

Client Alert

20 November 2015

A Secret UK Government Consultation—Is the Bribery Act About to Be Watered Down?

By Kevin Roberts, James Lloyd, and Tola Adeseye*

Through a Freedom of Information Act request, anti-corruption campaigners *Corruption Watch* obtained and released details of what they dubbed a “widespread, secret and one-sided consultation” by the Department of Business, Innovation and Skills (BIS). The consultation questioned whether the 2010 Bribery Act (the “Act”) could be made simpler and less costly for businesses to follow, and whether *The Bribery Act 2010 – Guidance* (the “Guidance”) needs improving. *Corruption Watch* has criticised the UK government both for the ‘secretive’ nature of the consultation and for raising such enquiries at all, believing it to be motivated by a clear political bias towards deregulation.

The consultation targeted trade associations in various sectors, specifically asking whether the Act was considered a problem and whether it impacted companies’ ability to export. The answer to this was a resounding “No”¹. Other than requests for more detailed guidance on facilitation payments (including on how to refuse them), respondents were satisfied with the efficacy of the Bribery Act. This supports government research published in July 2015², which showed that 90 percent of Small-to-Medium Enterprises (SMEs) had no problems with the provisions of the Act and 89 percent of SMEs felt it had no impact on their ability to export.

SO, WITH VARIOUS STAKEHOLDERS SEEMINGLY SATISFIED, WHY WAS THE CONSULTATION NECESSARY?

The UK government has stated that the consultation was necessary to keep dialogue open with the private sector and seek comment on the Act and Guidance in order to remain attentive to business concerns³. Interestingly, the same research that showed that 90 percent of SMEs found no issue with the Act, also showed that **only 56 percent of the 500 enterprises surveyed were aware of the Act and only 26 percent of that percentage were aware of the Guidance**⁴. A number of spokespeople for the UK government denied that the government is

¹ Corruption Watch, The UK Government’s Bribery Act Wobbles Receive Slap Down From Business, (November 2015). <http://www.cw-uk.org/wp-content/uploads/2015/11/CWUK-Business-Response-to-Consultation-on-the-Bribery-Act.pdf>

² HM Government (2015), Insight into awareness and impact of the Bribery Act 2010 – Among small and medium sized enterprises (SMEs), at p.37-38. https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/440661/insight-into-awareness-and-impact-of-the-bribery-act-2010.pdf

³ M. Anders, Searching for middle ground in UK anti-corruption efforts, (13 August 2015). <https://www.devex.com/news/searching-for-middle-ground-in-uk-anti-corruption-efforts-86695>

⁴ HM Government (2015), Insight into awareness and impact of the Bribery Act 2010 – Among small and medium sized enterprises (SMEs) at p.14 and 18. https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/440661/insight-into-awareness-and-impact-of-the-bribery-act-2010.pdf

Client Alert

reviewing the Bribery Act or planning on relaxing the Guidance, one in particular stating that the Ministry of Justice was “proud of the Bribery Act and serious about tackling corruption.”⁵

Nevertheless, there is no doubt that the consultation aroused suspicions of an attempt to back-track on the legislation, likely abetted by the current climate of business deregulation in the UK. Many, including a number of the respondents to the consultation, were clearly troubled by its implications. In response, a defence manufacturer warned of damage to the UK’s reputation that could result from any relaxation of its bribery laws, and a global leader in sustainable technologies commented that business concerns should not circumvent the harm that the Act was intended to combat.

The entire consultation produced only one notable response of discontent: a claim that bribes are integral to doing business in many Arab and Asian markets, “and therefore a necessity if you are going to export to those regions.”⁶ What effectively resulted from the consultation was an almost unanimous response that the Bribery Act was not considered to be a problem for businesses. It appears that the only thing found to be problematic was the consultation itself.

*Co-author Tola Adeseye is a Trainee Solicitor in our London office.

Contact:

Kevin Roberts

+44 (20) 79204160

kroberts@mofo.com

James Lloyd

+44 (20) 79204092

jlloyd@mofo.com

Tola Adeseye

+44 (020) 79204142

tadeseye@mofo.com

About Morrison & Foerster:

We are Morrison & Foerster—a global firm of exceptional credentials. Our clients include some of the largest financial institutions, investment banks, Fortune 100, technology and life science companies. We’ve been included on *The American Lawyer’s* A-List for 12 straight years, and *Fortune* named us one of the “100 Best Companies to Work For.” Our lawyers are committed to achieving innovative and business-minded results for our clients, while preserving the differences that make us stronger. This is MoFo. Visit us at www.mofo.com.

Because of the generality of this update, the information provided herein may not be applicable in all situations and should not be acted upon without specific legal advice based on particular situations. Prior results do not guarantee a similar outcome.

⁵ M. Anders, Searching for middle ground in UK anti-corruption efforts, (13 August 2015). <https://www.devex.com/news/searching-for-middle-ground-in-uk-anti-corruption-efforts-86695>

⁶ Corruption Watch, The UK Government’s Bribery Act Wobbles Receive Slap Down From Business, (November 2015) at p.5. <http://www.cw-uk.org/wp-content/uploads/2015/11/CWUK-Business-Response-to-Consultation-on-the-Bribery-Act.pdf>