

Definition

Bribery can be defined broadly as the receiving or offering/giving of any benefit (in cash or in kind) by or to any public servant or office holder or to a director or employee of a private company in order to induce that person to give improper assistance in breach of their duty to the government or company which has employed or appointed them. An occasion where such assistance might be sought would be in relation to the award of an export contract where a bribe might be used to influence the tendering process. Bribes may also be paid to individuals who, although not holding an appointment in a relevant company or national government, are nevertheless able to exert influence over such an appointee by reason of some personal, business or other relationship. Bribes may be paid in advance, as an inducement to a person to act improperly, or retrospectively pursuant to a previous promise, understanding or agreement. (This is not a legal definition.)

The Civil Service Code, which obliges officials to report evidence of criminal or unlawful activity, can be viewed at http://www.cabinetoffice.gov.uk/propriety_and_ethics/civil_service/civil_service_code.aspx. Civil servants and locally engaged employees in British Diplomatic Posts overseas who, in the course of their duties, become aware of, or receive information relating to, acts of bribery committed by UK nationals or companies incorporated in the UK must report the matter to London, either via the Anti-Corruption Secretariat, BERR, or direct to the appropriate UK authority. BERR transmits such reports to the Serious Fraud Office so that the appropriate UK authorities can decide whether to pursue an investigation.



Foreign &
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London

DEPARTMENT FOR BUSINESS
ENTERPRISE & REGULATORY REFORM



www.berr.gov.uk

This leaflet has been prepared in conjunction with the Home Office (<http://www.homeoffice.gov.uk>), Export Credits Guarantee Department (see <http://www.ecgd.gov.uk>) and the Department for International Development (see <http://www.dfid.gov.uk>).

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UK BRIBERY AND CORRUPTION LAW

Bribery is not only illegal, but also bad for business. A culture of corruption is a disincentive to trade and investment and payment of bribes is unacceptable behaviour for UK companies or nationals. By upholding the law and promoting transparency in business activities, British companies enhance their own reputations and staff morale.

The economic damage bribery can wreak on a society is well understood. Increasingly, justice systems throughout the world are willing and able to take action against acts of corruption.

Overall, the UK has a good reputation for openness and honesty. The UK Government wants to build on this by stamping out those acts of bribery which may be committed by a minority of UK companies and nationals.

Part 12 of the Anti-terrorism, Crime and Security (ATCS) Act 2001 includes legislation on bribery and corruption. This came into force on 14 February 2002 to deter UK companies and nationals from committing acts of bribery overseas. These changes to the UK law on corruption and the full legislation are available on the following website:
www.hmso.gov.uk/acts/acts2001/20010024.htm

The government intends to bring forward a new bribery bill to be published in draft during the 2008/09 session of Parliament, which would reform the criminal law of bribery to provide for a new, modern and consolidated scheme of bribery offences and to equip prosecutors and courts with the tools they need to tackle bribery of all kinds. The government has also extended the powers of the Serious Fraud Office through the Criminal Justice and Immigration Act 2008, to require documents at earlier vetting stages of foreign bribery cases.

Since 14 February 2002, UK-registered companies and UK nationals can be prosecuted in the UK for an act of bribery committed wholly overseas.

Frequently Asked Questions about bribery and corruption

1. What were the changes to UK law with effect from 14 February 2002?

The ATCS Act makes two main changes to the law:

It puts beyond doubt that the pre-existing offences of corruption apply to the bribery of foreign public officials or office holders including foreign MPs, Judges, Ministers and 'agents' whether public or private, as well as those who work in the UK public sector or for UK 'principals'. ('Agent' and 'principal' are used here in the sense given them by the Prevention of Corruption Act 1906: essentially an 'agent' is any person who is employed by, or performs functions for, another; and the 'principal' is his employer or the person for whom he performs functions). It gives UK courts jurisdiction over crimes of bribery committed wholly overseas by UK nationals and by bodies incorporated under UK law.

2. What is a UK company's liability for its overseas subsidiaries?

Under UK law a company can be criminally liable if it aids or abets an act of bribery by any of its overseas subsidiaries or if it conspires with an overseas subsidiary to commit such an act. (This would include directing a subsidiary to pay a bribe or providing the necessary funds to a subsidiary, knowing that they were to be used for a bribe.)

