

Bribery reform in the UK

- *An overview:*
- Two general offences;
- One offence concerned with foreign public officials;
- One offence focused on companies and partnerships.
- Is the Government committed?
- Will stakeholders oppose a Bill?
- What are the political parties' views?

Bribery reform in the UK

- The Law Commission's proposals (1)
- Two offences, one focused on the briber (P), and one on the recipient (R).
- Offences defined in the 'inchoate' mode.
- Bribe may be paid through a third party, or to a third party.

Bribery reform in the UK

- R commits the offence whether the bribe comes as an inducement, or as a reward.
- R also commits it if it would be improper even to ask for or accept an advantage.
- R behaves ‘improperly’ by improperly performing a public or private function.
- ‘Improper’ means in breach of an expectation of good faith, impartiality, or of a position of trust: these are specific forms of acting ‘corruptly’.

Bribery reform in the UK

- P commits the offence by offering/giving an advantage to someone, intending to induce or reward improper conduct by R. **OR:**
- P offers or gives an advantage knowing or believing that its acceptance by R would in itself be improper.
- The person advantaged, and the person behaving improperly may be different.

Bribery reform in the UK

- Bribery of a foreign public official (FPO).
- Intention to influence FPO in that capacity.
- Intention to obtain/retain business.
- Bribe may be through/to a third party.
- Defence if local law permits payment. Also:
- Reasonable belief that payment lawful.
- Meaning of 'FPO'.
- Jurisdictional reach.

Bribery reform in the UK

- Rt Hon David Cameron MP:
- “corporate America really understood the consequences of dodgy accounting not just when Enron collapsed - but when Jeffrey Skilling was given a 24 year jail sentence”
- Clause 8. ‘Consent and connivance’ offence applicable to individual directors etc.
- Only 36% of directors fear personal liability
- Note absence of ‘neglect’ added to ‘consent and connivance’ (contrast FSMA 2000).

Bribery reform in the UK

- Jurisdictional reach: different from 2001?
- Important to remember that FPO offence can be 'domestic' in focus.
- Important to remember that general offences can be international in focus.
- Clause 6: So long as conduct would be an offence under clauses 1/2/4, law applies.
- However, category of offenders extended to include persons 'ordinarily resident'.

Bribery reform in the UK

- Corporate ('C') failure to prevent bribery.
- 'A' is performing services for C.
- A bribes C in connection with C's business.
- Someone responsible for stopping A bribing another negligently failed to do so.
- Defence to show adequate anti-bribery systems in place.
- Defence unavailable if C's senior officers were guilty of the negligent failure.

Bribery reform in the UK

- A broader context: the OECD convention.
- The new structure secure UK compliance.
- OECD concerns remain:
- Narrowness in ‘intention’ in FPO offence.
- Meaning of ‘not legitimately due’.
- Meaning of ‘adequate systems’.
- Jurisdictional questions.
- ‘Registered’ and ‘incorporated’ bodies, in clauses 6 & 7.

Bribery reform in the UK

- A broader context: managing risk (1).
- Research on FTSE 250 companies:
- Only about 30% of boards ‘very aware’ of risk of punitive consequences of bribery.
- Majority of directors considered ‘lack of leadership’ and deficiency in ‘corporate culture’ to be main explanations.
- No company incentives to reduce risks.
- Woolf Committee recommendations.

Bribery reform in the UK

- A broader context: managing risk (2).
- 25% of companies had no crisis management plans to deal with regulatory intervention.
- Of those who had, 38% had not reviewed them in 12 months.
- 60% relied on internal review, not ‘mock raids’ to test crisis management systems.
- Less than 20% were ‘very confident’ in firm’s understanding of punitive risks.