

Adequate procedures to prevent bribery and corruption



AN INTRODUCTION TO UK LEGISLATION | JULY 2020 | SECOND EDITION

Any commercial organisation formed, or carrying out business, in the UK needs to have policies and procedures in place to prevent bribery and corruption. This guide explains what these are and how you can implement them.

WHAT ARE ADEQUATE PROCEDURES?

Any commercial organisation, namely any incorporated body or partnership formed, or carrying out business, in the UK needs to have 'adequate procedures' in place to avoid falling foul of the **Bribery Act 2010**.

The UK Ministry of Justice has published **guidance on the Bribery Act 2010** to help organisations design and implement these procedures using a risk-based approach which recognises that the threat from bribery and corruption varies across jurisdictions, business sectors, business partners and transactions.

The guidance is based on six principles to enable flexible and proportionate procedures to be put in place depending on the size of the company and its exposure to situations where bribery or the expectation of financial incentive or reward are recognised as high risks.

Following the guidance can reduce the risks associated with not only bribery and corruption, but also fraud and other financial crime.

WHY ARE THEY IMPORTANT?

Under s7 of the Bribery Act 2010, a commercial organisation with ties to the UK commits an offence if an 'associated person' bribes another person in order to obtain or retain business or gain an advantage for the commercial organisation.

An 'associated person' is a person performing services for or on behalf of an organisation. This is a very broad definition which can include employees, joint venture partners, agents, contractors and so on.

However, an organisation has a defence if it can prove that it had adequate procedures in place to prevent such conduct.

A commercial organisation is defined as:

- a body or partnership incorporated or formed in the UK irrespective of where it carries on a business; or
- a body or partnership incorporated or formed outside the UK that carries on a business or part of a business in the UK.

This broad definition includes charities, schools and universities, and public bodies, as long as they are either incorporated or a partnership and engage in commercial activities.

THE SIX PRINCIPLES

Principle 1: proportionate procedures

Anti-bribery procedures should be proportionate to the risks faced and the nature, scale and complexity of the organisation's activities. They should be clear, practical, accessible, effectively implemented and enforced.

Principle 2: top-level commitment

Senior management (be it a board of directors, the owners or any other equivalent body or person) is committed to and active in preventing bribery, working to foster a culture in which the practice is never acceptable.

Principle 3: risk assessment

The organisation conducts regular, well-informed and clearly documented assessments of the internal and external bribery risks it faces.

Principle 4: due diligence

The organisation applies due diligence procedures to people who perform, or will perform, services for or on its behalf as a means of mitigating and confronting identified risk.

Principle 5: communication (including training)

Through internal and external communication and training, management seeks to ensure that prevention is embedded

and understood throughout the organisation.

Principle 6: monitoring and review

Anti-bribery policies and procedures are monitored and reviewed by internal and external experts so that they can be improved where necessary.

CREATING A COMPLIANT POLICY

It is important to have a written policy which sets out your organisation's commitment to the anti-bribery and corruption agenda and the responsibilities for its prevention, detection, investigation and response. More specifically, to comply with best practice, it should:

- address each of the six principles;
- communicate the organisation's zero-tolerance approach to bribery;
- set out who it applies to (for example employees, volunteers, contractors, agents, third-party representatives and so on);
- explain to those parties the repercussions of breaching the policy;
- define what bribery is and what conduct is prohibited;
- explain the organisation's rules on the giving and receiving of gifts and hospitality;
- explain the organisation's approach to record keeping; and
- set out how concerns can be raised.

From a practical perspective, the policy should:

- permeate the entire business;
- be set out in public materials; and
- be self-evident from the conduct of employees and representatives.

Furthermore, it must inform all commercial relationships and demonstrate that the business has thought carefully about bribery and has done its best to address and overcome any risks.

CREATING AN ANTI-BRIBERY FRAMEWORK AND CONDUCTING CORRUPTION-FREE BUSINESS

People

Your anti-bribery policy should be supported at the most senior level, and a board member or senior manager should be appointed to take overall responsibility for it. The policy should be communicated throughout the organisation and to business partners, potential partners and third parties involved in contracts. This is particularly important for overseas employees, agents, joint venture partners or suppliers, especially those working in high-risk countries.

Invest adequate resources in training. It should be focused on employees offering frontline services or interacting heavily with business partners or third parties (that is, those who work in the high-risk areas, not necessarily from the top of an organisation down). It should be refreshed and updated regularly to reflect the changing risk profile of the organisation. The organisation also needs to review which employees require the training, for instance when they move into higher risk or more senior positions. There also needs to be a simple, safe way to report incidents of potential, suspected or actual bribery. The procedure should be explained in your anti-bribery policy, and all staff members need to be aware of this and trust it.

Procedures

Documentation of all anti-bribery related procedures and training is important, though there is no need for extensive written evidence if the risk of bribery is very small.

Draw up clear guidelines and procedures for tendering, third-party contractors or others used within a business relationship, corporate hospitality and due diligence. These should be based upon, and be proportionate to, the specific risks that your organisation faces. This means that a risk assessment needs to be conducted for the business (including its sector, locations and financial procedures) and its clients and contractors. The risk assessment should be reviewed regularly and updated as necessary.

Conduct due diligence on business partners, third-party contractors and agents. This should not be a tick box exercise but a more subtle process depending on the risks and difficulties in the sectors or locations in which business is conducted. Due diligence also needs to be refreshed periodically.

The due diligence requirements of 'adequate procedures' are not dissimilar to those in anti-money laundering legislation. So bear in mind that bribery, as defined in the Bribery Act 2010, which creates criminal property, is a predicate offence for the money laundering offences in the **Proceeds of Crime Act 2002**.

UK anti-bribery legislation is not designed to stop corporate hospitality. Corporate hospitality needs to be proportionate to the organisation's size and means, and the relationship that is being developed, but it should not be used to secure a business advantage by inappropriately lavish hospitality.

FURTHER INFORMATION

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

GAN Business Anti-Corruption Portal for a collection of free **anti-corruption compliance and risk management tools**.

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.

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

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