

The UK Bribery Act Continues to Keep Businesses on Edge As They Await Its Implementation

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A United Kingdom government official made headlines last week when he suggested that the UK Bribery Act 2010 (the Act), which is due to come into effect in April 2011, would be reviewed by the UK government. However, despite some media reports suggesting that the Act was under review, and might potentially be watered down, because of its potentially severe adverse effect on businesses, at present it appears that any “review” of the Act will be limited to potential inclusion in an ongoing UK government “Growth Review,” which is a broader effort by the UK government to spur economic growth and investment by seeking to identify unnecessarily onerous regulations and red tape that operate as a barrier to growth. At this stage, it is unclear exactly whether that review will have any effect on the Act.

Since it was enacted in April 2010, many business organisations have sharply criticized the Act for the potentially broad and uncertain interpretation of a number of its provisions, particularly in areas where the Act might encroach on ordinary business practice such as business entertainment, and for the new corporate liability offence, which has the potential to impose criminal liability on a corporation even in the absence of evidence of an intent to bribe. Under the Act’s strict liability provision, a relevant commercial organisation (which may also include non-UK companies if they conduct business in the UK) commits an offence if a person associated with it engages in bribery, unless the organisation can show that it had in place “adequate procedures” designed to prevent the offence.

In September 2010, the Ministry of Justice issued draft guidance concerning the Act and commenced a consultation process regarding what would constitute “adequate procedures.” The draft guidance sets forth six foundational principles of a corporate compliance program—all of which are hallmarks of Foreign Corrupt Practices Act compliance programs that many U.S. corporations have already implemented. These principles are (1) risk assessment; (2) top-level commitment; (3) due diligence; (4) clear, practical, accessible, and enforceable policies and procedures; (5) effective implementation; and (6) monitoring and review. The final version of this guidance is expected to be issued later this month, and the Act is due to come into effect in April 2011.

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 Organisations” (available at

http://www.morganlewis.com/pubs/WC_UKBriberyAct_LF_16sept10.pdf), also provides details regarding the draft guidance.

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 Morgan Lewis's "2011 FCPA Webinar Series: FCPA and the UK Bribery Act (Program 3)" webinar, to be held on March 15, 2011 at 10:00 a.m. EST. To register for the webinar, please go to <https://morganlewis.webex.com/morganlewis/onstage/g.php?t=a&d=666937419>.

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