

DOING BUSINESS WITHOUT BRIBERY

ANTI-BRIBERY TRAINING
TRAINER'S HANDBOOK

SUPPORTED BY:



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FTI Consulting, a global consultancy offering specialized expertise in the areas of compliance, risk, reputation, liability, performance, finance and information.

Inmarkets, a global e-learning company with a strong focus on governance, risk and compliance issues.

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TRAINER'S HANDBOOK**

Transparency International
January 2012

About this training course

This training module aims to provide best practice anti-bribery training for companies of all sizes, and other organizations that are at risk of encountering requests for bribes. It is also intended that companies should use the course to benchmark their own training programmes against TI-UK's view of best practice. This Trainer's Handbook is part of a set of complementary training tools produced by TI-UK, that include a powerpoint-based course and an e-learning module.

These are all available free of charge at:

www.transparency.org.uk/training.

Learning objectives

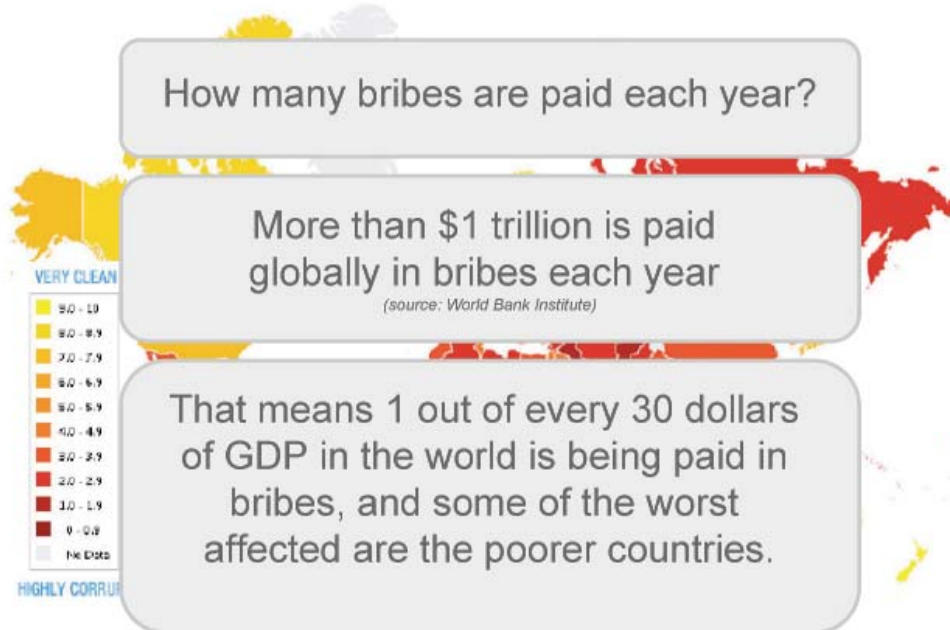
By the end of this session you will be able to:

- Understand what constitutes bribery and the risks facing a company
- Understand the legal framework
- Understand the damage that bribery can do to your own company and to society
- Identify and counter bribery risks, and how to respond to bribery demands
- Understand your obligations as an employee or director and how to report concerns, suspicions or breaches related to bribery, or seek advice.

Course contents

- Why countering bribery matters
- What is bribery?
- How bribes are paid
- Scenarios - common bribery challenges
- Scenario – getting through the airport
- Bribery and the law
- Reporting bribery
- Summary

Why countering bribery matters



Trainer's notes:

Let's start by looking at how significant bribery really is and the impact it has on society and corporations.

These figures from the World Bank indicate that bribery is a very significant global problem. That is why there is so much concern over bribery, and why lawmakers are starting to act.

'(Corruption) debases democracy, undermines the rule of law, distorts markets, stifles economic growth, and denies many their rightful share of economic resources or life-saving aid.'

Kofi-Annan, former Secretary General, United Nations

More details on the World Bank statistics are:

"April 8, 2004—More than \$1 trillion dollars (US\$1,000 billion) is paid in bribes each year, according to ongoing research at the World Bank Institute (WBI).

