

Bermuda's Anti-Bribery Legislation

The Bribery Act 2016 (the “Act”) came into effect in Bermuda in September 2017 to meet the threat that bribery poses to the proper functioning of the Island’s economy and the operation of the rule of law.

The objective of the Act is to create robust offences in relation to both the offering and the receiving ends of bribery. The Act affects employers because it establishes, *inter alia*, corporate liability for failing to prevent the payment of a bribe on behalf of a commercial organization. This means that employers must now be vigilant in the management of their business and adopt suitable policies and procedures that seek to prevent persons associated with them from engaging in bribes. Conducting due diligence, training staff, monitoring their practices and reviewing the effectiveness of measures taken, are all recommended measures. Crucially, in the event that an employee commits a bribery offence, the presence of these preventative measures may serve as a good defence.

Bribery may arise in many circumstances and the Act defines various offences relating to both active and passive bribery. The Act covers both the public and private sectors and applies to the “improper performance” of a function or activity of a public nature or connected with a business, i.e., performance which amounts to a breach of an expectation that a person will act in good faith, impartially, or in accordance with a position of trust. There is also the offence of inducing foreign public officials to personal enrichment in order to influence decisions regarding publicly-funded business opportunities.

The Courts have jurisdiction over offences committed not only in Bermuda, but also overseas, where the person or entity committing them has a connection with Bermuda.

Protection is offered for whistle-blowers adding to the protection currently afforded under the Employment Act.

As much as zero-tolerance policies are desirable, employers are expected to adopt a risk-based approach and establish procedures that are proportionate to the bribery risks they are facing. They must also consider policies on business expenditure relating to the provision of hospitality, gift-giving, or other business courtesies or promotional activities. Such expenditure is not criminalized if it is relatively modest, is incurred in good faith, and is commensurate with the norms of the particular industry.

Bribery, along with money-laundering, terrorist financing and corruption, forms part of a wide range of unlawful acts known as economic crime, involving the illegal and unethical attainment of money. By strengthening Bermuda’s laws to combat bribery, the Act helps enhance the Island’s international reputation for high ethical standards and a robust regulatory environment.

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