



United Kingdom - Global bribery offenses guide

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Por Laura Ford

1. What is the legal framework governing bribery in the UK?

The Bribery Act 2010 (UKBA) is the key piece of UK legislation governing bribery. It applies to conduct occurring from the implementation date of July 1, 2011. Older conduct occurring entirely before that date will be assessed by reference to the common law and a series of complex and overlapping pieces of legislation.

2. What constitutes a bribe?

A bribe is defined under the UKBA as a financial or other advantage offered, promised, given, requested, agreed to be received or received, with the intention of inducing or rewarding the improper performance of a relevant function or activity.

A relevant function or activity is one which is a function of a public nature, is connected with a business, is performed in the course of a person's employment, or is an activity performed by or on behalf of a body of persons (whether corporate or unincorporate) and the person performing the function or activity (i) is expected to perform it in good faith (ii) is expected to perform it impartially or (iii) is in a position of trust by virtue of performing it.

3. What are the principal offences under this legal framework?

- Offering, promising, or giving of a bribe to another person (section 1);
- Requesting, agreeing to receive, or accepting a bribe (section 2);
- Bribery of a foreign (non-UK) public official (section 6); and
- Failure by commercial organizations to prevent bribery by their associated persons* committed with the intention of obtaining or retaining business or an advantage in the conduct of business for the commercial organization (section 7).

**For the purpose of section 7, a person is associated with a commercial organization if (disregarding any bribe under consideration) they are a person who performs services for the commercial organization.*

4. What is the jurisdictional reach of the legal framework?

For the bribery offences under sections 1, 2 or 6 UKBA, the UK authorities may take jurisdiction where any act or omission which forms part of the offence takes place in the UK, or where a person or entity with a "close connection" to the UK takes part in the offence.

- For companies, "close connection" means being incorporated in the UK, whereas for individuals, "close connection" means being a British citizen or ordinarily resident in the UK, among other things.

In relation to section 7, any commercial organization which is (i) incorporated in the UK and carries on business there or

elsewhere or (ii) which is incorporated elsewhere but carries on business or part of a business in the UK, will be subject to the offence. Bribery by a person of any nationality or citizenship, anywhere in the world, is capable of being caught by this section of the UKBA, provided the bribe payer is associated with the commercial organization and the bribe is paid to obtain or retain business or an advantage in the conduct of business for the commercial organization.

5. Who may be liable for bribery? (public officials, private individuals, legal entities etc.)

Private individuals, public officials and the legal entity concerned can be prosecuted for bribery offences under sections 1, 2 or 6 UKBA.

A company can be held liable under the “identification principle” if a “directing mind and will,” typically a senior person in the company (such as a director), commits a bribery offence under sections 1, 2 or 6 UKBA.

A company or partnership may be liable for failing to prevent bribery under section 7. Section 7 is a strict liability offence and the relevant commercial organization need not even know that the bribery has taken place in order for it to be liable.

6. Can a parent company be liable for its subsidiary’s involvement in bribery?

Yes, if the subsidiary is a person associated with the parent company for the purposes of section 7. An offence will only be committed if the subsidiary is a person who performs services for the parent company and intended, when paying the bribe, to obtain or retain business or an advantage in the conduct of business for the parent company. This is not to be assumed and will depend on the circumstances of each case.

7. Are facilitation payments (i.e. small payments to speed up routine governmental action) considered bribes?

Yes, provided they meet the criteria, facilitation payments are considered bribery, no matter how small the amount.

8. Does the legal framework restrict political and charitable contributions?

A political or charitable contribution could be considered a bribe if it is given or received with the intention of inducing a person to act improperly, or as a reward for having done so.

Political contributions to non-UK public officials will be considered bribes if they constitute bribes paid with the intention of *influencing* the official in their capacity as such and with the intention of obtaining or retaining business or an advantage in the conduct of business.

9. Does the legal framework place restrictions on corporate hospitality?

The UKBA makes no express provisions with regard to corporate hospitality and any financial or other advantage given in that context would fall to be assessed by reference to the provisions described in this note.

Whether hospitality amounts to a bribe would be assessed on the basis of whether there was sufficient evidence to show that it was given with the intention of inducing conduct that amounts to a breach of an expectation that a person will act in good faith, impartially, or in accordance with a position of trust. This would be determined on the basis of what a reasonable person in the UK thought.

Guidance issued by the UK Ministry of Justice makes it clear that the UKBA does not criminalize reasonable and proportionate corporate hospitality that is designed to improve the image of a corporation or establish cordial relationships with its customers.

10. Are there any defenses for bribery offences?

There are no specific statutory defenses to charges under sections 1, 2 or 6.

It is a defense for a commercial organization charged with the offence of failing to prevent bribery under section 7 to prove

that it has “adequate procedures” in place to prevent bribery.

The UKBA does not define what will be considered “adequate procedures,” but official UK Ministry of Justice guidance states that the adequacy of a commercial organization’s procedures will be assessed by reference to six key compliance principles, including risk assessment, proportionate procedures, top level commitment, due diligence, communication and training, and monitoring and review.

The common law defense of duress may be available where individuals are left with no alternative but to make payments in order to protect against loss of life, limb or liberty.

11. What are the key regulatory or enforcement bodies with regard to bribery?

The Serious Fraud Office (SFO) is the primary agent in the UK for investigating and prosecuting cases of overseas corruption. The SFO typically investigates suspected crimes concerning values of GBP1 million or more.

The Crown Prosecution Service prosecutes bribery offences investigated by the police, committed either overseas or in England and Wales.

The Crown Office and Procurator Fiscal Service (COPFS) prosecutes bribery offences in Scotland.

The Public Prosecution Office prosecutes bribery offences in Northern Ireland.

12. What are the legal consequences of being found guilty of bribery offences?

Individuals face up to ten years’ imprisonment and/or an unlimited fine on conviction.

Companies can receive an unlimited fine.

An individual and/or company may also face confiscation of criminal property (i.e. the proceeds of crime) arising from the offence, which can include the revenue attributable to any contract won through bribery, not just the value of the bribe paid or the profits made on the relevant contract.

A director convicted of a bribery offence is likely to be disqualified from holding a position as a director for up to 15 years.

Companies convicted of bribery offences may also face debarment from public procurement contracts under the EU Public Procurement Directive.

13. Are deferred prosecution agreements (DPAs) or other similar settlement mechanisms available?

Yes, bribery offences are capable of being settled by way of a DPA. They may be offered by the prosecutor to a company, partnership or unincorporated association, but they are not offered to individuals.

If a DPA is offered and accepted, and provided all conditions of the DPA are met, the prosecutor agrees not to pursue a prosecution against the entity concerned.

Both corporate entities and individuals can enter into plea discussions with the prosecutor, where they agree to plead guilty to an agreed charge in anticipation of receiving more lenient treatment. While the accused and the prosecutor may discuss what they believe an appropriate penalty may be, it will be for the court to make that decision.

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