

# ECBA Conference - The New UK Bribery Bill

## ECBA CONFERENCE, STOCKHOLM

### THE NEW UK BRIBERY BILL

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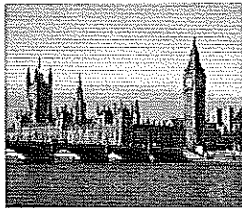
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## The Bribery Bill: Expected Implementation – January 2010?

- The Bill was published by Jack Straw in March.
- Baroness Scotland, the Attorney General, has indicated she would like to see it on the Statute books before the end of January 2010.



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## Key Changes to UK Legislation

- There is a replacement of the current law with two general offences of bribery – one for giving bribes and another for receiving them.
- The offence focuses on the briber and the recipient.
- No distinction between private and public sector.
- Bribes may be paid through a third party, or to a third party.
- The recipient of the bribe commits an offence whether the bribe is given as an inducement to do something or as a reward for doing it.



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## Bribing a Foreign Public Official

- In order for an offence to be committed a person must intend to influence a Foreign Public Official in the performance of his or her function as a public official, including any failure to exercise those functions and any use of his/her position, even if he/she does not have authority to use the position in that way.
- In order to commit the offence the person must also intend to obtain or retain business or an advantage in the conduct of the business.



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## Failure of a commercial organisation to prevent bribery

- This currently means: "Negligently failing to prevent bribery by an employee or agent".
- A relevant commercial organisation is one based in the UK or operating within it. It does not appear to include a public body.
- The offence is committed when:
  - A person performing services for the commercial organisation bribes another person;
  - The bribe is in connection with the commercial organisation's business; and
  - Another person (or persons) connected with the organisation who has the responsibility of preventing bribery, negligently fails to prevent the bribe.

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## Defence available for a commercial organisation

- There is a defence to this charge where the negligent failure is that of a person, or persons, who is not a senior officer within an organisation and they can show they had adequate procedures in place to prevent bribery being committed on its behalf.
- This defence is **not available** where the negligence is on the part of a senior officer of the organisation.
- This includes a director, secretary or manager of a body corporate or other similar senior individuals.
- In relation to partnerships, includes partners and any person who has control or management of the business of the partnership.

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## Further offences under the Bill

- Extension of bribery to cover Foreign Nationals that reside in the UK or conduct business here.
- From the **Fraud Act 2006** "consent or connivance":  
"Clause 8 of the Bill provides that a director, partner or similar senior manager of the organisation can be guilty of the same offence as the company if he/she consented or connived in the commission of the offence".
- Facilitation payments are still illegal.
- Up to 10 years imprisonment/unlimited fine.



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## How can business protect itself?

- The Board of a company needs to ensure adequate systems and procedures are in place to counter the threat of bribery within their organisation.
- The Board should delegate responsibility for the anti-bribery programme to a suitable member of staff, perhaps within Compliance.
- All staff should be trained, especially those in management positions. (Remember the defence within the bill).
- Any policy should be "risk" based.
- Robust internal controls and systems that stand up to scrutiny.



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