Daniel Kaufmann, the Institute's director for Governance, says this US\$1 trillion figure is an estimate of actual bribes paid worldwide in both rich and developing countries.

'It is important to emphasize that this is not simply a developing country problem,' Kaufmann says. 'Fighting corruption is a global challenge.'

The \$1 trillion figure, calculated using 2001-02 economic data compares with an estimated size of the world economy at that time of just over US\$30 trillion, Kaufmann says, and does not include embezzlement of public funds or theft of public assets."

Why countering bribery matters

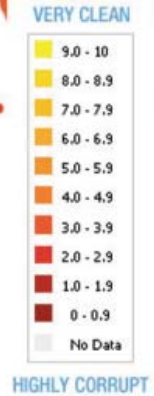
Does bribery matter?

Bribery is estimated to raise the average Kenyan family's annual cost of living by 15%

Source: Transparency International, 2011

'Each time a company pays a bribe it is contributing, even in a small way, to perpetuating a system of corruption that embeds poverty and, inequality. Stopping this supply-side bribery is vital if the fight against corruption is to be successful.'

*Chandrashekhhar Krishnan, Executive Director,
Transparency International UK*



Trainer's notes:

In recent years, there has been increasing research into the impacts of corruption.

It has become clear that corruption is not a victimless crime. These statistics from Kenya illustrate how demands for bribes affect individual families – often the poorest of the poor.

Bribery is a two-way transaction – it requires both a bribe-payer and a bribe-taker. That is why so much emphasis is placed on stopping people and companies paying bribes, even if they appear relatively small. If you cut off the supply-side of bribery, you can start to solve the problem of corruption.

Here are some more statistics:

83% of all deaths from building collapse in earthquakes over the past 30 years occurred in countries that are anomalously corrupt

[Source: Nature magazine, 12 January 2011]

Corruption has increased the cost of attaining the Millennium Development Goals on water and sanitation by more than US\$48 billion..that's half of annual global aid outlay

[source: Transparency International, 2010]

Why countering bribery matters



Where does bribery happen?

Bribery affects all countries - some of the larger scandals recently have taken place not in the developing world but in developed countries.

Corruption is everywhere; it's in the south, the north, east and west and the public and private sectors. So the question is: how do you cut through and make real change?

Georg Kell, Executive Director, UN Global Compact, June 2009

Trainer's notes:

Bribery is a key risk for companies worldwide. There are many countries and circumstances in which a company may encounter a request for a bribe.

One quarter of UK-based international companies surveyed in 2006 said they had lost business to corrupt competitors in the last 5 years ['International business attitudes to corruption - survey 2006', Control Risks, p.5]

It is not a reasonable excuse to say 'that is how they do it in other countries, so that is how I will operate over there'. Most ordinary citizens, all over the world, detest corruption when they encounter it. They know very well how badly it affects their lives.

'What keeps me awake isn't the prospect of deliberate corruption, it is the fear of inadvertent, naïve errors – the sort which arise from unthinking submission to local custom.'

Neil Holt, Director, Halcrow; board member, Transparency International UK

What is bribery?

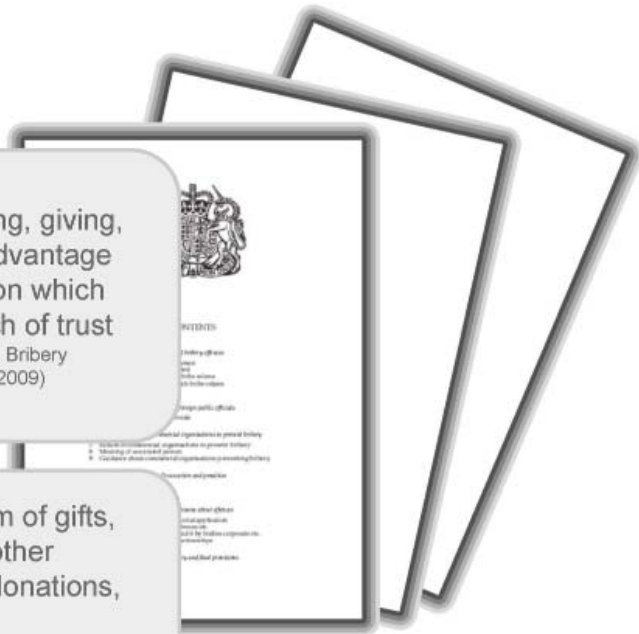
Definitions of bribery

Bribery is the offering, promising, giving, accepting or soliciting of an advantage as an inducement for an action which is illegal, unethical or a breach of trust

