

Client Alert.

2 February 2011

Ministry of Justice announces further delay to the implementation of the UK Bribery Act

By Kevin Roberts and Kelly Beirne

Since the Bribery Act 2010 received Royal Assent in April 2010 it has been beset with criticism from the business community and subject to delay. The Act, which has been described as “one of the most draconian anti-corruption measures in the world”, was originally expected to come into force in late 2010, was then postponed until April 2011, and has now been postponed again pending the release of further guidance from the Ministry of Justice.

Section 7 of the Act creates the new corporate offence of failure to prevent bribery. The Act is extra-territorial and will affect any business with a presence in the UK regardless of where that business is domiciled. However, a company will have a defence to an action under section 7 if it can show that it had “adequate procedures” in place to prevent bribery.

In July 2010 the newly elected coalition government announced that the implementation of the Act would be postponed until April 2011 to allow businesses sufficient time to align their practices with the Act’s requirements and to allow for publication of guidance as to what would constitute “adequate procedures”. In September 2010 the Ministry of Justice invited businesses to participate in a two month consultation process regarding the proposed guidance on the adequate procedures defence which is required to be published prior to implementation of the Act.

On 31 January 2011 the Ministry of Justice announced that the implementation of the Act is to be postponed pending the publication of finalised guidance on the “adequate procedures” defence. A spokesperson for the Ministry of Justice said: “We are working on the guidance to make it practical and comprehensive for business. We will come forward with 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”. The Ministry of Justice has not set a date by which the guidance will be published.

The further delay in the implementation of the Act will be welcomed by the business community which has been overtly critical of the Act. However, this decision will leave the UK government open to the accusation that it is failing to live up to its international obligations in combating corruption. Notwithstanding the fact that the implementation of the Act has been delayed it is important that companies take this opportunity to conduct risk assessments and align their policy and procedure with the draft guidance produced by the Ministry of Justice.

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For more information on preparing your organisation for the implementation of the Bribery Act and Morrison & Foerster's Anti-Corruption practice please contact:

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