



Field Fisher Waterhouse



Integrity

Bribery Act Procedures

The risk of criminal liability for your business

The Bribery Act 2010 which comes into force on 1 July 2011 creates the most onerous anti-corruption regime in the world. Businesses operating in the UK face criminal liability for bribes paid by their employees or paid by their business partners, wherever in the world the bribe is paid. The Act raises the prospect that businesses will face prosecution in relation to bribes they do not know about, paid by individuals overseas. The penalty will be an unlimited fine.

The Act provides that it will be a defence for a business to show that it had in place "adequate procedures" to prevent bribery taking place. The UK government has published guidance on what measures are likely to constitute "adequate procedures".

In light of the specific defence in the Act, businesses would be well advised to implement "adequate procedures". Those businesses that do not implement the recommended procedures will not be able to defend themselves properly if faced with a corruption prosecution and they will run a greater risk of conviction and penalties.

Our service

Our service addresses all of the 6 principles which the government guidance requires a business to adopt to demonstrate "adequate procedures", namely:

- Proportionate procedures
- Top level commitment
- Risk Assessment
- Due diligence
- Communication (including training)
- Monitoring and review

At the outset we brief you on the provisions of the Act and obtain relevant information from you about your business in a focussed and efficient manner. We work with you to identify general risk areas and the existing controls and procedures you have in place.

Galileo and Newton are just two of the enquiring minds who have been instrumental in the development of the telescope. Being empowered by a passion to see further and know more leads to the most inspirational achievements.



Magnifying glasses have been used in countless endeavours, from studying cells to gazing at stars. Sometimes, it's only by scrutinising details that you can search out the most appropriate solution.



Thereafter our service includes the following stages:

- **Detailed risk assessment.** We review your current controls and procedures, gather information from across the business, speak to your key personnel and consider the areas of your business that may be particularly exposed to corruption risk.
- **Due Diligence.** We advise you on the levels of due diligence you need to conduct on your business partners and market operations. The advice is tailored to the corruption risk each business target or market poses to your business. We provide a tiered due diligence service so that due diligence can be completed to the appropriate level in a cost effective manner.
- **Policies and Procedures.** We advise you on the policies and procedures that need to be implemented if your business is to avail itself of an adequate procedures defence. We can assist you with drafting policy documents and work with you to tailor procedures to your business.
- **Communicating and Monitoring.** Finally we provide you with a detailed and practical action plan for communicating your commitment and procedures, and monitoring the ongoing adequacy of your procedures across the business.

Our recent experience

- We advised a leading international retailer on their anti-corruption procedures.
- We advised an international oil company with headquarters in the UK on its compliance procedures in light of the Bribery Act 2010.
- We advised a Middle Eastern corporate on an internal investigation following the discovery of irregular payments.
- We advised a services company in relation to “self-reporting” to the Serious Fraud Office in light of the acquisition of a business with operations in Nigeria.
- Our lawyers advised a major UK corporate, which had been fined through its US operations for a breach of the US Foreign Corrupt Practices Act 1977, on issues arising from its contractual arrangements in Iran.

Why choose us

We provide a one-stop shop for your "adequate procedures" solution. We recognise that the implementation of "adequate procedures" requires specialist skills which are not available from one source, and that you may already possess some of these skills within your business. We can work with your existing professional advisors and in house compliance personnel, or can introduce you to experts in other fields that we have partnered with, to provide a package which offers you an adaptable turn key solution. We believe this is unique.

We provide a cost effective service, with certainty as to legal fees based on an assessment of the scope of the work.

As lawyers we can advise you on the Bribery Act in a manner which attracts legal advice privilege thereby helping you to maintain confidentiality.

We are acknowledged leaders in the field, and you also have the reassurance of working with our selected partners, who are experts.

We are recognised experts in dealing with fraud and corruption issues, from conducting internal investigations, through to interfacing with prosecutorial and regulatory authorities around the world. We can help you achieve the best possible outcome should a potential bribery or corruption issue arise in your business.

Key Contacts



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Bribery and corruption: Corruption clampdown - corporate Q&A

The Bribery Act 2010 - what new anti-corruption legislation could mean for your company.

I have no intention of paying a bribe. Why would this legislation affect me or my company?

Because the legislation imposes criminal liability on a commercial organisation that fails to prevent bribery committed by anyone providing services on its behalf. This is known as 'the corporate offence'. The penalty is an unlimited fine.

What if the bribe was paid overseas?

The bribe can take place anywhere in the world and still be caught by the legislation. Companies operating in jurisdictions susceptible to corruption therefore need to pay special attention.

Would my organisation be liable if a bribe was paid by an agent?

