

Anti- Bribery Policy PD-11

Align Property Partners being local authority owned follow the government guidance.

The Bribery Act 2010 modernises the law on bribery. It comes into force on 1 July 2011. This document offers a quick guide to the things you need to know to prepare your business for implementation. The Government has also produced detailed guidance about the Act and the procedures that organisations can put in place to prevent bribery, as well as a set of illustrative case studies which you may find of further assistance (available here: www.justice.gov.uk/guidance/bribery.htm).

- This Act deals only with bribery – not other forms of white collar crime
- Your organisation may be liable for failing to prevent a person from bribing on your behalf but only if that person performs services for you in business. It is very unlikely therefore that you will be liable for the actions of someone who simply supplies goods to you
- There is a full defence if you can show you had adequate procedures in place to prevent bribery. But you do not need to put bribery prevention procedures in place if there is no risk of bribery on your behalf
- Hospitality is not prohibited by the Act
- Facilitation payments are bribes under the Act just as they are under the old law

What is covered by the Act?

The Act is concerned with bribery. Very generally, this is defined as giving someone a financial or other advantage to encourage that person to perform their functions or activities improperly or to reward that person for having already done so. So this could cover seeking to influence a decision-maker by giving some kind of extra benefit to that decision maker rather than by what can legitimately be offered as part of a tender process.

The Act is not concerned with fraud, theft, books and record offences, Companies Act offences, money laundering offences or competition law. Further detail about what is covered by the Act can be found in 'The Bribery Act 2010 – 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)' – www.justice.gov.uk/guidance/bribery.htm

When could my organisation be liable?

Your organisation could be liable if a very senior person in the organisation (for example, a managing director) commits a bribery offence. This person's activities would then be attributed to the organisation.

Your organisation could also be liable where someone who performs services for it – like an employee or agent – pays a bribe specifically to get business, keep business, or gain a business advantage for your organisation. But you will have a full defence for this particular offence, and can avoid prosecution, if you can show you had adequate procedures in place to prevent bribery (see page 4, ‘What do I need to do to rely on the defence?’ for further information about this defence).

It is important to note that no one can be prosecuted in England and Wales unless one of the two most senior prosecutors (the Director of Public Prosecutions or the Director of the Serious Fraud Office) is personally satisfied that a conviction is more likely than not, and that prosecution is in the public interest.

What do I need to do to rely on the defence?

You will not commit the offence of failing to prevent bribery if you can show that your organisation had ‘adequate procedures’ in place to prevent bribery. What counts as adequate will depend on the bribery risks you face (‘How do I assess risk?’, see page 5) and the nature, size and complexity of your business. So, a small or medium sized business which faces minimal bribery risks will require relatively minimal procedures to mitigate those risks. The following six principles will help you decide what, if anything, you need to do differently:

1 Proportionality: The action you take should be proportionate to the risks you face and to the size of your business. So you might need to do more to prevent bribery if your organisation is large, or if you are operating in an overseas market where bribery is known to be commonplace, compared to what you might do if your organisation is small, or is operating in markets where bribery is not prevalent.

2 Top Level Commitment: Those at the top of an organisation are in the best position to ensure their organisation conducts business without bribery. If you are running a business, you will want to show that you have been active in making sure that your staff (including any middle management) and the key people who do business with you and for you understand that you do not tolerate bribery. You may also want to get personally involved in taking the necessary proportionate action to address any bribery risks.

3 Risk Assessment: Think about the bribery risks you might face. For example, you might want to do some research into the markets you operate in and the people you deal with, especially if you are entering into new business arrangements and new markets overseas (‘How do I assess risk’, see page 5).

4 Due Diligence: Knowing exactly who you are dealing with can help to protect your organisation from taking on people who might be less than trustworthy. You may therefore want to ask a few questions and do a few checks before engaging others to represent you in business dealings.

5 Communication: Communicating your policies and procedures to staff and to others who will perform services for you enhances awareness and helps to deter bribery by making clear the basis on which your organisation does business. You may, therefore, want to think about whether additional training or awareness raising would be appropriate or proportionate to the size and type of your business.

6 Monitoring and Review: The risks you face and the effectiveness of your procedures may change over time. You may want, therefore, to keep an eye on the antibribery steps you have taken so that they keep pace with any changes in the bribery risks you face when, for example, you enter new markets.

How do I assess risk?

