

Bribery Act 2010

AN INTRODUCTION TO UK LEGISLATION | JULY 2020 | FOURTH EDITION

UK anti-bribery legislation is among the strictest in the world and imposes serious sanctions on those who breach its far-reaching provisions. This guide provides an overview of the legislation for those who are new to the subject.



WHAT IS BRIBERY AND CORRUPTION?

Definitions of 'bribery' and 'corruption' vary. Some of the most commonly used international definitions are provided by Transparency International in [The Anti-Corruption Plain Language Guide](#).¹

Bribery

'The offering, promising, giving, accepting or soliciting of an advantage as an inducement for an action which is illegal, unethical or a breach of trust. Inducements can take the form of gifts, loans, fees, rewards or other advantages (taxes, services, donations, etc).'

Corruption

'The abuse of entrusted power for private gain. Corruption can be classified as grand, petty and political, depending on the amounts of money lost and the sector where it occurs.'

OVERVIEW OF THE LAW

The **Bribery Act 2010** (the 'Act') is the UK's main piece of anti-bribery and corruption legislation. It criminalises:

- offering a bribe;
- accepting a bribe;
- bribing a foreign public official; and
- the failure by a commercial organisation to prevent a person associated with it from bribing another.

The Act applies throughout the UK and covers bribes given or received in the UK and abroad.

The Act came into force on 1 July 2011 and is not retrospective. Any misconduct committed before this date is governed by the old regime, which includes the common law offence of bribery, the Public Bodies Corrupt Practices Act 1889, and the Prevention of Corruption Acts of 1906 and 1916.

WHO DOES IT APPLY TO?

The legislation applies to all individuals and corporates that offer or accept a bribe, or bribe a foreign public official when the conduct takes place in the UK. In addition, the Act applies to UK companies, UK citizens, and those with a close connection to the UK, who offer or accept a bribe, or bribe foreign public officials, when the conduct takes place abroad.

The 'failure to prevent bribery' offence applies to organisations incorporated in the UK and non-UK organisations (including partnerships) if they 'carry on business or part of a business' in the UK. This offence does not apply to individuals.

WHEN IS AN OFFENCE COMMITTED?

An offence is committed by Person A in the following circumstances.

- When Person A gives, promises or offers a bribe to Person B, with the intention to induce Person B to perform a relevant function² improperly, or to reward Person B for performing a relevant function improperly (s1).
- When Person A requests, agrees to receive or accepts a bribe from Person B with the intention that a relevant function should be performed improperly, or as a reward for the improper performance of a relevant function (s2).
- When Person A bribes a foreign public official with the intention to influence that person in their capacity as a foreign public official, and with the intention to obtain or retain business, or an advantage in the conduct of business (s6).
- When a commercial organisation ('Person A') fails to prevent bribery by an 'associated person', that is, a person performing services for or on behalf of Person A (s7). The Act does provide a defence for organisations that can prove that they had adequate procedures in place to prevent such conduct (s9).

The improper performance referred to in the s1 and s2 offences means any performance which amounts to a breach of an expectation that a person will act impartially and in good faith. The performance standard is commonly referred to as what a reasonable person in the UK would expect in relation to a performance, activity or function.

The s6 offence does not require an intention of improper performance, merely an intention to influence the public official in order to obtain a business advantage.

The Act also provides that if an offence is committed under ss 1, 2 or 6 by a body corporate with the consent or connivance of senior officers, those officers will also be liable for individual prosecution under the Act.

If you are ever in doubt about whether conduct falls within the scope of the legislation, always seek appropriate legal advice.

ADEQUATE PROCEDURES TO PREVENT BRIBERY

The UK Ministry of Justice has published [guidance on the Bribery Act 2010](#) to help organisations understand the legislation and design their 'adequate procedures' to prevent bribery. The guidance is based on six principles to demonstrate adequate procedures:

1. proportionality
2. top-level commitment
3. risk assessment
4. due diligence
5. communication and training
6. monitoring and review.

INTERNATIONAL CONSIDERATIONS

Individuals with a close connection to the UK and UK companies can be held criminally liable for their conduct abroad under the s1, 2 and 6 offences.

