

The Bribery Act

Introduction

The Bribery Act, (2010), took effect from 1st July 2011 and created a new “corporate” offence for “commercial” organisations who fail to prevent persons associated with them from committing bribery. Where however a commercial organisation can show that it has adequate procedures in place to minimise the risk of an act of bribery being committed it will be able to put forward a defence to avoid prosecution, should a person associated with the organisation commit an act of bribery. There is no need to put bribery prevention procedures in place if there is no risk of bribery occurring in the organisation.

The Bribery Act is concerned with bribery only, not other “white collar” offences such as money laundering, fraud, theft, books and record offences, Companies Act offences or competition law.

Bribery is broadly defined as “the giving or taking of a reward in return for acting dishonestly and/or in breach of the law”.

In Brief - key things you need to know

The Four Offences

Under the Bribery Act there are four possible offences including the “corporate offence” referred to above.

1. **Bribing another person**
The offering, promising or giving of a reward to induce a person to perform a relevant function or activity improperly
2. **Being bribed**
The accepting of, agreeing to accept or requesting of a reward in return for performing a relevant function or activity improperly
3. **Bribing a foreign public official**
This is a specific offence of trying to influence a foreign public official with the intention of obtaining or retaining business in a situation where the public official was not permitted or required by law to be influenced
4. **Failure to prevent bribery**
This – the “corporate offence” – occurs when an organisation fails to stop people who are operating on its behalf from being involved in bribery. A company will have a statutory defence to this offence if it has adequate procedures in place to minimise the risk of bribery by its employees, consultants, agents, etc

Briefly, to reduce the risk of bribery taking place and have a defence in case a charge under this offence is made against the organisation, the company should:

- **Assess** whether the business is at risk and if so the **level** of risk using the F044 Bribery Risk Assessment Questionnaire Form
- Put in place procedures **proportionate** to the risk identified, the scope and size of the business and the countries in which business is done
- Show a clear **commitment** to the prevention of bribery – zero tolerance
- Undertake appropriate employment/engagement **checks** (due diligence) on new employees/agents/consultants, etc
- **Communicate** and raise awareness among employees and business partners
- **Monitor** and review procedures implemented

Who and what the Bribery Act covers

The Bribery Act makes reference to “commercial organisations” being at risk of prosecution where “a person associated with the organisation” commits an act of bribery. The definition of “persons associated with” has widened the range of people that could trigger liability for the organisation. It now covers for example all employees, agents, consultants and subsidiaries, whereas under the previous legislation, only bribery involving senior managers was likely to result in legal action.

A “commercial organisation” is defined as “a body or partnership incorporated or formed in the UK irrespective of where it carries on business or an incorporated body or partnership which carries on a business or part of a business in the UK irrespective of the place of incorporation or formation”. The key concept is “that of an organisation which carries on a business”. An organisation that engages in commercial activities irrespective of the purpose for which profits are made will therefore be caught under the Bribery Act. It does not therefore exclude an organisation which pursues primarily charitable or educational aims or purely public functions.

How an Organisation can reduce the risk of bribery taking place and protect itself from liability if it occurs – “Adequate Procedures”

An organisation will be successful in avoiding prosecution under the Act, (where an act of bribery takes place), if it can show it had “adequate procedures” in place to prevent bribery. What counts as “adequate” will depend on the bribery “risk” an organisation faces, and the nature, size and complexity of the organisation. There are six principles which an organisation needs to consider in order to protect itself.

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What an Organisation needs to demonstrate in order to rely on the defence

1. Proportionality

The steps an organisation should take to minimise the risk of an act of bribery being committed by one of its employees, consultants, agents, etc, should be proportionate to the risk and the size of the business. A larger organisation or one that operates in overseas markets where bribery is known to be commonplace will be expected to do more than a smaller organisation or one that operates in markets where bribery is not prevalent.

2. Top Level Commitment

Senior executives are in the best position to ensure that their organisation conducts business without a bribery culture.

3. Risk Assessments

To establish what if anything needs to be done differently, an organisation will need to undertake a risk assessment to identify whether the organisation is at a low or high risk of its employees, agents, consultants, etc, being involved in/exposed to an act of bribery.

4. Due Diligence

Undertaking appropriate levels of due diligence on new employees, agents, consultants, etc, will help to avoid the organisation engaging people who might be less than trustworthy.

5. Communication

Enhancing awareness among employees, consultants, agents etc will help to deter bribery. A handbook factsheet for employees has also been prepared to increase awareness among employees and other persons, including advice on what to do should they be exposed to bribery or have a suspicion that it is taking place. The organisation's "zero tolerance" policy should be clearly communicated, including the disciplinary rules where there is a reasonable belief that an act of bribery has been committed.

6. Monitoring and Review

The risks an organisation faces today may be different tomorrow. An example of this is when an organisation enters new markets. It is therefore important to monitor the effectiveness of anti-bribery measures and periodically review the organisation's exposure to risk.

