

**Client Note:**  
The Long Arm of the Bribery Law



## What the Bribery Act 2010 means for the Real Estate Industry

New bribery and corruption legislation is being rolled out across Europe and beyond. At the same time, prosecutors in a number of different jurisdictions are starting to flex their muscles. As a result, corporations face the challenge of new and overlapping regulatory regimes and, at the same time, increasingly active, and competitive, prosecutors. It is hardly surprising that almost 50% of General Counsel reportedly view corruption as the issue of most concern for their business.

In April 2010, the UK's new Bribery Act was finally passed into law. The Bribery Act radically overhauls the UK's outdated corruption legislation and introduces a tough new regime, which in many respects is more stringent, and broader in its jurisdictional reach, than even the US Foreign Corrupt Practices Act.

- **Strict Liability** – Most significantly, the Bribery Act provides that corporations may be strictly liable for bribes paid on their behalf, including by agents, employees, subsidiaries and other third parties, unless they can prove that they had in place “adequate procedures” to prevent such action.
- **Long-Arm Jurisdiction** – This new offence will apply to any entity carrying on business in the UK, and not just to UK corporations or those with a UK listing. As a result, many multi-national corporations will in future be subject to UK jurisdiction in relation to bribes paid anywhere in the world, including by third parties acting on their behalf (and even without any link between the payment and the UK).
- **Personal Exposure** – Equally importantly, the Bribery Act targets individuals as well as corporations. It allows prosecutors to hold individual directors liable for bribes paid by the corporation even where the directors were not themselves involved in the criminal conduct.
- **No “Safe Harbours”** – Finally, the Bribery Act applies to payments made to both public and private sector recipients. It contains no “safe harbours” in relation to either promotional expenditures or facilitation payments, and potentially captures a wide range of current commercial practices. In particular, whilst the UK authorities have sought to offer comfort in relation to how the Bribery Act will be enforced, the language of the Act may technically prohibit any corporate hospitality for foreign public officials.

The implications of this are potentially far-reaching, particularly when coupled with the increasingly aggressive approach to enforcement taken by the UK authorities and the increased sentences possible under the Bribery Act (up to 10 years' imprisonment and/or an unlimited fine).

The Bribery Act is not yet in force, and implementation has been delayed to allow businesses some additional time to ensure that their compliance procedures, and their systems and controls, are “adequate” to meet the new bar being set.

On 30 March 2011, the Ministry of Justice published its long-awaited guidance on the Bribery Act and confirmed that it will come into force on 1 July 2011. All businesses should take steps now to ensure that they are compliant. Inevitably, the risks in this area vary from sector to sector, and from jurisdiction to jurisdiction. However, the construction industry is generally considered to be particularly vulnerable, and therefore often comes in for particular scrutiny from the authorities. This reflects the fact that:

- Construction projects are often large-scale and involve significant sums of money;
- Third parties are often appointed on behalf of developers by project managers and architects;
- There is inevitable interaction with government officials in relation to various aspects of construction projects; and
- Overseas projects may necessitate the use of local agents in jurisdictions where “facilitation payments” to local officials (which are illegal under English law) may be prevalent.

It should be noted that, pursuant to the EU Public Procurement Directive, if a company, its directors or *“any other person who has powers of representation, decision or control”* over the company is convicted of a bribery offence, they will be de-barred from tendering for public projects across the EU.

Real estate investors should also ensure that *“adequate procedures”* are in place to prevent bribery offences being committed by third parties appointed to manage their portfolios or individual assets on their behalf. More generally, any business which has third parties acting on its behalf, and particularly if they are negotiating contracts or interacting with public officials, needs to ensure that it has proper procedures in place for controlling and monitoring the conduct of those third parties.

As noted above, businesses cannot afford to wait until the Bribery Act comes into force before acting. It also should not be assumed that an established anti-corruption compliance program will necessarily be *“adequate”* in every respect.

Hogan Lovells International LLP  
April 2011

This note is written as a general guide only. It should not be relied upon as a substitute for specific legal advice. For further information or advice about this subject please contact Jeremy Cole at [jeremy.cole@hoganlovells.com](mailto:jeremy.cole@hoganlovells.com) or Michael Roberts at [michael.roberts@hoganlovells.com](mailto:michael.roberts@hoganlovells.com), telephone 020 7296 2000, or your usual contact.

**www.hoganlovells.com**

---

Hogan Lovells has offices in:

Abu Dhabi	Colorado Springs	Houston	New York	Silicon Valley
Alicante	Denver	Jeddah*	Northern Virginia	Singapore
Amsterdam	Dubai	London	Paris	Tokyo
Baltimore	Dusseldorf	Los Angeles	Philadelphia	Ulaanbaatar*
Beijing	Frankfurt	Madrid	Prague	Warsaw
Berlin	Hamburg	Miami	Riyadh*	Washington DC
Brussels	Hanoi	Milan	Rome	Zagreb*
Budapest*	Ho Chi Minh City	Moscow	San Francisco	
Caracas	Hong Kong	Munich	Shanghai	

Hogan Lovells International LLP is a limited liability partnership registered in England and Wales with registered number OC323639 and is regulated by the Solicitors Regulation Authority of England and Wales. Registered office and principal place of business: Atlantic House, Holborn Viaduct, London EC1A 2FG.  
The word "partner" is used to refer to a member of Hogan Lovells International LLP, or an employee or consultant with equivalent standing and qualifications.  
New York State Notice: Attorney Advertising.

© Hogan Lovells 2011. All rights reserved.

\*Associated offices