The Business Principles for Countering Bribery
(Transparency International, Berlin 2009)

Inducements can take the form of gifts, loans, fees, rewards or other advantages (taxes, services, donations, etc.).

The Anti-Corruption Plain Language Guide
(Transparency International, Berlin 2009)



Trainer's notes:

Let's start by defining what bribery is. A bribe is two way – it can be given or received.

Many definitions talk about giving or taking an 'advantage' or 'inducement' in order to perform a function 'improperly'.

The 2010 UK Bribery Act uses this language:

- A person is guilty of bribing where the person offers, promises or gives a financial or other advantage to another person, intends the advantage (i) to induce a person to perform improperly a relevant function or activity, or (ii) to reward a person for the improper performance of such a function or activity.
- A person is guilty of being bribed if the person requests, agrees to receive or accepts a financial or other advantage intending that, in consequence, a relevant function or activity should be performed improperly.

What is bribery?

Bribery takes many forms

Bribes are not only about money exchanged in brown envelopes or wired to secret accounts. A bribe can be anything of value to the person being bribed, such as a holiday for a purchasing manager disguised as a business trip.

What is bribery?

The thing of value can be disguised as a gift, hospitality or travel expenses, or it can be a payment to an intermediary - these are red-flag areas for bribery.



What is bribery?

The method of payment might be concealed such as false invoices or consultants' fees or payment through a third party – it is often thought by companies that channelling a bribe through an agent's books will protect the company – it doesn't.

'Improper performance' is a breach of a person's entrusted power, proper role or function. It may involve actions, such as an award of a contract or a permit, or it may simply involve inaction, i.e. someone turning a blind eye to something they are supposed to do.

What is bribery?

Bribery via agents is common

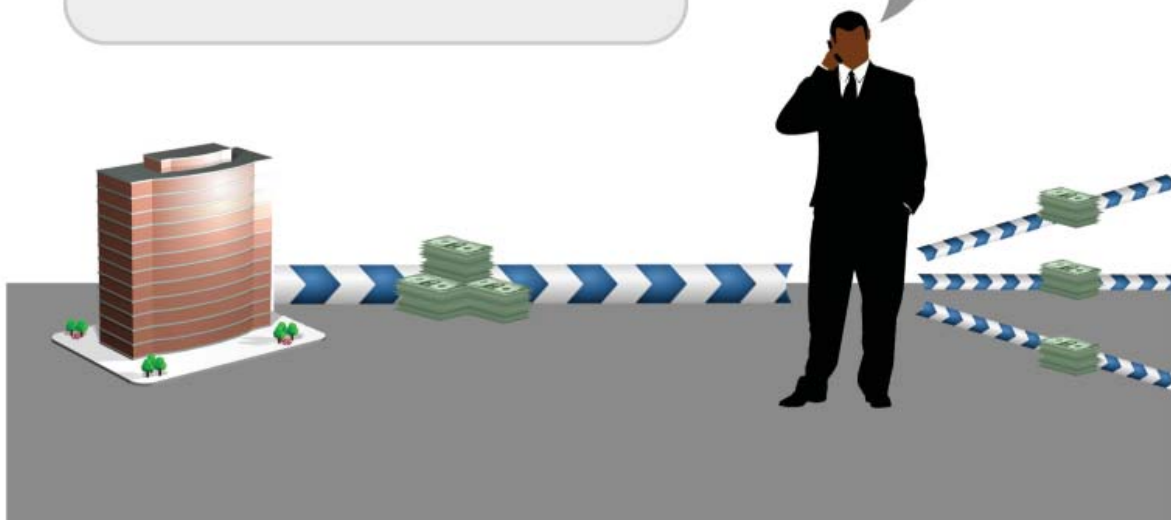
An offer or promise of payment is sufficient for prosecution even if the payment is never made



