

## U.K. BRIBERY ACT GOES INTO EFFECT

Similar to but broader than the U.S. Foreign Corrupt Practices Act, the new law exposes CFOs in the United States to more risk.

BY SARAH JOHNSON

**A** law going into effect July 1 potentially raises the personal liability of U.S.-based CFOs whose companies do business in the United Kingdom. The U.K. Bribery Act builds off of the 33-year-old U.S. Foreign Corrupt Practices Act (FCPA) and is expected to have a broad reach.

Violators could face up to 10 years imprisonment and hefty fines. The new law suggests executives may be held liable if they don't take certain steps to prevent bribery from occurring on their watch. The illegal activity could happen miles away, outside of the United States and the United Kingdom, and still be subject to the U.K.'s enforcement.

"If you carry on business in the U.K. and you do not have procedures in place to prevent bribery, it means if someone associated in your company does pay a bribe, you will have no defense — even though, as management of the company, you knew absolutely nothing about it," says Justin Williams, a partner who heads Akin Gump's London international disputes office.

The newness of the law raises questions about how U.K. authorities, who have limited financial resources for investigations, will both interpret and enforce it, notes Williams. However, working against companies is the fact that the U.K.'s Serious Fraud Office (SFO), which will enforce the Bribery Act, could piggyback on the work of the U.S. Department of Justice, which views FCPA enforcement as a priority. Attorneys who represent companies also posit that the Securities and Exchange Commission's new whistle-blower rules, which offer a cash bounty to informants, could bring more FCPA cases to the forefront.

"The risk of not giving [your companies' related policies] full and careful attention is extraordinarily high," says Wynn Segall, also a partner at Akin Gump. He

says the potential for dual prosecutions of the same case in both the United States and United Kingdom adds to the personal risk finance executives take on.

Still, executives may be able to take comfort from guidance earlier this year in which the SFO said the law "is not intended to penalize ethically run companies that encounter an isolated incident of bribery," but that the agency expects to strike a balance between "corporate responsibility for ensuring ethical conduct" with the public interest.

Other guidance from the United Kingdom suggests companies that merely list on a U.K. exchange will not fall under the law's purview. Businesses would also need to have a physical presence in the region, such as an office, warehouse, or manufacturing facility, Williams says. Experts recommend that companies that do have such a presence reevaluate their FCPA compliance programs and take another look at their directors' and officers' insurance policies.

Companies also need to scrutinize the activities of their suppliers. "This is going to put more pressure on companies to make sure they are continuously monitoring their partners and business relationships overseas," says Scott Schulman, president of corporate markets for Dow Jones.

To be sure, gaining confidence over how a supplier behaves in far-off lands — possibly under the pressure of dealing with cultures where bribery is the norm in business transactions — is not always possible. But the Bribery Act apparently makes that task necessary. "Regulators can say you are liable for the actions of third parties, that either you knew about [an illegal activity] or should have known," says Joe Zier, a partner and leader of Deloitte's FCPA practice. **CFO**