



**Bribery and
corruption update**

28 February 2018

The webinar will begin shortly...

Business & Management
20 minute lunch



corporatepartnerships@moneycorp.com



Webinar

Bribery and corruption

Practical steps to reduce your business risk

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Wednesday 28 February 2018



Partner
Steptoe & Johnson

Purpose of today's webinar

- Provide an overview of UK bribery and corruption law
- Highlight some examples of recent enforcement action
- Outline some practical steps to reduce the likelihood of your business breaking the law



Who we are

- We are the UK's leading anti-fraud charity and voice of the counter fraud community.
- We work to improve fraud resilience across the UK and around the world by championing best practice and (where appropriate) law reform.
- Our members cover the full spectrum of counter fraud professionals.

Working together to defeat fraud

Overview of the Bribery Act 2010

- Not retrospective – Only cases after 1 July 2011
- ‘Active’ and ‘passive’ bribery is illegal
- ‘Public sector’ and ‘private sector’ bribery is illegal
- Corporate offence of ‘failure to prevent bribery’
- Company is responsible for bribes by employees/subsidiaries/agents
- Jurisdiction extends to non-UK corporates who carry on business or part of a business in the UK
- Incentivises compliance, co-operation, self-reporting and settlements.



US Foreign Corrupt Practices Act

First foreign bribery statute enacted 1977

Covers public sector bribery

Facilitation payments exempt

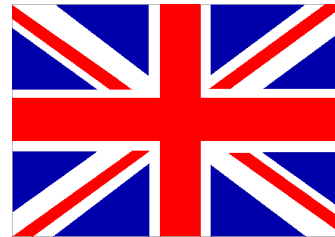
Respondeat superior

DoJ/SEC Resource Guide

No compliance programme defence

Significant enforcement

US\$bn fines



UK Bribery Act

Effective July 2011

Covers both public and private sector

Facilitation payments not exempt

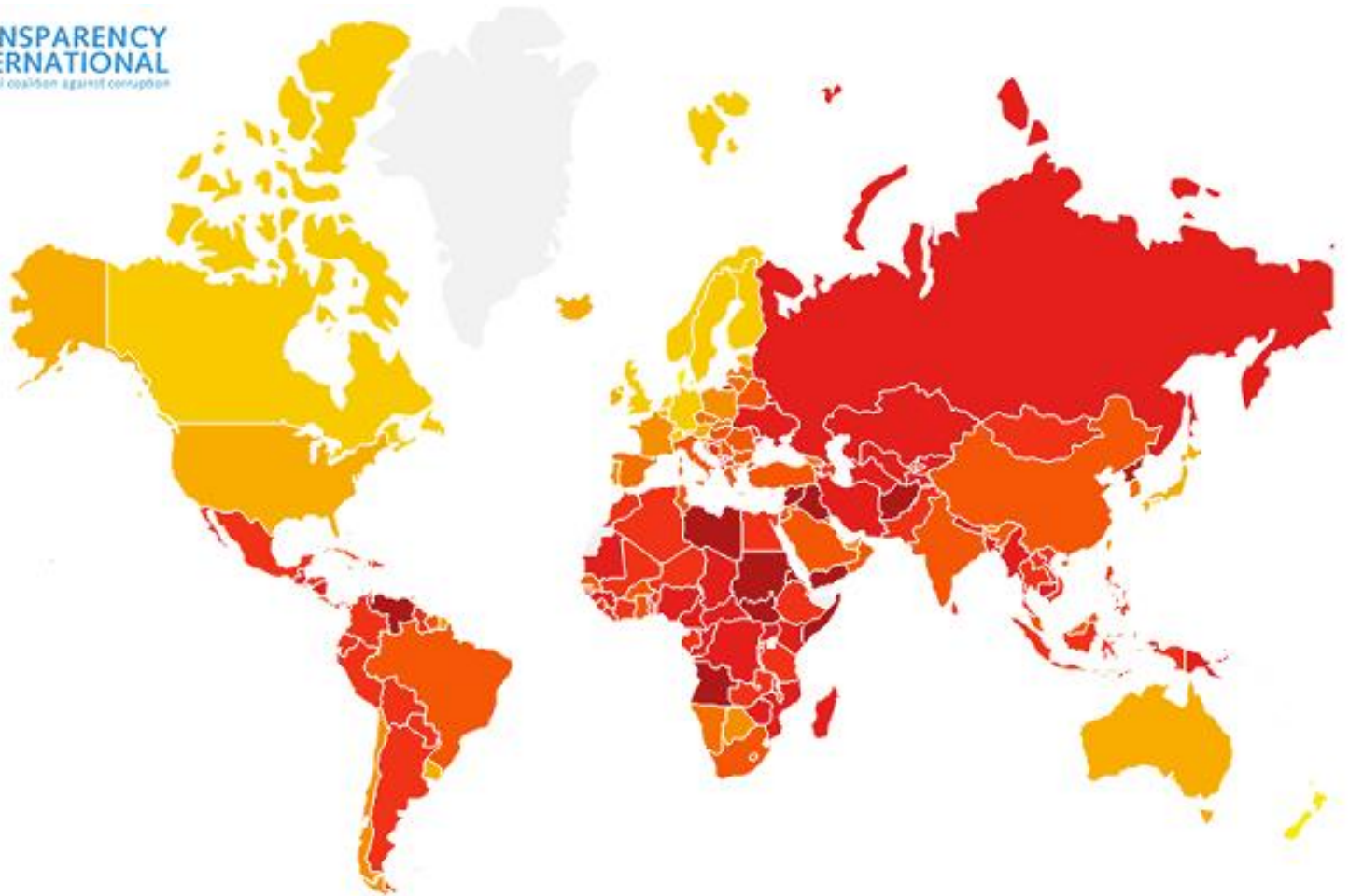
Directing mind & strict liability

