



LexisNexis
Bribery Act 2010

Protect your organisation by acting now

Introduction

The Bribery Act 2010 comes into force in July 2011 and represents the most significant change in the UK government's approach to tackling bribery and corruption for over 100 years. The Bribery Act 2010 replaces outdated legislation, bringing the UK in line with the OECD Anti-Bribery Convention and aims to make the UK a better place for conducting business.

The primary focus for companies is the new offence of failure by a commercial organisation to prevent bribery. All offences carry a maximum prison sentence of 10 years, with the exception of the offence relating to failure to prevent bribery, which carries an unlimited fine. Where a director is convicted of bribery, they may also be disqualified from holding a director position for up to 15 years.

The defence for a company is to be able to demonstrate that adequate procedures are in place to prevent bribery.

This puts companies' operational procedures under the spotlight and businesses may want to consider on a risk sensitive basis what processes and controls are implemented to mitigate bribery and corruption within their firm.

Despite a spate of recent bribery and corruption cases both in the UK and overseas, many companies are unprepared for the Bribery Act 2010 and need to act on this as the highest priority.

Key Influencers

Transparency International

www.transparency.org.uk

**Organisation for Economic
Co-operation and Development (OECD)**

www.oecd.org

United Nations Convention

www.unodc.org

US Department of Justice

www.justice.gov

Serious Fraud Office

www.sfo.gov.uk

Ministry of Justice

www.justice.gov.uk

**BIS: Department for Business,
Innovation and Skills**

www.bis.gov.uk



Bribery Act 2010

The Bribery Act reforms the criminal law to provide a new, modern and comprehensive scheme of bribery offences that will enable courts and prosecutors to respond more effectively to bribery at home or abroad.

The Act will:

- Provide a more effective legal framework to combat bribery in the public or private sectors
- Replace the fragmented and complex offences at common law and in the Prevention of Corruption Acts 1889-1916
- Create two general offences covering the offering, promising or giving of an advantage, and requesting, agreeing to receive or accepting of an advantage
- Create a discrete offence of bribery of a foreign public official
- Create a new offence of failure by a commercial organisation to prevent a bribe being paid for or on its behalf (it will be a defence if the organisation has adequate procedures in place to prevent bribery)
- Require the Secretary of State to publish guidance about procedures that relevant commercial organisations can put in place to prevent bribery on their behalf
- Help tackle the threat that bribery poses to economic progress and development around the world.

Penalties

Committing an offence under the Bribery Act 2010 can result in severe penalties.

An individual guilty of bribing another person, receiving a bribe or found to be bribing a foreign official faces a maximum prison sentence of 10 years and/or an unlimited fine.

A company found guilty of failing to prevent bribery will be subject to an unlimited fine. Directors and senior executives will also be personally liable if it is found that they were directly associated with an offence committed by their company. Where a director is convicted of bribery, they may also be disqualified from holding a director position for up to 15 years.

Companies may also find themselves debarred from EU and US procurement lists.

The defence for a company is being able to demonstrate that adequate procedures are in place to prevent bribery.



The Bill was published in draft on 25 March 2009 for pre-legislative scrutiny by a Joint Committee of both Houses of Parliament.

The Bribery Act comes into force in July 2011
Source: Ministry of Justice



Geographic reach of the Bribery Act 2010

The geographic reach of the Bribery Act 2010 has serious implications for companies. The corporate offence of failing to prevent bribery is applicable across the globe to any UK registered company or equivalent foreign company that has business operations within the UK.

This means that a company may be found guilty of an offence even if the offence was committed by an employee, foreign subsidiary, joint venture partner, agent or other third party intermediary acting on the company's behalf overseas.



