

To: Our Clients and Friends

February 1, 2011

UK Bribery Act Stalled

Just as the results of the UK Ministry of Justice Consultation on Guidance About Commercial Organisations Preventing Bribery were due to be published, the Ministry of Justice has confirmed that the UK Bribery Act will not come into force in April 2011 as previously expected.

There has been intense business lobbying expressing concerns about uncertainty as to what would constitute adequate procedures that would provide a defence under the Act to the strict liability offence for commercial organisations doing business in the UK that fail to prevent bribery by persons associated with them and the effect on British competitiveness in a time of efforts to promote economic recovery.

Areas such as hospitality and engaging third party services have been highlighted, as well as the uncertainty of the use of prosecutorial discretion in defining such issues. Questions remain as to the reach of the Act's jurisdiction and what constitutes doing business in the UK, as well as the lack of a requirement of an "improper performance" element in respect of the bribery of foreign officials.

The Justice Ministry has indicated that it is continuing to work on guidance to make the rules "practical and comprehensive" for business and that the law will not come into force for three months following the issuance of the guidance, which is expected "in due course."

Although there has been some talk that the Act was "rushed through" Parliament by the prior Government, efforts to modernise the UK's current anti-corruption laws, which date back to the turn of the last century, have been under consideration at least since the entry into force of the OECD Convention On Combating Bribery of Foreign Public Officials in International Business. These discussions have been the subject of several Law Commission Reports dating back at least to 1998.

The UK has been the subject of serious criticism by the OECD and other anti-corruption organisations in respect of its record of enforcement and failure to modernise its anti-corruption laws. The delay in implementing the Act has resulted in renewed criticism, with the OECD Chairman promising consideration of such options as blacklisting UK firms.

In the meantime, the UK's current anti-corruption laws remain in place.

Prepared by: Anita C. Esslinger
+44 (0) 20 3207 1224
aesslinger@bryancave.com

Bryan Cave's International Regulatory Bulletins are available online at www.bryancave.com

Bryan Cave LLP International Trade Client Service Group

Los Angeles

Evan Y. Chuck, Partner, CSG Leader
David Stepp, Partner
Nicole Simonian, Partner
Andrew Klungness, Partner
Michael Zara, Associate
Jackson Pai, Associate
Marwa Hassoun, Associate

Washington

Stanley Marcuss, Partner
Daniel Schwartz, Partner
Susan Kovarovics, Partner
Clif Burns, Counsel
Corey Norton, Associate
Megan Gajewski, Associate

Chicago

Nicola Fiordalisi, Partner
Patricia Hanson, Counsel

St. Louis

Fred Bartelsmeyer, Partner

Phoenix

Jeronimo Gomez del Campo, Consultant
(admitted in Mexico)
Juan Moreno, Counsel (admitted in US and Mexico)

New York

Judith Rinearson, Partner
Hassan Albakri, Associate

Atlanta

Joel Williams, Partner

Shanghai

Evan Y. Chuck, Partner
Zhongdong Zhang, Principal
Flora Sun, Director*
Zhao Jun, Senior Advisor*

Chian Voen Wong, Associate Director*
Yi Huang, Associate
Barry Fang, Associate
Estelle Lee, Senior Manager, China Affairs*
Min Lan, Director of Economic Analysis*
Rainny Xiaoran Wang, PRC Consultant*

Hong Kong

Mao Tong, Partner
Peter Chow, Partner
Donald Lan, Counsel
Michelle Cheuk, Associate

Singapore

Ignatius Hwang, Partner
Cecil Leong, CEO of BCIT, International Trade
Deputy Leader*
Tony Kerr, Senior Director*
Alfred Chia, Senior Associate
Melissa Kwek, Associate
Stephanie Wong, Senior Manager*

Bangkok

Malika Bhumivarn, Managing Director,
Thailand*
Kittipong Jangkamolkulchai, Associate
Director*

Tokyo

Tatsuya Kanemitsu, Senior Manager*

London

Anita Esslinger, Partner

Hamburg

Dr. Michael Leue, Partner
Dr. Staffan Wegdell, Counsel

Paris

Joseph Smallhoover, Partner
Jilali Maazooz, Partner

*Non-legal professionals

Note: This Bulletin is intended solely for general informational purposes and should not be construed as, or used as a substitute for, legal advice with respect to specific transactions. Such advice requires a detailed analysis of applicable requirements and an evaluation of precise factual information. We do not undertake to keep recipients advised as to all relevant legal developments. This Bulletin may be construed as an advertisement or solicitation. ©2009 Bryan Cave LLP. All rights reserved.