



Compass Chambers

THE BRIBERY ACT 2010 AND
THE SELF-REPORTING REGIME:
TO REPORT OR NOT TO
REPORT, THAT IS THE
QUESTION”.



THE ACT: BACKGROUND

- INTRODUCED 01 JULY 2011:
 - EXISTING LEGISLATION FLAWED;
 - DESIRE TO MAKE BRIBERY A GLOBAL OFFENCE;
 - DESIRE TO MAKE CORPORATES ACCOUNTABLE FOR ACTIONS OF EMPLOYEES/AGENTS;
 - DESIRE TO MAKE SENIOR INDIVIDUALS ACCOUNTABLE FOR ACTIONS OF CORPORATES.

THE ACT: KEY FEATURES

- ACTIVE BRIBERY (SEC 1)
- PASSIVE BRIBERY (SEC 2)
- BRIBERY OF FOREIGN PUBLIC OFFICIALS (SEC 6)
- CORPORATE FAILURE TO PREVENT BRIBERY (SEC 7)
- INDIVIDUAL LIABILITY FOR ACTS OF CORPORATE (SEC 14)
- HOSPITALITY IS CAUGHT BY THE ACT.
- SIGNIFICANT EXTRATERRITORIAL REACH (ALL “LOCAL” PRACTICES CAUGHT).



PENALTIES

- DIRECT:
 - UNLIMITED FINES;
 - 10 YEARS' IMPRISONMENT;
 - DISQUALIFICATION AS DIRECTOR;
 - SGC 2014 SENTENCING GUIDELINES.
 - INDIRECT:
 - REPUTATIONAL DAMAGE;
 - DEBARRED FROM TENDERING PROCESSES.

THE SELF-REPORTING REGIME

- INTRODUCED AS PILOT IN 2011:
 - “TO HIGHLIGHT THE CROWN’S COMMITMENT TO ENCOURAGING GOOD CORPORATE GOVERNANCE AND TO CREATING A CORPORATE CULTURE IN WHICH BRIBERY IS NOT HIDDEN”.
 - CROWN WILL ACCEPT REPORTS FROM BUSINESSES WHO HAVE DISCOVERED CONDUCT WITHIN BUSINESS WHICH MAY BE BRIBERY.

THE POTENTIAL PRIZE FOLLOWING A SELF-REPORT

- IF CROWN ACCEPTS THE REPORT:
 - NO PROSECUTION;
 - INSTEAD, CIVIL SETTLEMENT UNDER POCA 2002.



MINIMUM CRITERIA FOR ACCEPTANCE:

- THOROUGH INVESTIGATION;
- INDEPENDENT VERIFICATION;
- ROBUST STEPS TO PREVENT REPETITION;
- ACCEPTANCE THAT REPORT MAY BE USED IN A PROSECUTION.



SPECIFIC FACTORS TO WHICH CROWN HAS REGARD:

- NATURE/SERIOUSNESS OF HARM;
- SYSTEMIC OR ISOLATED CONDUCT;
- MOTIVATION FOR SELF-REPORT;
- PREVIOUS HISTORY;
- ACTION TAKEN AGAINST "GUILTY"
INDIVIDUALS;
- PROCEDURES IN PLACE AT TIME.

SELF-REPORT REGIME IN PRACTICE

- CROWN IS GENUINELY WILLING TO ENGAGE;
- CRUCIAL THAT CRITERIA FULFILLED;
- NO GUARANTEES WILL BE GIVEN RE INDIVIDUALS;
- NO CASE IS TOO BIG (ROLLS ROYCE DPA);
- IN EVENT OF SETTLEMENT: APPROACH TO PUBLICITY IS ENTIRELY COLLABORATIVE.

THE RISKS OF NOT SELF- REPORTING

- COMMISSION OF SEPARATE OFFENCES UNDER POCA;
- CONDUCT COMES TO ATTENTION OF AUTHS (EG WHISTLEBLOWERS, REPORTS BY REGULATED BODIES).

SELF-REPORT REGIME: THE FUTURE?

– OECD WORKING GROUP ON BRIBERY REPORT:
MARCH 2017:

- ”SCOTLAND TO CONSIDER ADOPTING A SCHEME COMPARABLE TO THE DPA SCHEME TO OVERCOME THE WEAKNESSES APPARENT IN CIVIL SETTLEMENTS AND TO ACHIEVE CONSISTENCY ACROSS THE UK”.



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