MoJ guidance

Adequate procedures defence

Limited enforcement / convictions /
fines (but increasing ...)

Rolls Royce £497m



SFO agrees first UK DPA with Standard Bank

**Sweett Group PLC sentenced
and ordered to pay £2.25m**

Enforcement trends

- Incentives for whistle-blowers
- International co-operation (intel & info-sharing)
- Global investigations / prosecutions / settlements
- Scrutiny of gatekeepers and enablers
- Similar international legal & procedural changes

— AML – FATF, EU 4th ML Directive: POCA

— ABC – OECD

— Asset recovery – Criminal Finances Act 2017

- Incentives for self reporting & settlements

**Rolls-Royce apologises after
£671m bribery settlement**

The Criminal Finances Act 2017 overhauls the UK anti-money laundering and confiscation regime and makes it much easier for authorities to prosecute tax evasion. This guide provides a general overview of the legislation for those who are new to the subject.

INTRO

AN INTRODUCTION TO UK LEGISLATION | DECEMBER 2017

Criminal Finances Act 2017

INTRODUCTION

The Criminal Finances Act 2017 (CFA 2017) is a new piece of legislation that covers a wide range of financial crime, including money laundering, tax evasion, and bribery.

The legislation is designed to provide a comprehensive framework for the prosecution of these crimes.

It also provides for the recovery of assets and the imposition of penalties on those who are found guilty of these crimes.

The legislation is a significant step forward in the fight against financial crime in the UK.

It is a key part of the government's strategy to tackle financial crime and protect the integrity of the financial system.

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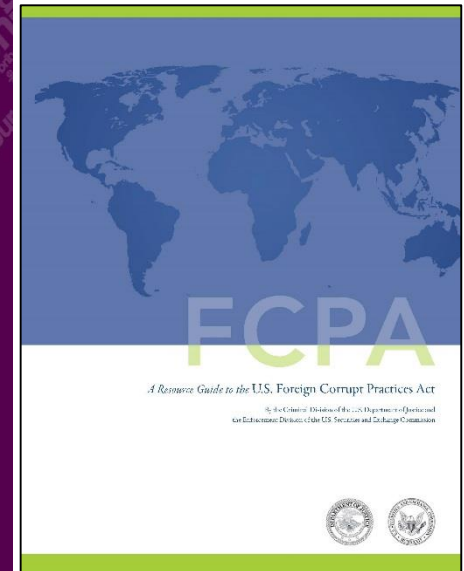
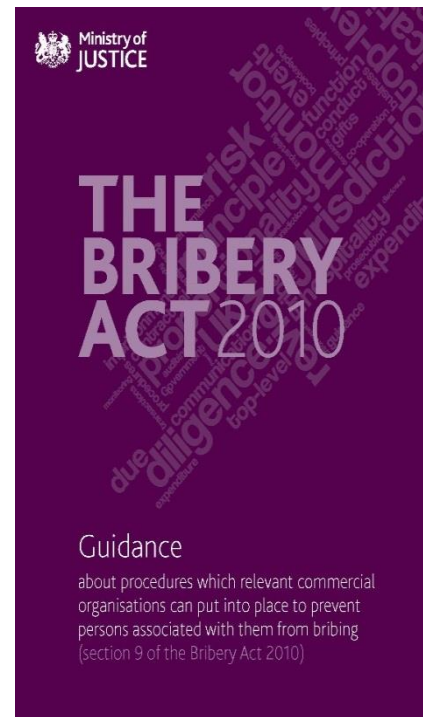
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Adequate procedures to prevent bribery



