

## LEGAL ISSUES

### U.K.'s Sweeping Anti-Corruption Legislation Increases Risk for Businesses

The United States Foreign Corrupt Practices Act (FCPA) has received a great deal of attention of late. The U.S. government's increased FCPA enforcement efforts resulted in \$1.2 billion in fines and sanctions in the first few months of this year, as well as a seven-year prison sentence for an executive of a U.S. corporation.

But across the pond, the United Kingdom is making its own headlines with the UK Bribery Act 2010, which received Royal Assent on April 8 and is expected to take effect towards the end of the year.

This new law has far-reaching implications for any business that is either incorporated in the U.K. or has any part of its operations there. Such companies need to be aware of the act's provisions and update their compliance efforts accordingly.

The act is generally broader and stricter than the U.S.'s FCPA. It applies to behavior taking place

either inside the U.K. or outside it, provided that the person or entity has a "close connection" with the U.K.

A person or entity has a sufficiently close connection with the U.K. if that person at the time of the offense was, among other things, a British citizen; an individual ordinarily resident in the U.K.; or a body incorporated under the law of any part of the U.K. The "failure to prevent bribery" provision (see below) applies to any partnership or corporation with any business operations in the U.K.

The act differs from FCPA in several significant ways:

1. The act applies to purely private commercial transactions as well as those involving foreign officials.
2. Unlike FCPA, the act does not contain an exception for facilitation payments or reasonable promotional expenses.

3. The act provides strict liability for organizations that "fail to prevent" bribery.

4. Sanctions for violating the act include imprisonment for up to 10 years, an unlimited fine and debarment from public procurement contracts within the European Union.

The act provides a potentially critical affirmative defense to the strict liability charge of "failing to prevent" bribery. Under the act, an organization is not liable if it had "adequate procedures" in place designed to prevent persons associated with the organization from engaging in such conduct.

Although there are not likely to be any bright-line rules regarding what procedures will be "adequate" enough to trigger the defense, guidelines are due out from the U.K. Secretary of State before the act takes effect.

— Bethany Hengsbach, partner,  
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