The Bribery Act 2010 will have far reaching implications for every company doing business in the UK. In many ways it creates a platform for what could be the toughest enforcement regime in any jurisdiction.

**HOW DOES IT DIFFER FROM THE FCPA?**

There are some significant differences: the Bribery Act makes it an offence to receive, as well as give, a bribe; bribery of private individuals and companies is criminalised; there is no need to prove corrupt intent; there is a strict liability corporate offence of failing to prevent bribery; there is no exemption for facilitation payments; and the extraterritorial reach has a broader impact for companies and individuals.

**WHAT ARE THE PENALTIES?**

The penalties can be severe: the maximum penalty for individuals will be 10 years imprisonment and/or a fine; and the maximum penalty for a corporate will be an unlimited fine. There can also be damaging collateral consequences such as director disqualifications, company debarment from public contracts and asset confiscation proceedings.

**WHAT ARE THE IMPLICATIONS FOR NON-UK COMPANIES?**

Simply having a UK presence (subsidiary, office or operations) will create jurisdiction. The Bribery Act applies to both UK companies and foreign companies with operations in the UK, even if offences take place in a third country and are unrelated to UK operations. This means that the relevant criminal act can occur outside the UK and persons or companies in the UK can be liable. For example, if a US company has a UK branch and engages in bribery in Asia, that US company has liability under the Bribery Act and could be prosecuted in the UK for failing to prevent bribery.

**COULD A NON-UK PARENT COMPANY BE HELD LIABLE?**

The offence of failing to prevent bribery is committed by a company when it fails to prevent an “associated person” (an employee, agent or subsidiary) from offering, promising or giving a bribe.

A further requirement is that the person offering, promising or giving the bribe has to be “performing services” for or on behalf of the defendant company. The Act includes a presumption that an employee performs services for and on behalf of the company unless the contrary can be shown. In all other cases (for example, where a non-UK parent company of a UK subsidiary is involved), the Act says that the court will have to determine liability by “reference to all the relevant circumstances and not merely by reference to the nature of the relationship…”.

Further clarity on the overarching issue of a parent company’s liability for a subsidiary in UK law will be given in due course as part of the Law Commission’s on-going general review of corporate criminal liability.

**WHAT ARE THE IMPLICATIONS FOR NON-UK INDIVIDUALS?**

Senior officers need to understand that they could be personally liable under the Act for offences committed by the organisation if they have consented to or connived in (turned a blind eye to) the commission of the main bribery offences, including bribing a foreign public official (but not that of failing to prevent bribery), and any part of the offence has taken place in the UK. If the
offence is committed outside the UK, they will only be liable if they have a “close connection” with the UK (such as being a British passport holder or being ordinarily resident in the UK).

WHAT DO US COMPANIES NEED TO DO NOW?

The only defence available to commercial organisations charged with the corporate offence will be for the organisation to show that it had in place “adequate procedures” to prevent an act of bribery being committed in connection with its business. This phrase is not defined in the Bribery Act but it is widely acknowledged that compliance procedures will be subject to intense scrutiny. Further government guidance is expected this summer. In the meantime, all companies that do business in the UK must start thinking immediately about whether their current policies, systems, controls and training programmes will be compliant with the UK anti-bribery law.

HOW CAN DLA PIPER'S CORPORATE CRIME AND INVESTIGATIONS TEAM HELP?

We have 35 criminal defence lawyers in the UK and can offer clients a valuable insight into how regulators approach and conduct their investigations. With compliance development programmes such as proTECT we are well equipped to advise our clients on due diligence and other anti-corruption issues to help them manage their risk in these challenging times.

We also have global anti-corruption expertise. If you need specialist advice in relation to your position in other jurisdictions we can help you identify the right person in our international practice.

WHO SHOULD I CONTACT FOR FURTHER INFORMATION?

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