

Article for APSCo Newsletter, Summer 2010

Scrutiny and enforcement steps up a gear in the UK and overseas

The Bribery Act explained... By Marcus McCaffrey

The rise of corruption enforcement globally reflects the swift progress of the UK Bribery Act through parliament onto the statute books. Playing legislative catch-up with the rest of the developed world, the UK is now starting to experience increased enforcement action against UK companies and directors.

The Bribery Act ('the Act') is a significant piece of legislation for anyone who does business with the UK, is a British citizen and/or conducts business in the United Kingdom or overseas. In essence, everyone who is involved in business in the UK falls under the jurisdiction of the Act.

The Act broadly reflects the measures and penalties made famous by the US through the Foreign Corrupt Practices Act but, importantly, differs in a number of ways. There will be no requirement to demonstrate the circularity of a bribe – it will be enough to evidence either the payment or receipt of bribes to secure convictions. The penalties facing those caught in violation of the Act are significant and, if tried on indictment, companies face unlimited fines and individuals up to ten years' imprisonment.

What would constitute a violation of the Bribery Act?

Violations comprise of offering, receiving or failing to prevent bribery and will cover both corporate and individuals. The Act will cover infractions such as excessive corporate hospitality and facilitation payments during tendering processes, although what constitutes 'excessive' is likely to be a subjective judgment.

How will the Bribery Act affect the recruitment industry?

The new "corporate offence" will have considerable impact on employers, whereby not only acts of bribery but also failure to prevent such acts are punishable by law. If a company is found guilty of committing such an offence, then both the company and the individual could be subject to criminal sanctions.

Employers should provide all employees with adequate training on the Act and ensure legal compliance by revising contracts to include clauses prohibiting bribery. Should adequate procedures such as these be put in place, then the company may be able to receive credit for offences if found in breach.

Statutory defences for companies and individuals in breach of the Act

Usefully, the Ministry of Justice ('MoJ') has issued guidance on what will constitute an adequate defence against corruption charges. The MoJ guidance covers the following areas: top-level responsibility; risk management and assurance; policies and procedures; appropriate implementation; due diligence of business relationships and monitoring and review of compliance procedures.

Please find a link to the Ministry of Justice guidance below:

<http://www.justice.gov.uk/publications/bribery-bill.htm>

Therefore, despite an escalating appetite to enforce against corruption and the draconian penalties available to prosecutors, company directors now have a clear opportunity to mitigate corruption risk. Act now and defence is ensured, ignore the risks and get caught in breach and expect severe sanctions.

Marcus McCaffrey is a *Forensics Services Partner based in the Baker Tilly London office.*