The business impact of non-compliance

The business impact of non-compliance often does not stop when the fine has been paid:

Immediate impact

- **Impact on share price of negative publicity**
Association with bribery and corruption can send share price plummeting
- **Company image is one of an organisation exposed to unethical business practice**
Public relations / corporate communications expenditure required to fix broken reputations
- **Impact on sales and business development**
Customers and business partners do not want to be associated with tarnished brands

Further Actions

- **Systems and controls require review**
Rewriting policies and enacting company wide staff training
- **Procedures for working with third-parties need to be reviewed**
Implementing effective due diligence, ongoing monitoring and audit controls
- **Organisation is subject to further scrutiny of consultants, regulators and enforcement agencies**
Stigma and costs of facilitating additional internal investigations and audits

Ministry of Justice Guidance

Under the new offence of failure to prevent bribery, the defence for companies is to implement 'adequate procedures'.

Following consultation, the Ministry of Justice published principles based guidance in March 2011 covering suggested procedures that companies can consider to prevent bribery:

Six Principles for Bribery Prevention

Principle 1 - Proportionate procedures

A commercial organisation's procedures to prevent bribery by persons associated with it are proportionate to the bribery risks it faces and to the nature, scale and complexity of the commercial organisation's activities. They are also clear, practical, accessible, effectively implemented and enforced.

Principle 2 - Top-level commitment

The top-level management of a commercial organisation (be it a board of directors, the owners or any other equivalent body or person) are committed to preventing bribery by persons associated with it. They foster a culture within the organisation in which bribery is never acceptable.

Principle 3 - Risk Assessment

The commercial organisation assesses the nature and extent of its exposure to potential external and internal risks of bribery on its behalf by persons associated with it. The assessment is periodic, informed and documented.

Principle 4 - Due diligence

The commercial organisation applies due diligence procedures, taking a proportionate and risk based approach, in respect of persons who perform or will perform services for or on behalf of the organisation, in order to mitigate identified bribery risks.

Principle 5 - Communication (including training)

The commercial organisation seeks to ensure that its bribery prevention policies and procedures are embedded and understood throughout the organisation through internal and external communication, including training, that is proportionate to the risks it faces.

Principle 6 - Monitoring and review

The commercial organisation monitors and reviews procedures designed to prevent bribery by persons associated with it and makes improvements where necessary.



Source: Ministry of Justice: Guidance about procedures which relevant commercial organisations can put into place to prevent persons associated with them from bribing (section 9 of the Bribery Act 2010)



Transparency International Guidance

The MoJ principles based guidance is broad ranging and does not reflect the different degrees of risk faced by companies large and small and the changing demands of the specific industry sectors in which they operate.

To complement the MoJ guidance, Transparency International published more detailed and practical guidance to further help companies prepare for the Bribery Act 2010 coming into force.

The guidance provides useful insight and advice and includes sections on:

- The Bribery Act
- Tone From The Top: The Control Environment
- Risk Assessment
- Implementation

- Business Partners: Applying Due Diligence
- Monitoring And Review
- Next Steps
- Glossary
- List Of Resources And Links
- Annexes 1-7



Transparency International's Adequate Procedures - Guidance to the UK Bribery Act 2010 can be found at:

<http://www.transparency.org.uk>

Check your company's anti-corruption procedures

Prior to the publication of government guidance, the GC100 Group of senior legal officers from selected FTSE 100 companies issued the following useful guidance which companies may want to consider:

