



IMPLEMENTATION OF U.K. BRIBERY ACT DELAYED

On January 31, 2011, the United Kingdom's Ministry of Justice ("MoJ") announced a further delay to the implementation of the U.K.'s anticorruption legislation, the Bribery Act of 2010 ("UKBA"). This is the third delay in the implementation of the UKBA, which was originally planned to come into effect in October 2010.

Much like the U.S. Foreign Corrupt Practices Act ("FCPA"), the UKBA criminalizes paying a bribe to a foreign public official. The UKBA also has broad, extraterritorial application and will be relevant to any organization that does business in the U.K. or with U.K. counterparties.

Unlike the FCPA, the UKBA penalizes corporations for failing to prevent bribery made for their benefit. The introduction of this strict liability "corporate offence" drew a large amount of attention when the UKBA was enacted in April 2010, as audiences on both sides of the Atlantic looked forward to guidance from the U.K. government regarding the sort of "adequate procedures" that would serve as the sole defense to the "corporate offence" under the new law.

The U.K. government is required to publish the guidance on "adequate procedures" before the UKBA can be enforced. The Serious Fraud Office, the U.K.'s enforcement authority, is formulating guidance for businesses regarding the proper scope of adequate procedures and the extent to which it will exercise prosecutorial discretion under the new legislation. The MoJ's decision to further delay implementation suggests that the formulation of this guidance has proved to be a complex and onerous task.

A spokesperson for the MoJ indicated that they were working to make "practical and comprehensive" guidance available to businesses but did not commit to a precise date for the publication. As it stands, the law will not come into force until three months after the guidance on adequate procedures has been published and distributed—a period that is designed to allow businesses time to prepare for and adapt to the new regime.

The delay has raised concerns that the implementation of the UKBA could be significantly delayed

or that the law itself faces additional scrutiny from the U.K. government. Nonetheless, those closely involved with the development of the law expect the UKBA to come into force in the first half of 2011, and they doubt that any significant changes will be made to the substance of the law. It is much more likely that the MoJ will use this opportunity to produce more detailed guidance on some of the most complex issues arising under the UKBA, such as corporate hospitality as well as potential liability for the actions of joint venture partners, agents, consultants, and other third-party associates. These issues are also highly relevant under the FCPA.

For more information about the UKBA and the FCPA, please see the April 2010 Jones Day Alert, "A New Weapon in the Arsenal for the Fight Against Corruption: The U.K. Bribery Act of 2010," and the January 2010 Commentary, "The Foreign Corrupt Practices Act: An Overview."

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