British law on corporate bribery

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1. Introduction

Bribery is the making of a payment or giving a reward to a person in office or a position of power to induce them to act in a corrupt manner for the benefit of the person making the payment or giving the reward. Bribery as a facet of commercial fraud has come to the forefront of the international legal scene during the past decade. Bribery attracts the application of a vast range of criminal and civil liability rules. This paper is concerned with the UK law, the Bribery Act 2010 ("BA"), in dealing with bribery. For the BA to apply, the person bribed must be performing a relevant function or activity, to which they are either in a position of trust, or expected to perform in good faith, or expected to perform impartially.

One problem in curbing bribery in the corporate world has always been on how to hold the company as an entity liable for bribery. This is because compared to a natural person who has a mind to carry out criminal acts the company being an artificial entity has no mind of its own. To overcome this problem, the law developed a doctrine of attribution – where acts of senior officers of the company are attributed to the company. In *Tesco Supermarket Ltd v Nattrass* ([1972] AC 153 at 170) Lord Reid said that the person acting for the company is an embodiment of the company, and his mind is the mind of the company, such that if it is a guilty mind then that guilt is the guilt of the company. But the rules on corporate attribution depends on involvement of senior officers of the company, and are deficient where only junior officers are involved in the relevant criminal acts – the BA goes beyond attribution.

In serving as an effective tool for curbing bribery in the corporate world, the BA seeks to reverse the rules on corporate attribution in relation to bribery with the effect that companies are likely to be guilty of bribery even when no senior officer commit bribery but where persons associated with the company commit bribery and companies had no adequate procedures to prevent bribery. The effectiveness of the BA in curbing bribery is likely to be enhanced by its extra-territorial reach such that UK companies committing bribery overseas would face prosecution back in the UK.

The paper proceeds as follows. The second section provides a brief legal framework of bribery law in the UK. The third section explores the removal of the old distinction between public sector and private bribery under the BA. The fourth section discusses business culture and the offence of failing to prevent bribery under the BA. The fifth section explores the robustness of the BA in curbing bribery by

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moving away from attribution rules in the context of corporate crimes. The sixth section looks at the extraterritorial reach of the BA. The seventh section concludes.

2. Brief legal framework of UK bribery law

Bribery is a facet of commercial fraud. As early as the 18th century, commercial fraud was active in British companies. In the 17th century people started pooling shares instead of goods, and domestic companies emerged. By the 18th century, fraud started entering such trading with promotion of exaggerating shares to attract investors to companies, leading to a stock market collapse. This reached a climax in 1720 when the share price of the South Sea Company collapsed; this event was known as the South Sea 'Bubble' because once it burst, there were no assets left. There came the Bubble Act 1720. Thus, as early as 1720, commercial fraud was active. But not until the BA, prior statutes did not effectively address commercial bribery and seemed to focus on public bribery and corruption in general.

UK bribery laws have progressively reformed. We trace this reform from the Public Bodies Corrupt Act 1889 – this confined bribery to the public sector, criminalising the soliciting or receiving of bribe by a person in public office. The law moved to the Prevention of Corruption Act 1906 – this enjoined private sector to bribery, making it an offence for agents to bribe people in public office. When prosecution became difficult, the burden of proof was lightened by the Prevention of Corruption Act 1916 – this created a rebuttable presumption that a person in public office who received a gift or money was corrupt. On the international scene, the OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions was adopted in 1997 and came into force in 1999, and was implemented in UK law under Part 12 (ss108-110) Anti-Terrorism Crime and Security Act 2001, which dealt with bribery committed outside the UK by public officials.

