



# **The UK Bribery Act and what US companies need to know about it**

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## Bribing (s.1)

It is an offence to **offer, promise or give** a **financial or other advantage** to **another person** with the intention of:

- Inducing a person **to perform improperly** a **relevant function or activity**; or
- Rewarding a person for the **improper performance** of a **relevant function or activity**

## Being bribed (s.2)

It is an offence to **request, agree to accept or to accept** a **financial or other advantage** in return for the **improper performance** of a **relevant function or activity**.

## Bribing a foreign public official (s.6)

It is an offence for a person to intend to influence an FPO by **offering, promising or giving** any **financial or other advantage**:

- to an FPO; or
  - to another person at an FPO's request or with an FPO's assent or acquiescence,
- in order **to obtain or retain business or an advantage in the conduct of business.**

## Failure of commercial organisations to prevent bribery (s.7)

A **relevant commercial organisation** is guilty of an offence if **a person associated** with the organisation bribes another person with the intention of either:

- **Obtaining** or **retaining business** for the organisation, or
- **Obtaining** or **retaining** an **advantage** in the conduct of business for the organisation

## “Relevant commercial organisation”

A **relevant commercial organisation** is defined as either:

- A body or partnership **incorporated or formed in the UK** and which **carries on a business**; or
- A body corporate or partnership **incorporated or formed outside the UK** which **carries on a business**, or part of a business, in any part of the UK.

## “Associated person”

Someone who performs services for or on behalf of the organisation e.g.:

- Employees
- Agents
- Subsidiaries
- Consultants
- Joint Venture Partners
- Consortium Partners
- Intermediaries
- Contractors
- Distributors
- Advisers

## The defence to Section 7: adequate anti-corruption procedures in place

It is a defence if the relevant commercial organisation can show that it had in place **adequate procedures** designed to prevent persons associated with the organisation from undertaking corrupt activities.



## What are adequate procedures?

Ministry of Justice Guidance, required by s.9, was (finally) issued on 30 March 2011 and identified six principles for bribery prevention:

1. Proportionate procedures
2. Top level commitment
3. Risk assessment
4. Due diligence
5. Communication (including training)
6. Monitoring and review

[www.justice.gov.uk/guidance/docs/bribery-act-2010-guidance.pdf](http://www.justice.gov.uk/guidance/docs/bribery-act-2010-guidance.pdf)

## Enforcement

Underlying policy of the Serious Fraud Office

Applying the policy by:

- Targeting the real offenders
- Exercising prosecutorial discretion

## Enforcing the Corporate Offence

Serious Fraud Office approach would be influenced by:

- Adequate anti-bribery procedures within the company
- Self-referral by company of discovered bribery

## Facilitation Payments

- Eradication a long-term objective
- Sector initiatives
- Size of payments

## SFO Guidance on Facilitation Payments

- Clear company policy
- Written guidance to employees on procedures
- Procedures being followed by employees
- Recording of payments
- Informing authorities in countries concerned
- Practical steps to curtail such payments

## Gifts and Hospitality

- Must be reasonable and proportionate
- Care needed because a risk area
- Application of common sense

## SFO Guidance on Gifts and Hospitality

- Clear company policy
- Expenditure must fall within policy confines
- Need for expenditure to be proportionate
- Recording of such expenditure
- Receipt of hospitality to be legal in recipient's country

## Liability of senior officers (s.14)

Where an offence is committed under ss.1, 2 or 6 **by a company**, then:

➤ A **senior officer** of the company will be **personally liable** for the offence under ss.1, 2 or 6 if they are found to have **connived in or consented to** the offence and they have a **close connection with the UK**, e.g. British citizen, an individual ordinarily resident in the UK, a body incorporated under the laws of the UK.



## Legal and Other Consequences

- Unlimited fines
- Huge legal costs
- Possible debarment from public contracts
- Up to 10 years in prison
- Affect upon shareholders
- Civil suit
- Difficulty of selling its business if no “adequate procedures”

## Where Next?

- Risk analysis in both public and private sectors
- Particular focus upon third parties
- Update of policies and procedures
- Update of existing training programmes