

## UK Bribery Bill Update

It has been reported that the UK Bribery Bill, introduced in March 2009, made it out of Parliament before the upcoming general election. The Bribery Bill is a significant departure for the UK in the area of foreign anti-corruption. It is significantly stronger than the FCPA. Many internationally focused US companies have offices in the UK or employ UK citizens in their world-wide operations. This legislation could open them to prosecution in the UK under a law similar to, but stronger than, the relevant US legislation.

Some proposed amendments were recently introduced by the Tory Party which would have allowed allow facilitation payments that were ‘reasonable in amount’, ‘customary in the situation’ or the ‘only reasonable alternative in the situation’. Writing in the blog *doinggoodbiz.wordpress.com*, Alan Holroyd reported that Clair Ward, the Parliamentary Under-Secretary of State for Justice, stated that such exceptions would have ‘driven a coach and horses through the policy objectives of the bill’.

This debated brings up one of several differences between the FPCA and the Bribery Bill. These include:

- The Bribery Bill has no exception for facilitation payments.
- The Bribery Bill creates strict liability of corporate offense for the failure of a corporate official to prevent bribery.
- The Bribery Bill specifically prohibits bribery of private citizens, not just governmental officials.
- The Bribery Bill has criminal penalties of up to 10 years per offense not 5 years as under the FCPA.

There is one affirmative defense listed in the Bribery Bill and it is listed as the ‘adequate procedures’ defense. The Explanatory Notes to the Bribery Bill indicate that this narrow defense would allow a corporation to put forward credible evidence that it had adequate procedures in place to prevent persons associated from committing bribery offences. The legislation requires Secretary of State for Justice to publish guidance on procedures that relevant commercial organizations can put in place to prevent bribery by persons associated with their entity.

Other than this commentary, the Bill provides no further information on what might constitute ‘adequate procedures’ as a defense but the Government has signaled that it will work with the UK business community to provide appropriate guidance to this critical component of the Bribery Bill. The UK law firm KattenMuchin has indicated that they expect the Government will apply a test regarding the ‘adequate procedures’ defense “with regard to the size of the company, its business sector and the degree to which it operates in high risk markets.” The law firm of Covington and Burling, in a client advisory dated March 31, 2010, has opined that the Bribery Bill will not come into force

until late 2010 because it will take the UK government until then to issue guidance on what may constitute 'adequate procedures'.