

UK Bribery Act's reach even longer than FCPA
Tuesday, 13th April 2010 by David Thorley

Lawyers working on compliance programmes say they have been “swamped with work,” as the newly-passed UK Bribery Act forces the region’s companies to reassess their anti-corruption preparations.

The act, which gained royal assent on 8 April, creates three new offences under British law – those of giving and receiving bribes and bribing a foreign public official, as well as establishing corporate liability for failing to prevent bribery – all which apply to UK companies, UK citizens and UK residents, irrespective of where they are based.

Non-UK nationals or companies can be liable if an act or omission forming part of the offence takes place in the UK.

Roger Best, a partner working on regulatory enforcement proceedings in London office, says, “All our English corporate clients with Latin American operations will be affected by the act, but more striking is the fact that many of our non-UK clients will be affected - for example if they carry on business in the UK, they will be subject to the requirement to prevent bribery by those serving their organisation throughout the world.”

The act goes beyond the requirements of the US’s equivalent legislation, the Foreign Corrupt Practices Act (FCPA), and Best explains that he is advising his clients that while “the UK government has yet to publish its compliance guidance, we can say now that a US FCPA compliance programme will not necessarily suffice because the UK act extends to private sector corruption as well as public sector.”

However, says David DiBari, managing partner of the firm’s Washington DC office, “a US FCPA compliance programme is a good basis from which to build a UK compliance programme. Companies that have been required to comply with the FCPA for years should be in an excellent position to adapt their practices to also cover UK law.”

Isabel Franco of Brazilian firm Koury Lopes Advogados says, “The fact that the UK has established very stringent rules on anti-bribery is a victory in the fight to combat corruption.”

“We are flooded with questions” from companies wishing to know how to reform their compliance programmes, she adds.

A particular area of concern is corporate hospitality. The act includes corporate hospitality as a potentially corrupt form of payment, but does not establish a fixed value of the hospitality to be regarded as illegal.

Franco explains: “Routine and inexpensive hospitality is acceptable, but lavish or extraordinary hospitality should and will definitely be punished. Thus if UK companies in Brazil are more conscientious about their corporate hospitality standards, we in Brazil will benefit from these new standards.”

She concedes that corporate hospitality remains a grey area, saying, “I have many consultations where I am asked if it is OK to pay for the Carnival stands for Brazilian officials during Carnival holidays.”

But, she adds, “I have started to have consultations about the World Cup and the Olympic Games. In this case, the customs in Brazil do play an important role, but still anyone who has a sense of ethics knows what reasonable corporate hospitality should be.”

In such matters, says Best, perceptions of corruption are likely give the firm’s international partners cause for anxiety as they develop new compliance programmes. He explains, “the high levels of perceived corruption in some Latin American states (as revealed by the Transparency International Corruption Perceptions Index) suggests that some Latin American businesses should be treated as high risk and therefore subject to specific attention in companies’ anti-corruption programmes.”