Visit:
www.justice.gov.uk and www.justice.gov

Corruption indicators

- Abnormal cash payments, high commission payments
- Inflated invoice prices, unexplained expenses
- Lavish gifts & hospitality, overseas trips, payment of education fees
- Payments to offshore accounts, payments to 3rd party countries
- Urgent or advance payments for bringing forward orders
- Agents with little or no subject knowledge
- Agents or intermediaries with government connections / local expertise
- Lack of evidence of work done by agents
- Limited due diligence or independent oversight of selection process, work carried out, or of value for money
- Bypassing normal tendering or contract procedures

Practical steps to reduce the likelihood of your business breaking the law

Prevent

- Regularly risk assess, mitigate, review and update
- Create a culture of compliance

Detect

- Train/incentivise staff, agents and intermediaries to be ethical and report internally
- Audit, audit, audit – companies must investigate quickly/promptly

Remediate

- Encourage early liaison with compliance / external experts
- Build a positive/proactive relationship with prosecutors/regulators – consider self-reporting to authorities



Free resources at www.fraudadvisorypanel.org

Any commercial organisation formed, or carrying out business, in the UK is now expected to have policies and procedures in place to **prevent bribery and corruption**. This guide explains what these are and how you can implement them.

BRIEF

A BEGINNER'S GUIDE TO ANTI-FRAUD MEASURES | MAY 2018

Adequate procedures to prevent bribery and corruption

WHAT ARE ADEQUATE PROCEDURES?

Any commercial organisation, whether any incorporated body or partnership formed, or carrying out business, in the UK is now expected to have adequate procedures in place to avoid falling foul of the **Bribery Act 2010**.

The UK Ministry of Justice has published guidance on the **Bribery Act 2010** to help organisations design and implement these procedures using a risk-based approach which recognises that the threat from bribery and corruption varies across jurisdictions, business sectors, business partners and transactions.

The guidance is based around six principles to enable flexible and proportionate procedures to be put in place depending on the size of the company and its exposure to situations where bribery or the expectation of financial incentive or reward are recognised as risks.

Following the guidance can reduce the risks associated not only with bribery and corruption, but also with fraud and financial crime.

WHY ARE THEY IMPORTANT?

Under the **Bribery Act 2010** a commercial organisation with a view to the UK commits an offence if it 'associated person' performs a person performing services for or on its behalf (bribe) and the person in order to obtain or retain business or gain an

advantage. However, an organisation has a defence if it can prove that it had adequate procedures in place to prevent such conduct.

A commercial organisation is defined as: a body or partnership incorporated or formed in the UK; or a business, or body or partnership incorporated or formed outside the UK that carries on a business or part of a business in the UK.

This broad definition includes charities, schools and universities and public bodies as long as they are either incorporated or a partnership and engaged in commercial activities.

THE SIX PRINCIPLES

Principle 1: proportionate procedures
Anti-bribery procedures should be proportionate to the size, nature and the nature, scale and complexity of the organisation's activities. They should be clear, practical, accessible, effectively implemented and enforced.

Principle 2: top-level commitment
Senior management (as a board of directors, the owners, or any other equivalent body or person) is committed to and actively in preventing bribery, willing to 'tone it down' in which the practice is never acceptable.

Principle 3: risk assessment
The organisation makes regular, well-informed and clearly

documented assessments of the internal and external bribery risks it faces.

Principle 4: due diligence
The organisation applies due diligence procedures to people who perform, for or on its behalf as a means of identifying and controlling identified risk.

Principle 5: communication (including training)
Through internal and external communication and training, management seeks to ensure that prevention is embedded and understood throughout the organisation.

Principle 6: monitoring and review
Anti-bribery procedures are monitored and reviewed so that they can be improved where necessary.

CREATING A COMPLIANT POLICY

It is important to have a written policy which sets out your organisation's commitment to the anti-bribery and corruption legislation and the responsibilities for its prevention, detection, investigation and response. It should also communicate an important message to staff and third parties that such behaviour is unacceptable and will not be tolerated. The policy should: promote the anti-bribery and corruption legislation; set out the public materials; set out the consequences of conduct of employees and representatives; and address each of the six principles.

Furthermore, it must inform all commercial relationships and demonstrate that the business has thought carefully about bribery and has done its best to address and overcome any risks.

CREATING AN ANTI-BRIBERY FRAMEWORK AND CONDUCTING CORRUPTION RISK-FREE BUSINESS

People
Your anti-bribery policy should be supported at the most senior level with a board member or senior manager appointed with overall responsibility for it. The policy should be communicated throughout the organisation and to business partners, potential partners and third parties involved in contracts that is particularly important for overseas employees, agents, joint venture partners or suppliers, especially those working in high-risk countries.