Pressures to reform UK bribery laws were coming from within and outside the UK. As from within the UK, a brief history of reforms of bribery law indicates that the BA began life with the Nolan report (Nolan, 1995). One of the concerns in the Nolan report was that, public officials, on leaving office, were taking up positions in companies with which they had had official dealings. Thus the Nolan report recommended reforms of the law on bribery. In 1998 the Law Commission proposed legistaltive reform of bribery law (Law Commission, 1998). As bribery is linked to corruption, the Government's white paper published in 2000 was on corruption (White Paper, 2000). The white paper having been subjected to much pre-legislative scrutiny, the matter was sent back to the Law Commission. The Law Commission consulted and then published its report in 2008 (Law Commission, 2008). The draft Bribery Bill (Cm 7570) was put to Parliament on 25 March 2009, and the Bribery Bill received Royal Assent on 8 April 2010, becoming the Bribery Act 2010 (the "BA").

As to pressures to reform UK bribery law coming from outside the UK, this came in late when the UK was already committed to reform bribery law. In 2005 the OECD Working Group, ignoring the Functional Equivalence approach, was unhappy with the UK legal framework, and stated that there was "a lack of clarity among the different legislative and regulatory instruments in place ... The current substantive law governing bribery in the UK is characterised by complexity and uncertainty" (OECD, 2005). But it is well known that English law is peculiar in its blend of common law and equity and partial codification of various areas of law through statutes, such that the law on bribery could be spread across these sources. To say that the English legal framework was uncertain and complex therefore went against the grain of the functional equivalence approach. For OECD threshold, what is

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important is that the objective standard of the Convention is met, though functional equivalence of different legal instruments or measures is not easily obtained (Pieth, 2007, p. 54). Nonetheless, as the UK was already committed to reforming its bribery law, these external pressures hastened the fruition of BA and in 2010 the BA was born. The BA is the watermark of reform of bribery law in the UK.

The BA does not define bribery but sections 1 and 2 provides cases showing bribery as an offence of offering or taking a financial reward or other advantage with a consequence of performing a relevant function or activity improperly. The law places the performer in a position of trust to perform a function or activity in good faith and impartially and therefore treats it as bribery to reward or induce a breach of trust or lack of good faith or partiality. The test of improper performance is what a reasonable person in the UK would expect from the performer of a function or activity, disregarding any foreign custom or practice unless required by a written applicable law (Bribery Act 2010, s 5). In simple terms, a company subject to the BA, if it cannot get away with a bribe in the UK, it is unlikely to justify bribes abroad.

By the BA, the UK government aimed at establishing a clear legal, regulatory and policy framework for action against foreign bribery (HM Government, 2010). The result of this was a law, whilst taking a criminal offence-led strategy, containing a regulatory dimension to it (Horder, 2013, 199). The regulatory dimension is evident in the defence – proof that the company had adequate procedures designed to prevent bribery being committed on its behalf – which is concerned with measuring the adequacy of internal standards that might otherwise be disregarded.

The law aims to remove the position where all business pay bribes in the course of competing for contracts, and in particular compete on the basis of who can pay the highest bribe. If all businesses, including overseas competitors, were to offer the highest bribes they can, the cycle of corruption would be perpetuated. The ideal position is for markets to operate efficiently and for UK businesses to compete without making additional payments (Ministry of Justice, 2010).

The problem of bribery is a corrosive one and undermines faith in transparent markets as well as confidence in the rule of law. The law on bribery should aim at protecting and enhancing free markets for business transactions. Whilst the UK had been slow to reform its bribery laws in regard to foreign corrupt payments by UK companies and their agents, the BA is a sign of hope that some change may be occurring which may lead to a more fundamental cultural change in the practices of many UK companies (Tomasic, 2011, 12). In taking a regulatory sanction approach to corporate bribery, the BA is likely to be an effective law not only for curbing bribery, but also for protecting and enhancing free markets for business transactions.

3. Public sector versus private bribery

The BA has changed the way companies might do business. In the old laws in the UK, whilst acceptance of a bribe by a public official was a crime, acceptance of a bribe by a private actor was not a crime. The BA makes no distinction between public and private bribery. The removal of this distinction seems to be based on the perceived difficulty of distinguishing between the private and public bribery. The Law Commission took the view that, 'the fact that there is now so much more private sector provision of goods and services in the public interest, makes it hard to argue that no one should ever accept advantages in any form simply because what they do involves a public service dimension' (Law Commission, 2008, para 3.216).

