

## UK Bribery Act: Delay to implementation

It has been widely reported that implementation of the Bribery Act, which had been due to come into force in April this year, is to be postponed. The reason is that explanatory guidance to be issued by the Ministry of Justice is not yet ready. The awaited guidance relates to compliance procedures. One innovation of the Act is a corporate offence of, failing to prevent bribery by persons performing services on your behalf. The only available defence for an organisation charged with this corporate offence is to show that it had adequate compliance procedures in place to prevent such an occurrence.

The Act requires the Secretary of State to publish guidance on what may constitute such procedures. The Ministry of Justice has consulted upon draft guidance built around high level principles. This attracted widespread calls for additional practical detail but also for better guidance on key aspects of the operation of the Act, such as the impact upon corporate hospitality, facilitation payments and gifts.

Justice Secretary Ken Clarke has reaffirmed the promise of the previous government that there will be three month grace period following the publication of the “adequate procedures” guidance before the Act is brought into force. Given that the final guidance on adequate procedures has not been issued by the end of January this inevitably means that the target implementation date of April 2011 cannot be met.

The Ministry of Justice has not committed to a date when the delayed guidance will be issued but has indicated that it will release new details on the legislation “in due course”. Due to this delay, the implementation of the Act will be postponed beyond April 2011 and not before May 2011, at the earliest. We understand that the delay is to enable the government to deliver what industry have requested, better practical detail on operation of the Act to meet expressed concerns. We understand that this will be achieved by reading the Ministry of Justice guidance, when issued,

together with guidance in preparation by the Serious Fraud Office and Director of Public Prosecutions. The latter guidance is to address how prosecutors will approach the new offences under the Act, including the corporate offence of failing to prevent bribery. We understand that the delay will enable these streams of guidance to be better coordinated into a comprehensive overall picture.

Though the delay has drawn criticism from numerous observers and interested parties, including the Organisation for Economic Cooperation and Development’s anti-bribery unit, Transparency International and CBI, it is our view that if the result of the delay is more comprehensive guidance when it is finally issued, then this is to the good of all Companies should not use the delay as a reason to postpone work on considering and developing anti-corruption policies and procedures. The core Principles and draft text in the current Ministry of Justice guidance are unlikely to be changed, merely expanded upon. The Act itself is not anticipated to change. For business operating from multiple global centres or with links to high risk geographies it would be very challenging to seek to develop and implement procedures in the space of three months’ from the time the final guidance is issued. The starting point for any business must be a comprehensive and tailored root and branch assessment of risks facing that business and appraisal of the existing control framework. That work should proceed expeditiously.

***Andrew Legg, Partner***

+44 20 3130 3386

[alegg@mayerbrown.com](mailto:alegg@mayerbrown.com)

***Marc Cohen, Partner***

+44 20 3130 3494

[mcohen@mayerbrown.com](mailto:mcohen@mayerbrown.com)

***Angela Hayes, Partner***

+44 20 3130 3311,

[ahayes@mayerbrown.com](mailto:ahayes@mayerbrown.com)

---

Mayer Brown is a leading global law firm serving many of the world's largest companies, including a significant portion of the Fortune 100, FTSE 100, DAX and Hang Seng Index companies and more than half of the world's largest investment banks. We provide legal services in areas such as Supreme Court and appellate; litigation; corporate and securities; finance; real estate; tax; intellectual property; government and global trade; restructuring, bankruptcy and insolvency; and environmental.

OFFICE LOCATIONS    AMERICAS: Charlotte, Chicago, Houston, Los Angeles, New York, Palo Alto, São Paulo, Washington DC  
ASIA: Bangkok, Beijing, Guangzhou, Hanoi, Ho Chi Minh City, Hong Kong, Shanghai  
EUROPE: Berlin, Brussels, Cologne, Frankfurt, London, Paris  
TAUIL & CHEQUER ADVOGADOS in association with Mayer Brown LLP: São Paulo, Rio de Janeiro  
ALLIANCE LAW FIRMS: Spain (Ramón & Cajal); Italy and Eastern Europe (Tonucci & Partners)

Please visit our web site for comprehensive contact information for all Mayer Brown offices. [www.mayerbrown.com](http://www.mayerbrown.com)

Mayer Brown is a global legal services organisation comprising legal practices that are separate entities (the Mayer Brown Practices). The Mayer Brown Practices are: Mayer Brown LLP, a limited liability partnership established in the United States; Mayer Brown International LLP, a limited liability partnership (regulated by the Solicitors Regulation Authority and registered in England and Wales number OC 303359); Mayer Brown JSM, a Hong Kong partnership, and its associated entities in Asia; and Tauil & Chequer Advogados, a Brazilian law partnership with which Mayer Brown is associated. "Mayer Brown" and the Mayer Brown logo are the trademarks of the individual Mayer Brown Practices in their respective jurisdictions.

© 2011. The Mayer Brown Practices. All rights reserved.