

5 Minutes

UK Bribery Act 2011 - what you need to know



The Bribery Act came into force on 01 July 2011.

“Hospitality is not prohibited by the Act”

“Facilitation payments are bribes under the Act just as they are under the old law”

Resource: Quick Start Guide – Ministry of Justice (UK)

The UK Bribery Act, which received Royal Assent on Thursday, 08 April 2010, has been introduced as a result of pressure to reform the law regarding bribery and corruption in the UK due to the current law's being out of date, ineffective and not well suited to the modern global economy. The purpose of the proposed legislation is to simplify the law on bribery and to allow a more effective response to bribery offences that occur either in the UK or abroad.

The legislation is similar to its US counterpart, the Foreign Corrupt Practices Act (FCPA), but the UK measure goes farther than the FCPA by also making it illegal to request or accept a bribe, and companies could also face prosecution for failure to prevent bribery by employees.

What are the offences?

The Act creates four categories of offence, which address the following:

- Offering, promising or giving a bribe to another person
- Requesting, agreeing to receive or accepting a bribe from another person
- Bribing a foreign public official
- A corporate offence of failing to prevent bribery

The biggest change for businesses under the Bribery Act is it makes a corporate failing to prevent bribery an offence. Under this category, a commercial organisation could be guilty of bribery where a “person associated” with the organisation bribes another person intending to obtain or retain business for the organisation or to obtain or retain an advantage in the conduct of business for the organisation. Persons “associated” with the organisation could potentially include employees, agents, sub-contractors and joint venture arrangements (amongst others). The Act also requires organisations to have “adequate processes” in place to prevent such offences, and the executives must ensure that everyone within the organisation follows them.

Scope of UK Bribery Act

For UK registered corporations, there are three potential offences:

- A general offence of offering or receiving bribes
- A specific offence of bribing a foreign public official
- An offence of failing to prevent bribery on the corporation's behalf

Corporate entities which are not UK registered but which do business in the UK can also be charged with the offence of failing to prevent bribery on their behalf.

Individuals who are British citizens or ordinarily resident in the UK can be charged with the general offence of offering or receiving bribes, and with bribing a foreign public official.

These offences – for corporations and individuals – apply regardless of where in the world the bribes are offered or received, and regardless of whether the bribery is direct or indirect via a subsidiary or third party.

Penalties

Corporate bodies found to have committed any bribery offence could face unlimited fines. In addition, they may be disqualified from tendering for Government contracts, under Article 45 of the EU Public Sector Procurement Directive 2004.

Individuals could face a maximum ten year prison sentence and/or an unlimited fine. This includes senior officers of companies held liable through their consent to or connivance with a general or foreign public official offence by their company.

Is there a defence against bribery charges?

A defence for the corporate failure offence exists if it can be shown “adequate processes” were in place. The burden of proof rests with the organisation and processes will need to be evidenced in practice. The involvement of the organisation's top management in the failure will be taken into account when assessing the adequacy of the procedures in place.

The UK government has indicated that it intends to publish non-statutory guidance following Royal Assent but prior to the new offences coming in to force, so as “to give business time to prepare”. The guidance will be indicative, setting out broad principles and illustrative good practice examples of adequate procedures rather than detailed and prescriptive standards.

How should companies act?

Lack of knowledge of the new bribery laws is not a defence for a bribery offence. Although the Act does not apply retrospectively, companies need to be prepared to show adequate anti-bribery procedures are in place in practice. Section 9 of the Act requires the secretary of state to publish guidance about procedures which commercial organisations can put in place to prevent persons associated with them from bribing.

This document can be accessed at:

<http://www.justice.gov.uk/downloads/guidance/making-reviewing-law/bribery-act-2010-guidance.pdf>

A full copy of the Act and its Explanatory Notes can be accessed at:

www.legislation.gov.uk/ukpga/2010/23/pdfs/ukpga_2010023_en.pdf

The steps to follow and the likely work involved will vary depending on whether the organisation is already prepared to comply with the FCPA (e.g. Foreign Private Issuers) or equivalent. For these companies, the main immediate action is to review the scope and effectiveness of their existing anti-bribery programme and remediate any gaps. Policies require ensuring compliance with the new bribery law on the basis of the nature and structure of the individual organisation; you are encouraged to seek guidance as soon as possible.

For questions and further information, please contact:

Rifat Bozacioğlu
PwC Turkey
Forensic Services, Manager
+90 (212) 376 5352
rifat.bozacioglu@tr.pwc.com

Sandra Haeberli
PwC Turkey
Forensic Service, Manager
+90 (212) 376 5946
sandra.x.haeberli@tr.pwc.com