

## Tackling corruption in the UK's Overseas Territories and Crown Dependencies

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Corruption has devastating effects on the world's poorest and most vulnerable communities. Coordinated international action is needed and the UK has made significant progress. However, there are concerns that UK's Overseas Territories (OTs) and Crown Dependencies (CDs) do not have strong anti-corruption legislation and mechanisms and this could undermine the UK's efforts and international leadership in this area.

Specifically, the majority of the UK's Overseas Territories have not signed or ratified the two most comprehensive anti-corruption Conventions: the United Nations Convention Against Corruption, and the OECD Anti-Bribery Convention. Furthermore, loopholes in the 2010 Bribery Act relating to the Overseas Territories and Crown Dependencies could undermine the effectiveness of the Act by allowing business registered in these jurisdictions to commit bribery without facing prosecution in the UK.

### What do we want the UK Government to do?

1. The UK government should work with all of the OTs to extend the territorial application of the United Nations Convention Against Corruption (UNCAC) and the OECD Anti-Bribery Convention to these jurisdictions.
2. The Government should extend the Bribery Act to all legal persons incorporated (i.e. companies) in all of the Overseas Territories and Crown Dependencies, as recommended by the OECD earlier this year.

### The impacts of corruption

Corruption seriously hinders a country's efforts to meet the Millennium Development Goals and remains one of the major impediments to poverty alleviation, good governance and financial and social stability. According to the World Bank in 2004, it was estimated that \$1 trillion is paid in bribes every year with devastating affects.<sup>1</sup>

Tearfund Research<sup>2</sup> shows that corruption can:

- undermine the quality of, and access to, public services – for example as companies use bribery in order to secure procurement contracts
- reduce access to justice
- waste financial resources
- undermine stable governance and the rule of law

It is often fuelled and facilitated by external actors. For example, supply-side bribery by companies (including British companies), and contradictory or badly-enforced polices within exporting countries, donor government and large financial centres, are a significant part of the problem.

<sup>1</sup> World Bank (2004) The costs of corruption.

<sup>2</sup> Tearfund (2010) Corruption and its discontents: assessing the impact of corruption on people living in poverty.

## Case Study

In 2010 BAE was convicted of failing to keep proper books and records in relation to the sale of an air traffic control system to Tanzania, relating in particular to a \$12.4m payment to a Tanzanian middleman for "marketing" purposes. BAE avoided any admission of corruption, but agreed with the Serious Fraud Office (SFO) to pay out £29.5 million to the people of Tanzania as an ex-gratia payment, equivalent to the size of the contract.

## The Overseas Territories and Crown Dependencies

The UK has 3 Crown Dependencies, which are self-governing possessions of the British Crown. These are the Isle of Man, Jersey and Guernsey.

There are 14 Overseas Territories, which fall under the jurisdiction of the UK but are not formally part of it. These are: Anguilla, Bermuda, British Antarctic Territory, British Indian Ocean Territory, British Virgin Islands, Cayman Islands, Falkland Islands, Gibraltar, Montserrat, Pitcairn, Henderson, Ducie and Oeno Islands, St Helena and Dependencies, South Georgia and South Sandwich Islands, Sovereign Base Areas of Akrotiri and Dhekelia, The Turks and Caicos Islands.

While these territories are largely self-governing, in many cases UK law can and does still extend to them. With many of these jurisdictions home to tens of thousands of companies involved in international trade and finance, it is important that the OTs and CDs play their part in a zero-tolerance approach to corruption.

## What needs to be done?

### 1. Extend the territorial application of international anti-corruption conventions to all of the UK's Overseas Territories

Corruption is an issue that crosses borders and needs to be addressed at an international level. The United Nations Convention Against Corruption (UNCAC)<sup>3</sup> and the OECD Anti-Bribery Convention<sup>4</sup> are the two most comprehensive and far-reaching anti-corruption frameworks.

