

BRIBERY LAWS IN SINGAPORE – ARE YOU COMPLIANT?



A New Regime

Governments around the world are increasingly clamping down on all forms of bribery. Companies and their employees must now be concerned not only with the laws of the country in which they work, but also additional international laws which may apply to them. For companies operating in Singapore, and throughout the Asia-Pacific region, and having an international workforce, it is quite likely that in addition to the main Singapore anti-bribery and corruption laws, the laws of the UK, US, and to a lesser extent Australia, may also apply. In some cases the legislation being introduced also extends to cover “facilitation payments”, the nature of which may be both common, and an essential method of being able to carry on business in many parts of the world. In addition the legislation may also cover citizens of that country working abroad.

Facilitation Payments

Facilitation, or grease payments, are regarded as a bribe, even though they may be a common practice in certain countries, and a typical example of such is where a government official is given money or a gift to do something, or to speed up a particular process. These types of payments are treated differently by the main applicable laws and it is important that companies and employees are aware of how they might be affected by the relevant laws.

The principal concern for companies and employees is that although many of the countries in which they operate do not have any laws to prevent such facilitation, or grease payments, the laws of the UK and the US have extra-territorial application. That is, they apply to all UK and US citizens even if they are not working in their home country.



The UK Bribery Act came into force in 2011. This is a very significant piece of legislation which applies to all UK citizens, regardless of where they work, or the place of registration of their employer.

In addition, it can be an offence for employees who are subject to such laws, to “turn a blind eye” to an illegal act, such as the making of a facilitation payment. This even includes where the company itself is not making such payment, but is instead using a middleman to deal with the authorities, which is common practice in many locations.

As you can understand this is proving to be a major concern for employees who may now be subject to new laws even outside of their home country.

What Are The Main Laws?

The principal legislation in Singapore is the Prevention of Corruption Act. This law is aimed at catching both the commission of corrupt acts and attempts to commit the same, and although it does not have quite the same wide-reaching extra-territorial scope as the Bribery Act or the FCPA, it may still apply in relation to acts committed outside of Singapore if these relate to business taking place in Singapore, or individuals residing in Singapore.

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In addition, the US Foreign and Corrupt Practices Act (FCPA) will apply to all US citizens, again regardless of whether they work within or outside the US.

In Australia the position is regulated by the Australian Criminal Code. Unlike the UK and US legislation, this does not have such a wide extra-territorial scope and does not automatically apply to Australian citizens working abroad. However Australian companies which carry on business in Singapore, or in the UK or US, or with companies from those countries, should be aware of the international laws which may apply to them.

What Do The Laws Cover?

Singapore

All Singapore registered entities, will be subject to the Prevention of Corruption Act (PCA) which is the main legislation in Singapore aimed at preventing, and punishing, acts of bribery and corruption.

The PCA is extremely broad in scope and catches both the commission of corrupt acts and attempts to commit the same. It applies to individuals as well as companies.

The PCA may also apply in relation to acts committed outside Singapore if these relate to business taking place in or individuals residing in Singapore.

The PCA also imposes penalties on both givers and receivers of bribes.

United Kingdom

The UK Bribery Act, has a wide scope and will apply to all British citizens worldwide.

The Act creates four offences:

- A general offence covering offering, promising or giving a bribe.
- A general offence covering requesting, agreeing to receive or accepting a bribe.
- A distinct offence of bribing a foreign public official to obtain or retain business.
- A new strict liability offence for commercial organisations where they fail to prevent bribery by those acting on their behalf.

This is a strict liability offence: there is no need to prove negligence or the involvement and guilt of the ‘directing mind and will’ of the organisation. This makes the offence easier to prove and will probably lead to more corporate prosecutions and convictions in the UK. All British citizens should be aware of this law, as it will apply to them, even though they may be working outside of the UK, for a company which is not registered in the UK.

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United States

Similar to the UK Bribery Act, the US FCPA has a broad reach and applies to US citizens working overseas. A brief overview of the key provisions is set out below.

Under the FCPA the key offences are as follows:

- A general offence of offering a bribe with a “corrupt” intent.
- A distinct offence of bribing of a foreign public official. The definition of foreign public official includes the following: any individual holding a foreign legislative or judicial position; any person exercising a public function for a foreign country, territory, public agency or public enterprise; or any official or agent of a public organisation.
- A distinct strict liability offence for all companies subject to US jurisdiction who fail to prevent bribery within their organisation. Under this offence, companies can be held vicariously liable for acts of bribery committed by their employees and agents.

The FCPA creates an exemption for facilitation payments and contains a “defence” in relation to promotional expenses to the extent that it can be established that such expenses were reasonably incurred and amounted to bona fide expenditure. This is the main difference between the FCPA, and the Bribery Act in which all facilitation payments are illegal.

The FCPA also has extraterritorial effect and may apply to both US and non-US citizens and businesses. Liability may arise even where the corrupt act takes place entirely or mainly outside the US if there is a connection to the US or a US citizen.

Particular risks for Businesses

One particular risk for companies which conduct any of their operations abroad, and especially in countries which may be identified as being “high-risk” in terms of bribery and corruption, is where they use agents in a foreign jurisdiction. The agent may be accustomed to making facilitation payments, or providing favours which may be contrary to the company’s acceptable standards. It is essential that all employees dealing with an agent make the agent aware of the company’s policies in relation to bribery, in appropriate circumstances, as turning a blind eye to an agent’s actions will not be a legitimate defence to an illegal act.

What Can Be Done?

Obviously the most effective way to ensure compliance with the applicable laws is for all employees to be aware of what is now prohibited by these laws, specifically the very high standard imposed by the UK Bribery Act. This should include being familiar with the type of facilitation payments which are now prohibited, and even the nature and the amounts of corporate hospitality, and the giving and receiving of gifts which are now restricted.

The company can assist by introducing a written code of conduct, which explains the new laws and clarifies what employees must, and must not do, to ensure compliance.

Having a written code of conduct should be regarded as essential, as companies have a duty to demonstrate that they have implemented “adequate procedures” to address the new legal requirements.

How Can HFW Help?

HFW can assist in the preparation of a written code of conduct, which will summarise the main relevant laws, and set out very clearly what employees must do to ensure compliance, and to avoid them and the company being subject to investigation, or even prosecution.

This code of conduct can also be extended to include a policy on other relevant issues, such as anti-money laundering obligations, and, if your company does not already have one, a whistle blowing policy, relating to the reporting of such offences.

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