

# Call in for a Coffee

RSM Nelson Wheeler, Thailand

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## Introduction

Welcome to RSM's tenth edition of "Call in for a Coffee". In this edition, we focus on recent bribery and corruption legislation in the UK, which is relevant to all UK nationals residing and doing business in Thailand.

The UK Anti-terrorism, Crime and Security Act 2001 was enacted on 14 February 2002. Part 12 of this Act relates to bribery and corruption committed in the UK and overseas. The provisions of the Act may therefore be enforced against any UK national or entity incorporated in accordance with the laws of the UK who commits contravening acts while conducting business in Thailand.

## The Development of Corruption Laws in UK

Laws on corruption currently in force in the UK includes:

- The Public Bodies Corrupt Practices Act 1889,
- The Prevention of Corruption Act 1906,
- The Prevention of Corruption Act 1916

## Definition (Russell on Crime):

"Bribery is the receiving or offering of any undue reward by or to any person whatsoever, in a public office, in order to influence his behaviour in office, and incline him to act contrary to the known rules of honesty and integrity"

The Public Bodies Corrupt Practices Act 1889, defines "corruption in office a misdemeanour" as follows:

(1) Every person who shall by himself or by or in conjunction with any other person, corruptly solicit or receive, or agree to receive, for himself or for any other person, any gift, loan, fee, reward, or advantage whatever as an inducement to, or reward for, or otherwise on account of any member, officer, or servant of a public body as in this Act defined, doing or forbearing to do anything in respect of any matter or transaction whatsoever, actual or proposed, in which the said public body is concerned, shall be guilty of a misdemeanour.

(2) Every person who shall by himself or by or in conjunction with any other person, corruptly give, promise, or offer any gift, loan, fee, reward, or advantage whatsoever to any person, whether for the benefit of that

person or of another person, as an inducement to or reward for or otherwise on account of any member, officer, or servant of a public body as in this Act defined, doing or forbearing to do anything in respect of any matter or transaction whatsoever, actual or proposed, in which the said public body as aforesaid is concerned, shall be guilty of a misdemeanour.

In brief the scope of the enforcement of these laws are limited in the UK. However, the UK Government have determined that laws on corruption should be expanded to include UK nationals overseas.

## The Origin of the Anti-terrorism, Crime and Security Act 2001

A culture of corruption is a disincentive to trade and invest and the payment of bribes is considered to be unacceptable behaviour for UK companies or nationals. The UK Government realises that corrupt culture has spread worldwide. Therefore, to broaden the enforcement of those laws on corruption, the UK Government has enacted the Anti-terrorism, Crime and Security Act 2001. Sections 108-110 of Part 12 of this Act, are the key provisions:-

### (Section 108 Bribery and corruption of or by foreign officers etc.):

- for the purposes of any common law offence of bribery, it is immaterial if the functions of the person who receives or is offered a reward has no connection with the UK and that these are carried out in a country or territory outside of the UK.

This results in a UK national being deemed to be in contradiction of UK law even if:-

- 1) The principal's affairs or business have no connection with the UK or are conducted in a country or territory outside of the UK; and,
- 2) The agent's functions have no connection with the UK and are carried out in a country or territory outside of the UK.

Furthermore, a public body as formerly defined in Section 7 of the Public Bodies Corrupt Practices Act 1889, shall include Government agencies of other territories and countries.

**(Section 109 Bribery and corruption committed outside the UK):****➤ This section applies if-**

- 1) a national of the United Kingdom or a body incorporated under the laws of any part of the United Kingdom does anything in a country or territory outside the United Kingdom ; and,
- 2) the act would, if done in the United Kingdom, constitute a corruption offence (as defined below).

**➤ In such a case-**

- 1) the act constitutes the offence concerned ; and,
- 2) proceedings for the offence may be taken in the United Kingdom.

**➤ Corruption offences include:-**

- 1) any common law offence of bribery;
- 2) offences under section 1 of the Public Bodies Corrupt Practices Act 1889 (c. 69) (corruption in office); and,
- 3) the first two offences under section 1 of the Prevention of Corruption Act 1906 (c. 34) (bribes obtained by or given to agents).

**➤ A national of the United Kingdom is an individual who is-**

- 1) a British citizen, a British Dependent Territories citizen, a British National (Overseas) or a British Overseas citizen ;
- 2) a person who under the British Nationality Act 1981 (c. 61) is a British subject ; or,
- 3) a British protected person within the meaning of that Act.

**(Section 110 Presumption of corruption not to apply)**

“Section 2 of the Prevention of Corruption Act 1916 (c. 64) (presumption of corruption in certain cases) is not to apply in relation to anything which would not be an offence apart from sections 108 or 109”.

**How to Enforce the Act in other Jurisdictions :**

Generally, a country will have their own boundary, sovereignty and jurisdiction in their own countries. However, this Act may be enforced in the court jurisdictions of other countries if those countries are members of the international anti-corruption organisation (“OECD”) which most EU countries belong.

Enforcement of the Act in other countries shall depend on the conventions or agreements between or amongst those countries and their domestic laws.

Currently Thailand does not have a treaty, convention, or a membership of the OECD and it is not possible, therefore to enforce this Act in the Thai Courts.

**However, UK nationals who commit an act in contravention of this law should be aware that they may still face prosecution upon their return to the UK. We have been reliably informed that Servants of her Majesty working at the British Embassy in Thailand are obliged to report misdemeanours by British Citizens residing in Thailand to the appropriate authorities back in Britain.**

**RSM News**

RSM’s 2<sup>nd</sup> Anniversary Annual Cocktail Function will be held at the Conrad Hotel on Thursday 26<sup>th</sup> June where guests and friends have been invited to celebrate our second year in Thailand.

RSM expects to enter into new joint ventures in Thailand during the next few months which should result in future expansion to its existing business.

**Free consultation**

If you have financial, legal or other problems that require innovative solutions, please contact the RSM team and “Call in for a coffee” for a free consultation.

**Contact Details**

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