

Anti-bribery checklist to keep your company and people safe

A Guest Article by Rhys Novak of Speechly Bircham LLP
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The Bribery Act 2010

The Bribery Act 2010 comes into force in April 2011. Are you prepared? The facts are as follows.

- The Act criminalises bribery of and by public officials and private individuals and companies.
- The bribe can be offered or accepted outside the UK.
- The bribe does not need to be accepted.
- The bribe does not need to be in monetary form.
- There is no minimum value for an advantage to count as a bribe.
- Gifts, travel and hospitality could fall foul.
- Facilitation payments (small payments to fast-track a routine governmental action) are not exempt.
- Using an agent to bribe does not protect the principal.
- You can be guilty of aiding and abetting a bribe even where you are not directly involved.
- Local "custom" is no defence.
- "Senior officers" of a company or partnership can be guilty of a criminal offence if a bribe is shown to have been committed with their consent or connivance.
- A corporation or partnership based in the UK, or based elsewhere but doing business in the UK, can be guilty of an offence without any fault on its part if a person associated with that company commits a bribe anywhere in the world and that company does not have "adequate procedures" in place to guard against bribery.

What are "adequate procedures"?

To devise and implement "adequate procedures", you will need to:

- Develop a clear corporate policy (perhaps as part of a wider corporate social responsibility initiative) that helps senior officers and employees to

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recognise corrupt practices and makes it clear that they are unacceptable to the company and illegal. This will require input from a range of company sources and legal advisers.

- Ensure that members of senior management are familiar with the policy, and that it is understood and supported at all levels of the company and throughout the company's international subsidiaries and trading partners.
- Communicate a uniform corporate culture that stresses the policy as a core value.
- Warn your senior officers and employees that violating the policy is a disciplinary offence.
- Put in place positive measures to educate senior officers and employees (do not simply circulate the policy – hold periodic training sessions to reinforce awareness).
- Carry out periodic audits and require annual certificates from relevant personnel on their adherence to the policy.
- Ensure that there are clear, confidential channels of communication for reporting abuse and/or queries, and make sure that you comply with any national legislation for whistleblowers.
- Re-examine anti-bribery monitoring mechanisms and modify the policy if business practices or structures change. Have a roll-out plan prepared for new business or new countries.
- Carry out extensive due diligence on foreign joint venture partners, local business consultants, brokers or agents, and integrate them into the training programme if possible. Avoid middlemen whose integrity is doubtful.
- Ensure that accurate and complete books and records are kept, while considering the impact of relevant data protection legislation.
- Insist that contractors, joint venture partners or suppliers sign up to the anti-corruption policy.
- Be alert to the activities of competitors and encourage employees to report suspected activities of other companies to senior management, who should, in turn, report to enforcement authorities.
- Keep your local embassy informed of your activities in the country in which you are investing.

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What if you suspect bribery?

If you believe one of your senior officers or employees has offered or received a bribe, you will need to act as follows.

- Investigate potential violations quickly and thoroughly. You may wish to instruct legal advisers to do this to generate legal privilege.
- Apply appropriate, fair and consistent disciplinary measures to your senior officer or employee if the policy is violated.
- Consider self-reporting breaches of legislation promptly to the authorities and assist them with their investigations.
- Remedy the offence by terminating the agency contract if the agent has committed the offence, and/or by offering reparations.

Severe penalties

- Under current UK law, the criminal penalty for an individual can be imprisonment for up to ten years and/or a fine with no upper limit.
- Civil penalties are available if you self-report. This can mean that you avoid criminal sanctions and their consequences, such as disbarment from tendering for public sector contracts.
- The FSA and other sectoral regulators can penalise companies and individuals in other ways, such as suspending or barring a person from a particular regulated activity.
- Reputational damage can be worse than all of the above.

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This information was correct to the best of our knowledge and belief at the time it was submitted. It is, however, written as a general guide, and is not intended to apply to specific circumstances. The content should not, therefore, be regarded as constituting legal advice and should not be relied on as such. Accordingly, we recommend that specific professional advice be sought before any action is taken.

If you would like more information on any of the points covered in this Guest Article, please contact **TCii** on **020 7099 2621**.