However, currently UNCAC has only been extended to the three Crown Dependencies and to one of the fourteen Overseas Territories (British Virgin Islands).<sup>5</sup> The OECD Anti-Bribery Convention has only been ratified by the three Crown Dependencies and one of the Overseas Territories (the Cayman Islands) and progress to extend this Convention to the remaining OTs remains slow.

<sup>3</sup> [http://www.unodc.org/documents/treaties/UNCAC/Publications/Convention/08-50026\\_E.pdf](http://www.unodc.org/documents/treaties/UNCAC/Publications/Convention/08-50026_E.pdf)

<sup>4</sup> Full title of the Convention: OECD Convention on Combating Bribery of Foreign Public Officials

<sup>5</sup> UK self-assessment of its compliance with UNCAC:

<http://webarchive.nationalarchives.gov.uk/+/http://www.dfid.gov.uk/Documents/consultations/draft-UK-self-assess-un-convention-corr.pdf>

Concerns have been expressed over issues of sovereignty in the OTs, however, according to the OECD Review team's report earlier this year the UK 'can and has extended international treaties to the OTs and enacted legislation in these territories over their objection.'<sup>6</sup> The UK must therefore take a more proactive approach to extending the Conventions to the remaining OTs, demonstrating its commitment to a zero-tolerance approach to corruption and in order that the OTs have strong and effective governance.

## Recommendation

- **The UK government should work with all of the OTs to extend the territorial application of the United Nations Convention Against Corruption (UNCAC) and the OECD Anti-Bribery Convention to these jurisdictions.**

## 2. Extend the Bribery Act to the UK's Overseas Territories and Crown Dependencies

The UK Bribery Act 2010 reforms the criminal law, providing a comprehensive scheme of bribery offences, bringing the UK into line with its international commitments. In particular the Act requires companies to have procedures in place to prevent bribery.<sup>7</sup> If widely implemented and enforced the Act could go a long way in ensuring that UK companies do not fuel or facilitate bribery overseas.

However, earlier this year, the OECD Anti-Bribery Convention review team published its report on the UK's compliance with the Convention, highlighting their concerns that under the Bribery Act, the UK does not extend its jurisdiction to prosecute legal persons incorporated in the Overseas Territories and Crown Dependencies, although natural citizens in these territories can be prosecuted.

This is inconsistent and means that companies incorporated in the CDs and OTs, but which do not carry on a business in the UK, could be used to commit foreign bribery without being prosecuted under the Bribery Act. This is of particular concern when a large number of companies are incorporated in the CDs and OTs. For example, there are over 447,801 active companies incorporated in the British Virgin Islands alone.<sup>8</sup> Consequently, the UK Government should ensure that the Bribery Act is extended to cover all legal persons incorporated in the CDs and OTs.

## Recommendation

- **Extend the Bribery Act to companies registered in all Overseas Territories or Crown Dependencies as recommended by the OECD Review team earlier this year.<sup>9</sup>**

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<sup>6</sup> OECD parallel report into the UKs compliance with the Convention: See p50 and 51: [OECD Phase 3 BiS report on implementing the OECD Anti-Bribery Convention](#). The OECD report shows that the UK has legal powers to do this as has done so in cases involving the UK's international obligations e.g. anti-terrorism.

<sup>7</sup> International commitments include the OECD Anti-Bribery Convention and the United Nations Convention Against Corruption

<sup>8</sup> According to the BVI Financial Services Commission, Statistical bulletin 2012 the total number of active companies incorporated is 447,801. That said, earlier this month the Guardian claimed that there are over 1 million companies incorporated in the BVI. See here: <http://www.guardian.co.uk/uk/2012/nov/25/offshore-secrets-british-virgin-islands>.

These statistics are even more startling when the population of the BVI currently only 29,000: *The Overseas Territories – Security, Success and Stability* (FCO White Paper 2012).

<sup>9</sup> <http://www.oecd.org/investment/briberyininternationalbusiness/anti-briberyconvention/50026751.pdf> (see page 50)