

An Important New Law You Should Be Aware Of

We've complained a lot about the United States trying to extend its laws extra-territorially, and we've warned Brits that whatever the US does, the UK will follow. The UK's new Bribery Act is an example of this. It affects British citizens all over the world even if they never do business in the UK at all. It goes way too far in my opinion... subjecting Britons to even stricter criteria than the USA's FCPA (Foreign Corrupt Practices Act)

The Bribery Act applies not just to offences that take place in the UK, but also to British companies and British nationals anywhere in the world, including any international companies that have business operations or even mere incorporation in the UK. This means, for example, that banks present in the UK will be affected by it and will pass the resulting compliance work on to their customers.

What is a bribe? Basically, giving a financial advantage to induce the improper performance of a public function, business activity, or an act in the course of someone's employment. It's not just about bribing foreign government officials, but can also be extended to the private sector.

'Improper performance' is left wide open. The question of what is expected is based on what a reasonable person in the UK would expect. This specifically prohibits Brits from doing business in accordance with a local culture where grease payments might be the norm. In Asia, for example, commission payments are typically expected in many deals and sectors. You now need to take legal advice even on simple commission payments. The USA's FCPA does include a safe harbor for 'grease payments' – the UK's Bribery Act does not.

What about corporate hospitality? The guidance issued by the

British Ministry of Justice includes a foreword by Secretary of State Kenneth Clarke stating that nobody wants to stop companies taking their clients to Wimbledon or the Grand Prix. The concerning thing, however, is that these are only guidance notes – not the law. The law can and will be subject to stricter interpretation over time. That is the nature of laws.

The penalties for failure to comply are severe. Just as companies are obliged to have procedures in place to prevent money laundering and terrorism financing, this introduces a new level of regulation. There is also a corporate offence of “failing to prevent bribery” – so you can be sure that your bankers, if they have any activity in the UK, will start asking more and more questions about payments of things like commissions or consulting fees.

The article above was originally published in Q Bytes, our free newsletter, earlier this year. Peter Macfarlane and the editorial team are currently enjoying their annual holidays so we decided to upload this article to the blog for those that had missed it. If you would like to receive our free weekly newsletter to keep up to date on matters that could affect you and your wealth, [sign up here](#). It's free.