

Podcast Script: Bribery Act

Speaker: Nikki Allen & Tony Fisher

Practice Area: Commercial



“Welcome to iLegal.info where we at FJG keep an eye on the law for you.”

“On 1 July 2011 the Bribery Act 2010 comes into effect in England and Wales. It is a very significant piece of legislation which has unlimited territorial effect. All businesses need to understand the offences it creates and what they should be doing to avoid prosecution. Listen here while we talk to Tony Fisher of Fisher Jones Greenwood, he is going to tell us more about the Act.

“Tony, what are the most significant aspects of the new Act?”

“Well the Act which comes into effect on 1 July this year significantly extends the extent to which organisations can become responsible for bribery. It extends the crime of bribery to cover both public and private sector transactions whereas previously only offences in relation to bribing public officials and agents were covered and very significantly it creates a new strict liability offence of failing to prevent bribery, an organisation will only have a defence to this offence if it can show that it had what I would describe as adequate procedures in place to prevent bribery, and also it has very extensive scope. The offences are very broadly defined and the Act has a very significant extraterritorial reach so that for instance any organisation which has any sort of presence in the UK can be held liable for this strict liability offence even if it was committed overseas and that has a very significant bearing on the way in which overseas agents for instance will have to be appointed from now on, especially in those areas of the world where bribery is known to be rife.”

“So how does it differ from the Prevention of Corruption Acts?”

“Well, the most significant difference is the creation of this new strict liability offence and the extension into the private sector as well as the public sector.”

“What are the benefits of the new Act?”

“Well, I suppose the benefits are it is going to be more effective in preventing bribery taking place and it shows a huge commitment on the part of the UK government to ensure that businesses which trade within the UK respect the need to operate transparently throughout the world. It goes beyond virtually every piece of legislation that every other country has passed, in many cases, in the US for instance, if the actions concerned are not illegal within the country where the inducements are given then no offence is committed but there is no such exception here. It is a strict liability offence, if you fail to prevent bribery then you are guilty of it and that is a very significant advance.”

“What steps should a business be taking to ensure that they are compliant on it?”

“Well, the government have now actually issued some fairly comprehensive guidance with regard to what these adequate procedures to prevent bribery should consist of and they are not... I mean they haven't put a workshop manual up on the web which you can just copy and implement, but they have identified six golden principles if you like and if you comply with these six principles then you can rely on the defence that you have adequate procedures in place.

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“The first one is surrounding proportionality. Obviously what a multinational corporation needs to do is very different to what some small exporter needs to do and also for those companies that trade almost entirely within the UK then very little really does need to happen so whatever steps are taken they need to be proportionate to the extent of the risk and if you are a big business and you have an number of agents in African countries or in South East Asia for instance then you will have to do an awful lot more to show that you have taken adequate procedures than if you are a small business trading in the UK. They also want to see top level commitment so there needs to be a leadership within the organisation with regard to the anticorruption policies. They need to see evidence that you’ve undertaken an adequate risk assessment in relation to the area of the world that you are actually trading in, whether directly or through third parties. For example they have given an example in the guidance, you might want to do some research into markets that you operate in and the people you deal with, especially if you are entering into new business arrangements and new markets overseas.

“And that really leads on to the next principle which is due diligence. They expect you to know who exactly you are dealing with, so I think a lot of businesses will be introducing more comprehensive processes for identifying and instructing foreign agents to ensure that they are trustworthy and that they can show that they have operated transparently for a number of years before they are instructed.

“Communication is the fifth principle. You need to be able to show that you have communicated within your organisation what your anticorruption policies are and there is a lot of stealth training issues that surround that.

“And finally, organisations need to monitor and renew their policies, procedures, education programmes and so on because obviously circumstances change within overseas countries and your policies and procedures need to keep up with whatever changes are taking place.”

“And who at Fisher Jones Greenwood can we speak to for more advice?”

“Well, you could speak to me, Tony Fisher, and also other members of our Commercial Department, in particular Katie Fordham and Beth Baird.”

“I understand Fisher Jones Greenwood are holding a seminar, can you tell me more about this?”

“Yes, we are holding a seminar at the University of Essex on Monday 27 June at 4pm and the seminar will be presented by Stephen Harvey QC who is top-rated as a legal and criminal silk who has a specialism in this area and Professor Sheldon Leader who is a member of the Human Rights Centre there and a leading voice on business and human rights. The purpose of the seminar really is to bring businesses up to speed with the act, the offences it creates and what they need to be doing to mitigate the risks of prosecution. There has been a lot of debate with regard to how the Act will be enforced but the signs are that it will be policed with some vigour. The Serious Fraud Office has recently restructured itself so that a third of its staff are now dealing with anticorruption issues. We all know what state the government finances are in and penal revenues from soft target businesses may prove too attractive to miss for the government, so if you are in business and especially if you are using

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foreign agents in parts of the world where corruption is rife then it would be a good idea to attend the seminar.”

“And who do we contact at Fisher Jones Greenwood LLP to get on to the seminar?”

“You can contact Penny Hepburn, that’s PHepburn@fjg.co.uk or telephone 01206 835324.”

““Thank you for listening to iLegal. For further information contact us at Fisher Jones Greenwood LLP on 01206 578282 or email us at info@fjg.co.uk or visit our website on www.fjg.co.uk.”