Many organisations will face little or no risk of bribery, especially if their business is undertaken primarily in the UK. If you operate overseas, the risks may be higher. Factors

such as the particular country you want to do business in, the sector which you are dealing in, the value and duration of your project, the kind of business you want to do and the people you engage to do your business will all be relevant.

There are simple practical steps you can take to assess and mitigate risks. These are mostly obvious, and are similar to (or even the same as) those you probably take anyway (for example, to make sure you can trust the people you work with). For example, you might use simple internet searches to find out about the levels of corruption or bribery in the particular country you propose to do business in. You could consult UK diplomatic posts or UK Trade and Investment for advice. You could also consult business representative bodies here and in the relevant country for up to date local knowledge. We set out some contacts below including a Government-sponsored Business Anti-Corruption Portal aimed at small and medium sized businesses involved in overseas trade.

Do I need complex procedures in place even if there is no risk?

No. If there is very little risk of bribery being committed on behalf of your organisation then you may not feel the need for any procedures to prevent bribery. If, having assessed the position, there is a risk of bribery then, if you want to rely on the defence, the procedures you adopt should be proportionate to that risk.

There is no need for extensive written documentation or policies. You may already have proportionate procedures through existing controls over company expenditure, accounting and commercial or agent contracts for example. In larger organisations it will be important to ensure that management in charge of the day to day business is fully aware and committed to the objective of preventing bribery. In micro-businesses it may be enough for simple oral reminders to key staff about the organisation's anti-bribery policies.

In addition, although parties to a contract are of course free to agree whatever terms are appropriate, the Act does not require you to comply with the anti-bribery procedures of your business partners in order to be able to rely on the defence.

Do I need to do due diligence on all my suppliers?

You only have to think about doing due diligence on persons who will actually perform services for you, or on your behalf. Someone who simply supplies goods to you is unlikely to do that. It is very unlikely, therefore, that you will need to consider doing due diligence on persons further down a supply chain.

Where you decide to undertake due diligence, how much you need to do will depend on your risk assessment. If you assess the risk as low then all you may need to do is satisfy yourself that people performing services for you (for example, an agent) are genuine and someone you can trust to do your business without bribing. You could do this by making enquiries with business contacts, local chambers of commerce or business associations or via the internet for example.

Where you think the risks are higher, then you may need to do more. You might ask your agent for a CV, financial statements or accounts, and other references. You might then follow those up to ensure they are genuine. The aim is to satisfy yourself that the person that is to represent your organisation can be trusted not to use bribery on your behalf, but this does not necessarily require sophisticated and costly techniques. Personal contact, allowing you to assess the person for yourself, can be very helpful.

Do I need to employ consultants or lawyers to provide advice on the risks I face, the procedures I adopt, or the level of due diligence I should undertake?

No. There is no duty to engage lawyers or consultants in helping you assess what risks you face, what procedures you might adopt or what sort of due diligence you undertake - especially where you consider the risks to be low or non-existent. The Act does not require external verification of any bribery prevention measures you have put in place.

Can I provide hospitality, promotional or other business expenditure under the Act?

Yes. The Government does not intend that genuine hospitality or similar business expenditure that is reasonable and proportionate be caught by the Act, so you can continue to provide bona fide hospitality, promotional or other business expenditure.

In any case where it was thought the hospitality was really a cover for bribing someone, the authorities would look at such things as the level of hospitality offered, the way in which it was provided and the level of influence the person receiving it had on the business decision in question. But, as a general proposition, hospitality or promotional expenditure which is proportionate and reasonable given the sort of business you do is very unlikely to engage the Act. So you can continue to provide tickets to sporting events, take clients to dinner, offer gifts to clients as a reflection of your good relations, or pay for reasonable travel expenses in order to demonstrate your goods or services to clients if that is reasonable and proportionate for your business.

What about facilitation payments?

Facilitation payments, which are payments to induce officials to perform routine functions they are otherwise obligated to perform, are bribes. There was no exemption for such payments under the previous law nor is there under the Bribery Act.

As was the case under the old law, prosecutors will carefully consider all the facts and surrounding circumstances of cases which come to their attention to assess whether a payment amounts to a bribe and, if so, whether a prosecution is in the public interest.

You can continue to pay for legally required administrative fees or fast-track services. These are not facilitation payments.

This policy applies to all those employed by Align Property Partners

Signed:



Managing Director

Align Property Partners

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