

#### The UK Bribery Act: Long-Awaited Guidance Issued

#### 31 March 2011

On 30 March, the United Kingdom Ministry of Justice issued long-awaited guidance for business organisations preparing for the implementation of the UK Bribery Act (the Act), now scheduled for 1 July 2011. The Act, passed in April 2010, initially was slated for implementation in October 2010, but its implementation has been delayed twice, first until April 2011 and then indefinitely, following criticism of its potentially sweeping effects and the uncertainty surrounding its application.

The purpose of the guidance is to help organisations understand the legislation and deal with the risks of bribery. As expected, the guidance brings some moderation to certain aspects of the Act. The guidance makes clear that "[t]he objective of the Act is not to bring the full force of the criminal law to bear upon well run commercial organisations that experience an isolated incident of bribery on their behalf," and recognises that "no bribery prevention regime will be capable of preventing bribery at all times." The guidance stresses a risk-based approach to managing bribery risks and the implementation of procedures that are proportionate to such risks.

Section 7 of the Act creates a new form of liability for failing to prevent bribery on behalf of a commercial organisation. However, the organisation will have a full defence if it can show that it had "adequate procedures" in place to prevent persons associated with it from committing bribery. The guidance identifies and elaborates upon six principles that should inform commercial organisations about the meaning of "adequate procedures": (1) procedures that are proportionate to the bribery risks an organisation faces; (2) top-level commitment within the organisation; (3) periodic, informed, and documented risk assessment; (4) due diligence to mitigate identified bribery risks; (5) internal and external communication, including training; and (6) monitoring and review of procedures, including improvements where necessary.

In addition, the guidance addresses concerns voiced by business organisations regarding promotional expenditures, clarifying that it is not the intention of the Act to criminalise bona fide hospitality and promotional expenditures that seek to improve the image of a commercial organisation, better present products and services, or establish cordial relations.

Notwithstanding prior speculation to the contrary, the guidance reaffirms that facilitation payments—small bribes paid to facilitate routine government action—are not exempted from the Act's prohibitions. However, the guidance recognises that such payments are the reality in some sectors and parts of the world, and emphasises the need for prosecutorial discretion in cases of facilitation payments.

The guidance can be accessed online at <a href="http://www.justice.gov.uk/guidance/docs/bribery-act-2010-guidance.pdf">http://www.justice.gov.uk/guidance/docs/bribery-act-2010-guidance.pdf</a> and <a href="http://www.justice.gov.uk/guidance/docs/bribery-act-2010-quick-start-guide.pdf">http://www.justice.gov.uk/guidance/docs/bribery-act-2010-quick-start-guide.pdf</a>.

A thorough overview and analysis of the Act and Guidance will be presented in Morgan Lewis's "2011 FCPA Webinar Series: FCPA and the UK Bribery Act (Program 3)" webinar on 13 April 2011 at 10:00 a.m. EST. To register for the webinar, please visit

http://www.morganlewis.com/index.cfm/eventID/ea430d7d-73ac-4804-91c9-525d898c1313/fuseaction/event.detail.

In addition, 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 White Collar Practice

Morgan Lewis's national and international White Collar Practice features dozens of former prosecutors and former high-level government officials whose experience representing companies and individuals covers a broad array of substantive white collar and government enforcement areas, including, among others:

- Antitrust
- Congressional investigations
- Environmental
- False Claims Act
- FCPA

- Financial fraud
- Healthcare fraud
- Industrial accidents and workplace safety
- Import/export regulations

- Money laundering
- Qui tam
- Securities fraud/SEC enforcement
- Tax

If you have any questions regarding this LawFlash or the Bribery Act, or if you require assistance with any other issue relating to the defence of any other government enforcement matters, please contact the authors, Iain Wright (+ 44 (0)20 3201 5630; <a href="mailto:iwright@morganlewis.com">iwright@morganlewis.com</a>), Eric Kraeutler (215.963.4840; <a href="mailto:ekraeutler@morganlewis.com">ekraeutler@morganlewis.com</a>), Alison Tanchyk (215.963.5847; <a href="mailto:atanchyk@morganlewis.com">atanchyk@morganlewis.com</a>), and Dana Becker (215.963.4628; <a href="mailto:dana.becker@morganlewis.com">dana.becker@morganlewis.com</a>), or any of our white collar attorneys:

<b>London</b> Iain Wright	+44 (0)20 3201 5630	iwright@morganlewis.com
New York Leslie R. Caldwell Kelly A. Moore Joanna C. Hendon	212.309.6260 212.309.6612 212.309.6377	lcaldwell@morganlewis.com kelly.moore@morganlewis.com jhendon@morganlewis.com
Philadelphia Eric W. Sitarchuk John C. Dodds Eric Kraeutler	215.963.5840 215.963.4942 215.963.4840	esitarchuk@morganlewis.com jdodds@morganlewis.com ekraeutler@morganlewis.com
Matthew J. Siembieda Lisa C. Dykstra Nathan J. Andrisani Meredith S. Auten	215.963.4854 215.963.5699 215.963.5362 215.963.5860	msiembieda@morganlewis.com ldykstra@morganlewis.com nandrisani@morganlewis.com mauten@morganlewis.com

W	as	hi	ngt	01	n,	D.C.
_	-	_		_		

202.739.5560	ffielding@morganlewis.com
202.739.5655	mark.matthews@morganlewis.com
202.739.5256	bvangelder@morganlewis.com
202.739.5953	aconway-hatcher@morganlewis.com
202.739.5435	rtenpas@morganlewis.com
202.739.5458	kmcdermott@morganlewis.com
202.739.5098	smemmott@morganlewis.com
	202.739.5655 202.739.5256 202.739.5953 202.739.5435 202.739.5458

# Wilmington

Colm F. Connolly 302.574.7290 <u>cconnolly@morganlewis.com</u>

Frankfurt

Jürgen Beninca +49.69.714.007.19 <u>jbeninca@morganlewis.com</u>

### About Morgan, Lewis & Bockius LLP

With 22 offices in the United States, Europe, and Asia, Morgan Lewis provides comprehensive transactional, litigation, labor and employment, regulatory, and intellectual property legal services to clients of all sizes—from global Fortune 100 companies to just-conceived startups—across all major industries. Our international team of attorneys, patent agents, employee benefits advisors, regulatory scientists, and other specialists—nearly 3,000 professionals total—serves clients from locations in Beijing, Boston, Brussels, Chicago, Dallas, Frankfurt, Harrisburg, Houston, Irvine, London, Los Angeles, Miami, New York, Palo Alto, Paris, Philadelphia, Pittsburgh, Princeton, San Francisco, Tokyo, Washington, D.C., and Wilmington. For more information about Morgan Lewis or its practices, please visit us online at <a href="https://www.morganlewis.com">www.morganlewis.com</a>.

This LawFlash is provided as a general informational service to clients and friends of Morgan, Lewis & Bockius LLP. It should not be construed as, and does not constitute, legal advice on any specific matter, nor does this message create an attorney-client relationship. These materials may be considered **Attorney Advertising** in some states.

Please note that the prior results discussed in the material do not guarantee similar outcomes.

© 2011 Morgan, Lewis & Bockius LLP. All Rights Reserved.