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DISPUTE RESOLUTION ALERT

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At the recent 2016 International Anti-Corruption Summit, Prime Minister David Cameron announced the UK's intention to extend failure-to-prevent offences over and above bribery and tax evasion to include economic crimes. Depending on what the concept economic crimes will encompass, this novel offence is anticipated to aid the successful prosecution of corporations for their failure to prevent employees, agents and other persons associated with the organisation from engaging in or facilitating corporate criminal conduct, such as money-laundering, fraud, forgery and false accounting, on behalf of the corporation.

Described as "the most significant shake-up in corporate criminal law in a century", the proposed extension of strict liability to economic crimes will probably also find favour with legislatures in other jurisdictions. Corporations are therefore advised to take heed as this bold initiative could set the stage for a new and higher international standard in fighting economic crime in general.

The UK Bribery Act already leads the international field with s7 providing that a commercial organisation has to provide for adequate procedures designed to prevent bribery in order to escape liability for bribery acts committed by persons associated with such organisation. Reference to a 'commercial organisation' includes a body corporate or partnership (wherever formed or incorporated) which

carries on a business or part of a business in any part of the UK, thus implicating South African corporations with a business nexus in the UK.

The extra-territorial reach of the UK Bribery Act mimics the provisions of the US Foreign Corrupt Practices Act (FCPA) which, when enacted in 1977 made the US the frontrunner in the battle against corporate corruption. The FCPA makes it unlawful for a domestic concern and certain issuers of securities to, either directly or indirectly, make corrupt payments to a foreign official or foreign political party for the purpose of obtaining or retaining business for or with, or directing business to, any person. Subsequent to an amendment in 1998, these provisions also apply to foreign corporations and persons while they are present in US territory. At the recent Summit, the US was, however, far more reserved than the UK, undertaking to, among other things, "continue to prosecute cases of violations of the FCPA".

During the course of the Summit, Jim Yong Kim, president of the World Bank, encapsulated the global fight against corporate corruption in stating:

We will rededicate ourselves to fighting the cancer of corruption and move ahead with urgency to stop those who are stealing from the poor. This is both our moral duty and one of the best possible strategies for economic development.

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At the Summit, the South African government expressed intent to redraft a National Anti-Corruption Strategy with the view of incorporating international best-practice models.



The Summit concluded on a high note with the publication of the Global Declaration Against Corruption, founded on the premise that corruption should be exposed, pursued, punished and driven out.

Taking the momentum generated by the Summit even further into anti-money laundering, the UK intends to create a public registry of beneficial ownership, which will make it the first country in the G20 to do so. In taking this lead, the UK's dedication is likely to influence local legislation in other jurisdictions.

These recent UK developments are particularly relevant in a South African context not only in so far as they may implicate local corporations doing business in the UK (depending on the

jurisdictional reach of the new offence), but also in light of the fact that, at the Summit, the South African government expressed intent to redraft a National Anti-Corruption Strategy with the view of incorporating international best-practice models.

In light of the commitments made at the Summit and the publication of the Global Declaration Against Corruption, those involved in international business are not only reminded of the stringency and scope of the UK Bribery Act and the FCPA, but also encouraged to closely watch this space as similar vigour may infiltrate our legal domain.

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