Liability under s7 is even broader. For the purposes of the s7 offence it does not matter where an 'associated person' is based or where the conduct of the associated person occurs. The definition of 'associated person' is also very broad - it means anyone who performs services for or on behalf of the company. This could include joint venture partners, employees, contractors and agents.

Therefore, anti-bribery codes need to incorporate careful monitoring of overseas partners' activities, the dissemination of training and materials to them, and contractual obligations ensuring the overseas partners do not bribe on behalf of the home organisation.

Companies with links to the US should also be aware of the **US Foreign Corrupt Practices Act 1977**. This Act has very wide extraterritorial reach which can impact on UK companies if, for example, they:

- have any securities listed in the US;
- are doing business there (including making payments in dollars and sending emails); or
- have US subsidiaries.

In appropriate circumstances, the US may seek extradition of UK nationals and a company's third-party representatives to stand trial in the US.

REPORTING CONCERNS

Allegations of bribery, or if you have been offered or received a bribe, should be reported to **Action Fraud** (the UK's national reporting centre for fraud and cybercrime) by calling 0300 123 2040 or using the online reporting tool.

Allegations of bribery of foreign public officials by British nationals or UK companies should be reported to the **Serious Fraud Office**. It has published guidance for businesses on self-reporting cases of overseas corruption.

The receipt, or likely receipt, of a bribe (amounting to knowledge or suspicion of money laundering) in the regulated sector should also be reported to the **National Crime Agency**. For individuals in the regulated sector, failure to make an appropriate disclosure and tipping off the suspected launderer are both criminal offences under the **Proceeds of Crime Act 2002**. If not in the regulated sector, a voluntary disclosure can also be made to the NCA.

Financial sector firms regulated by the Financial Conduct Authority or the Prudential Regulation Authority should also report concerns about bribery, including possible failings in their anti-bribery systems and controls, to their regulator. Dual-regulated firms should inform both the FCA and the PRA.

DEFERRED PROSECUTION AGREEMENTS

A deferred prosecution agreement is an agreement reached between a prosecutor and an organisation that could be prosecuted for a specified economic crime offence (including offences under the Act) that has been approved by the court. Under a DPA, the prosecution for an alleged offence is deferred (or suspended) on the condition that the organisation complies with a number of specified terms within a defined time limit. An individual cannot enter into a DPA.

A DPA must contain:

- a statement of facts relating to the alleged offence;
- an expiry date; and
- a statement of the requirements imposed on the organisation, which may include (but are not limited to) payment of a financial penalty and costs, disgorgement of profits, compensation to victims, and implementation or variation of a compliance programme.

The amount of any financial penalty agreed must be broadly comparable to the fine that a court would have imposed on conviction following a guilty plea.

If a DPA is breached then the prosecutor can apply to court for it to be terminated and a criminal prosecution can proceed.

Once a DPA has expired, criminal prosecutions are discontinued and fresh criminal proceedings cannot be instituted for that offence.

THE RISKS OF NON-COMPLIANCE

The key risks arising from non-compliance with the legislation may include one or more of the following.

- Investigation by law enforcement agencies and regulatory or disciplinary bodies, such as the NCA, SFO, FCA and HMRC.
- Reputational and business damage.
- Prosecution of individuals and commercial organisations, deferred prosecution agreements, regulatory or disciplinary proceedings.
- A custodial sentence of up to 10 years or an unlimited fine.
- Disgorgement of profits.
- Possible debarment from tendering for public contracts.

FURTHER INFORMATION

Financial Conduct Authority for thematic reviews of anti-bribery systems and controls in **commercial insurance brokers** and in **investment banks**.

Organisation for Economic Co-operation and Development for the **OECD convention on combatting bribery of foreign public officials** in international business transactions.

United Nations Office on Drugs and Crime for the **UN convention against corruption**.

Also see the **resources** section of our website.

Notes

¹ Published in July 2009.

² A relevant function is any function of a public nature, any activity connected with a business, any activity performed in the course of a person's employment, or any activity performed by or on behalf of a body of persons (whether corporate or unincorporated) - s3 of the Act.

This helpsheet was kindly reviewed and updated by Patrick Rappo and Calum Ablett at DLA Piper.

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