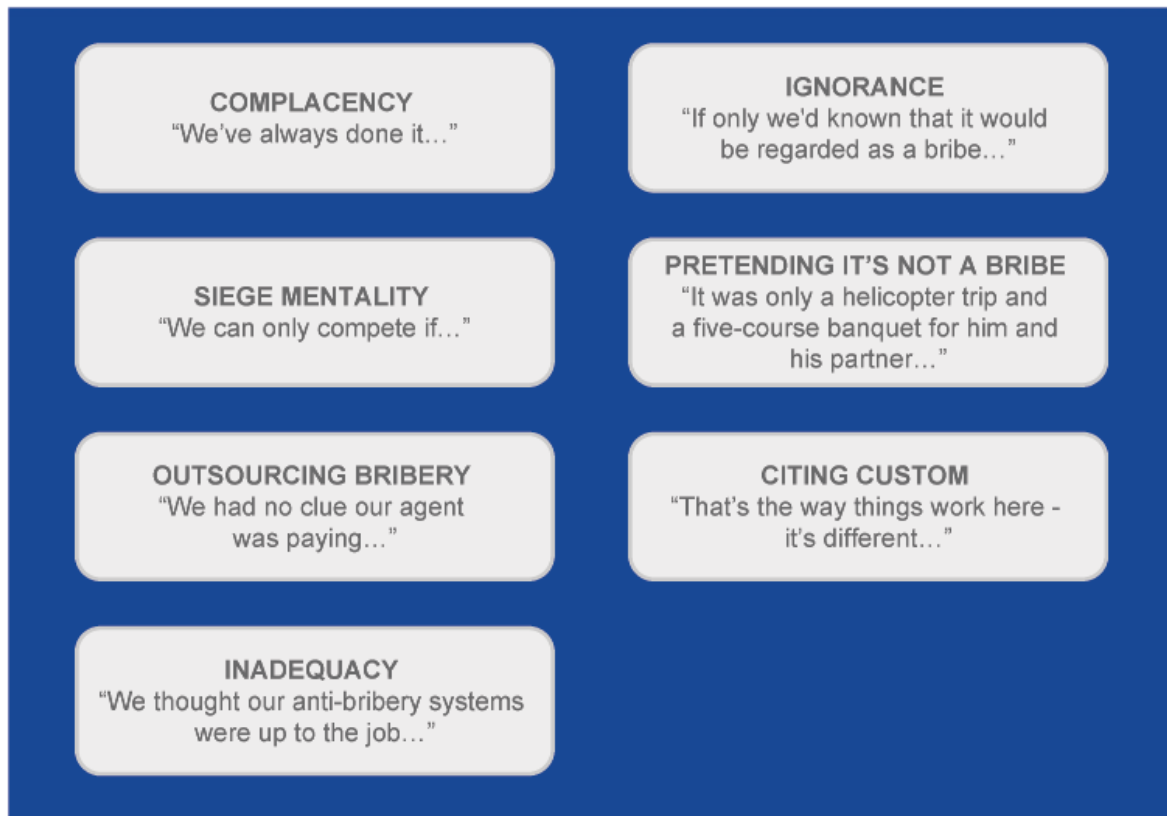
What is bribery?

...and even if the company itself had no knowledge that the agent was offering the bribe

Leave the final negotiations to me, you don't need to know...



Common excuses



Trainer's notes:

People find a variety of excuses for justifying bribes. None of these represents good business practice or provides any defence under the law.

One exception is if the payment is genuinely owing to extortion or duress that threatens an individual's personal safety. Such a payment is unlikely to be deemed as bribery.

How bribes are paid



Trainer's notes:

Patterns of bribery can vary considerably from one country to another. Although there are some common forms of bribery, bribes are also demanded and paid in different ways throughout the world.

Most anti-bribery laws and prosecutors are sophisticated enough to see through attempts to disguise bribery. For instance, the UK Bribery Act covers a company's 'Associated Persons'. This is a deliberately wide-ranging phrase that can encompass employees, agents, suppliers, contractors, re-sellers and others.

