

CLIENT ALERT

The UK Bribery Act 2010 – avoid being the ‘April fool’ next year

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The Ministry of Justice has this week announced that the UK Bribery Act 2010 ("the Act") will come in to full force in April 2011.

The Government has commented that: *"The Act will ensure the UK is at the forefront of the battle against bribery and pave the way for fairer practice by encouraging businesses to adopt anti-bribery safeguards."*

When the Act comes in to force next year it will:

- Introduce a strict liability corporate offence of failing to prevent bribery by persons working on behalf of, or associated with, a business. A business has a complete defense if it can demonstrate that it has "adequate procedures" in place that should have prevented bribery.
- Make it a criminal offence to give, promise or offer a bribe and to request, agree to receive or accept a bribe either at home or abroad. The measures cover bribery of a foreign public official where the offender need only have an intention to influence the foreign public official acting in his/her official capacity.
- Increase the maximum penalty for bribery from seven to 10 years imprisonment, with a potential unlimited fine for corporates.

Companies will be most concerned with what constitutes "adequate procedures." The Government will undertake a short consultation exercise in September 2010 and will encourage feedback from interested parties. The intention is that formal guidance will then be issued early in the New Year. This will give stakeholders what the Government has called an "adequate familiarization period" before the Act comes in to force.

In reality, this will mean that companies will have a relatively narrow window of two to three months in which to evaluate the guidance and make whatever changes may be necessary to ensure their anti-corruption procedures are "adequate."

The Government has already confirmed that its guidance will not be prescriptive but will be principles based. It is anticipated that it will follow the same format as the anti-corruption guidance already issued by organizations such as Transparency International ("TI") and the Organization for Economic Co-operation and Development ("OECD"). Indeed TI have this week published new guidance entitled "The 2010 UK Bribery Act - Adequate Procedures" which is aimed at assisting companies in their preparations for when the Act comes in to force.

Many companies, particularly those operating in the US will already have anti-corruption controls and procedures - to ensure compliance with the Foreign Corrupt Practices Act - but it is important to recognize that in some areas, like bribing a foreign public official, the Bribery Act goes further and has even greater jurisdictional reach than the FCPA, so it important that companies take steps before April 2011 to review, amend and update their relevant policies and procedures to ensure compliance with both Acts.

For more information, please contact the professional(s) listed below, or your regular Crowell & Moring contact.

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