

THE UK BRIBERY ACT 2010 UPDATE

22 July 2010

To Our Clients and Friends:

The Ministry of Justice announced on 20 July 2010 that the government plans to bring the UK Bribery Act into force in April 2011. The Ministry of Justice also set forth the government's timetable and process for the publication of its guidance on procedures that commercial organisations can put in place to prevent bribery.

This update supplements our previous Bribery Act updates¹ and focuses on the need for corporations to consider their anti-corruption programmes before the Bribery Act takes effect.

The Bribery Act introduces the concept of a “corporate offence” which imposes strict liability on a “relevant commercial organisation” (which can extend to non-UK corporations and partnerships) for failure to prevent bribery anywhere in the world by a person performing services for or on behalf of the relevant commercial organisation. The only jurisdictional requirement is that the relevant commercial organisation carries on a business, or part of a business, in the UK.

It is a defence for the relevant commercial organisation to prove it had in place “adequate procedures” designed to prevent bribery. The Bribery Act requires the government to publish guidance on what is meant by “adequate procedures”. There has been much speculation about the timing of the publication of such guidance and the form it will take.

The Ministry of Justice announced on 20 July 2010 that as a first step the government intends to launch a short public consultation exercise in September 2010 on the form and content of the guidance. The stated purpose of this exercise is to allow the government to take account of the views of those with an interest in this area prior to formulating and publishing its guidance, which the Ministry of Justice indicated the government expects to do early in 2011.

As outlined in our previous Bribery Act updates, we consider the impact of the corporate offence to merit careful consideration by all companies and partnerships that carry on

¹ *The UK Bribery Act 2010: A Guide to the New Offences, dated 19 May 2010; Bribery Bill Update: Anti-corruption Developments in the UK, dated 12 March 2010; and The Draft Bribery Bill, dated 29 September 2009. All three of these updates are available at <http://www.debevoise.com/TheBriberyAct>.*

business in the UK because of the Bribery Act's global reach and the prospect of an unlimited fine for a relevant commercial organisation convicted of a corporate offence.

Companies will benefit from reviewing their anti-corruption programmes now if they have not done so already.

We will provide a further update following the commencement of the consultation process in September 2010. In the meantime, please feel free to contact any of us if you have any questions.

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