3. What are the criteria for prosecutions?

Under the current legal framework, prosecutions under Part 12 of the ATCS Act may only be brought with the consent of the Attorney General. However, under new proposals currently before Parliament, the consent requirement will be devolved to the Director of Public

Prosecutions or equivalent, with the Attorney General retaining a very limited power of direction in relation to individual cases posing a threat to national security. Currently, when deciding whether to consent to any potential prosecution, the Attorney General will consider whether there is sufficient evidence to provide a realistic prospect of conviction and, if so, whether the proposed prosecution is in the public interest.

4. Why doesn't the UK law exclude 'facilitation payments'?

We do not think it is desirable for UK law to apply differently overseas from the way it applies in the UK. We do not tolerate the making to UK officials of 'facilitation payments' – payments to induce public officials to perform regular functions such as issuing licences or permits (not a legal definition). The making of such payments will most likely be illegal under the law of the country concerned.

5. What is the maximum penalty for this offence?

An unlimited fine and/or 7 years in prison.

6. Won't UK business lose out to rival foreign companies who pay bribes in order to gain contracts?

UK companies may lose some business by taking this approach, but equally there will be those who choose to do business with UK companies precisely because we have a no-bribery reputation, and the costs and style of doing business are more transparent. Companies based in other OECD countries and elsewhere are subject to similar laws.

If you have concrete evidence of a foreign rival company acting in a corrupt fashion, then you should alert the local judicial authorities and/or the authorities of the country where the company is registered. If you report it to the nearest British Diplomatic mission, they will consider how best to take it forward. This might include contacting the

local authorities, contacting that country's local mission or suggesting to BERR London that we raise the matter at the OECD Working Group on Bribery.

7. I am forced to make corrupt payments and pay bribes in order to do business. What do I do?

Do not commit criminal offences. The whole issue of bribery and corruption is a difficult one, but we are determined to tackle it. We do not condone involvement in corrupt practices.

Contact the local UK mission. They may be able to take up your case with the authorities, including to help you resist requests for facilitation payments. They might also suggest joint action, for example with other EU/OECD/international donor missions, to increase the lobbying weight of the intervention.

The legislative changes of the ATCS Act give UK companies and nationals a stronger defence against attempts to extort bribes from them. Explain that you are liable for prosecution in the UK under UK law; that your hands are tied; and that your company has strict anti-corruption guidelines.

We do not know of any country which does not criminalise the bribery of public officials within its own borders. The penalties can be severe. If you are requested or required to pay a bribe then you should refuse to do so. Instead, you should report this matter to the law enforcement authorities of the country concerned and to any other appropriate authorities.

8. Bribery and corruption are endemic in many parts of the world. What are you doing about the wider problem?

The UK is actively involved in international initiatives such as the OECD Convention against Bribery of Foreign Public Officials in International Business Transactions, which is part of the international effort to stamp out corruption in world trade. All OECD members, which include the top

eleven major exporting countries (USA, UK, Germany, France, Japan, Italy, Canada, Korea and the Benelux), have legislation in place against bribery of foreign public officials which meets OECD Convention requirements, full details of which are available on www.oecd.org/corruption. The UN Convention against Corruption was agreed at the end of 2003 and has been signed and ratified by over 100 countries, including the UK (<http://www.unodc.org/unodc/en/corruption.html>). It came into force in December 2005. We are also involved in GRECO (the Council of Europe anti-corruption body), which is helping its members develop effective anti-corruption systems (www.greco.coe.int). We also support business-led initiatives which help fight corruption such as the UN Global Compact (www.unglobalcompact.org), and the Aerospace and Defence Industries Association of Europe's Common Industry Standards (CIS) and actively promote the OECD Guidelines for Multi-national Enterprises (www.csr.gov.uk).

Through multilateral and bilateral assistance programmes we support anti-corruption work as part of broader efforts to improve political and economic governance and stability. Only through sustained effort can we help bring about the cultural and administrative changes necessary in some countries to make a tangible difference to the business environment.

In addition, we work with business and professional bodies in the UK to help them develop anti-bribery guidance in their sectors, as well as offering advice on tackling bribe solicitation.

A good example of a sector-specific approach is the Extractive Industries Transparency Initiative (EITI), led by the UK. Corruption can be particularly rife in extractives-based developing economies where taxes and royalties paid to public authorities by oil, gas and mining companies are often not reported publicly. EITI seeks to create greater transparency and accountability through joint action by governments, extractive companies and local and international civil society. See www.eitransparency.org for further details.