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U.K. Bribery Act Raises More Questions Than It Answers

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The Stock Exchange Tower in London. A foreign company with shares listed on the London Stock Exchange, but no other presence in Britain, may be outside the scope of the bribery act.

The U.K. Bribery Act should be a concern for the nearly half a dozen Russian companies entering or preparing to enter the British stock market, experts said.

The main source of uneasiness from the act, slated to come into effect July 1, is jurisdiction. While the guidelines published March 30 by the British Justice Ministry state that the "mere" presence on the British stock exchange does not make a company liable under the law, experts say it might.

The wording of the act is rather vague, stating that the law extends to any non-British company that "carries on a business or part of a business in the U.K." That clause is not further clarified in the law, enforced by the British Serious Fraud Office, or the SFO.

A foreign company with shares listed on the London Stock Exchange, but no other presence in Britain, may be outside the scope of the act, SFO spokeswoman Katie Winstanley wrote in an e-mail.

But, if complaints or allegations of corruption are received from disadvantaged British companies, the SFO might investigate the company's activities, Winstanley said.

If a company is implicated in bribery, it is up to the judge to make the decision, said SNR Denton partner Doran Doeh.

Instilling strict and clear anti-bribery guidelines is the best way for a company to ensure compliance with the law, Doeh and other experts said.

Demand for consulting services related to this legislation has increased this year, firms that provide such services said.

"Many questions arise because our investigations showed that some companies experience 'commercial' corruption," said Alexander Sokolov, partner and head of the banking sector at KPMG Russia and CIS.

For example, "Staff in the procurement department could request kickbacks for awarding services to certain suppliers," he said.

Russia is likely to be qualified as high risk in terms of corruption because of its low ranking in various indexes that measure such things, Sokolov said.

Transparency International gave Russia a score of 2.1, down from 2.2 last year. The index ranks 183 countries on a score from 1 to 10, with 1 being the most corrupt.

Richard Alderman, director of the SFO, said he saw a lot of enthusiasm from Russian companies when he visited the country last month to discuss the law and advise businessmen on compliance.

"They want to know what the new global rules are," Alderman said.

Several large companies asked Transparency International about a year ago for advice on improving practices in anticipation of the act, and took that advice seriously, director Yelena Panfilova said.

Big business is likely to comply with the act, while small companies may face problems, since some will have to transform office politics, where bribing is tolerated, Panfilova said.

Renaissance Group plans to update its codes after the March 30 publication of guidelines for the act, head of compliance Mark Harris said.

In general, Russian businesses are slow to modify their operations to adapt to the new law, said Dmitry Dementyev, senior FCPA/U.K. Bribery Act expert at Magisters law firm.

"Our companies are waking up very slowly," Dementyev said. "They will fully wake up when something happens. And something will happen. A company will get caught."

Yevroset, one of the firms with plans to list its initial public offering next week, declined to comment for this article. The spokeswoman was not aware of the U.K. Bribery Act.

The Sputnik Group, an investment holding that has a small office in Britain, will not take any action, PR director Olga Barkovets said.

Some of the law's provisions seem to be stricter than the U.S. Foreign Corrupt Practices Act, or FCPA, passed in 1978.

While the FCPA outlaws bribing public officials, the U.K. Bribery Act outlaws all bribery, including private transactions.

The U.K. Bribery Act also bans "grease" payments to foreign officials or payments to expedite a process that the official is already performing, allowed under the FCPA.

Companies are liable for failing to prevent bribery under the U.K. Bribery Act, while the FCPA holds the company responsible only if "corrupt intent" can be proved, said SNR Denton partner Glenn Colton.

Punishment for breaking the law includes jail time of up to 10 years and unlimited fines. Conviction under the FCPA could result in up to five years in prison and fines proportionate to the bribe.

But the U.K. Bribery Act may be more lenient toward business because of its "common sense" principle, Dementyev said.

For example, the U.K. Bribery Act allows more leeway in corporate hospitality, Dementyev said. Giving prime seat tickets to a sports event is allowed, as long as they are not box tickets for a year. Under the FCPA guidelines, tickets to a farther seat are more appropriate.

For the act to take effect will take time and resources, and much will need to be done in terms of enforcement.

It takes about a year to instill the "adequate procedures" mentioned in the act, and another year to monitor compliance, Dementyev said.

Recently a lot of anti-corruption measures have been signed, but their effect remains questionable, Panfilova said.

"The U.K. Bribery Act is such a beautiful law, but if investigations won't be started, it will become another meaningless piece of paper," she said.

But public discussion is the first step to ending graft, said Mark Foster, deputy board chair of the International Business Leaders Forum.

"In many places in the world corruption wasn't openly discussed, but now it is," Foster said. "Public tolerance is reaching its limit."

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