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THE UK ADOPTS ITS FIRST LOBBYING LAW

On January 30, 2014, the UK Parliament adopted the Transparency of Lobbying, Non-Party Campaigning and Trade Union Administration Act 2014 (the "Act"). The Act introduces a mandatory and publicly available register for "consultant lobbyists" operating in the UK. Organizations that meet the Act's requirements would be required to register and disclose, on a quarterly basis, specified information relating to lobbying activities carried out on behalf of their clients. The lobbying register aims to increase Government accountability and public trust in the fairness of policy outcomes.

The mandatory UK register is a modest step toward U.S.-style lobbying disclosure obligations in Europe. To date, only a handful of EU Member States have introduced a mandatory registration requirement, and although the European Commission and the European Parliament have operated a Joint Transparency Register relating to lobbying the EU institutions since 2011, the EU Register is voluntary. Importantly, however, unlike in the United States, the new UK law does not require registration by corporations whose main business is *not* lobbying, even if these corporations undertake limited lobbying activities.

CONTROVERSY SURROUNDING THE LEGISLATIVE HISTORY OF THE ACT

The Act has been highly controversial since its introduction to Parliament as a Bill in July 2013. Despite fierce opposition from both industry and transparency groups, and following heated debates on the merits of the law in Parliament, the lobbying Bill was fast-tracked through the legislative process and was adopted in just over six months. (See progress of the Bill here.) The Act has been criticized both for its narrow scope and the limited consultations with stakeholders. Indeed, at the early stages of the legislative process, the House of Commons Political and Constitutional Reform Select Committee was so unhappy with the proposed scope that it asked the Government to either rewrite the text or withdraw it.

SUMMARY OF KEY PROVISIONS

Requirement to Register Lobbying Activities

The Act prohibits any person from carrying on "consultant lobbying" unless they (or, in the case of an employee, their employer) are entered on the register of consultant lobbyists. The register will be maintained by a designated Registrar, and will be made publicly available via a website (similar to the EU's Transparency Register). The Registrar will be an independent statutory office-holder appointed by the Secretary of State or the Lord President of the Council (*i.e.,* the fourth ranking of the Great Officers of the State, a position currently held by Nick Clegg).

Scope of the Act

Despite criticism, the definition of "consultant lobbying" contained in the Act remains unchanged and includes oral or written communications with specified Government officials made on behalf of another in the course of a business -- and in return for payment -- in connection with Government policy, legislation, the award of contracts, licenses or similar benefits, or the exercise of any other Government function.

The Act sets out various exceptions to the general registration requirement, which effectively exclude organizations whose main business is not lobbying and whose lobbying communications are merely "incidental" to the carrying out of their overall business. Although the Act does not define "incidental," the activities of in-house lobbyists, multi-disciplinary law, accountancy, and consulting firms would likely remain outside of the scope of the law.

The provisions are clear that the condition for lobbying to be made "in return for payment" would be met whether a lobbyist receives direct or indirect payment. Thus, as clarified in the Government's Explanatory Notes to the Act, it would not be possible for lobbyists to avoid the need to register by, for example, structuring their business so as to receive payments from clients via a third party, or for periods of service, or in some non-monetary form. Lobbying activities performed on a pro-bono basis would not be covered, however.

The Act defines consultant lobbying to include only communications with very senior officials (*e.g.,* Ministers or permanent secretaries). Communications only with mid-ranking civil servants or special advisors would not require registration. That said, pursuant to a new provision (added as a compromise amendment agreed between the House of Commons and the House of Lords), the Government is free to introduce regulations to include special advisors in future.

Disclosure Obligations

Upon registration, organizations subject to the Act must provide their particulars (*e.g.,* name, registered number, and registered address), the names of any directors (or equivalent), and state whether they undertake to comply with a code of conduct that governs the carrying on of consultant lobbying and, if so, where a copy of that code may be obtained. The content and adoption of such code of conduct appears to be at the discretion of the lobbyist organization but, if adopted, the code should be publicly available.

Additionally, lobbyists are required to disclose -- on a quarterly basis -- the names of their clients and whether they have received a payment. At present, the Act does not require disclosure of the amounts paid by individual clients, although this may change in the future as the Government has discretion to make further provisions to require lobbyists to disclose additional information about their clients or related payments. Also, lobbyists will not be obligated to specify with whom they are meeting or what policies or political processes they are trying to influence.

If an organization has registered, but has not done any lobbying during a particular quarter, it will need to make a statement to that effect. A lobbyist may seek to discontinue a registration at any time if no longer engaged in consultant lobbying, but the historic record of disclosures made previously will remain publicly available.

Offenses and Enforcement

Carrying out lobbying activities without being registered, provision of inaccurate information in the register, or failure to report quarterly is an offense punishable by a maximum fine of £7,500. The Act

also makes directors or other senior manages jointly liable for offences committed by an organization with their consent or connivance.

If you have any questions concerning the material discussed in this client alert, please contact the following members of our firm:

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