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## **Analysis: Bribery Act brings UK in line with rest of world**

As of 8 April, Britain's long-awaited Bribery Act is law – one of the last pieces of legislation passed by the country's outgoing Labour administration. And many of Britain's international competitors, it's fair to say, will probably have breathed a heartfelt sigh of relief.



The OECD had certainly been pushing for a single coordinated and consolidated piece of British legislation, says Rob Mitchell, European head of due diligence at London-based trade risk assessment specialists World-Check.

“Previous legislation had really left the country a laughing stock,” he says. A series of corruption scandals – involving companies as diverse as BAE Systems and Balfour Beatty – had failed to result in high-level convictions. Rather than convictions, and fines; it seemed that ‘naming and shaming’, coupled to the imposition of civil recovery orders, was the usual outcome.

“Obtaining a conviction was difficult,” explains Mitchell. “There were lots of legal hurdles to overcome – not least due to the fact that what legislation there was, was very outdated.”

Indeed, points out Jayne Hussey, a partner at Pinsett Masons, the law that the Bribery Act replaces – The Prevention of Corruption Act of 1916 – had an entirely different focus altogether: the bribing of government officials, either in the UK, or abroad.

“The Bribery Act goes further – a lot further,” she says. “It’s a major piece of legislation, and not just a box-ticking exercise.” Indeed, she points out, the Act not only brings British law in line with America’s Foreign Corrupt Practices Act, but goes further. “It’s right up there with international best practice,” stresses World-Check’s Mitchell.

Most notably, the Act extends culpability into two new areas.

First, it legislates against corrupt practices carried out by third-party agents of a company – and not just a business’s direct employees. “So it’s not just what you do, it’s what your suppliers and agents do as well,” says Hussey.

Secondly, it creates an offence of ‘failing to prevent corruption’. “It won’t be an acceptable defence to say: ‘We didn’t know.’,” she stresses. “Directors are personally liable – and the courts will take the view that they should have known what was going on in their businesses.”

So how can a company ensure compliance?

To begin with, says Hussey, companies should be aware that it is a valid defence to be able to point to acceptable system and procedures that are aimed at preventing corruption.

The terms and conditions on the back of purchase orders; supplier manuals; internal training courses; employee handbooks; hospitality and gifts policies – such documents should make it explicitly clear that corruption is not to be condoned, she emphasises.

And, naturally, law firms such as Pinsent Masons stand ready to help, drafting acceptable wording, and carrying out ‘health check’ audits. Likewise, firms such as World-Check stand ready to establish the true ownership lying behind the trade relationships a business might have – useful when a companies wishes to avoid, however inadvertently, lining pockets of overseas government ministers.

But will the Act, at the end of the day, make a genuine and lasting difference? “It does have people worried,” says Hussey. “They aren’t sure what to expect.” “There will be prosecutions – but probably not as many as people fear,” adds World-Check’s Mitchell.

In short, complacency would be unwise. Case law will doubtless clarity, but in the meantime, vigilance would seem to be in order.

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