- 1 Board responsibility for the anti-corruption programme** - The board of directors should take responsibility for the effective implementation of the company's anti-corruption programme. The board should take steps to ensure that senior management is aware of its policy in respect of corruption, and accepts the programme. The Chief Executive should make a clear statement about the expected culture and the consequences of breaching these ideals.
- 2 Compliance function** - A senior officer should be made responsible for oversight of the anti-corruption programme. They should be provided with proper authority to implement and monitor all programme activities.
- 3 Anti-corruption code** - Commercial organisations should have a clear and unambiguous code of conduct which includes an anti-corruption element, should publicise this code adequately internally, and should publish the code on its website.
- 4 Risk management** - Procedures should be established to assess the likely risks of corruption arising in an organisation's business.
- 5 Employment procedures** - Whilst not appropriate for all organisations, wherever possible:
 - a) employees should be vetted before they are employed to ascertain as far as is reasonable that they are the type of person who is likely to comply with the company's ethical policies;
 - b) employment contracts should include express contractual obligations and penalties in relation to corruption;
 - c) disciplinary procedures should be in place which, where appropriate, entitle the company to take suitable disciplinary action against an employee who commits a corrupt act.
- 6 Gifts and hospitality policy** - A commercial organisation should develop and implement a gifts and hospitality policy whereby it provides guidance to employees on its policies in relation to the giving and receiving of gifts and entertainment, and puts in place measures to monitor this activity.
- 7 Training** - It is important for commercial organisations to ensure that their codes of conduct and other policies are properly embedded throughout their businesses. Anti-corruption training should therefore be provided, with reminders on a regular basis, to all relevant employees to make them aware of the types of corruption, the risks of engaging in corrupt activity, the organisation's anti-corruption code, and how they may report corruption.
- 8 Due diligence** - Before entering into any business relationship or project, the organisation should carry out due diligence on the country in which the business is to be conducted, on its potential business partners, agents used and on the proposed project or business transaction in order to identify as far as reasonably possible the risk of corruption.
- 9 Anti-corruption contract terms** - Consideration should be given to the contracts which are entered into between the company and its business partners to contain anti-corruption contract terms, and whether or not they should provide express contractual obligations and penalties in relation to corruption. Particular care should be taken when agents are being used.
- 10 Decision-making process** - An organisation should formalise its decision-making processes, so that where a greater risk of corruption is perceived to exist, the decision is taken by a suitably senior individual within the organisation.
- 11 Financial controls** - An organisation should ensure that it puts in place financial controls to minimise the risk of the company committing a corrupt act against another individual or organisation (e.g. employees, clients, business partners, sub-contractors or suppliers), or of any corrupt act being committed against the company by another individual or organisation. This can be done through an organisation's internal audit function, if one exists.
- 12 Commercial controls** - An organisation should ensure that its commercial controls minimise the risk of the company committing a corrupt act against another individual or organisation (e.g. employees, clients, business partners, sub-contractors or suppliers), or of any corrupt act being committed against the company by another individual or organisation.
- 13 Supply chain management** - Wherever possible, an organisation should use procurement and contract management procedures which minimise the opportunity for corruption by sub-contractors and suppliers against the company.
- 14 Reporting and investigation procedures** - An organisation should develop and implement procedures ("whistleblowing") for reporting corruption which enable employees to report corruption in a safe and confidential manner to a responsible senior officer of the company. Similarly, organisations should ensure that all allegations of corruption are properly investigated by properly qualified individuals, and, where appropriate, the results of those investigations are reported back to the individual who made the original complaint.



How to spot bribery and corruption?

Bribery and corruption adopts many guises and often companies are unaware that common business practices within a firm's day to day operations may expose them to the risks of becoming a victim of bribery and corruption. Worse still, are those companies who may be unaware that they operate within a business culture that may be perceived to promote bribery and corruption. All of these factors put a firm at risk of penalties under the Bribery Act 2010.


The Serious Fraud Office has issued a useful set of corruption indicators which firms should consider as part of their approach to identifying and tackling the risks of bribery and corruption.

Corruption Indicators

This list is not exhaustive and the ingenuity of those involved in corruption knows no bounds! You should beware of:

- Abnormal cash payments
- Abnormally high commission percentage being paid to a particular agency. This may be split into 2 accounts for the same agent often in different jurisdictions
- Abusing decision process or delegated powers in specific cases
- Agreeing contracts not favourable to the organisation either with terms or time period
- Avoidance of independent checks on tendering or contracting processes
- Bypassing normal tendering / contractors procedure
- Company procedures or guidelines not being followed
- Individual never takes time off even if ill, or holidays, or insists on dealing with specific contractors him/ herself
- Invoices being agreed in excess of contract without reasonable cause
- Lavish gifts being received
- Making unexpected or illogical decisions accepting projects or contracts

- Missing documents or records regarding meetings or decisions
- Payments being made through 3rd party country, e.g. goods or services supplied to country A but payment is being made, usually to shell company in country B
- Pressure exerted for payments to be made urgently or ahead of schedule
- Private meetings with public contractors or companies hoping to tender for contracts
- Raising barriers around specific roles or departments which are key in the tendering / contracting process
- Unexplained preference for certain contractors during tendering period
- Unusually smooth process of cases where individual does not have the expected level of knowledge or expertise
- The payment of, or making funds available for high value expenses or school fees etc on behalf of others

 Source: Serious Fraud Office

Summary

The Bribery Act 2010 requires companies to prevent bribery in their organisation, including intermediaries and other third party agents used by companies overseas. The defence within this part of the Act is for companies to have in place "adequate procedures" to mitigate the risks of bribery within their business.

