

The U.K. Passes the Bribery Act Creating Several New Anti-Corruption Offenses, Including “Strict” Criminal Liability

A major development in the enforcement and prosecution of overseas bribery occurred last week with the long awaited passage of the U.K.’s [Bribery Act](#). The Act, which received royal assent last Thursday, creates several new anti-corruption offenses that could impact companies doing business in the United Kingdom, including a new “strict liability” offense that could apply if a company fails to stop bribery from being committed on its behalf anywhere in the world. Although the Bribery Act is not yet in effect, it is expected to be implemented later this year after the United Kingdom’s scheduled parliamentary elections and the government issues guidance on the new Act.

The Bribery Act modernizes the U.K.’s approach to overseas and domestic corruption by updating and coalescing the often ineffectual patchwork quilt of anti-corruption laws the United Kingdom formerly had on its books, many of which dated from the 1880s. Portions of the new law dealing with overseas bribery bear many similarities to the U.S. Foreign Corrupt Practices Act (FCPA). Like the FCPA, the Bribery Act makes it illegal to bribe a foreign official, prohibiting anyone from offering, promising, or providing any advantage to a foreign official, or to another person at the request of the foreign official, for purposes of influencing that foreign official in order to obtain or retain any business advantage.

The Bribery Act goes beyond even the broad scope of the FCPA in three major respects, however. First, and most significantly, the Act imposes a new strict liability offense that applies to any company with ties to the United Kingdom that fails to prevent anyone performing services on its behalf (including employees, agents, subsidiaries, and possibly subcontractors and vendors, among others) from paying a bribe. The only defense to liability is if the company can prove that it had “adequate procedures” in place to prevent the bribery from occurring. Second, the Bribery Act does not contain any exceptions for “facilitation payments,” those relatively insubstantial payments made to facilitate or expedite routine governmental action. Third, the Act criminalizes “purely commercial” bribery that is unconnected to any public or governmental official, unlike the FCPA.

The passage of the Bribery Act means that the rules governing companies doing business in the United Kingdom are about to change dramatically. Under the new law, companies operating in the United Kingdom can be criminally charged for bribery that occurs anywhere in the world. Those companies need to react now to the new U.K. enforcement paradigm by adopting rigorous anti-corruption policies and procedures, training their employees, and implementing compliance programs that include substantial monitoring elements. Now that the Bribery Act is set to become law, your company’s compliance program could be its last, best defense.

If you have any questions about the Bribery Act and its effect on your business activities, please do not hesitate to contact your Ropes & Gray attorney.

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