How bribes are paid

Bribes via agents

Agents are major conduits for bribes

Example

A company pays a 20 per cent commission to an agent, which then creates the room for the agent to pay a bribe to the decision-maker on a contract, with or without the company's knowledge.



How bribes are paid

Hospitality or travel expenses may be another route for bribery

Example

The company pays for the decision maker on a contract, perhaps with his or her family, to go on a lavish holiday described as a training course. Or the company may entertain a buyer frequently and excessively with the aim of grooming the buyer for more substantial bribery.



How bribes are paid

Even charitable donations can be used to disguise bribes.

Example
A company contributes to the building of a school, which is hailed as a charitable act, but part of the funds are channelled to the decision maker.



How bribes are paid

Nepotism or cronyism can also be used to bribe

Example
The company hires a relative or friend of the decision-maker in return for receiving a favour.



How bribes are paid

Bribes can be given to facilitate or speed up the performance of legitimate actions

Example

Small payments are made to speed up planning permissions, utility connections, provision of security, release of goods from customs, obtaining visas etc.



Trainer's notes:

A facilitation payment, or a grease payment, is a bribe designed to give you access to, or speed up receipt of, something you are entitled to anyway, e.g. payments made for police guard, to speed up getting goods through ports/customs, to get the electricity switched on and so on.

Some people argue that facilitation payments are harmless and should not be classified as bribes. But this is not true. They are bribes and paying them helps to perpetuate a culture of bribery and corruption within the country concerned. Since they are bribes, they are illegal.

Facilitation payments are illegal under the UK's Bribery Act and in many other countries. Under US law, small facilitation payments are permitted if the purpose of the payments is to expedite or secure the performance of a "routine governmental function" - something the company is entitled to receive anyway. However, this is a very narrow exception. If the activity involves the exercise of any official discretion, or the amount involved is large (say over \$100), then the exception may not apply. A company that pays serial facilitation payments without attempting to stop them may also breach US law.

Watching out for red flags

It is important to remember that there are common red flags for bribery which you can watch out for

Exercise: how many red flags can you list?

Trainer's notes:

Exercise: how many red flags can the group list?

The Serious Fraud Office (SFO) in the UK has published a list of bribery indicators, on which these are based:

Agents and consultants

1. Agent's fees are paid in cash;
2. The fee payments are made in a country different to where the activity takes place, in particular one of the off-shore financial centres known to be used to launder money;
3. There is no apparent business case for use of an agent; Extensive use of consultancy services without apparent value received;
4. Pressure exerted for payments to be made urgently or ahead of schedule;
5. Payments being made through a third-party country, e.g. goods or services supplied to country 'A' but payment made to shell company in country 'B';
6. Fees are split into multiple accounts for the same agent, often in different jurisdictions.

Marketing

1. Exceptional sales achievements in a market where competitors are known to bribe;
2. Tender documents use specifications favourable to the company's products;
3. Frequent hospitality and travel for public procurement officials
4. Requests for special favours such as donations or sponsorship related to favourite causes of the procurement officer.

Purchasing and contracting

1. Private meetings with public contractors or companies hoping to tender for contracts;
2. Lavish hospitality and gifts being received;
3. Closeness to suppliers such as taking holidays with them; Individual never takes time off, even if ill, or holidays, or insists on dealing with specific contractors him/herself; Making unexpected or illogical decisions on accepting projects or contracts;
4. Breaching the decision process, controls or delegated powers in awarding a contract;
5. Awarding contracts unfavourable to the organisation, either with terms or time period;
6. Unexplained preference for certain contractors; Avoidance of independent checks on tendering or contracting processes;
7. Raising barriers around specific roles or departments which are key in the tendering/contracting process; Excessive number of rush orders or contract variations;
8. Lack of documentation of key meetings and decision^S.

You are the manager:
What do you do?



Trainer's notes:

In this section members of the group being trained will assume the position of a country manager for a company. In this capacity the group will be asked to comment on situations and approve/reject requests.

