractors from paying bribes. Companies should promptly undertake a risk assessment of their potential exposure to both the Bribery Act and the FCPA. A thorough review and revision of internal policies, training materials, and due diligence procedures is necessary as enforcement authorities will undoubtedly be looking for more than fig-leaf showings of compliance.

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