

## Ripple Effects of the UK Bribery Act

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Setting a gold standard for the global anti-corruption laws, the Bribery Act, 2010 ("Bribery Act") of the United Kingdom comes into effect on July 1, 2011.

Ordinarily a new law in the UK should not be of concern for businesses in other countries. The Bribery Act however is different, and has sent minor tremors to jurisdictions far from its epicenter. Some of the unique features of the Bribery Act extend its applicability worldwide. The Bribery Act therefore assumes significance for entities in each territory which, simply put, have a business relationship or presence in the UK.

We have answered below some of the basic questions on this subject, to assist the readers in understanding and preparing for this change:

### A. How does it matter to us - we are in India?

The Bribery Act has a worldwide reach. It is relevant for each entity that conducts business in the UK (even if incorporated anywhere else in the world), or performs services on behalf of a UK entity in other jurisdictions. The applicability of the Bribery Act is said to extend to subsidiaries, parent entities, joint venture partners, employees, agents, consultants and third parties associated with the UK businesses.

While it may practically be difficult for the UK authorities to prosecute and punish entities or persons not in the UK, the UK authorities have powers to prosecute and punish the UK counterparts, unless they can demonstrate that they had implemented "adequate procedures" to prevent bribery.

Owing to exposure under the Bribery Act, the UK entities are likely to be much more cautious in selecting business partners and service providers in foreign territories. The Bribery Act therefore also matters to those Indian entities who intend to have a business relationship with any businesses in the UK, especially when India is considered a high risk jurisdiction in the context of bribery and corruption. The Indian entities can therefore expect a high level of scrutiny by their UK business partners.

### B. What does the Bribery Act punish and how?

The Bribery Act specifies that the following criminal offences would be punished with an unlimited fine and/or imprisonment of up to 10 years:

- bribing a foreign public official;
- giving a bribe; and
- accepting a bribe.

In addition, the Bribery Act also introduces a new corporate offence of failure to take adequate steps to prevent bribery, punishable with unlimited fine.

Needless to say, a conviction is also likely to entail loss of reputation and possible blacklisting of those convicted and other consequences such as re-

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covery of the total value of the business/contract in relation to which bribing took place.

### **C. What are “adequate procedures”?**

The UK Government has prescribed a few guiding principles to enable entities to demonstrate that they have implemented “adequate procedures” to prevent bribery, which include introduction of anti-corruption policies and procedures, assessment of corruption risk, conduct of due diligence of service providers, monitoring and review, etc.

The UK entities would thus expect their overseas business partners to understand and implement these procedures.

### **D. Is the Bribery Act like FCPA?**

The Bribery Act and the Foreign Corrupt Practices Act of the USA, or FCPA, both are anti-corruption legislation. However, in comparison, the Bribery Act is clearly more stringent. It has wider applicability as compared to the FCPA and also prescribes heavier fines and terms of imprisonment. Unlike FCPA, the Bribery Act does not permit “facilitation payments” to assist or expedite “routine government action”. While FCPA is concerned only with payments to government officials, the Bribery Act also brings within its ambit, “commercial bribes” exchanged between private entities. “Failing to prevent a bribe” is also a new offence recognized by the Bribery Act.

### **E. What should we do?**

If you are subject to applicability of the Bribery Act (refer Question A above), it is time that you:

- understand what the prescribed “adequate procedures” are and implement them as appropriate, with review and recording;
- have clear policies and procedures in place to prevent bribery; and
- inform and train your employees on the provisions and “dos and don’ts” in view of the Bribery Act.

The objective should be to put in place a system and supervision capable enough to assess whether any payment or expense (e.g. hospitality) may run afoul of the Bribery Act. Please bear in mind that what may be considered an acceptable local practice may not be treated likewise under the Bribery Act.

### **F. How much time do we have?**

The Bribery Act comes into force on July 1, 2011. The concerned businesses should therefore implement “adequate procedures” as soon as possible, to strengthen their defense if any instance of bribery by or within their organization comes to the notice of the authorities.

If you do not have any business in or with any entity of the UK at present, you may implement the procedures at the time you foresee any such relationship coming into existence.