Stuart Green argues that public and private bribery ought to be distinguished on grounds that they are qualitatively different, albeit maintaining both to be wrong.

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Green argues that those who hold public office have duties that are qualitatively different from those held by employees of private firms (Green, 2013, pp. 55-60). Public officials represent and work on behalf of the public good. When public official accept bribes, they undermine a process in which all their constituencies theoretically have an interest. Private employees who accept bribes also violate a trust, but it is a trust owed to a private firm, to their superiors, colleagues, customers of shareholders. Private company officials ordinarily have no obligation to the general public other than that specifically imposed on them by law.

Peter Alldridge also underscores that there is something qualitatively different about pubic bribery and private bribery (Alldridge, 2002, p. 267). The problem with bribery derives not from a breach of trust, but rather from deleterious effects of corruption on the proper functioning of governments and markets. He argues, bribery in the private sphere distorts the operation of a legitimate market (prevents competition to the detriment of consumers), whereas bribery in the public sphere creates a market in things that should never be sold (services of judges or civil servants).

But the harmful effects of private bribery, especially in development projects, should not be underestimated. Indira Carr illustrates how the private sector is presented with ample opportunity for engaging in bribery in development projects from the stage of inception to completion. Carr notes that, through bribes, it is common for the private sector to influence public decision-making, and drive the choice of projects based on bribe rewards as opposed to the needs of the public. For example, a state with bountiful rainfall and a good irrigation system may decide to propose a project for the building of a dam, as opposed to funding for a vaccination programme to eradicate the high incidence of tuberculosis and other childhood diseases, if the rewards from the construction industry are far greater than that offered or promised by the pharmaceutical industry (Carr, 2013, p. 136).

Whatever the merits of distinguishing between public and private sector bribery, the BA criminalises both. Effective curbing of bribery calls for criminalising both the supply and receipt of bribes in both public and private sectors. The removal of public versus private sector bribery distinction is likely to put pressure on companies to change their business cultures (see discussion in the next section).

4. Business culture and the offence of failure to prevent bribery

In a typical international business transaction, bribery takes the form of a company making a payment to a government official so that the latter would make a decision in the company's interests rather than in the public interest. In some countries a distinction is drawn between 'bribes' and 'facilitation payments.' The distinction between bribes and facilitation payments is very thin and it is difficult to see how the latter can be justified as a legal payment. Yet, the OECD Convention in its Commentaries states that "small 'facilitation' payments do not constitute payments made 'to obtain or retain business or other improper advantage' within the meaning of paragraph 1 and, accordingly, are also not an offence" (OECD, 2011). In English law, a reward that is so small as not to be considered a reward at all is not bribery. In the *Bodmin Case*, Willes J mentioned how he had been required to swear that he would not take any gift from a man who had a plea pending unless it was "meat or drink, and that of small value" ([1869] 1 O'M & H 121). Whilst a small value free lunch is not bribery, 'facilitation payments' is likely to be bribery under English law.

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British companies are subject to the BA even when they operate abroad. The well-known English novel may well remind British companies of the aspired ethics: "We've got to have rules and obey them. After all, we're not savages. We're English, and the English are best at everything" (Golding, 1954). If British companies doing business abroad should avoid falling foul of the BA, they have got to refrain from conforming to foreign local business cultures of making facilitation payments. The problem with facilitation payments is it distorts competition in the markets. Approaching the problem from a business law perspective than a criminal law focus, section 7 of the BA strikes a balance between criminalising and regulating such practices by creating an offence of a company's failure to prevent bribery.

It is a challenging corporate world for British companies doing business abroad. In the study by Weber and Getz (2004, p. 697), the authors observe a number of challenges. First, petty bribes are often demanded by low to mid-level civil servants to complete their job to supplement income – called grease payment. Second, more complex bureaucracy also facilitates bribes as there are unclear lines of accountability, high levels of discretion and little transparency – bribery is used if bureaucracy is too complex to navigate through legitimate channels. Third, this culture, economically, has a distortionary effects and there is an opportunity cost as the bribe payment is not put to productive use. Fourth, the economic consequences of bribery are devastating to business seeking to compete legally in developing markets. British companies must change these cultures or risk falling foul of the BA.

