

Overview on anti-corruption rules and regulations in the UNITED KINGDOM

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I. What is the anti-corruption legal framework in your country (including brief overview on active / passive bribery, bribery of foreign officials, and commercial bribery)?

The Bribery Act (the Act) came into force on 1 July 2011 and replaced all existing legislation relating to bribery and corruption offences. Importantly, the Act is not retrospective in its application and therefore only applies to conduct post-1 July 2011. The key bribery offences under the Act are:

- **Bribing and being bribed** – Sections 1 and 2 of the Act. The Act consolidates the law into two general offences: **Bribing**: it is an offence to offer, promise or give a financial or other advantage for the purpose of bringing about an improper performance of a function or activity (Section 1); **Being bribed**: it is an offence to request, agree to or receive a financial or other advantage for the purpose of bringing about an improper performance of a function or activity or to request, agree to or receive a reward for having done so (Section 2). "Improper performance" means a breach of an expectation of good faith or impartiality, or a breach of a position of trust. The test of whether an activity has been performed improperly is what a reasonable person in the UK would expect in relation to the activity. If the activity takes place overseas, then any local customs are disregarded unless permitted by the country's written law. In each case, it is the intention to bring about the improper performance that is the key to the offence. The Act does not contain any exemption for facilitation payments (small payments to "oil the wheels").
- **Bribing foreign public officials** – Section 6
- The Act also introduces a new offence of offering, promising or giving a financial or other advantage to a foreign public official, with the intention of influencing the performance of their duties, where such advantage is not permitted under the written law applicable to that foreign official. The briber must intend to obtain or retain business or an advantage in the conduct of business. The key difference from the Section 1 offence is that briber does not need to intend to induce improper conduct.
- **Failing to prevent bribery** – Section 7 A commercial organisation is guilty of an offence if a person associated with it bribes another person intending to obtain or retain business or an advantage in the conduct of business for that organisation. It is a defence for the organisation to prove that it had adequate procedures in place designed to prevent persons associated with it from undertaking such conduct. These procedures include: proportionate procedures, top level commitment, risk assessment, due diligence, communication and training, monitoring and review.

For offences committed before 1 July 2011, (and post-14 February 2002), a UK national or a body incorporated in the UK can be prosecuted under Section 109 of the Anti-terrorism, Crime and Security Act 2001. This legislation captures any offences under the common law offence of bribery, offences under Section 1 of the Public Bodies Corrupt Practices Act 1889 and the first two offences under Section 1 of the Prevention of Corruption Act 1906 and applies to conduct within and outside the UK. Under common law bribery it is an offence to bribe the holder of a public office in order to persuade them not to act in line with their public duty, or for such office holder to accept such a bribe. Where the bribe is not accepted, the offeror may still be guilty of attempting to commit bribery. Under Section 1 of the Public Bodies Corrupt Practices Act 1889 it is an offence for any person to corruptly receive or give, or agree to receive or give, for himself, or for any other person, any gift, loan or advantage as an inducement or reward, from or to any member or officer of a public body, for doing or not doing anything in respect of a matter or transaction in which the public body is concerned. Section 1 of the Prevention of Corruption Act 1906 concerns corrupt dealing with agents and states that it is an offence to corruptly accept or obtain, or agree or attempt to obtain any gift or as a reward for doing or not doing any act, or favouring or not favouring any in relation to his employer's affairs or business person consideration.

II. Does this framework also cover extra-territorial corruption?

The Act covers conduct by private and public organisations in relation to both private and public commercial activities. UK courts have jurisdiction over bribery outside the UK where the person committing the offence is a British citizen or British national, the individual is ordinarily resident in the UK or the organisation is incorporated in the UK. In relation to the offence of failing to prevent bribery, if a company carries out any business in the UK, any conduct that occurs outside the UK and is unrelated to the UK aspect of the business will be caught by this offence.

III. Is there a concept of corporate criminal liability?

Yes. For a corporate to be convicted of an offence under sections 1, 2 or 6, which require a mental element, the prosecution will need to prove that a very senior person in the organisation, e.g. the CEO or Managing Director, committed the offence as that person's activities would then be attributed to the organisation (known as the "directing mind" principle). This means a company is liable for the acts and state of mind of a company officer who is its 'directing mind' – commonly a director or senior manager. These acts and state of mind will then be attributed to the company. All elements of the offence must be proved against the 'directing mind', i.e. the individual who can be shown to direct the company and the company's liability will follow as a matter of course if that is achieved. Historically, under the previous legislation covering corruption offences, this test has caused prosecutors difficulty so it is more likely that a corporate will now be prosecuted under the Section 7 offence which is far wider in scope.

