

The long arm of the Bribery Act

Lawyers must take care to establish the status of clients when advising on the UK Bribery Act



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The Bribery Act 2010 asserts the UK's jurisdiction over offences committed anywhere in the world by millions of individuals who are neither British citizens nor ordinarily resident in the UK.

Under the act, UK courts can have jurisdiction over individuals who: offer or pay a bribe; receive a bribe; offer or pay a bribe to a foreign public official; or over a senior manager who connives or consents to the payment of a bribe. But the UK courts only have jurisdiction if the offences were wholly or partly committed in the UK, or if the individual in question has a 'close connection' with the UK. It is this test that extends the reach of the act.

The two most obvious close connections are British citizens and those ordinarily resident in the UK.

Other categories are: British overseas territories citizens; British overseas citizens; British nationals (overseas); British subjects; and British protected persons. The act does not explain or define these terms, but they can be described briefly here.

As well as places such as the British Antarctic Territory, the Pitcairn Islands and the Falklands Islands, overseas territories include the financial centres of Bermuda, the British Virgin Islands, the Cayman

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Islands, Gibraltar, and the Turks and Caicos Islands. Broadly speaking, much of the population of these places will be British overseas territories citizens.

British national (overseas) status is held by about half the population of Hong Kong. It was available from 1986 to 1997 to all those who had British dependent territories citizenship by virtue of their connection to Hong Kong, and who applied for it.

British overseas citizen status is broadly held by three categories of people: the one million or so ethnically Chinese population of the former protected states of Penang and Malacca (now part of Malaysia); the ethnically Indian population of Hong Kong who did not apply to be a British national (overseas) to the extent that they would otherwise be stateless; and a large proportion of the south Asian populations of

Kenya, Tanzania and Uganda.

The British subject category covers those who at the time of the British Nationality Act 1948 were potentially citizens of a then-Commonwealth country, but had not yet acquired that status. A 1980 white paper assessed their number at 50,000.

The British protected person category covers people born in one of the former British protectorates – such as the Maldives, Tonga, New Hebrides (now Vanuatu) and Sharjah – who were not able to obtain citizenship in the newly independent countries. A 1977 green paper assessed their number at 274,000.

Even before the act, from 2002 the UK's corruption offences (statutory and common law) extended to these same categories of British national. It follows that those advising on liability under English anti-bribery legislation may need to enquire as to the nationality and status of individuals. Those from British overseas territories and Hong Kong are likely to come under the jurisdiction of the act or its antecedents. Similarly, many people of south Asian descent in East Africa, or of Chinese descent in Malaysia, will be caught.

Be aware of the risks.
Gibson Dunn associate Mark Handley assisted with this article