



BRIBERY ACT 2010 - SFO POLICY REVIEW UPDATE

On 9 October 2012, the UK Serious Fraud Office (SFO) published new policies on facilitation payments, business expenditure (hospitality) and corporate self-reporting.

While there has been no change in the underlying legal position, the SFO has recently appointed a new Director, Mr David Green CB QC, and has taken the opportunity to publicise that its responsibility lies in the investigation and prosecution of serious and complex fraud, rather than in providing guidance on those parts of the UK Bribery Act (the Act) which are unclear.

The current position can therefore be summarised as follows:

- The SFO is unwilling to provide tailored guidance on bribery and corruption to companies.
- Facilitation payments remain illegal bribes.
- Business expenditure in the form of

hospitality is recognised as an important element of corporate relationships, but is illegal where used to disguise a bribe.

- The SFO continues to encourage companies to self-report if they are made aware of any fraud-related offence.
- Whether or not the SFO will prosecute for a bribe continues to be governed by the two stage Full Code Test in the Code for Crown Prosecutors and other published guidance (see below).

Because the latest guidance on facilitation payments and corporate policy does not change the legal position, companies which are subject to the Act still need to have in place robust procedures for preventing bribery including, in particular, appropriate procedures on facilitation payments, dealing with foreign public officials and corporate hospitality.

What has changed is that it is now clear that the SFO is no longer pursuing a policy of informal



engagement with businesses, thereby closing off one possible source of guidance on the practical ramifications of the Act.

The latest guidance also helpfully reiterates that the SFO will only prosecute if the case is a serious or complex one that falls within the SFO's remit and the SFO concludes that the Full Code Test has been satisfied.

The Full Code Test has two elements:

1. The evidential stage: Prosecutors must be satisfied that there is sufficient evidence to provide a realistic prospect of conviction against each suspect on each charge.
2. The public interest stage: Prosecutors must be satisfied that a prosecution is required in the public interest.

While corporate self-reporting is still an option, the SFO has reiterated that *companies are encouraged to take a genuinely proactive approach when any offending is brought to their attention, including self-reporting to the SFO*, and that for a self-report to be taken into consideration as a public interest factor tending against prosecution, it must form part of a "genuinely proactive approach adopted by the corporate management team when the offending

is brought to their notice" and that self-reporting is not a guarantee that a prosecution will not follow.

The new statements serve as a clear message that the SFO's primary role is to investigate and prosecute serious and complex fraud, rather than to provide advice and guidance to companies on their position under the Bribery Act 2010. That reinforces the onus on companies which are subject to the Act to have in place appropriate anti-bribery policies and procedures, training programmes and contractual terms and conditions.

For further information, please contact **Anthony Woolich**, Partner, on +44 (0)20 7264 8033 or anthony.woolich@hfw.com or **Daniel Martin**, Associate, on +44 (0)20 7264 8189 or daniel.martin@hfw.com, or your usual contact at HFW.

**For more information,
please also contact:**

Anthony Woolich
London Partner
T: +44 (0)20 7264 8033
anthony.woolich@hfw.com

Guillaume Brajeux
Paris Partner
T: +33 (0)1 44 94 40 50
guillaume.brajeux@hfw.com

Konstantinos Adamantopoulos
Brussels Partner
T: +32 2 643 3401
konstantinos.adamantopoulos@hfw.com

Jeremy Davies
Geneva Partner
T: +41 (0)22 322 4810
jeremy.davies@hfw.com

Dimitri Vassos
Piraeus Partner
T: +30 210 429 3978
dimitri.vassos@hfw.com

Hugh Brown
Dubai Partner
T: +971 4 423 0501
hugh.brown@hfw.com

Paul Aston
Singapore Partner
T: +65 6305 9538
paul.aston@hfw.com

Paul Hatzer
Hong Kong Partner
T: +85+852 3983 7666
paul.hatzer@hfw.com

Henry Fung
Shanghai Partner
T: +86 21 5888 7711
henry.fung@hfw.com

Gavin Valley
Melbourne Partner
T: +61 (0)3 8601 4523
gavin.valley@hfw.com

Stephen Thompson
Sydney Partner
T: +61 (0)2 9320 4646
stephen.thompson@hfw.com

Julian Sher
Perth Partner
T: +61 (0)8 9422 4701
julian.sher@hfw.com

Jeremy Shebson
São Paulo Partner
T: +55 (11) 3179 2903
jeremy.shebson@hfw.com

Lawyers for international commerce hfw.com

HOLMAN FENWICK WILLAN LLP
Friary Court, 65 Crutched Friars
London EC3N 2AE
United Kingdom
T: +44 (0)20 7264 8000
F: +44 (0)20 7264 8888

© 2012 Holman Fenwick Willan LLP. All rights reserved

Whilst every care has been taken to ensure the accuracy of this information at the time of publication, the information is intended as guidance only. It should not be considered as legal advice.

Holman Fenwick Willan LLP is the Data Controller for any data that it holds about you. To correct your personal details or change your mailing preferences please contact Craig Martin on +44 (0)20 7264 8109 or email craig.martin@hfw.com