



Anti-bribery and anti-corruption

Why the new UK Bribery Act may apply to Russian companies – implications for your business

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Agenda

- **The new UK legal framework**
 - does it apply to your company
 - does it apply to your directors/senior managers
- **Key issue for Russian companies – the new Corporate Offence**
- **Recent changes in Russian attitude to corruption - OECD 2012?**

Key area of the Bribery Act 2010 directly relevant to Russian companies

- **The new Corporate Offence**

- strict liability offence for failure to prevent bribery by a person “associated” with it
- “Bribery”: only covers the offering, promising or giving of a bribe contrary to Sections 1 and 6 NOT the taking of a bribe contrary to Section 2
- “Associated” persons: performs services for or on behalf of a corporate in any *capacity* and in any *jurisdiction*
 - e.g. joint venture relationships, subsidiaries, agents, distributors

Application of the Bribery Act 2010

- **Extra-territoriality**
- **The Corporate Offence**
 - the corporate must be *incorporated* in the UK or must *carry on business* in the UK
 - no definition of what constitutes “carrying on business” in the UK
 - the underlying act of bribery carried out by an associated person can take place in *any* jurisdiction

Key areas of the Bribery Act 2010 directly relevant to Russian companies

- **Am I as a director or senior manager potentially liable?**
- **No senior officer liability for Corporate Offence but:**
 - where one of the General Offences or the FPO Offence has been committed by a corporate, the corporate's "senior officers" may also be held liable for the offence if they *consent* to or *connive* in the commission of the offence
 - directors, managers, company secretaries, other "similar officers", or any persons purporting to act in such a capacity
 - limitations on liability:
 - but "directing mind" problem
 - must have a "close connection" with the UK

Key area of the Bribery Act 2010 directly relevant to Russian companies

- **The defence: “adequate systems and procedures” to prevent bribery**
 - Government guidance due to be published shortly
 - The “Six Principles for Bribery Prevention”:
 - thorough risk assessments;
 - top level commitment;
 - due diligence of all business relationships;
 - clear, practical and accessible policies and procedures;
 - effective implementation of the policies and procedures; and
 - effective monitoring and audit of the policies and procedures

Key areas of the Bribery Act 2010

- **Foreign Public Officials: The FPO Offence**

- no carve outs for “reasonable and bona fide expenditure” in connection with promoting, demonstrating or explaining products and performing contracts
- no requirement to show “impropriety” on the part of the paying party in the offence of bribing an FPO:
 - focus on intention to influence the FPO and to obtain or retain business advantage
 - technically, all forms of hospitality can be caught by this offence
- reliance on prosecutorial discretion

- **Facilitation Payments**

- no carve out for facilitation payments

Risk management strategies for Russian companies: detection and prevention

- **Relationships with “Associated” Persons**
 - effective due diligence with *all* third parties who perform services for or on your behalf

Conclusions

- **The beginnings of a more proactive approach in the UK:**
 - implementation of the Bribery Act 2010
 - comments made by the judiciary in recent cases about the seriousness of bribery offences
- **Enforcement priorities of the SFO**
- **The scope of the Bribery Act 2010 should not be underestimated:**
 - in some respects it is wider reaching than the FCPA
 - liability over the actions of associated persons
 - facilitation payments
 - a lack of clarity in key areas of the anti-bribery legislation
 - doubtful future of plea bargaining and self-referral

Our Team in London



Alistair Graham

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Bars and Courts

Hong Kong, 1990

England and Wales, 1987

Education

Guildford College of Law, 1985

MA, St. Edmund Hall, Oxford University, 1983

Alistair Graham is a partner in the London Dispute Resolution group. He is a Solicitor Advocate and has represented clients in litigation in the High Court, Court of Appeal, House of Lords, Privy Council and the Supreme Court in London as well as clients in ad hoc, LCIA and ICC arbitrations. He is also experienced in ADR techniques and has represented clients in mediations on numerous occasions and is an accredited mediator.