Practical advice on establishing a defence

1. All managers should be issued with a copy of this guidance document.
2. Each Director should complete a risk assessment, using a F044 Bribery Risk Assessment Questionnaire form, to identify the level of risk (if any) within their area of responsibility. The outcome of the risk assessment will determine the extent of anti-bribery measures to be introduced.
3. Where a "**no risk**" rating is concluded through the risk assessment questionnaire, no further action is required. The employee handbook will be updated to provide general information on anti-bribery measures, what to do if an employee suspects bribery is taking place or is exposed to it and the penalties for involvement in an act of bribery. Further details are provided in our Handbook Factsheet "Managing the Risk of Bribery in the Workplace".
4. Where a "**low risk**" rating of bribery is identified, all employees should be issued with a copy of the handbook factsheet "Managing the Risk of Bribery in the Workplace" and receipt confirmed.
5. Where a "**medium risk**" rating is identified, in addition to the measures stated previously, all relevant employees, agency workers, agents, consultants, etc, should be asked to complete a "Self-Declaration" questionnaire. Further advice should be sought on the introduction of more comprehensive anti-bribery measures.
6. Where an organisation has identified a "**high risk**", in addition to the measures stated previously, special actions will need to be implemented. Further guidance should be sought from the person identified with overall responsibility for anti-corruption measures.
7. In all organisations, a director/senior manager should be nominated with responsibility for anti-corruption.
8. We will continue to undertake for retained clients our comprehensive new employee validation service (due diligence), including reference checks, identity checks and (for clients who have purchased the additional service) our heightened intelligence checks including bribery and associated criminal prosecutions checking. This additional service is strongly recommended for an organisation where a medium or high-risk rating is identified through the risk assessment questionnaire.
9. Where circumstances change, such as entering a new market, a new risk assessment questionnaire should be undertaken by the appropriate director/senior manager to assess whether or not the risk level has changed.
10. Depending on the level of risk identified, employers should also consider adopting similar measures for non-employees such as agents, consultants, subsidiaries, etc. Further advice can be provided on request.

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Frequently Asked Questions

When did the Bribery Act take effect?

The Bribery Act took effect from 1st July 2011.

Can I still provide hospitality, promotional or other business expenditure under the Act?

Yes. The Government does not intend that genuine hospitality or similar business expenditure that is reasonable and proportionate be caught by the Bribery Act, so you can continue to provide bona fide hospitality and promotional activities, providing it is proportional. Depending on the Company's existing policy, you can continue to provide tickets to sporting events, take clients to dinner, offer gifts to clients as a reflection of your good relations or pay for reasonable travel expenses, providing it is reasonable, proportionate and in line with the Company's policy.

What are "facilitation" payments and are they permitted?

Facilitation payments are payments made to induce officials to perform routine functions they are obligated to perform and are bribes. There was no exemption under previous law and they are not permitted under the Bribery Act either.

You can, of course, continue to pay for legally required administrative fees or fast track services. These are not facilitation payments.

What should one of my team do if they are approached to accept a bribe by another individual?

The employee should immediately report it under the "Raising a Concern at Work" procedure contained in the employee handbook. The employee raising the concern should not advise their immediate manager until they have spoken to the person identified with responsibility for anti-corruption.

What should one of my team do if they suspect a colleague or another person is involved in bribery?

The employee should immediately report it under the "Raising a Concern at Work" procedure contained in the employee handbook. The employee raising the concern should not advise their immediate manager until they have spoken to the person identified with responsibility for anti-corruption.

What action should I take as a Manager against an employee if they are suspected of being involved in bribery?

In the first instance you should discuss it with the person with responsibility for anti-corruption and seek advice from the HR Department on what course of action should be followed. For investigation reasons, it is not recommended that you confront the employee before obtaining further advice.

What Company documentation has been introduced to communicate information to employees about the Bribery Act?

A new handbook factsheet, "Managing the Risk of Bribery in the Workplace" has been prepared and is available to employees. In order to understand the level of risk (and therefore the level of "adequate procedures" required) a "Bribery Risk Assessment Questionnaire" has been developed, to be completed in most cases by a senior manager/director.

Where an organisation has identified a medium or high-risk level, relevant staff will be asked to complete a "Self-Declaration" questionnaire.

What steps does the Organisation take to reduce the risk of employing an employee who is open to bribery?

We will continue to undertake for retained clients our comprehensive "new employee" validation service, including, reference checks, identity checks and (for clients who have purchased the additional service) our heightened intelligence checks including bribery and associated criminal prosecutions checking. This additional service is strongly recommended for an organisation where a medium or high-risk rating is identified through the risk assessment questionnaire.

Other Sources of Information

A copy of the Government's guidance on the Bribery Act can be downloaded from www.justice.gov.uk/guidance/bribery.htm

Additional information including help on assessing the level of country risk can be obtained from the government sponsored "Business Anti-Corruption Portal" at www.business-anti-corruption.com