

BRIBERY ACT 2010 – OUTLINE OF REQUIREMENTS

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INTRODUCTION

The Act makes bribery a criminal offence. Various forms of bribery are identified in the Act, with a view to preventing bribery and requiring organisations to uphold responsible, ethical and fair business practices. It is good practice for businesses to have policies in place to describe the requirements of the legislation and the sanctions which may be applied to individuals for breaches of the law. Businesses are also encouraged to provide suitable reporting and communication channels, to ensure that information about any actual or potential wrongdoing is reported and is properly and effectively dealt with.

A policy dealing with bribery will normally be stated to apply to all directors and permanent and temporary employees of an organisation as well as agency workers, casual workers, contractors, consultants, seconded staff, suppliers and sponsors.

LEGAL OBLIGATIONS AND ANTI-BRIBERY POLICY

The Bribery Act 2010 applies to the conduct of an organisation both in the UK and abroad. A bribe is an inducement or reward offered, promised or provided in order to gain any commercial, contractual, regulatory or personal advantage.

It is a criminal offence in the UK:

- to offer, promise or give a financial or other advantage to another person (i.e. bribe a person), whether within the UK or abroad, with the intention of inducing or rewarding the performance of a business function in a way which is not in good faith or impartial or is in breach of trust
- to request, agree to receive or accept a financial or other advantage (i.e. receive a bribe) for or in relation to improper business conduct
- for a person associated with a company to bribe another person with the intention of either obtaining or retaining business, or obtaining or retaining an advantage in the conduct of business, for the company
- bribe a foreign public official.

Bribery on the part of individuals is an offence punishable by up to 10 years' imprisonment.



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An organisation can be liable for offences of bribery committed by its employees or by associated persons where it has failed to put in place adequate procedures to prevent such bribery. As well as an unlimited fine, the organisation could suffer substantial reputational damage. An organisation may have a defence if it can show that it has adequate procedures in place to prevent bribery.

Anti-bribery policies frequently recognise that industry practices may vary from country to country or from culture to culture and that what is considered unacceptable in one place may be normal or usual practice in another. A payment or gift to a public official or other person to secure or accelerate the performance of a routine government procedure or process (a “facilitation payment”) will commonly give rise to a breach of the legislation. Such payments are rare in the UK but are common in some other jurisdictions. Strict adherence to the requirements of the UK legislation is normally expected of employees and all those to whom an anti-bribery policy applies.

It is normal for policies to draw distinctions between bribery in the strict sense and the receipt of business gifts from third parties and corporate hospitality offered by third parties. **The giving of business gifts/hospitality to clients, customers, contractors and suppliers need not be prohibited provided certain requirements are met. A business gift or hospitality must obviously not be given with the intention of obtaining business or a business advantage or in explicit or implicit exchange for favours or benefits.** It should be given in the organisation’s name, not in the giver’s personal name and should not include cash or a cash equivalent (such as gift vouchers). It should be given openly, and at an appropriate time (e.g. Christmas) and should be of an appropriate and reasonable type and value.

Anti-bribery policies will commonly name the person within the organisation to whom facts or suspicions should be reported, normally on a confidential basis as far as is practical. Reports may result in the disclosure of details to a regulatory agency or the police and/or disciplinary action against relevant employees. Breaches of the legislation may amount to gross misconduct in some cases, resulting in summary dismissal. It is normal to give reassurance to those who may raise genuine concerns in good faith that they will not suffer any detrimental treatment, even if they turn out to be mistaken and their suspicions are unfounded.

RECORD KEEPING

Policies will normally require that all receipts, invoices and other documents and records relating to dealings with and payments made to third parties and the reasons for them are carefully prepared and retained in an organisation’s records. Such records should also cover any hospitality or gifts offered to or received from third parties.



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MONITORING COMPLIANCE AND TRAINING

A director or senior manager in an organisation should be designated as having responsibility for ensuring compliance with an anti-bribery policy and monitoring its effectiveness. Training may also need to be provided to employees to help them understand their duties and responsibilities under the legislation and the issues which may arise from it. The policy may also need to be communicated to business partners or other external third parties at the outset of the business relationship with them.

Companies and individuals have been prosecuted for offences under the Bribery Act 2010. Fines running into millions of pounds have been imposed. The prosecutions have illustrated the high standards which companies are required to meet if they seek to show that they have adequate procedures in place to prevent bribery. The individuals who have been prosecuted include a managing director in the construction industry (for paying a bribe) and a project director (for soliciting a bribe in return for providing information likely to be of help to a prospective bidder for the award of a contract and offering to put forward a persuasive case to support the acceptance of the bid from the prospective bidder).

This guidance document was prepared with the assistance of Keith Potter, Downs Solicitors LLP
<http://www.downslaw.co.uk> and is gratefully acknowledged.