

## UK BRIBERY ACT ENTERS INTO FORCE

30 June 2011

To Our Clients and Friends:

We remind clients that the UK Bribery Act 2010 (the “Bribery Act” or the “Act”) is due to come into force this Friday, 1 July 2011. The so-called “corporate offence” of the Act means that from now on, corporates with a demonstrable business presence in the UK will be liable in the UK for bribery by so-called associated persons, even if the associated persons are wholly outside the UK, unless the corporate can prove it has “adequate procedures” in place to prevent bribery. This applies to both bribery of government officials and commercial bribery.

We have been advising clients on what steps to take in order to avail themselves of the defence of adequate procedures. The Serious Fraud Office (“SFO”) has made it clear that the corporate offence is aimed at fostering “fair competition” and supporting ethical UK businesses that are undermined by companies intent on using corruption to obtain a competitive advantage; it will not be used to punish ethical companies honestly trying to resolve problems.

In addition to the corporate offence, the SFO has also stressed that the offences of bribing another person and bribing a Foreign Public Official will incur corporate criminal liability where the senior officer of a corporate “consented or connived” in their commission. Additionally, such senior officers will face potential personal liability for their involvement in such bribery offences.

The guidance published by the Ministry of Justice on 30 March, along with various statements made by the SFO since, shows that while the SFO is determined to enforce the Act, and in particular its jurisdictional provisions, aggressively, the intent of the government and the SFO is for a common-sense approach to prevail in its enforcement. While media speculation about the criminalisation of even the most customary business hospitality was always wide of the mark, the authorities have made it clear that the application of the corporate offence will depend on the level of control the corporate has over the relevant entity where the bribery occurs. This is of key importance in joint ventures but also in the private equity context vis-à-vis portfolio company investments.

Clients are nonetheless well advised to remain active and vigilant in ensuring they have effective anti-corruption compliance measures in place both within their organisations and with third parties they engage.

For more on the Bribery Act, including all of our previous client updates, please see our website at: <http://www.debevoise.com/TheBriberyAct>

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Please call us if you have any questions.

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