As to grease payments, they are pure bribes and cannot be justified under the common law *de minimis* rule on bribes. In *Woodward v Maltby* ([1959] VR 794) the books of matches given to electors by an election candidate were found to of small value to constitute a bribe. Applying a *de minimis* rule, a gift is not a bribe if it is of such a small value that in itself it cannot induce favour from the recipient to the giver.

Grease payments are favour payments without which the recipient will not do their job and therefore fall outside the *de minimis* rule. Grease payments are rewards for doing the job one is under duty to do, and such rewards constitute a bribe in the wider sense of corruption. It was said in *R v Leslie Charles Parker* ([1986] 82 Cr App R 69) where a councillor received a reward after granting planning permission to a firm, that he had received a bribe, for the offence lies not in showing favour to the application but in accepting a reward for doing so. Grease payments are bribes under the BA, as they reward or induce improper performance.

Section 1 of the BA details the offence of bribing another person, known as 'active bribery.' This prevents a person – either directly or through an agent – from offering, promising, or giving an advantage to another (Bribery Act 2010, s 1(2)(a)). A simple offer, promise or indirect payments received from third parties (Bribery Act 2010, s 1(2)(a)), completes the offence and gifts of a financial nature or otherwise are included within the mandate of the provision and not limited to payments of money (Bribery Act 2010, ss 4 and 5). The crucial requirement is that the party receiving the payment intends the advantage so proffered to induce the recipient to improperly perform an act or to reward the recipient for having done so (Bribery Act 2010, s 2(b)(i)). On the other hand, section 2 of the BA details the offence of passive bribery, where the perpetrator requests or agrees to receive a bribe. Receipt of the bribe is not required; merely asking to receive it is sufficient (Bribery Act 2010, s 2(3)(a)). The bribe does not need to be monetary (Bribery Act 2010, s 2(3)(a)).

In order to be liable for bribery under the BA, the test is whether a reasonable person in the UK thought it a bribe. For example, it is likely that a reasonable person in the UK would think it bribery for a pharmaceutical company to pay doctors who

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prescribe its products to patients. In 2012, in the USA, a British pharmaceutical company, GlaxoSmithKline, settled to pay $3 billons in a case where the prosecutors said the company had tried to win over doctors by paying for trips to Jamaica and Bermuda (Thomas and Schmidt, 2012).

Section 6 of the BA creates an offence of bribing a foreign official. Closely linked to the definition in the OECD Convention (Art 1(4)(a)), a foreign public official is defined as one who holds a legislative, administrative or judicial position of any kind of a country or territory outside the UK, exercising a pubic function or is in an official or agent of a public international organisation (Bribery Act 2010, s 6(5)). A public international organisation is defined as an organisation whose members include territories countries or territories, governments of countries or territories, other public organisations of a mixture of any of the above (Bribery Act 2010, s 6(6)). This offence has no jurisdictional limit (Ministry of Justice, 2010, para 22).

Hospitality of free lunch to public official is not an offence unless intended to influence the foreign public official in his or her official capacity. Thus, if what is provided is reasonable, proportionate and done in good faith, it is difficult to see how the offence can be triggered (Monteith, 2011, p. 112). The Ministry of Justice explains that 'bona fide hospitality … is recognised as an established and important part of doing business and it is not the intention of the Act to criminalise such behaviour' (Ministry of Justice, 2010, para 46). In Parliament, the UK government's position was, 'corporate hospitality is an accepted part of modern business practice and the government is not seeking to penalise expenditure on corporate hospitality for legitimate purposes. But lavish corporate hospitality can be a bribe … where it was … intended the recipient to be influenced to act improperly' (Tunnicliffe, 2010).