IV. What are the penalties for legal entities (if applicable) and natural persons?

Companies can receive unlimited fines and the appropriate figure will normally be the gross profit from the contract obtained, obtained or sought through the offence. Alternatively, in the case of a section 7 offence of failure to prevent bribery, the appropriate figure may be the likely cost avoided by failing to establish effective anti-bribery procedures. The guidelines provide that where the actual or intended gain cannot be established,

the appropriate measure [of gain] will be the amount the court considers was likely to be achieved in all the circumstances. Where there is insufficient evidence of the amount that was likely to be obtained, 10-20 per cent of the relevant revenue (for instance, by reference to the worldwide revenue derived from the product or business area to which the offence relates for the period of the offending) may be an appropriate measure. Individuals can be sentenced to up to 10 years imprisonment.

V. Which local authorities are competent for corruption investigations?

The Serious Fraud Office (SFO) is the principal agency which investigates and prosecutes business crime committed by companies and individuals. They are a specialist agency which investigate and, if appropriate, prosecute, those who commit serious or complex fraud, bribery and corruption. The National Crime Agency have however recently been tasked with assisting in investigations of overseas corruption and have a dedicated anti-corruption unit.

VI. Are there whistle-blower regulations?

Whistle-blowing is encouraged by the SFO but there are no specific regulations covering this area.

VII. Are there voluntary disclosure / self-reporting programmes and procedures?

Deferred Prosecution Agreements (DPAs) came into force on 24 February 2014 and the first agreement was approved by the Courts on 30 November 2015. Under a DPA a prosecutor charges a company with a criminal offence but proceedings are automatically suspended. The company agrees to a number of conditions, such as paying a financial penalty, paying compensation and co-operating with future prosecutions of individuals. If the company does not honour the conditions, the prosecution may resume. DPAs can be used for fraud, bribery and other economic crime. They apply to organisations, not individuals. A DPA could be appropriate where the public interest is not best served by mounting a prosecution.

VIII. What are the consequences for assessment of guilt or admission of wrongdoing for future business, work, permits e.a.?

This will depend on the particular wrongdoing proved or admitted and the nature of the businesses activities. There will inevitably be reputational implications for the business which will require careful management. In certain sectors, for example the public sector, businesses which have a negative finding recorded against them are prohibited from tendering for contracts.

IX. What are the latest developments in anti-corruption in your jurisdiction?

The major recent developments have been the approval of the first DPA and the first instance of a company pleading guilty to a section 7 bribery offence (failing to prevent bribery). On 30 November 2015 Standard Bank reached a Deferred Prosecution Agreement with the SFO and will now pay penalties of US\$32.2m, including a

fine of US\$16.8m to be paid to the SFO and a fine of US\$6m to be paid to the Tanzanian government. More recently, on 2 December 2015 the Sweett Group pleaded guilty to an offence under section 7 of the Bribery Act and will be sentenced in the New Year.

X. The Author



Chris specialises in business crime and regulatory defence work.

He has in-depth experience of advising corporate clients and individuals in relation to financial crime investigations and prosecutions. Chris has acted on behalf of individuals in relation to fraud, bribery/corruption, cartel and money laundering investigations and prosecutions conducted by the Serious Fraud Office, the Financial Conduct Authority (and previously the Financial Services Authority), the Crown Prosecution Service and the Competition and Markets Authority (formerly the Office of Fair Trading). He has also conducted internal investigations relating to financial crime on behalf of corporate clients.

In addition, Chris's practice encompasses advising clients in relation to corporate manslaughter investigations and the related inquest and health and safety work.

Throughout his career, Chris has represented clients at the police station and in the Magistrates' Court, as well as being involved in the preparation of complex, document heavy cases in the Crown Court and High Court. He is an accomplished advocate having practised in the Magistrates' Court for a number of years and, more recently, prosecuted regulatory cases in civil tribunals and he continues to represent individuals who are subject to investigation by their professional body.

Chris is a member of the Fraud Lawyers Association, the Health and Safety Lawyers Association, the London Criminal Courts Solicitors' Association, the Association of Regulatory and Disciplinary Lawyers, and the European Criminal Bar Association.

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