

House of Lords Bribery Act 2010 Committee Publishes Post-Legislative Scrutiny

Friday, March 22, 2019

On March 14, the House of Lords Select Committee (Select Committee) on the Bribery Act 2010 (Bribery Act) published its report, “Bribery Act 2010: post-legislative scrutiny,” to establish whether the Bribery Act is achieving its intended purposes.

In its report, the Select Committee concludes that the Bribery Act is an excellent piece of legislation, creating offenses that are “*clear and all-embracing*.” In particular, the offense of corporate failure to prevent bribery is regarded as effective and enables those in positions of influence in a company to ensure that the company operates ethically.

However, the report states that guidance from the UK Ministry of Justice (MoJ) is less helpful in providing small and medium enterprises with the information and advice needed for developing formal anti-bribery policies. For example, for companies considering exporting services, the Select Committee notes that the MoJ’s guidance should give more guidance on the point at which hospitality exceeds what a reasonable member of the public might think was acceptable and begins to influence the recipient’s course of action.

The Select Committee’s report reminds firms in the financial services sector that they must (where relevant) abide by legislation which goes beyond the Bribery Act, such as the revised Markets in Financial Instruments Directive (MiFID II). It also notes that the UK Financial Conduct Authority (FCA) “*takes a stern line on hospitality*” and considers sporting or social events as not meeting the requirement that hospitality should be “*conducive to business discussions*.” The FCA also considers activities provided after training events or conferences, such as evening dinners or attendance at rugby games, are often not appropriate—therefore firms regulated by the FCA have no choice but to observe the FCA’s guidelines. The Major Event Organisers Association considers this as an “*overreaction*” from firms’ compliance officers in implementing legislation, resulting in event organizers being unintentionally negatively impacted by the Bribery Act and MiFID II.

In the absence of judicial interpretation of the Bribery Act’s provisions on bribing another person or a foreign public official from a hospitality point of view, the Select Committee has suggested that it may help businesses to look at the situation from the point of view of the recipient of hospitality. For example:

1. would the guests expect to be treated in such a way, regardless of the decision they might reach on the business in question;
2. would the guests believe that the level of hospitality offered was an attempt to influence them improperly into making a decision which they might not otherwise have made; or
3. what would a reasonable member of the public, who is properly informed, think of the hospitality a business is proposing to offer.

The Select Committee has encouraged professional organizations and trade associations to provide sector-specific guidance on where their members should draw the line on hospitality.

The Select Committee’s report is available [here](#).

Katten

Katten Muchin Rosenman LLP

Article By [Carolyn H. Jackson](#)
[John Ahern](#)[Nathaniel W. Lalone](#)[Neil Robson](#)
[Katten Muchin Rosenman LLP](#)
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