The key provision of the BA in regard to companies is section 7, which creates an offence of failure of commercial organisations to prevent bribery. This broad provision creates a separate strict liability criminal offence for a company or other entity subject to this section. A relevant commercial organisation (C) is guilty of an offence under this section if a person (A) associated with the relevant commercial organisation bribes another (B). A relevant commercial organisation includes a body which is incorporated under the law of any part of the UK and which carries on a business (whether there or elsewhere), or a partnership which is formed under the law of any part of the UK and which carries on a business (whether there or elsewhere) (Bribery Act 2010, s 7(5)). This is applicable to any other body corporate (wherever incorporated), which carries on a business, or part of a business, in any part of the UK, or any other partnership (wherever formed) which carries on a business, or part of a business, in any part of the UK (Bribery Act 2010, s 7(5)(b) and (d)).

Section 7(2) contains the 'adequate procedures defence', the only defence to corporate liability. It is a defence where C had in place adequate procedures, designed to prevent persons associated with C from committing bribery. With the establishment of this strict liability provision, which requires no intent or knowledge, there is no need to establish the controlling mind of a legal entity (see section 5 below). The BA cuts across the need to identify the controlling mind to find a company guilty. Section 7 simply and only deals with failure to prevent bribery. If bribery has occurred, the BA is concerned with (a) is the person an employee of the company, and (b) has the company failed to prevent that person committing bribery.

Business criminal liability is necessary as most serious bribery is committed in a business environment and to the benefit of business (Monteith, 2011, p. 112). The BA does not directly create an offence of not having an anti-bribery policy, but rather

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it subtly deals with business integrity by creating an offence of failure to prevent bribery (section 7). The effect of the defence of having ‘adequate procedures,’ is an important aspect of the BA and provides incentives to businesses to do something to prevent bribery. The BA does not define what adequate measure for the defence is, but section 9 empowers the Secretary of State to provide guidance. The BA, by the defence given to commercial organisations, is likely to achieve greater success than the normal deterrent of criminal law that mostly depends on enforcement. This may be a gentle approach, but it is far better than using criminal law to its full extent – many of the larger companies already have well-developed codes in place as part of their corporate social responsibility, and should be able to incorporate anti-bribery policies and procedures with ease (Carr, 2013, p. 156).

5. Beyond merely attributing crimes to companies

The importance of holding companies liable for crimes resulting from their activities was well articulated by Turner J in *R v P & O European Ferries (Dover) Ltd*, as follows:

> Since the nineteenth century there has been a huge increase in the numbers and activities of corporations whether nationalised, municipal or commercial, which enter the private lives of all or most of “men and subjects” in a diversity of ways. A clear case can be made for imputing to such corporations social duties including the duty not to offend all relevant parts of the criminal law ([1990] 93 Cr App R 72 at 83 per Turner J).

In the case of bribery, the BA imputes to companies a duty not to offend criminal law. But first we examine the nature of companies. The company having a legal personality separate from its shareholders and managers, yet being an artificial person, has often caused difficulties in finding the company directly liable for criminal acts. English law treats a company as a legal person or entity in its own right and not as an aggregate of shareholders. Incorporation gives the company legal personality, separate from its members, with the result that a company may own property, sue and be sued in its own corporate name (Lowry and Reisberg, 2009, p. 31). It was said in *Solomon v Salomon*, that:

> The company is at law a different person altogether from the subscribers to the memorandum; and, though it may be that after incorporation the business is precisely the same as it was before, and the same persons are managers, and the same hands receive the profits, the company is not in law the agent of the subscribers or trustee for them. Nor are the subscribers as members liable, in any shape or form, except to the extent and in the manner provided by the Act ([1897] AC 22 at 51 per Lord MacNaghten).

