

Bribery Act Implementation Further Delayed

1 February 2011

On 31 January 2011, the United Kingdom Ministry of Justice confirmed a further delay in the implementation of the UK Bribery Act (the Act). The Act, which was scheduled to come into effect in April 2011, has been delayed pending the publication of guidance designed to enable business organisations to prepare for the new regime, particularly in relation to the procedures that organisations should adopt in the context of the new corporate offence of failure to prevent bribery. The Act is presently scheduled to come into effect three months after the guidance has been published. The Ministry of Justice has not announced when the final guidance can be expected.

This latest delay follows the UK government's July 2010 announcement that it was postponing the Act's implementation until April 2011 to allow businesses time to prepare for its effect. In September 2010, the Ministry of Justice issued draft guidance relating to the Act and initiated a two-month consultation period designed to elicit feedback from affected parties, with final guidance originally expected to be published in January 2011. The Act drew attention earlier this year when a UK government official suggested that the government would review the Act, leading to speculation that its anticipated effect on businesses would be tempered.

Since the Act's enactment, business organisations have criticized its potentially sweeping adverse effect and the uncertainty surrounding its interpretation. The Act, which seeks to broaden the UK's existing anti-bribery laws, establishes a strict liability corporate offence of failure to prevent bribery. This offence provides that a commercial organisation, which may include non-UK companies that conduct business in the UK, commits a criminal offence if a person associated with it engages in bribery with the intention of benefiting the organisation. The Act provides a potential defence for the organisation if it can demonstrate that it established "adequate procedures" to prevent the offence. Businesses have also voiced concerns about the Act's implications in the area of business entertainment and hospitality.

Morgan Lewis's May 2010 White Paper, "The New UK Regime on Bribery: An Introduction" (available at http://www.morganlewis.com/pubs/LIT_NewUKRegimeOnBriberyWP_May2010.pdf), provides a detailed overview and analysis of the Act. Morgan Lewis's September 16, 2010 LawFlash, "UK Bribery Act: Commencement of Consultation Process on Proposed Guidance on Anti-Bribery Procedures to Be Adopted by Relevant Commercial Organizations" (available at http://www.morganlewis.com/pubs/WC_UKBriberyAct_LF_16sept10.pdf), also provides details regarding the draft guidance. Morgan Lewis's January 18, 2011 LawFlash, "The UK Bribery Act Continues to Keep Businesses on Edge as They Await Its Implementation" (available at <http://www.morganlewis.com/pubs/WC->

[LF_BusinessesAwaitUKBriberyActImplementation_18jan11.pdf](#)), provides details about the UK government's potential review of the Act.

Morgan Lewis is continuing to monitor developments concerning the Act and will provide updated analyses. A thorough overview and analysis of the Act will also be presented in the third webinar in Morgan Lewis's 2011 FCPA Webinar Series, "FCPA and the UK Bribery Act," which will be held on March 15, 2011 at 10:00 a.m. EST (2:00 p.m. GMT). To register for the webinar, please go to <https://morganlewis.webex.com/morganlewis/onstage/g.php?t=a&d=666937419>.

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If you have any questions regarding this LawFlash or the Bribery Act, or if you require assistance with any other issue relating to the defense of any other government enforcement matters, please contact the authors, **Iain Wright** (+ 44 (0)20 3201 5630; iwright@morganlewis.com), **Eric Kraeutler** (215.963.4840; ekraeutler@morganlewis.com), and **Dana Becker** (215.963.4628; dana.becker@morganlewis.com), or any of our white collar attorneys:

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