

Steps taken to implement and enforce the OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions

UNITED KINGDOM

(Information as of 16 August 2011)

Date of deposit of instrument of ratification/acceptance or date of accession

The United Kingdom signed the Convention on Combating Bribery of Foreign Public Officials in International Business Transactions (“the OECD Convention”) on December 17 1997, and deposited its instrument of ratification on December 14 1998. The UK’s ratification was extended to the Isle of Man in 2001 and to the two Channel Islands of Jersey and Guernsey in early 2010.

Implementing legislation

The Bribery Act received Royal Assent on 8 April 2010 and came into force on 1 July 2011.

<http://www.legislation.gov.uk/ukpga/2010/23/contents>

Other relevant laws, regulations or decrees that have an impact on a country’s implementation of the OECD Convention or the Recommendations

The UK has prosecuted the crime of bribery under the common law (unwritten) for many centuries but the crime of corruption only entered statute law (written) with the Public Bodies Corrupt Practices Act 1889, which outlawed bribery of public officials.

The Prevention of Corruption Act 1906 extended bribery into the private sector and introduced the concept of bribing agents acting on behalf of a principal.

The Prevention of Corruption Act 1916 Act widened the definition of “public body” and added a presumption of corruption for all payments made in connection with contracts to Crown employees or government departments.

The Anti-Terrorism, Crime and Security Act 2001 received Royal Assent on 14 December 2001. Part 12 of the Act, which came into force on 14 February 2002, expressly extended the jurisdiction of domestic courts to bribery committed abroad by UK nationals or bodies incorporated under UK law, and widened the definition of public bodies to encompass foreign public bodies. Before the Anti-Terrorism, Crime and Security Act 2001 if the substance of the offence was committed in the UK it would be prosecutable.

Section 59 of the Criminal Justice and Immigration Act 2008 extends SFO powers to compel the production of documents at the earlier vetting stage of foreign bribery cases. These new pre-investigation powers facilitate the collecting of relevant evidence at a much earlier stage and therefore enable swifter, more proactive investigatory action against well-founded cases. These new powers came into force in July 2008, and were first used in October 2008.

<http://www.legislation.gov.uk/ukpga/2008/4/contents>

Other information

Relevant authorities

Department for Business, Innovation & Skills,
1 Victoria Street
London
SW1H 0ET
Tel: 0207 215 3010

The Secretary of State has issued guidance on what commercial organisations can do to prevent persons associated with them from bribing.

<http://www.justice.gov.uk/guidance/making-and-reviewing-the-law/bribery.htm>

Signature/Ratification of other relevant international instruments

The United Kingdom has signed the Council of Europe Criminal Law Convention on Corruption and joined GRECO. The round 1 report was published September 2001 and the compliance report in August 2003. An on-site evaluation mission was completed April 2004. The United Kingdom signed the United Nations Convention against Corruption (UNCAC) on 9 December 2003 and ratified UNCAC on 14 February 2006. UK law became fully compliant with the convention when the Criminal Justice (International Co-operation) Act 1990 (Enforcement of Overseas Forfeiture Orders) Order 2005 came into force on the 31 December 2005, and the Proceeds of Crime Act 2002 (External Requests and Orders) Order 2005 came into effect on 1 January 2006.

http://www.coe.int/t/dghl/monitoring/greco/default_en.asp

<http://www.unodc.org/unodc/en/treaties/CAC/index.html>

Working Group on Bribery Monitoring Reports

Phase 1: Review of Implementation of the Convention and 1997 Recommendation (December 1999):

<http://www.oecd.org/dataoecd/8/24/2754266.pdf>

Phase 1bis. (March 2003): <http://www.oecd.org/dataoecd/12/50/2498215.pdf>

Phase 2: Report on the Application of the Convention on Combating Bribery of Foreign Public Officials in International Business Transactions and the 1997 Recommendation on Combating Bribery in International Business Transactions (March 2005).

<http://www.oecd.org/dataoecd/62/32/34599062.pdf>

Phase 2: Follow-up Report on the Implementation of the Phase 2 Recommendations on the Application of the Convention and the 1997 Recommendation on Combating Bribery of Foreign Public Officials in International Business Transactions July 2007).

<http://www.oecd.org/dataoecd/43/13/38962457.pdf>

Phase 2 bis. (October 2008) <http://www.oecd.org/dataoecd/23/20/41515077.pdf>

Phase 1ter (December 2010) <http://www.oecd.org/dataoecd/58/43/46883138.pdf>

Judicial decisions (and enforcement actions)

Action on Macmillan Publishers Limited

The Director of the Serious Fraud Office (SFO) took action in the High Court, which resulted in an Order for the company, Macmillan Publishers Limited (MPL), to pay in excess of £11 million in recognition of sums it received which were generated through unlawful conduct related to its Education Division in East and West Africa.

<http://www.sfo.gov.uk/press-room/latest-press-releases/press-releases-2011/action-on-macmillan-publishers-limited.aspx>

FSA fines Willis Limited £6.895 million for anti-bribery and corruption systems and controls failings

The Financial Services Authority (FSA) fined Willis Limited £6.895 million for failings in its anti-bribery and corruption systems and controls. These failings created an unacceptable risk that payments made by Willis Limited to overseas third parties could be used for corrupt purposes.