He has particular experience in white collar disputes, financial services disputes, banking litigation, regulatory and fraud investigations and international asset tracing. He has coordinated and managed a number of complex cross border disputes, and most recently been advising on the implications of the new Bribery Act.

Alistair is a frequent commentator in the press and at conferences on bribery and fraud related issues, specifically relating to the introduction of the new Act.



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Bars and Courts

England and Wales, 1986

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University of Durham (BA Dunelm)

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Charlie Monteith joined White & Case in February 2011 as Counsel in the global White Collar group based in the London office. Prior to joining the Firm, Charlie was Head of Legal and Operational Assurance at the UK Serious Fraud Office where he was a leading policy maker and key architect of the UK's new Bribery Act due to come into force in 2011. He was on the Law Commission's Bill Advisory Group, led the drafting of the Attorney General's guidelines and was part of the working group that drew up the adequate procedures guidance. He has advised numerous corporates on the governance and compliance implications of the Act on their businesses. Charlie has also been one of the UK's leading economic crime enforcers in recent years having been involved in such high profile cases as BAe, Mabey Johnson, Balfour Beatty and Oil for Food.

Charlie is a regular speaker at numerous high level anti-corruption, corporate compliance, securities fraud, money laundering and white collar crime conferences and has authored various articles on the subject.

Our Global White Collar Group

- Our Global White Collar Group is led by Washington, DC based partner George J. Terwilliger III, and has senior, experienced lawyers based throughout the United States (Washington, DC, New York and Los Angeles) and Europe, including the United Kingdom, France, Germany, Belgium and Eastern Europe.
- Our Global White Collar Group advises companies, financial institutions, and senior business and political figures on both domestic and international civil and criminal investigations and enforcement proceedings.
- We provide strategic and legal assistance on matters such as regulatory investigations, enforcement proceedings, internal investigations, compliance audits, and administrative and legislative enquiries. We have advised across almost all industry sectors including consumer products and retail, education, energy, oil and gas, financial services, healthcare and pharmaceutical, industrial/manufacturing, telecommunications, media and technology, and transport and logistics.

Appendix of recent cases

- **Recent cases**
- **Julian Messent:** *The chief executive of insurance firms PWS was imprisoned for 21 months and made to pay £100,000 compensation following his involvement in corrupt payments to Costa Rican officials*
- **Robert Dougall:** *The former vice president of DePuy International was imprisoned for 12 months for his involvement in DePuy's bribing of Greek healthcare officials to induce them to buy orthopaedic products*
 - *Lord Justice Bean disregarded the suspended sentence Dougall had agreed with the SFO in return for his cooperation. He said that whilst Dougall had been of great value to the SFO, "criminality on that scale" cannot merit anything other than immediate imprisonment*
 - *the Court of Appeal: imposed a suspended sentence on the facts of the case.*

Appendix of recent cases

- **Innospec Limited:** *Fined \$12.7 million for conspiring to give or agree to give corrupt payments to government officials in Indonesia as inducements to secure, or as rewards for having secured, contracts with the Indonesian government*
 - Lord Justice Thomas commented that it was unconstitutional for the SFO to enter a binding agreement with the US prosecuting authorities as to the level of the fine: it was for the court to determine ultimate criminal financial sanctions and the UK should have agreed a 50:50 split
- **Mabey & Johnson Limited:** *Self referral of bribes paid to officials in Jamaica and Ghana in breach of UN Sanctions. Fined £3.5 million, confiscation order of £1.1 million and reparations of £1.4 million, £350,000 in costs to the SFO, and must undergo monitoring at its own expense for five years*
- **Alfred McAlpine Slate Ltd:** *Three former executives were imprisoned for between 10 months and 2.5 years and fined for dishonestly concealing mismanagement and under-performance at the company between 2004 and 2007*

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