In the context of crimes, the premise of separate legal personality is that the entity cannot, ordinarily, be liable for crimes of its members and equally the converse. Moreover, ordinarily, common law and statutory criminal offences require proof of a criminal mind, yet it is difficult to show a criminal mind of a company, for the artificial person has no mind of its own as do the natural person. One way the law has dealt with this is to create regulatory offences that attract strict liability without requiring proof of a criminal mind. For example, the company commits a regulatory offence, if it fails to comply with the order of the Secretary of State to change its name

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(Companies Act 2006, ss 67-68 and 75-76); or if it fails to comply with the requirement to keep a register of members available for inspection (Companies Act 2006, s 114).

But unlike regulatory offences, common law and statutory criminal offences requires a finding of *mens rea* – a criminal mind – which is difficult for an artificial person who does not have a mind of their own. The law found a way around this by the doctrine of identification or attribution. In *Lennard's Carrying Co Ltd v Asiatic Petroleum Co Ltd*, in finding actual company liability based on the acts of the company's management, Lord Haldane attributed to the company the acts of the person "who is really the directing mind and will of the corporation, the very ego and centre of the personality of the corporation" ([1915] AC 705 at 713. In *Tesco Supermarkets Ltd v Nattrass*, the House of Lords did approve the approach of attribution in dealing with liability of companies, and stated both the problem and the solution as follows:

> A living person has a mind which can have knowledge or intention or be negligent and he has hands to carry out his intentions. A corporation has none of these: it must act through living persons, though not always one or the same person. Then the person who acts is not speaking or acting for the company. He is acting as the company and his mind which directs his acts is the mind of the company … He is an embodiment of the company or, one could say, he hears and speaks through the persona of the company, within his appropriate sphere, and his mind is the mind of the company. If it is a guilty mind then that guilt is the guilt of the company ([1972] AC 153 at 170 per Lord Reid).

Prior to the BA, it would have required applying attribution rules to find that the company has committed a bribe. In *Bolton Engineering v Graham*, Denning LJ said that 'the state of mind of these managers is the state of mind of the company and is treated by the law as such' ([1957] 1 QB 159 at 172 per Lord Denning). To apply attribution rules to bribes, the personnel with whom the company is identified would only include those at the centre of corporate power – the board of directors, the managing director and perhaps other senior personnel who carry out the functions of management and speak and act as the company. As bribery generally happens in the lower hierarchy of corporations or institutions, relying on attribution for corporate crimes poses considerable difficulties (Yeoh, 2012, p. 43). The BA goes beyond attribution rules to avoid their limitations.

Ordinarily, the rules of attribution are meant to make the company criminally liable for the acts of its senior managers. The limitations of these rules lie in requiring an identification of a human being at a senior level of company management who has committed a crime. For example, in *R v P & O European Ferries (Dover) Ltd* ([1990] 93 CR App R 72) where a catastrophe befell the vessel Herald of Free Enterprise in Zeebrugge harbour with the result, *inter alia*, of loss of life, the criminal liability against the company failed because the prosecution was unable to identify one senior individual who had the necessary degree of *mens rea* for manslaughter. The focus on the personnel within the company rather than on the activities of the company makes it difficult to secure conviction of the company.

To resolve the difficulties resulting from focusing on senior managers rather than company activities, especially in cases where the activities of company have caused death, came into force the Corporate Manslaughter and Corporate Homicide Act 2007. Under section 1 of the 2007 Act, the company can be found guilty of a

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relevant crime "if the way in which its activities are managed or organised by its senior management is a substantial element in the breach." But the 2007 Act still relies on rules of attribution – section 4 of the Act refers to senior participants, which implies not necessarily only those at the very top of the managerial hierarchy (Kershaw, 2012, p. 167). But applying attribution rules even under the 2007 Act is not easy, and conviction is still rare – only one case between 2007 and 2013 where the facts of the case in a one man company suggests that it is not easy even at common law to obtain a conviction (*R v Cotswold Geotechnical (Holdings) Ltd* [2011] All ER (D) 100).