<http://www.fsa.gov.uk/pages/Library/Communication/PR/2011/066.shtml>

MW Kellogg Ltd to pay £7 million in SFO High Court action

Although M.W. Kellogg Limited (MWKL) took no part in the criminal activity which generated share dividends payable from profits and revenues produced by contracts obtained by bribery and corruption. The High Court made an Order under the Proceeds of Crime Act 2002 on 16 February 2011 which will lead to the payment of £7,028,077 in full and final settlement of the case.

<http://www.sfo.gov.uk/press-room/latest-press-releases/press-releases-2011/mw-kellogg-ltd-to-pay-£7-million-in-sfo-high-court-action.aspx>

BAE System plc

In February 2010 the SFO announced that it had reached an agreement with BAE Systems, that the company would plead guilty in the Crown Court to an offence under the Companies Act 1985 of failing to keep reasonably accurate accounting records in relation to its activities in Tanzania. BAE were sentenced on 21st December 2010. The plea agreement was agreed by the Court and BAE were fined £500K ordered to pay £225K costs and pay £29.5 million to the people of Tanzania.

<http://www.sfo.gov.uk/press-room/latest-press-releases/press-releases-2010/bae-fined-in-tanzania-defence-contract-case.aspx>

<http://www.sfo.gov.uk/press-room/latest-press-releases/press-releases-2010/bae-systems-plc.aspx>

Julian Messent

A former director of London-based insurance business PWS International Ltd -Julian Messent-pleaded guilty to two counts of making corrupt payments between February 1999 and June 2002, contrary to s1 (1) of the Prevention of Corruption Act 1906. He was sentenced to 21 months imprisonment on each count to run concurrently. He was ordered to pay £100,000 compensation within 28 days to the Republic of Costa Rica or serve an additional 12 months imprisonment if he fails to do so. He was disqualified from

being a company director for a period of five years. The sentencing judge made it clear that Messent's guilty plea, cooperation with the SFO and the mitigation offered had allowed him to reduce the sentence from an initial starting point of four to five years to the 21 months. Messent admitted making or authorising corrupt payments of almost US \$2 million to Costa Rican officials in the state insurance company, Instituto Nacional de Seguros (INS) and the national electricity and telecommunications provider Instituto Costarricense de Electricidad (ICE). He also asked for 39 similar offences to be taken into consideration.

<http://www.sfo.gov.uk/press-room/latest-press-releases/press-releases-2010/insurance-broker-jailed-for-bribing-costa-rican-officials.aspx>

Robert John Dougall

Former DePuy executive Robert John Dougall pleaded guilty after admitting his involvement in making £4.5 million of corrupt payments to medical professionals within the Greek state healthcare system. He was originally sentenced to 12 months imprisonment. Recognising the important public interest issues raised in this case, Mr. Dougall was granted leave to appeal. On appeal the sentence was suspended. The Court of Appeal emphasised that where a defendant entered a guilty plea and provided full co-operation with the authorities investigating a major crime involving fraud or corruption and the level of criminality and mitigation meant that the sentence of imprisonment would be 12 months or less, then —the argument that the sentence should be suspended is very powerful and that —this result will normally follow.

<http://www.sfo.gov.uk/press-room/latest-press-releases/press-releases-2010/british-executive-jailed-for-part-in-greek-healthcare-corruption.aspx>

Innospec Ltd

In March 2010, Innospec Ltd appeared at Southwark Crown Court and entered a plea of guilty to bribing employees of Pertamina (an Indonesian state owned refinery) and other government officials in Indonesia. The judge indicated he would impose a fine of the sterling equivalent of US\$ 12.7 million.

<http://www.sfo.gov.uk/press-room/latest-press-releases/press-releases-2010/innospec-judgment.aspx>

<http://www.judiciary.gov.uk/NR/rdonlyres/5343F038-A6E5-448B-BB2D-7CA31F9E2DDA/0/sentencingremarksthomasljinnospec.pdf>

Mabey & Johnson

In July 2009, bridge builders Mabey and Johnson entered guilty pleas to charges of corruption and breaching UN sanctions. On 25 September 2009, the company agreed to pay £6.6 million in fines, confiscation and reparation orders. A monitor was appointed for up to three years to ensure future compliance.

<http://www.sfo.gov.uk/our-work/latest/mabey--johnson-ltd-sentencing-.aspx> 4

FSA fines Aon

In January 2009 the Financial Services Authority fined the company £5.25 million for failing to take reasonable care to establish and maintain effective systems and controls to counter the risks of bribery and corruption.

<http://www.fsa.gov.uk/pages/Library/Communication/PR/2009/004.shtml>

Balfour Beatty plc

In October 2008 the Serious Fraud Office used new Civil Recovery powers against a UK plc to recover property obtained by unlawful conduct. A Consent Order agreed before the High Court established a settlement of £2.25 million plus costs.

<http://www.sfo.gov.uk/press-room/latest-press-releases/press-releases-2008/balfour-beatty-plc.aspx>

City of London Police - Guilty plea to bribery sets legal landmark

The first UK prosecution of a foreign bribery offence was heard in August 2008. The Managing Director of a UK-based company was found guilty of making corrupt payments to foreign officials. A Ugandan Government official who received the payment was arrested in London and also convicted.

<http://www.cityoflondon.police.uk/CityPolice/Departments/ECD/anticorruptionunit/guiltypleatobribery.htm>