

To: Our Clients and Friends

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## UK Ministry of Justice Draft Bribery Legislation

The UK's Ministry of Justice has today published for pre-legislative scrutiny a draft bill to reform UK corruption laws. The proposed new legislation is modeled on the Bribery Bill published by the Law Commission in its November 2008 report, "Reforming Bribery." See International Regulatory Bulletin No. 416. If adopted, the new legislation would repeal the common law of bribery and the Prevention of Corruption Acts 1889-1916 (as amended by the Anti-terrorism, Crime and Security Act 2001 to make clear that those acts cover bribery of foreign officials and bribery committed outside the UK by UK nationals or companies).

In their place, the legislation would provide for two general offences prohibiting: (1) offering, promising or giving a financial or other advantage to another intending it to induce or reward the improper performance of an activity of a business, professional or public nature; or (2) requesting, agreeing to or accepting a financial or other advantage for such improper behaviour. These offences would cover both public and private bribery. The formulation of these provisions abandons the "agent/principal" basis for a violation which underlay prior law and was criticized by the OECD, and instead would base a violation on an intention to induce improper conduct. See International Regulatory Bulletin No. 409.

Significantly, and following on the serious criticism by the OECD of the UK's anti-bribery record, the new legislation would establish a new discrete offence of bribing a foreign official, which offence is aimed at closely following the requirements of the *OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions*.

Finally, a separate corporate offence would be established if someone acting on a company's behalf commits bribery in connection with the company's business and there was negligent failure to prevent the bribery. The draft bill provides for a defence if there are adequate procedures in place, but this defence would not apply if a director, or manager or equivalent person in the company was negligent in failing to prevent the bribery.

An act of bribery committed outside the UK by a British national or resident or a UK company would constitute an offence if it would constitute an offence if performed in the UK. A person guilty of the general offence of bribery or of bribery of a foreign official on conviction on indictment would be liable to imprisonment up to 10 years or an unlimited fine, or both.

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