



THE END OF CORRUPTION

UK Bribery Act Handbook

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UK Bribery Act

The Bribery Act of 2010 is an Act of the Parliament of the United Kingdom. It was introduced in the Queen's Speech to Parliament on 18 November 2009, which sets out the UK Government's proposed legislative program over the forthcoming terms of Parliament. The bill has broad cross-party support, and was passed into the statute book on the 8th April of 2010.

What is Considered "Bribery"?

The act defines 'bribery' in broad terms, to capture the differing ways in which bribes are made or received. It sets out several scenarios, or "cases". The one which is expected to apply to most businesses is the offence of giving a bribe, specifically:

"The defendant offers, promises or gives a financial or other advantage intending to induce another person to perform improperly one of their functions in their position of trust and responsibility, or as a reward for improper performance"

Guidance

The United Kingdom's Ministry of Justice has released guidelines for individuals and companies seeking to comply with the UK Bribery Act.

Following the advice of the government's consultation constitutes a defense against charges of a business entity failing to prevent bribery.

The UK Bribery Act takes effect in April 2011. Having these procedures in place prior to that date can protect your company against financial ruin, caused by the potentially unlimited fines that may be levied.

Although the guidelines do not recommend specific procedures for this purpose, they serve as an effective roadmap for UK Bribery Act compliance.

In addition, implementing these principles will also protect your company from Foreign Corrupt Practices Act (FCPA) violations.



Six Principles for Bribery Prevention

Risk assessment

It must be a dynamic and ongoing process, not a one-time action. Sticking your head in the sand regarding bribery risks in your industry and region is not an excuse.

Top level commitment

There must be zero tolerance for bribery and corruption in your corporate culture. This includes not only avoiding corruption yourself, but steering clear of business partners without the same level of commitment.

Due diligence

Accurately assess and manage risks prior to becoming involved in any business transaction.

Clear, Practical, and Accessible Policies & Procedures

Specific written guidelines for employees, business partners, subsidiaries, etc.

Effective implementation

Anti-bribery measures fully incorporated within internal controls, recruitment and remuneration processes, and communication of the policies through multiple high-profile avenues.

Monitoring and Review

Requires transparent, dynamic auditing and financial controls as well as internal checks and balances to monitor ethics and compliance procedures. These must be approved and supported by the Board of Directors and subject to external verification.

The Bribery Act 2010 will not change the disciplinary process that would need to be followed to investigate any alleged act of corruption before a disciplinary sanction is imposed, so if bribery takes place the company should follow its own procedure or fall back on the Acas Code on disciplinary and grievance procedures.



What Constitutes a Violation?

Four new criminal offences:

- Offering or paying a bribe
- Requesting or receiving a bribe
- Bribing a foreign public official. (A specific offence required to comply with the OECD Convention)
- A corporate offence of failing to prevent bribery being undertaken on its behalf.

Offering or paying a bribe

The act states that it is a violation of the act to offer, promise or give advantage to someone with the intention of inducing the person to behave improperly. Any reward for behaving in an improper manner is also included in this provision. Even knowing or believing that the recipient's acceptance of the advantage was improper is considered a violation.

Requesting or receiving a bribe

Any recipient who requests, agrees to receive, or accepts an advantage is liable.

Failure To Prevent Bribery

Any commercial entity doing business in the UK is liable. Senior officers who negligently fail to prevent bribery on the part of their employees or agents will be prosecuted. There is no need for the employee or agent to be prosecuted. The defense must demonstrate that adequate procedures were followed in their prevention attempts.

Bribery of a Foreign Official

This is considered a separate offence. Anyone who offers, promises or gives an advantage to a foreign public official is liable. It includes only acts which are not permitted or required under the laws of the official's country. The following are considered separate offences under the UK Bribery Act:

- Bribing another person (general offence)
- Being bribed (general offence)
- Bribery of a foreign public official (specific offence)
- Senior office connivance (specific offence)—when a senior officer of a corporation consents or connives to the performance of any of the above offences
- Corporate failure to prevent bribery— does not take state of mind into account



Business Affected

The legislation applies to all companies, partnerships and individuals based in England, Scotland, Wales and Northern Ireland, as well as foreign companies and individuals doing business in the UK. It has a global reach, applying to acts or omissions taking place anywhere in the world.

Unlike the FCPA, the UK Bribery Act applies to both the public and private sector. For example, bribing another private company for special treatment is a violation of the latter.

Penalties For Violations

Individuals—up to 10 years in prison and potentially unlimited fines

Entities— potentially unlimited fines

Ramifications of the UK Bribery Act

Companies will have to take even greater care with compliance than before. The UK Bribery Act is significantly more far-reaching than the United States' equivalent FCPA (Foreign Corrupt Practices Act).

