

U.K BRIBERY ACT V. FCPA: COMPARISON

Provision	U.K Bribery Act	FCPA
<i>Bribery of foreign public officials</i>	Yes (<i>Section 6</i>)	Yes – the FCPA’s anti-bribery provisions only apply to bribery of foreign officials (including political parties, party officials and candidates for office)
<i>Commercial bribery</i>	Yes – except for the Foreign Public Official offense (the “FPO offense”), the Act applies to “private to private” bribery.	No-except that the books and records provisions mandate accurate record-keeping by issuers with respect to all transactions. The Travel Act and the Wire Fraud statute have also been used to prosecute commercial bribery.
<i>Receipt of a bribe</i>	Yes (<i>Section 2</i>)	No
<i>Intent</i>	Mixed: some of the “general offenses” (<i>Sections 1 and 2</i>) require an intention for a relevant function or activity to be performed improperly; the “FPO offense” (<i>Section 6</i>) requires an intent to influence the FPO and to obtain/retain a business or a business advantage; and the “corporate offense” (<i>Section 7</i>) requires no intent.	Yes – the anti-bribery provisions of the FCPA require that the defendant act “corruptly,” “wilfully,” and “knowingly.” Knowledge is expressly defined to include willful blindness.
<i>Facilitation payments exception</i>	No - facilitation payments are not excluded under the Act.	Yes – in limited circumstances, small facilitation payments are permitted when made to expedite or secure the performance of ‘routine governmental action’.
<i>Failure to keep accurate books and records</i>	No specific offense but failure to keep accurate books and records may constitute a failure to have “adequate procedures” in place.	Yes – for U.S and foreign companies required to file periodic reports with the SEC.
<i>Promotional expenses exception</i>	No – there is no specific exception but the U.K. Government’s draft guidance indicates that “reasonable and proportionate” promotional expenditure will not be prosecuted.	Yes – the FCPA provides an affirmative defense for payments that are reasonable and bona fide business expenses that are directly related to the promotion, demonstration or explanation of products or services, or in connection with the execution or performance of a contract with a foreign government or agency.
<i>Extra-territorial application</i>	Yes-individuals and corporate entities may be liable for “general offenses” and the “FPO offense”, if committed outside the U.K. and if they have a “close connection” with the U.K. (i.e. if they are U.K citizens, ordinarily resident or incorporated in the U.K) (<i>Section 12 (4)</i>). The “corporate offense” applies to U.K entities and anybody	Yes – the FCPA applies to acts by U.S. issuers, domestic concerns and their agents and employees that occur wholly outside the U.S, and to acts by U.S citizens or residents wherever they occur.

	corporate (wherever formed) which carries on part of its business in the U.K. (<i>Section 7 (5)</i>).	
<i>Liability for actions of third parties</i>	Yes – liability for “general offenses” and the “FPO offense” can accrue for bribery conducted through third party intermediaries, and liability under the “corporate offense” can arise if the bribery is conducted by an “associated person” (a person performing services on behalf of the commercial organisation – <i>Section 8</i>).	Yes – there is a prohibition on corrupt payments through intermediaries. It is unlawful to make a payment to a third party, while knowing (including conscious disregard and deliberate ignorance) that any portion of the payment will go directly or indirectly to a foreign official.
<i>Penalties</i>	Individuals: up ten years’ imprisonment and/or an unlimited fine. Corporations: an unlimited fine.	Corporations: an unlimited fine. Individuals: a criminal fine of up to \$250,000 per violation and imprisonment for up to five years. Corporations: a criminal fine of up to \$2,000,000 per violation. Civil remedies include civil penalties and disgorgement of profits.
<i>Statute of limitations</i>	None.	5 years (subject to tolling by court for up to an additional 3 years while mutual legal assistance is being sought).