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The U.K.'s Bribery Act More Stringent than the FCPA?

By [Nicole Gewinner](#) and [Sue Snyder](#)

Many U.S. companies are familiar with the Foreign Corrupt Practices Act of 1977 ("FCPA"), which imposes criminal and civil liability for bribery of foreign government officials, as well as other potential liabilities. Many U.S. companies have responded to increased enforcement of the FCPA by putting in place procedures and policies meant to monitor compliance and minimize the likelihood of a violation. The United Kingdom has recently introduced an anti-bribery law even more rigorous than the FCPA with criminal and civil enforcement, which will be enforced starting April 2011. The U.K. Bribery Act of 2010 is not only strict, it also has wide territorial application. Because the U.K. Bribery Act applies to U.S. companies that conduct business in the U.K., many U.S. companies will be forced to address compliance with this law.

The U.K.'s Bribery Act of 2010 replaces the U.K.'s previous anti-bribery laws, including the Prevention of Corruption Acts of 1889-1916. The U.K. Bribery Act makes it an offense to both offer and to receive a bribe. A person may have liability for offering or receiving a bribe even if the bribery does not take place in the U.K., and even if the function of the bribe has no connection to the U.K. The Act requires only that the person committing the bribery has a "close connection" to the U.K. The definition of persons with a close connection to the U.K. includes British citizens, British nationals living overseas, persons that are ordinarily resident in the U.K., and companies incorporated under the laws of the U.K.

The U.K. Bribery Act also includes the offense of "failure of commercial organizations to prevent bribery." The offense applies to both a company incorporated in the U.K. and a company incorporated outside of the U.K. which conducts business in the U.K. A company may be guilty of this offense if a person associated with the company bribes another person to obtain or retain business or an advantage for the company. The definition of a person "associated" with a company is a person that performs services for or on behalf of the company, and includes an agent, subsidiary or employee. A company can therefore no longer disassociate itself from bribery in a subsidiary, even if that subsidiary is located outside of the U.K. and its operations are kept separate and apart from the company.

While the failure to prevent bribery offense may seem overly broad and its application practically global, the Bribery Act does provide a defense. The Act provides that a company may defend itself by showing that it had adequate procedures in place to prevent persons associated with the company from committing bribery. The Ministry of Justice's "Consultation on Guidance About Commercial Organizations Preventing Bribery" describes how a company may use the defense and demonstrate that it had adequate procedures in place to prevent bribery.

The Ministry of Justice's Consultation sets forth six "principles for bribery prevention." They are risk assessment, top level commitment, due diligence, clear policies and procedures, effective implementation and monitoring and review. The Consultation describes each of these principles and provides suggestions for their implementation. For example, in order to show that a company has assessed bribery risk in its operations, the company must have the assessment conducted by a professional with adequate skills and training. In addition, a company must conduct external and internal research in order to inform the assessment. Implementation of these principles may be advantageous to a business in that they encourage and create good governance and standardized operations. Implementation may also be costly, so it is important that it is done correctly.

If you have any questions about the U.K.'s Bribery Act of 2010 or the FCPA and its impact on your business, please feel free to contact [Nicole Gewinner](mailto:ngewinner@jw.com) at 512.236.2366 or ngewinner@jw.com or [Sue Snyder](mailto:ssnyder@jw.com) at 512.236.2240 or ssnyder@jw.com.

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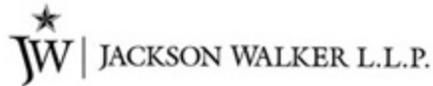
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