For one thing, bribery need not involve a public official; fully private transactions can be prosecuted under the UK Bribery Act.

Also, the failure to prevent bribery in itself is now a separate offence.

The law affects every person or entity doing business in the United Kingdom. Since the U.K. is a large and essential market for many goods and services, the impact is enormous. Many multinational corporations have subsidiaries or global offices in London or other areas of the country.

You are subject to the UK Bribery Act if even just one of your employees, vendors, or customers resides or works in England, Scotland, Wales, or Northern Ireland. For example, an online store that ships an order to Great Britain is considered to be doing business there.

All the offences apply to behavior taking place either inside the UK, or outside it provided the person has a "close connection" with the UK. A person has a "close connection" if they were at the relevant time among other things a British citizen, an individual ordinarily resident in the UK, or a body incorporated under the law of any part of the United Kingdom.

There is a separate charge for bribing a foreign official, separate from the charge of bribing another person.



It does not matter whether or not your company's representative is aware that either accepting or performing a bribe is improper; they will still be violating the law. An effective corporate due diligence program will help clarify these issues and rout out those susceptible to such behavior.

The financial penalties resulting from violations of the UK Bribery Act are potentially unlimited. In the past, some companies may have considered some minor violations of bribery statutes as a cost of doing business. That can no longer be the case. Fines will be far more than symbolic, putting the health of corporations in danger.

Individuals involved in the violations face a criminal sentence of up to 10 years in prison. Such a sentence may potentially deny your business of the human capital needed to innovate and expand.

A defense against charges of failing to prevent bribery is a robust anti-bribery and anti-corruption system. This system must be in place--and regularly monitored.

In the future, the FCPA could be amended to incorporate elements of the UK Bribery Act. Other nations may also take a page from Great Britain's playbook. Therefore, it is essential to prepare now.



How to prevent Bribery Act Liability

Compliance programs

The UK Bribery Act, unlike the US Foreign Corrupt Practices Act, institutes an “adequate procedures” defense, which will allow a company who has instituted an anti corruption policy, a defense against full liability.

Employees should receive regular training on anti-bribery laws and certify that they understand and will follow corporate policy. Employees should also be informed on the proper procedure and contact channels for guidance and or to report possible violations.

Third party relationships (joint venture partners and agents) should be required to verify their compliance with anti-bribery laws.

Companies should develop comprehensive due diligence procedures to investigate joint venture partners, agents and targets of prospective mergers and acquisitions. Finally, companies should monitor current records to maintain that such persons do not hold a political office or have close relationships with government officials or organizations or have been linked to corruption investigation by an enforcement agency anywhere in the world.

Relationship Risk Assessment

All corporations and persons who are based in the United Kingdom, or that conduct business within the borders of the United Kingdom to some extent, should perform a risk assessment on all business partners, third party agents, and potential merger partners to understand whether any company or individual is affiliated with a foreign government, or any non government entity has been linked to corruption allegations in the UK or elsewhere.

Understanding these relationships can only be performed by a screening of each entity and person against a comprehensive database of politicians, their associates, and government owned entities. This relationship screening should be performed on all new relationship and periodically on all current relationships to ensure that all funds transferred to these individuals and entities are not conflicting with the intent of the Bribery Act.

Although installing policies and training employees is a significant step in preventing corruption liability, the only way to measure whether these procedures are effective is by installing a due diligence system that is consistent and will alert management when these policies have been broken. Whilst performing due diligence against corporate corruption may be difficult, the payment of funds to a government officials is significantly easier to spot with the proper due diligence policy. The best way to



institute a policy that recognizes and prevents such shortcomings is by installing a “systematic” due diligence process. Systematic due diligence should be applied to all divisions of a company that provide or receive products or services outside of the United Kingdom.

Initial Due Diligence:

Screen all 3rd parties, regardless of locations, in a similar fashion
Gather critical details on contacts to ease the deconflicting process
Set up procedures to deal with names that fall in “gray”

Ongoing Due Diligence:

Gather and centralize information on all 3rd parties
Process names in a “batch” screening environment to recognize ties of business contacts to foreign governments and illicit behavior against a reputable Bribery Act compliant database
Implement monitoring application to alert to changes in risk

Components of a Bribery Act compliant database:

Must have a truly global scope, there are over 800,000 known foreign officials globally

Data must contain “unique identifiers” such as a date of birth, photograph, passport number and national id number to differentiate among similar names
Offer the ability to recognize variations in spelling and foreign languages.