

April 11, 2011

The UK Bribery Act is intended to reform UK criminal law regarding bribery offenses and was originally scheduled to come into effect in April 2011. After receiving widespread criticism regarding an earlier version of the Act, the UK government delayed implementation while it prepared official guidance regarding compliance. A 45-page document containing official guidance and a condensed 7 page summary have been published and the Act is now slated to take effect on July 1, 2011. A copy of the guidance is available [here](#). View the quick start guide [here](#).

Unlike the anti-bribery provisions of the U.S. Foreign Corrupt Practices Act ("FCPA"), which focus primarily on corruption involving non-U.S. government officials, the UK Bribery Act prohibits both domestic and international bribery, as well as bribery across both private and public sectors. The Act specifically criminalizes offering or giving a bribe, requesting or receiving a bribe, and bribing a non-UK public official to obtain or retain business or secure a business advantage.

Most significantly, however, the Act provides a new offense whereby an organization that "fails to prevent bribery" by anyone associated with the organization can be charged under the Act unless the organization can establish the defense of having implemented "adequate procedures" to prevent bribery. The UK Bribery Act's official guidance provides six guiding principles intended to give organizations an understanding of the factors to be considered when developing "adequate procedures" to prevent bribery. Each of the six principles contains a summary description and commentary of the principle along with recommended procedures that organizations seeking to comply with the Act may undertake to prevent running afoul of the Act's requirements.

These guiding principles include:

Proportionate procedures: A commercial organization should assess its business and the risks faced in its operation in order to implement anti-bribery procedures proportionate to the "nature, scale and complexity" of the company's endeavors.

Top-level commitment: The board of directors or other similar upper management of a commercial organization should demonstrate the appropriate "tone at the top" to promote an organizational culture that is committed to preventing bribery, both within the organization itself and with persons associated with the organization externally. This culture should convey the organization's position that bribery is never acceptable.

Risk assessment: A commercial organization should undertake "periodic, informed and documented" assessments, both internal and external, of the risks it faces with regard to bribery on the organization's behalf. The official guidance identifies a number of commonly encountered risks that should be considered in regular risk assessments, including country risk, sectoral risk, transaction risk, business opportunity risk, and business partnership risk.

Due diligence: A "proportionate and risk-based approach" to due diligence procedures assessing the organization's existing or proposed relationships is important to prevent and resolve identified bribery risks.

Communication (including training): A commercial organization should develop appropriate channels of communication, both internally and externally, to ensure that the organization's anti-bribery policies and procedures are embedded and understood by all parties associated with the organization. Training should be provided for both organization employees and parties with which the organization maintains relationships, proportionate to the bribery risks faced by the organization, and the organization should follow up through regular monitoring and evaluation for all staff and agents where appropriate.

Monitoring and review: Anti-bribery policies and procedures should be monitored and reviewed on an ongoing basis and improvements should be made where necessary as the organization's activities alter or as risks change through time.

In addition to these six guiding principles, the guidance includes eleven case studies as examples of the guiding principles in action.

The UK government's official guidance also touches upon hospitality and promotional business expenses. In doing so, the official guidance states that "the Government does not intend for the Act to prohibit reasonable and proportionate hospitality and promotional or other similar business expenditure for these purposes." The guidance, however, goes on to state that "it is, however, clear that hospitality and promotional or other similar business expenditure can be employed as bribes." To qualify as a bribe, "there must be an intention for financial or other advantage to influence the official in his or her official role and thereby secure business or a business advantage."

Regarding whether a company falls within the scope of the UK Bribery Act, the guidance states that jurisdiction extends to commercial organizations either "incorporated or formed in the UK" or "which carr[y] on a business or a part of a business in the UK irrespective of the place of incorporation or formation." A determination regarding whether an organization is carrying on a business or a part of a business in the UK will be made by the UK courts and will require "a demonstrable business presence." The official guidance states that an organization will not be deemed to be carrying on a business in the UK merely by virtue of having the organization's securities listed on the London Stock Exchange or by having a UK subsidiary.

The official guidance also states that facilitation payments are prohibited. The guidance defines a facilitation payment as "small bribes to facilitate routine Government action." In other words, the UK Bribery Act prohibits payments to induce government officials to perform routine functions they are otherwise obligated to perform.

In light of the differences between the UK Bribery Act and the FCPA, companies operating internationally are encouraged to review their existing anti-corruption policies and procedures to ensure compliance with applicable law. Such a review should include a renewed commitment to the company's anti-corruption efforts by senior management, an analysis of the anti-corruption laws applicable to the company's operations, a risk-based assessment of the adequacy of the company's anti-corruption policies and procedures, and enhanced training for company personnel.

For additional information concerning the UK Bribery Act or the U.S. Foreign Corrupt Practices Act, please contact one of the attorneys listed above.

This content is provided for general informational purposes only, and your access or use of the content does not create an attorney-client relationship between you or your organization and Cooley LLP, Cooley (UK) LLP, or any other affiliated practice or entity (collectively referred to as "Cooley"). By accessing this content, you agree that the information provided does not constitute legal or other professional advice. This content is not a substitute for obtaining legal advice from a qualified attorney licensed in your jurisdiction, and you should not act or refrain from acting based on this content. This content may be changed without notice. It is not guaranteed to be complete, correct or up to date, and it may not reflect the most current legal developments. Prior results do not guarantee a similar outcome. Do not send any confidential information to Cooley, as we do not have any duty to keep any information you provide to us confidential. When advising companies, our attorney-client relationship is with the company, not with any individual. This content may have been generated with the assistance of artificial intelligence (AI) in accordance with our AI Principles, may be considered Attorney Advertising and is subject to our [legal notices](#).

Key Contacts

Michael Attanasio San Diego	mattanasio@cooley.com +1 858 550 6020
Kevin King Washington, DC	kking@cooley.com +1 202 842 7823

This information is a general description of the law; it is not intended to provide specific legal advice nor is it intended to create an attorney-client relationship with Cooley LLP. Before taking any action on this information you should seek professional counsel.

Copyright © 2023 Cooley LLP, 3175 Hanover Street, Palo Alto, CA 94304; Cooley (UK) LLP, 22 Bishopsgate, London, UK EC2N 4BQ. Permission is granted to make and redistribute, without charge, copies of this entire document provided that such copies are complete and unaltered and identify Cooley LLP as the author. All other rights reserved.