Guidance indicates that implementing effective systems and controls for conducting third-party due diligence and monitoring helps your business to comply with the requirements of the Bribery Act 2010.

The Lexis® Diligence online solution provides access to the intelligence needed to carry out due diligence checks on third parties in-house.

Anti-bribery and corruption solutions from LexisNexis

Lexis Diligence

Protect your organisation and its corporate reputation with cost-effective due diligence. In one search, access all the intelligence you need to vet your existing and future third party relationships, including:

- Over 150 databases of global public and private company reports and directories, including over 130 million company records, enabling you to identify and verify companies in Europe, US and emerging markets
- Comprehensive English and non-English news coverage from 23,000 international news sources for conducting negative news checks and enhanced due diligence
- Extensive databases of politically exposed persons (PEPs) helping you to identify government officials
- Key global sanctions and law enforcement lists to check for high risk companies and individuals
- Extensive country profiles highlighting risk analysis and political structures

It's simple to use and includes an audit trail so you can demonstrate you have carried out appropriate due diligence.

Ongoing screening & monitoring

Track high risk third-parties to ensure you are alerted to any changes. Our sanctions screening and media monitoring tools along with Lexis Diligence provide the complete third party due diligence solution.

• Bridger Insight

Screen as many third-parties as you need to in bulk against sanctions, ID verification data, PEPs and your own internal watch lists to continue to safeguard your corporate reputation.

Our superior fuzzy-name matching algorithm ensures better matches, saving you valuable time and money.

• LexisNexis Analytics

Monitor news across all key media on your high risk suppliers or partners through your own early warning system, set up by our analysts. Automated monitoring enables you to anticipate and mitigate any financial and reputational risks to protect your organisation.

• Instant ID International

Confirm the identity of UK, US and international individuals using the most up to date ID verification information available. Sources include electoral roll and passport data.

Lexis®PSL Bribery and Corruption Toolkit

Available as part of the LexisPSL Company Commercial and In-house Counsel modules.

Our team of expert lawyers and contributors from 25 Bedford Row have put together the Lexis®PSL Bribery and Corruption toolkit, which features key resources and practical guidance via an easy-to-use online platform. These resources include legislation, sample policies, current awareness updates, practice notes, precedents, checklists, country profiles and much more.

For more information, please call us on **020 7400 2984** or send an email to bribery@lexisnexis.co.uk

Lissack and Horlick on Bribery

Written by expert practitioners in white collar international crime, with magic circle and FCPA practitioner contributions, Lissack and Horlick on Bribery is an authoritative and accessible work with a clear emphasis on all practical issues related to anti-corruption compliance.

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For further information or to order your copy go to www.lexisnexis.co.uk/legal and use response code IN12546.

About LexisNexis Risk Solutions

LexisNexis has a world-class reputation for providing professional firms with critical business tools. For over 30 years we have been pioneers in risk management and intelligence.

LexisNexis offers comprehensive solutions to meet your third party, employee screening and ongoing monitoring needs. Combining unrivalled content with the latest technology, our due diligence and identity verification tools enable you to safeguard your reputation, reduce financial risk and add value to your business.

Our solutions are used internationally by over 75,000 organisations. These include financial services, law enforcement, government, legal and accountancy firms and blue chip multinational companies, including the world's top 5 banks. We help customers to reduce the cost of compliance, fulfil regulatory requirements, enhance decision making and protect their businesses.



Get in touch

To find out more about how LexisNexis can help your business:

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