

The Bribery Act: Timing & Consultation Announced

The UK recently approved new legislation consolidating existing anti-corruption laws and adding broad new offences.

On 20 July 2010 the UK Government announced that the new Bribery laws will come into force in April 2011, not October 2010 as was expected. This is to enable companies to prepare for the new laws and ensure compliance. In particular, it is meant to enable businesses to review operations and put in place procedures to prevent bribery.

Under broad new UK anti-corruption laws, bribing, receiving a bribe, bribing a foreign public official and, importantly, failing to prevent bribery are offences wherever they take place worldwide. Any business with UK connections will potentially be caught by the new laws.

Whether you know about it or not on top of your own obligations, you will be criminally responsible for bribery by business partners worldwide if your business was intended to benefit or benefits, directly or indirectly.

If you get it wrong you risk prison. Your business risks unlimited fines, blacklisting from EU contracts and forfeiture of proceeds of illegal deals.

However, there will be a statutory defence for businesses that have adequate procedures to prevent bribery. The government is to publish guidance around this.

Kenneth Clarke, the Justice Secretary and Anti-Corruption Tsar, has now announced that there will be a short consultation period from September 2010 on the proposed guidance, and that final guidance for companies would follow early in 2011. Winston & Strawn looks forward to participating in the consultation process.

While guidance has not yet been published, it will not be prescriptive and will likely be based upon the principles already published by the UK Serious Fraud Office in 2009 when advising businesses of their policy towards bribery and corruption taking place outside of the UK.

Although the commencement date of the new laws and the guidance have been delayed, companies should prepare now for their entry into force. Prosecution authorities will no doubt take the view that come April 1, 2011 companies will have had ample time to put their houses in order and will have little sympathy for those who are in breach of the new laws.

Winston & Strawn London is running a series of webinars and will issue a series of briefing notes on the new laws. For more information and advice on this issue, please contact the Winston & Strawn attorney listed below or your usual Winston & Strawn contact.

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Barry Vitou

bvitou@winston.com

44 (0)20 7105 0018

www.winston.com

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