Each scenario suggests some courses of action on which the trainer can ask the group to comment. The correct answer is highlighted in red.

Reza is a top-performing salesperson in your team. She is excited about a big potential opportunity with MegaCorp. How would you respond to what she's saying?

"You know I had this nice lunch organised with MegaCorp's procurement officer today? Well, I've just had an email announcing a new tender by MegaCorp that's just right for us."



Trainer's notes:

Potential courses of action

1. That's excellent timing, but I'd suggest upgrading the lunch to that expensive sushi place to really impress him.
2. Nice one, but you want to be careful not to alert Compliance or internal audit; book it as a meeting with another client.
- 3. Cancel the lunch but see if the procurement officer still wants to meet in his office or ours to discuss current work.**
4. Go ahead, but make sure you don't go over our hospitality spending limits - we need to be extra vigilant about bribery in this situation.

Explanation

The right course of action for Reza is to cancel the lunch, explaining that she is prevented from entertaining during the tender period. Reza could suggest it would be worthwhile meeting anyway - with no hospitality involved - if necessary to discuss progress on existing contracts.

Some months ago you asked a distributor for a neighbouring country that you oversee to show a key customer, travelling in that country, around over a weekend. After a long delay, he's finally submitted an invoice for the expense. It is for 6,000 dollars and the transaction is described as "refund of Distributor's sales promotion expenses". No further details are given. He's calling to chase it up. How would you respond to him?

"Hi, did you get my invoice?
Could you get it paid soon?
We've been out of pocket for
many months."



Trainer's notes:

Potential courses of action

1. **Could you give me a breakdown of your costs?**
2. Yes, I've got the invoice. I'll get accounts payable to process it asap.
3. Certainly, I'll get it paid today. You did well. We've done some more business with that customer. I'll keep you in mind if something like this comes up again.

Explanation

This is a large cost for just showing a person around and could involve a bribe. So, at a minimum, you must ask for and review the details of expenditure and record these so they are available in the case of an audit.

The distributor is recounting items that include rather lavish entertainment and gifts. What would you do now?

"Sure. I can resubmit the invoice with a detailed breakdown and payment receipts. I know the cost is high, but I thought you wanted me to take good care of him. I took him out to the most expensive restaurant and bought some pearls for his partner."



Trainer's notes:

Potential courses of action

- 1. Inform your management or legal department about the incident and get advice as to how to proceed.**
2. Tell the distributor to leave the invoice as is to mask the problem.
3. Tell the distributor that he overstepped his mandate and must bear some of these costs himself.

Explanation

If you detect problems with expenses (e.g. cash payments, lavish entertaining, unusual hotel bookings, large gifts), you should report them internally through the correct channels such as your legal or compliance department.

Remedies may include asking the customer for reimbursement and instructing, controlling and monitoring intermediaries more carefully in the future. This may include reviewing the anti-bribery procedures and remedying any weaknesses including putting in place processes for pre-approval of certain expenses.

Commissions to third parties

Kosum manages a team of field sales people in your company. She uses a travel company to organise her team's travel. The invoices from the travel company are quite generic and do not record enough detail to identify who is travelling where. This is what Kosum is saying when questioned. How would you respond?

"I've been using this company for many years. They don't spend money on paperwork because they are busy getting us the best deals. I reckon they cut our travel bills by 20 per cent."



Trainer's notes:

Potential courses of action

1. Wow! If they are saving that much, maybe we should put more business their way.
2. That's good. But do ensure that they keep getting us the best deals.
- 3. That's good. But we'll need to have a better description of all services provided, run a proper check and get them to sign up to our standard vendor agreement.**

Explanation

This travel company may be completely legitimate and beneficial to your company, but it could also be a vehicle for paying bribes -for example, by providing free hotel bookings and flights for clients and their families as well as employees.

Not having sufficient descriptions of services makes it impossible to tell if travel is legitimate or to track levels and categories of expenditure. If bribes or inappropriate benefits are being provided, your company's policy will be breached and you and your company could be committing a bribery offence.

If there is a legitimate reason for using this supplier, then it should be set up as an authorised supplier, incorporate anti-bribery clauses in its contract and ensure it provides accurate and detailed records of travel and services provided in future.

