



# Understanding the Bribery Act 2010: an essential guide for your business

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The risks from bribery are a growing concern for all businesses which can be confronted with demands for bribes, faced with competitors acting corruptly or undermined by employees violating their codes of conduct. In addition, there has been an increase in the enforcement of foreign bribery laws and the introduction in the UK of comprehensive bribery legislation. Businesses must act now to guard and promote their reputation for integrity and responsibility.

## What is bribery?

Transparency International (a non-governmental anti-corruption organisation) defines bribery as “*the offering, promising, giving, accepting or soliciting of an advantage as an inducement for an action which is illegal or a breach of trust*”.

## The Bribery Act 2010 (the “Act”)

The Act consolidated and replaced long-standing anti-corruption legislation in the UK and introduced changes in the law that could significantly impact on your business. In particular:

- it extends the crime of bribery to cover all private sector transactions;
- it creates a new strict liability offence of failing to prevent bribery;
- its scope is extensive: the offences are broadly defined and a company can be liable if the offences are committed in the UK or overseas; and
- the bribery offences it contains carry criminal penalties for individuals and organisations.

## What are the bribery offences?

The Act applies to the whole of the UK and sets out four categories of bribery offences:

- bribing another person: offering, promising or giving a bribe to another person;
- being bribed: requesting, agreeing to receive or accepting a bribe from another person;
- bribing a foreign public official;
- the corporate offence: commercial organisations failing to prevent bribery.

## The corporate offence in more detail

The corporate offence provides that a commercial organisation is guilty of an offence if a person associated with it bribes another person, intending to obtain or retain business or a business advantage for the organisation. Associated person is defined widely: it can include employees, subsidiaries, agents, suppliers, contractors and any other person who performs services for your business, regardless of their capacity.

A business can avoid conviction if it can demonstrate that it had adequate procedures in place designed to prevent bribery.

## What are the penalties for committing an offence?

- The offences of bribing another person, being bribed and bribing a foreign public official are punishable on indictment either by an unlimited fine, imprisonment for up to 10 years, or both. Both a company and its directors can be subject to criminal penalties.
- The corporate offence is punishable on indictment by an unlimited fine.
- Businesses convicted of corruption could find themselves permanently debarred from tendering for public sector contracts.
- A director convicted of a bribery offence may also be subject to a director disqualification order which could result in his disqualification from holding a director position for up to 15 years.
- The reputational damage associated with a prosecution or conviction will arguably have the greatest impact on your business.

## Practical steps to help prevent breaches of the Act

Businesses must act now to seek to limit their risk of exposure to the bribery offences by taking the following straight-forward measures:

- top level commitment: senior management must lead the anti-bribery culture of your business. Make sure all senior managers and directors understand their exposure to the offences. They must take and be seen to take responsibility for a zero tolerance attitude towards bribery.
- risk assessment:
  - ✦ ensure you understand the risks your business may be exposed to. Certain industry sectors and countries present a greater risk than others;
  - ✦ consider the types of transactions your business engages in, who the transactions are with, and how your business undertakes them. High risk areas can include procurement and supply chain management, regulatory relationships (e.g. obtaining licences or permits), and the giving of charitable and political contributions;
  - ✦ review how your business entertains customers and potential customers. Routine or inexpensive corporate hospitality is unlikely to be a problem, but clear guidelines must be in place.

- due diligence: establish processes to identify the risk of corruption before engaging an employee or entering into a business relationship of any sort. Consider including contractual provisions relating to bribery in your contracts with business associates.
- communication: implement a code of conduct setting out clear, practical and accessible anti-bribery policies and procedures applying to your entire business; and communicate it effectively.

We can help you to act now.

We can help you to understand the application of the Act to your business in more detail and can provide you with draft anti-bribery statements and policies for review and implementation within your business.

If you would like assistance, please contact Aisha Dickson

## Aisha Dickson

This article is not intended to be a full summary of the law and advice should be sought on all issues.

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