

## ALERTS AND UPDATES

### UK Ministry of Justice Confirms Delay with Bribery Act Guidance

February 1, 2011

January has come and gone, and the UK's Ministry of Justice (MoJ) has confirmed the obvious: that it missed its deadline for guidance on the procedures that commercial organizations should take to stamp out bribery. The guidance is significant, as the [Bribery Act](#)—which was to have come into force in April 2011—introduces a new offense of failure to prevent bribery. The guidance was intended to show companies the steps they needed to take to have a defense under this new offense.

As detailed in the 7 October 2010 *Alert*, "[UK Clarifies Wide-Ranging Bribery Laws and the Impact on Non-UK Companies](#)," the MoJ published draft guidance that was open to consultation until 8 November 2010. Duane Morris and a number of other interested organizations made representations to the MoJ as part of that consultation process and the final guidance was due to be published last month.

The MoJ has yet to clarify what the delay will mean in practice. This morning of 1 February, an official at the MoJ told us, "We are still working on the guidance to ensure it is practical and comprehensive. We will provide further details in due course. When the guidance is published, it will be followed by a three-month notice period before implementation of the Act." This is likely to mean that implementation of the entire Act would miss its scheduled April implementation date. A less likely option would be that implementation of just the new offense of failure to prevent bribery would be postponed. There is no suggestion that the main offenses under the Act will be changed in any way.

#### What Steps Should Businesses Consider Taking Now?

In the meantime, organizations may want to make use of any delay to ensure that they are prepared for the implementation of the legislation. For most businesses, if they have not done so already, this is likely to involve at least a four-step strategy:

1. The review of any existing Ethics Code, Foreign Corrupt Practices Act (FCPA) Code or the like, to check its compliance with the UK legislation.
2. Communicating to employees what is expected of them. This would extend beyond people employed by a UK company or a UK subsidiary. It would also include those negotiating contracts in the UK and UK nationals employed by the organization wherever they work.
3. Companies should consider embedding compliance programs in subsidiaries, whether wholly owned or not. For most organizations, this would likely involve a structured program of board meetings of subsidiary entities, with the new Act as an agenda item. They may also want to send a briefing note to all of the directors of the relevant subsidiaries beforehand, explaining their responsibilities and instructing them to come up with an action plan to deal with the new law.
4. A specific training session for affected employees. This might coincide with training the organization has already completed; for example, under the FCPA, showing again any online materials that are not inconsistent with the new UK legislation. Over time, corporations can build on this initial training, incorporating the MoJ's guidance once it is published.

Duane Morris will continue to monitor the development of the new guidance and issue additional *Alerts*, as needed.

## **For Further Information**

If you have any questions about the UK Bribery Act or would like more information about this *Alert*, please contact [Jonathan P. Armstrong](#) or [Jeffrey V. Rodwell](#) in our [London office](#), [George D. Niespolo](#) in our [San Francisco office](#), [Joseph J. Aronica](#) in our [Washington, D.C. office](#), any [member](#) of the [White-Collar Criminal Law Practice Group](#), any [member](#) of the [Corporate Practice Group](#) or the attorney in the firm with whom you are regularly in contact.

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