Invest adequate resources in training. It should be focused on employees offering frontline services or interacting heavily with business partners or third parties (e.g. those who work in the high-risk areas, not necessarily from the top of an organisation down and regularly refreshed and updated to reflect the changing risk profile of the organisation). There also needs to be a simple, safe way to report incidents of bribery, suspected or actual bribery that all staff members are aware of and to trust.

UK anti-bribery legislation is among the strictest in the world and imposes serious sanctions upon those who fail to follow its wide-ranging powers. This guide provides an overview of the legislation for those who are new to the subject.

BRIEF

AN INTRODUCTION TO UK LEGISLATION | MAY 2016

Bribery and corruption

3RD EDITION

WHAT IS BRIBERY AND CORRUPTION?

Definitions of 'bribery' and 'corruption' vary. Some of the most commonly used international definitions are provided by 'Transparency International' in the **Anti-Corruption Risk Management Guide** (July 2009).

Bribery

The offering, promising, giving, accepting or soliciting of an advantage or an incentive, for an action which is illegal, unethical or a breach of trust. Incentives can take the form of gifts, loans, fees, rewards or other advantages (taxes, services, contracts, etc.).

Corruption

The misuse of entrusted power for personal gain. Corruption can be described as grand, petty and political, depending on the amounts of money lost and the sector where it occurs.

WHEN IS AN OFFENCE COMMITTED?

A bribery offence is committed in the following circumstances:

- When a person gives, promises or offers a bribe to another person in the UK or abroad with the intention to induce a person to perform a relevant function improperly (s.1, s.2).
- When a person requests, agrees to receive or accepts a bribe from another person in the UK or abroad with the intention that a relevant function should be performed improperly (s.2, s.3).

The Act applies to England and Wales, Northern Ireland and Scotland, and covers a broad range of offences in the UK and abroad.

WHAT IS THE ACT?

The Act came into force on 1 July 2010 and is not retrospective. It means that any misconduct committed before this date is governed by the old regime comprising the common law offence of bribery, the Public Bodies Corrupt Practices Act 1889, the Prevention of Corruption Act 1906-1998, and the Anti-Fraud (Crime and Security) Act 2001.

WHY DOES IT APPLY TO?

The legislation applies to individuals, namely UK nationals and those with a close connection to the UK, and companies which are incorporated in the UK. The 'failure to prevent bribery' offence only applies to organisations (including those incorporated elsewhere if they have an 'associated person' in the UK).

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THE IMPROPER PERFORMANCE

The improper performance referred to in the Act is a breach of an expectation that a person will act impartially and in good faith. The performance standard is commonly referred to as 'what a reasonable person in the same position would expect in relation to a performance, activity or function'.

WHY DOES IT APPLY TO?

When a person bribes a foreign public official, with the intention to influence that person in their capacity as a foreign public official, and with the intention to obtain or retain business or an advantage in the conduct of business, the offence is committed. The offence can be a legal, executive or judicial function, exercise a public function on behalf of the state or territory or be an official or agent of an international organisation (s.1, s.2).

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Whenever an organisation transacts with a third party there may be a risk of being exposed to financial and reputational losses resulting from fraudulent conduct or unethical behaviour. This guide explains how to conduct basic **due diligence on UK-based third parties**.

BRIEF

A BEGINNER'S GUIDE TO ANTI-FRAUD MEASURES | DECEMBER 2015

Due diligence on UK-based third parties

WHAT IS DUE DILIGENCE?

Due diligence is the process of obtaining information about a third party before you conduct business with a third party for the first time - even if they have been introduced by a trusted individual or organisation.

WHY IS IT IMPORTANT?

Conducting due diligence is important to help protect against losses due to fraud, reputational damage through dealing with unscrupulous third parties and credit risk.

KEY ELEMENTS OF EFFECTIVE DUE DILIGENCE

It is most important to have a written policy for due diligence. It should set out: the criteria that will be conducted and who will perform them;

WHY DOES IT APPLY TO?

- How information will be obtained and for how long;
- Any industry, statutory or regulatory obligations that need to be complied with;
- The frequency of ongoing monitoring;
- The frequency of relationship and agreement reviews.

WHO IS RESPONSIBLE?

The more people involved in the due diligence process, the more likely it is to be effective. Due diligence is usually divided to

ensure that no one individual is responsible for the entire due diligence process from start to finish.

Directors and/or trustees (on the case of a company) due diligence strategy and the policy and procedures which underpin it.

WHY DOES IT APPLY TO?

It is good practice to check each and every customer, supplier or other third party that may support your business (e.g. a sales agent or outsourcer). The process should be applied consistently as part of business as usual procedures, regardless of the nature of the business relationship, and not be seen as an optional 'checkbox'.

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