

**BRIBERY BILL UPDATE:
ANTI-CORRUPTION DEVELOPMENTS IN THE UK**

12 March 2010

To Our Clients and Friends:

If enacted, the Bribery Bill would bring about a radical overhaul of the law relating to bribery and corruption in the UK. This update supplements our client update of 29 September 2009 and focuses on the new offence of failure to prevent bribery by a commercial organisation (the “corporate offence”), which is widely considered to be the most controversial provision in the new Bribery Bill.

The Bribery Bill has recently completed its passage through the House of Lords, and received its second reading in the House of Commons on 3 March 2010. Following various amendments during the course of the Bill’s passage through the House of Lords, we have identified the following key features of the corporate offence:

- The corporate offence, as currently drafted, circumvents the traditional English law position of corporate criminal responsibility, under which criminal liability can only attach if the “controlling mind and will” of a company are culpable. By making the offence one of strict liability, the legislature has removed a considerable evidentiary obstacle for the prosecution.
- The proposed corporate offence applies to bribery of private individuals, as well as bribery of public officials. In that way, the application of the Bribery Bill is broader than the US Foreign Corrupt Practices Act (“FCPA”), which focuses on the bribery of public officials.
- If a commercial organisation carries on a business, or part of its business, in the UK, the organisation may be prosecuted in the UK for the failing to prevent bribes being made on its behalf anywhere in the world.¹
- If a commercial organisation has failed to prevent bribery, the sole potential defence available to the organisation would be to prove that they had in place “adequate

¹ *Provided the person performing services on its behalf intended to obtain or retain business or a business advantage for the company/partnership.*

procedures” designed to prevent persons associated with the organisation engaging in such conduct. At present, there is no definitive guide as to what amounts to “adequate procedures.”

- There is no distinction made between bribes and facilitation payments.

We are actively monitoring the progress of the Bribery Bill and keenly await the publication of the Secretary of State’s guidance which will address, to some degree, procedures that can be put in place by commercial organisations to prevent bribery.

CONCLUSION

It is extremely likely that investigations into the corporate offence will focus on the internal controls put in place by a commercial organisation to prevent bribery.

The Bribery Act is likely to signify a further toughening of UK corruption laws and will assist the SFO in continuing to make a significant contribution to global anti-corruption enforcement.

We will provide a more detailed update once the legislation has been finalised. In the meantime, please feel free to contact any of the undersigned if you have any questions.

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