

Bribery and corruption – protecting your business

In the United Kingdom existing legislation on foreign bribery is now being rigorously enforced and a new Bribery Bill has recently been introduced into parliament. Together, these have important implications for all businesses. Existing business policies and practices should be reviewed now – and remedial action taken where necessary. Failure to fully comply with the legislation could result in serious financial and reputational repercussions.

Introduction

Bribing to secure or retain contracts is a serious crime which undermines the rule of law, leads to injustice and can adversely impact economic development. Evidence shows that where there are weak bribery and corruption controls within an organisation other crimes such as money laundering, fraud and cybercrime (including data and intellectual property theft) are also likely to exist.

What is bribery and corruption?

Definitions for 'bribery' and 'corruption' vary. Some of the most commonly used international definitions are provided by Transparency International:

Bribery: '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).'

For example: A sales director makes a payment (either directly or indirectly via an agent) to the chairman of a government tender committee to influence the outcome in favour of that company.

Corruption: 'The misuse of entrusted power for personal gain.'

For example: A government minister, who has the authority to award a commercial contract, makes such award conditional upon his (or someone else) receiving or being promised a personal reward/payment. (Intermediaries may also be used to accept and process the payment.)

The Bribery Bill

Bribery is currently a criminal offence in the United Kingdom under common law, the Prevention of Corruption Acts 1889-1916, and the Anti Terrorism Crime and Security Act 2001. The new Bribery Bill (see box overleaf) is expected to replace and

simplify existing legislation and to address:

- domestic and international bribery, and
- bribery of public and private sector officials.

It also introduces a new corporate offence of failing to prevent bribery, providing a statutory defence for corporates who can demonstrate the existence of adequate procedures to prevent bribery.

Setting the anti-bribery and corruption agenda

1. Recognise bribery and corruption as potential risks to your business and instil a policy of zero tolerance throughout the organisation – implemented across all offices and subsidiaries (including those overseas).
2. Ensure the board and senior management take responsibility for the development and implementation of anti-bribery policies and processes, whatever the size of organisation.
3. Make sure that there are relevant, properly managed and documented policies and business processes in place to mitigate bribery risk.
4. Include bribery and corruption on the risk register, and establish clear lines of accountability and delegation for managing these risks.
5. Review third-party contracts, remuneration and terms and conditions. Advise and ensure that all third parties – including agents, consultants, advisers, key suppliers and others – are included in the compliance programme, and that they have undergone appropriate due diligence.
6. Review all employee conduct policies and procedures to ensure that they reflect the organisation's stance on bribery and corruption.

The risks of non-compliance

Key risks arising from non-compliance may include:

- Damage to reputation and hostile stakeholder action.
- Potential share price volatility and consequent adverse impact on loans, covenants and credit lines where underwritten against market capitalisation.
- Contract blacklisting, sanctions and revenue loss.
- Interruption of operations and diversion of management resource.
- Unbudgeted costs of investigation and/or defence of any legal action.
- Negative impact on customers, suppliers and partners.
- Additional costs of US intervention.
- Imprisonment of key employees and/or directors.
- Unlimited fines (both individual and organisation).

Practical steps to protect your business

Policies

Develop policies to provide practical guidance for all employees on acceptable business practices covering:

- Business ethics – to create a culture of 'doing the right thing'.
- Conduct and how to deal with conflicts of interest.
- Gifts and hospitality.

Processes

Ensure that policies are embedded into normal business practices:

- Undertake independent due diligence of all third-party agents and others who are in a position to pay bribes for business.
- Ensure that all third-party agents and intermediaries comply with your

- organisation's business policies and procedures.
- Review the management of indirect sales channels (eg, agents, advisors, consultants and distributors).
- Include in your terms and conditions of trade the standards of ethical behaviour that you expect of joint venture and other business partners.
- Maintain accurate and timely records of all transactions related to third parties especially in the sales and procurement areas of the organisation.
- Establish mechanisms to enable significant issues to be escalated within the organisation.
- Undertake regular reviews and conduct appropriate audit of relevant business processes to ensure that they remain up to date and corruption risk is identified.

People

The commitment of staff is crucial to the success of your business policies and processes. To this end:

- Set the 'tone from the top' as one of zero tolerance towards bribery, corruption and other related crimes.
- Assign specific responsibilities to the board and senior management.

- Ensure appropriate oversight and adherence to policies and processes.
- Introduce and maintain a credible mechanism for employees to report concerns.

Communication

Ensure that staff and third parties (including customers and suppliers) are fully aware of company policy:

- Communicate clear simple messages across cultures and languages.
- Introduce full disclosure on policy, process and breaches in all reports.
- Ensure disciplinary policy on breaches is communicated and enforced.
- Implement appropriate and ongoing training and education programmes.

International considerations

Companies with business links to the United States should be aware of the US Foreign Corrupt Practices Act 1977 (the 'FCPA'). This act has extra-territorial reach for UK companies with any securities listed in the US, doing business there or with 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 USA.

KEY FEATURES OF THE DRAFT BRIBERY BILL

- Criminal offence to give, promise or offer a bribe in the UK or abroad.
- Criminal offence to request, agree to receive or accept a bribe in the UK or abroad.
- Separate criminal offence of bribing a foreign public official which does not require evidence of improper performance (to ensure full compliance with the OECD Convention).
- It does not matter whether the offence was committed in the UK or abroad. If abroad, the law will be applied to all British citizens, UK companies, non-UK companies with a business presence in the UK, and anyone resident in the UK.
- A corporate offence of failing to prevent bribery by persons working on behalf of a business. (A business may be able to avoid conviction if it can be shown there are adequate procedures in place to prevent bribery.)
- Sentences increased from seven to 10 years imprisonment and/or unlimited fines. For corporate offences an unlimited fine and potential prosecution or civil recovery against those deemed negligent.
- The Attorney General's consent will no longer be needed to prosecute a bribery offence.

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Reporting concerns

Allegations of bribery of foreign public officials by British nationals or UK companies should be reported to the Serious Fraud Office (SFO) on 020 7239 7388. The SFO has published guidance for businesses on self-reporting cases of overseas corruption which is available from www.sfo.gov.uk.

Further information

Department for Business Innovation and Skills

www.berr.gov.uk

Business Portal

www.business-anti-corruption.com

International Chamber of Commerce

www.iccwbo.org

Ministry of Justice

(Draft Bribery Bill)

www.justice.gov.uk

Organisation for Economic Co-operation and Development

(OECD Convention on Combatting Bribery of Foreign Public Officials in International Business Transactions)

www.oecd.org

Serious Fraud Office

www.sfo.gov.uk

Transparency International

www.transparency.org

United Nations Office on Drugs and Crime

(UN Convention against Corruption)

www.unodc.org

United States Department of Justice

(US Foreign Corrupt Practices Act)

www.usdoj.gov

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