Relying on such attribution rules creates difficulties where the breach is wholly a result of activities managed by the company's junior management. In curbing bribery, the BA goes beyond such attribution rules and makes the company liable for the criminal acts of any associated person resulting from criminal risks the company could have prevented. The liability arises only if the associated person was intending to obtain a business advantage for the company (Davies and Worthington, 2012, p. 206). The associated person is a wider notion than senior management, for this includes junior management, employees at any level, or any agent of the company. Moving away from attribution rules that focuses on acts of individuals, the BA focuses on the quality of business systems – their robustness to address risks of bribery and to prevent such crimes.

6. Extraterritorial scope and application of the bribery law

As the international community is determined criminalise bribery, the UK cannot afford to remain disinterested in the face of these international efforts. In the former times, if a company or an individual in England needed to bribe overseas officials in order to secure business, then that was viewed by English law with total disinterest (Alldridge, 2002, p. 271). This lack of interest has since changed with the BA. The extraterritorial reach of the BA is twofold: first, companies 'carrying on a business or part of a business' in the UK commit a section 7 offence if persons associated with them and acting for their benefit commits bribery abroad; and second, companies connected with the UK by having been incorporated in the UK (Bribery Act 2010, s 12(4)(h)) commit a section 1, 2 or 6 offence if they commit bribery abroad. This tightening of UK bribery law should not create enormous difficulties to British companies abroad in securing business contracts, for all major multinational companies, mostly from the USA, are likely to be on the same footing – subject to either domestic ant-bribery laws or OECD anti-bribery convention. This should create a combined effort against business cultures that promote bribery, and create a level playing field for honest dealings and competition in international business.

Apart from the BA's extraterritorial reach, regulators around the world are actively seeking to reverse bribery cultures, and British companies are among the culprits. In 2012, in the USA, the British pharmaceutical firm GlaxoSmithKline (GSK) agreed to plead guilty to criminal charges and pay $3 billion in fines for corruptly promoting its antidepressants by paying doctors for trips as well as spa treatments and hunting excursions (Thomas and Schmidt, 2012). In 2013, in China, GSK was accused of bribing doctors with cash and sexual favours in return for prescribing its drugs, and the investigator in China found that bribery is a core part of the activities of GSK in China (Neate, 2013). In 2013, in the USA, GSK announced that they will no longer pay doctors to promote its products as it attempts to modernize at a difficult time of the company (Monaghan, 2013). This change in culture by GSK is

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exactly what the BA envisions, and British companies operating abroad have to change their business culture or risk facing the BA's extraterritorial reach.

7. Conclusion

This paper has observed that the problem of bribery is a corrosive one and undermines faith in transparent markets as well as confidence in the rule of law. It has argued that the law on bribery should aim at protecting and enhancing free markets for business transactions. Most of the bribes committed are traced in the activities of companies. Yet, holding companies liable for crimes has always caused difficulties given that the artificial legal entity lacks the criminal mind of its own. Attribution rules that impute the crimes of senior personnel to the company have not proven effective in imposing criminal liability on companies. Tracing the reform of bribery laws in the UK, examining the deficiency of previous laws, this paper has argued that the effectiveness of the BA in curbing bribery lies in its regulatory approach that moves from focusing on the guilty of personnel to focusing on the activities of the company.

This paper has examined the BA from three of its key features. First, the BA removes the distinction between public and private sector bribery. Differentiating between public and private sector bribery fuels the forbearance of practices such as 'facilitation payments' or 'grease payments', which are now likely to fall foul of bribery under the BA. But hospitality to a public official by way of say corporate free lunch that is proportionate and done in good faith is unlikely to trigger bribery offence under the BA. Second, the BA creates a strict liability offence of failing to prevent bribery, but seasoned with a defence of 'adequate procedures', which defence provides incentives to companies to do something to prevent bribery. In the regulatory application of this offence, the BA cuts across the need to identify the controlling mind to find the company guilty, and simply deals with failure to prevent bribery regardless of who within the company is culpable. Third, the BA has an extraterritorial application. With efforts of regulators around the world, by its extraterritorial reach, the BA is likely to lead to a more fundamental cultural change in the practices of many British companies doing business abroad, leading to transparent and competitive markets.

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