Quite possibly. Under the legislation, a company commits an offence if any person performing services on its behalf pays a bribe in connection with its business. That person may be the company's employee, agent or subsidiary, but "performing services" is not defined, and may, in appropriate cases extend to less proximate relationships.

What if nobody in my organisation knew that a bribe had been paid?

Lack of knowledge of the bribe is not a defence. As things stand, corporates will be strictly liable for bribes paid on their behalf.

My company is not registered in the United Kingdom. Do I need to be aware of the legislation?

Yes. The corporate offence captures all commercial organisations "conducting business" in the UK.

Are there any defences?

Yes. It is a defence for a commercial organisation to show it had in place 'adequate procedures' designed to prevent bribery being committed on its behalf. Businesses will need to consider how they can put 'adequate procedures' in place.

My company is compliant with the US Foreign Corrupt Practices Act 1977 (FCPA).

Do I need to pay attention to the UK legislation?

Yes. The UK legislation is more stringent than the FCPA in a number of respects. In particular, the legislation is not limited to bribery of foreign public officials, there is no carve out to permit facilitation payments and the act of bribery does not have to have a connection to the jurisdiction. The UK corporate offence will apply to all corrupt payments, whether in the public or private sector, anywhere in the world.

Is there anything my company can do now?

Companies which start to consider now internal procedures to prevent bribery will be at an advantage when the corporate offence comes into force (which is expected in 2011). They will be well placed to demonstrate that they have "adequate procedures" in place to combat the risk of corruption.



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Expertise

Tony is head of the Fraud and Anti Corruption team at Field Fisher Waterhouse LLP. He is a recognised as an expert in the legal directories, specialising in investigations and claims arising from fraudulent conduct, focussing on corruption, tracing assets, theft of confidential information and other assets, money laundering, and the interplay between civil and criminal proceedings. Tony has acted in many high profile, complex and reported cases, which are often multi-jurisdictional.

A leading directory, Chambers, comments, "*Tony Lewis is acclaimed for the 'unerringly accurate anticipation of opposition moves' that keeps him 'one step ahead of the game'*". He engenders further praise for his smooth running of cases and ability to '*seamlessly pull together complex concepts and diverse teams of professionals*'. The Legal 500 says that he "*impresses clients*".

Tony is a regular speaker on fraud and corruption issues. Recent engagements include the London Fraud forum annual conference, the Lexis Nexis Anti-Money Laundering conference, the Lexis Nexis International Litigation and Fraud Conference, Central Law Training, and a series of talks for R3, the organisation for business recovery professionals.

Tony has also had numerous articles published in on fraud and corruption issues, most recently in the Lawyer, Fraud Intelligence, European Lawyer and the IBA Litigators' Newsletter.

Tony is also an active member of various professional organisations, including the Commercial Fraud Lawyers' Association, the International Bar Association, the London Fraud Forum, the Commercial Litigators' Forum and the Proceeds of Crime Lawyers' Association.



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Alexandra is a member of the Fraud and Anti Corruption team within the Dispute Resolution business unit. She advises on a wide range of high-value contract and corporate disputes and specialises in fraud and anti-corruption work and associated professional negligence claims. Alexandra has significant experience in guiding clients through investigations and asset recovery, both in the UK and abroad. She advises clients on obtaining and enforcing freezing orders, search and seizure orders and other injunctions.

Alexandra advises on corruption legislation and its impact on clients' anti-bribery policies and procedures. She works with companies of all sizes but her focus is on corporate clients with an international reach and she has considerable experience of coordinating advice which impacts on numerous jurisdictions, particularly companies in the construction, oil & gas and mining sectors.

Alexandra currently acts for several international clients and trade bodies in the mining and oil and gas sectors and in the construction sector advising them on their anti-corruption policies and procedures.

Alexandra is a recognised expert in the field of anti-corruption work. She is regularly invited to speak at client and trade seminars on the Bribery Act and its implications for business. By way of example, she was invited by the Major Energy Users Council to speak at the 2010 National Energy Management Exhibition.

Alexandra regularly writes articles on the Bribery Act for the trade and legal press. She has articles published in Fraud Intelligence, New Law Journal and Utility Week. She was recently quoted in an article on the Bribery Act published in the Indian Business Law Journal.

Alexandra's corruption related experience includes:

- advising the UK Government on the anti-corruption terms and conditions required in the third party contracts for a large telecommunications project including audit, indemnity and termination rights clauses.
- advising an AIM listed company on the anti-corruption clauses in their Executive's Service Agreements
- advising another AIM listed company on anti-corruption clauses for its Director's Duties policy document.
- advising a trade body in the construction industry on their Anti-bribery guidance to members and their internal procedures.