

Bribery: What is needed for the UK Bribery Act to be effective?

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Bribery has devastating effects on the world's poorest and most vulnerable communities. The UK Bribery Act is a landmark piece of legislation, which if implemented and enforced, would be a major step forward in ensuring that UK companies do not participate and facilitate bribery both at home and abroad. Yet Tearfund has concerns that current loopholes and insufficient resourcing for enforcement undermine the effectiveness of the Act.

What do we want the UK Government to do?

- For the UK Bribery Act to be extended to all legal persons incorporated (i.e. companies) in all of the Overseas Territories and Crown Dependencies, as recommended by the OECD earlier this year.
- Ensure adequate enforcement of the Bribery Act by increasing funding for the Serious Fraud Office as well as to diplomatic posts. Posts must have standard procedures in place to deal with reports of bribery by UK firms and be equipped to support UK businesses overseas to comply with the Act.
- Clarify the Ministry of Justice's guidance for businesses – particularly on aspects relating to the reach of the Act and bribery by subsidiary firms.
- Appoint an Anti-Corruption Champion that will provide leadership, commitment and cross-department coordination to tackle corruption and ensure strong implementation of the UK Bribery Act.

The impacts of bribery

Bribery has devastating effects on development, but is often fuelled and facilitated by external actors. Supply-side bribery by companies (including British companies), and contradictory or badly-policed polices within exporting countries, donor government and large financial centres, are a significant part of the problem.

Bribery by UK companies overseas:

- undermines just and stable governance
- undermines the rule of law, as people can 'buy' their way out of justice
- leads to poor quality public services – as companies use bribery in order to secure procurement contracts

Case Study

In 2010 BAE was convicted of failing to keep proper books and records in relation to the sale of an air traffic control system to Tanzania, relating in particular to a \$12.4m payment to a Tanzanian middleman for "marketing" purposes, but avoided any admission of corruption. BAE agreed with the SFO to pay out £29.5 million to the people of Tanzania as an ex-gratia payment, equivalent to the size of the contract.

A landmark piece of legislation

The UK Bribery Act 2010 reforms the criminal law, providing a comprehensive scheme of bribery offences, bringing the UK into line with its international commitments. In particular the Act requires companies to have procedures in place to prevent bribery.¹ If widely implemented and enforced the Act could go a long way in ensuring that UK companies do not fuel or facilitate bribery overseas.

What needs to be done?

1. Extend the Bribery Act to companies registered in all Overseas Territories or Crown Dependencies²

Earlier this year, the OECD Anti-Bribery Convention review team published its report on the UK's compliance with the Convention, highlighting their concerns that under the Bribery Act, the UK does not extend its jurisdiction to prosecute legal persons incorporated in the Overseas Territories (OTs) and Crown Dependencies (CDs), although natural citizens in these territories can be prosecuted.³ This is inconsistent and means that companies incorporated in the CDs and OTs, but which do not carry on a business in the UK, can be used to commit foreign bribery, without being prosecuted under UK law. This is of particular concern when a large number of companies are incorporated in the CDs and OTs – for example, in the British Virgin Islands alone, 802,850 companies were incorporated in 2007. Consequently, the UK Government should ensure that the Bribery Act is extended to cover all legal persons incorporated in the CDs and OTs.

2. Ensure sufficient resources for enforcement

Effective implementation of the Bribery Act requires sufficient resourcing. The Serious Fraud Office (SFO) has the responsibility to enforce this new piece of legislation but is subject to significant funding cuts, with its budget cut from £52 million in 2008 to approximately £33 million in 2012 and it is expected to be further reduced in forthcoming years.

The UK's Diplomatic posts are the first port-of-call for UK businesses operating overseas that are experiencing bribery. Consequently, these posts need to have standard procedures in place to ensure they deal with all these reports in an appropriate and consistent manner, as otherwise some reports may be investigated whilst others overlooked for various reasons.

Furthermore, diplomatic posts need to continue to support businesses to implement the Act, particularly supporting companies to put procedures in place to prevent bribery that are relevant and specific to the contexts in which they operate.

1 International commitments include the OECD Anti-Bribery Convention and the United Nations Convention Against Corruption.

2 Crown Dependencies: Isle of Man, Channel Islands - Balliwick of Jersey, Balliwick of Guernsey (includes Guernsey and its dependencies)

Overseas Territories: Anguilla, Bermuda, British Antarctic Territory, British Indian Ocean Territory, British Virgin Islands, Cayman Islands, Falkland Islands, Gibraltar, Montserrat, Pitcairn, Henderson, Ducie and Oeno Islands, St Helena and St Helena Dependencies (Ascension and Tristan da Cunha), South Georgia and South Sandwich Islands, Sovereign Base Areas of Akrotiri and Dhekelia, The Turks and Caicos Islands

3 <http://www.oecd.org/investment/briberyininternationalbusiness/anti-briberyconvention/50026751.pdf> (see page 50)

3. Clarify the Ministry of Justice's Guidance for businesses

Whilst non-statutory, the Ministry of Justice Guidance risks weakening the legislation in certain areas and creates unnecessary confusion for companies.

- Coverage of the Act - clause 36 of the guidance indicates that firms listed on the London Stock Exchange are not necessarily covered by the Act.
- Potential outsourcing of bribery to subsidiaries - clause 42 of the guidance suggests a prosecutor will need to establish an intention on the part of a subsidiary to obtain a business advantage through bribery for the parent company rather than for itself. This means that bribery could potentially be 'outsourced' to a subsidiary.

4. Appoint an Anti-Corruption Champion

Further to the cabinet re-shuffle, there has been no announcement about a new Anti-Corruption Champion, as has been usual when the current post-holder changes departments. This role is needed to provide leadership, commitment and cross-department coordination to tackle corruption. The focus of the role should be both on the UK and overseas, with a need for a comprehensive strategy which would allow Parliament and other stakeholders to measure progress on this crucial issue.

About Tearfund

We are a Christian relief and development agency building a global network of local churches to bring justice, transform lives, and eradicate poverty. Our ten-year vision is to see 50 million people released from material and spiritual poverty through a worldwide network of 100,000 churches.

We work on: Governance & Corruption, Environment & Climate Change, Water & Sanitation, Livelihoods & Food Security, Gender, Healthcare, and HIV & AIDS

Giving aid regardless of race, religion or nationality, we work directly in response to disasters, and in partnership with organisations in: Afghanistan, Angola, Bangladesh, Bolivia, Brazil, Burkina Faso, Burundi, Cambodia, Chad, Colombia, Côte d'Ivoire, DR Congo, Egypt, Ethiopia, Guatemala, Haiti, Honduras, India, Kenya, Kyrgyzstan, Liberia, Malawi, Mali, Mekong, Mozambique, Myanmar, Nepal, Nicaragua, Niger, Nigeria, Pakistan, Peru, Rwanda, Sierra Leone, South Sudan, Sudan, Tajikistan, Tanzania, Uganda, Uzbekistan, Zambia, Zimbabwe,