Even if it is a long-standing supplier, when the new contract is issued, a basic due diligence check should be undertaken to be certain that it has not been involved in bribery in the past, does not have a reputation for unethical business conduct and that there are no other red flags.

You traditionally give presents to customers at Christmas that are quite modest. Some of those customers are government officials. Your assistant has chosen a nice gift. How would you instruct him?

"For this year's Christmas gifts for customers I've selected a crystal vase. It is a few pounds more expensive than last year's gift, but it will leave a lasting impression."



Trainer's notes:

Potential courses of action

1. Due to the risk of these gifts being seen as bribes under the new bribery law, I've decided to cancel giving gifts this year.
2. Due to the new bribery law, we should send the gifts to people's home address and leave out their name if possible.
3. We'll have to identify government officials and others in a position to make buying decisions in the coming months and exclude them from the list of recipients.
- 4. It is time to review our gifts policy to make sure that we meet our no-bribes policy. With new anti-bribery laws it is becoming a complex area with greater risks and perhaps we should no longer make gifts.**

Explanation

Gifts are traditional in many countries and gifts of nominal value are usually permitted by company codes of conduct and bribery laws. However, if the gift influences a person or is capable of influencing, then it could be seen as a bribe. The best course of action is to have clear gifts policies supported by guidance and to record any gifts made or received.

Avoid making gifts of more than negligible value whether to government officials or to those in the private sector. Promotional gifts such as low-cost diaries at New Year will be an acceptable approach. Gifts of this type can be acceptable if it is the cultural norm and is not intended to induce an improper performance.

A good test decide whether a gift is reasonable, proportionate and bona fide is whether the company would be willing to make public the detail of a gift. If you think that making it public would embarrass the company or cause other concern, then don't make it.

Charitable donations

Janice is involved in a bid for a new government contract. Part-way through the negotiations, she has been asked by a government minister to make a charitable donation.

"I've been requested by a government minister to make a substantial donation to a local schools charity. What do you think? It's not a large amount for us and will be good for our image. Should we do it?"



Trainer's notes:

Potential courses of action

1. Sure. Let's charge this to our marketing budget.
2. Yes, let's go ahead with it immediately. We can give the money from our discretionary budget.
- 3. Is this minister in a position to make a decision about our company? If she is, we shouldn't make this donation.**
4. Yes, it's a good idea. Could you give the money from your personal account, Janice? We will ensure that you get an equivalent amount as a bonus next month?

Explanation

Charitable donations are generally a good thing. However, this may be perceived as a bribe to influence the minister to award business.

The correct course of action is that charitable contributions should be made within a company's charitable contributions policy and against established criteria.

Ad hoc contributions related to marketing activities are always a potential risk and should be avoided whenever possible. Even if they meet the policy and criteria, if there is a current marketing situation then the donation should not be made.

Seek help from your legal department - if it could be considered a bribe, then don't pay.

Getting through the airport



Trainer's notes:

In this section you will learn how to resist demands for facilitation payments (or grease). For this purpose we will review the case of Paul Nantes who has flown in for a business visit to Formania. Before the visit he was warned about incidents of immigration officers demanding facilitation payments and is prepared for this eventuality.

Paul is aware that if he pays a bribe, he will be breaching his company's policy and breaking the law. His company has a strict policy because it knows that as soon as its personnel get a reputation for paying bribes, the company will face escalating demands. If Paul pays, he could make it more difficult for any of his colleagues to refuse in future. He remains courteous and unflustered throughout this exchange, because he knows his company will support him even if it leads to delays.

Getting through the airport

Officer: "Thanks for visiting Formania. Could you pay a cash fee of \$50 please?"

Paul: "What exactly is that for?"

Officer: "Ummm. It's the entry fee."



Trainer's notes:

Learning point

Paul has received bribery training and is aware of this risk and correctly confronts the solicitation. Many companies will produce guides on the methods corrupt officials will employ and counter measures to use. Larger companies will also have 24 hour hotlines for those who need advice.

Getting through the airport

Paul: "Really? Could you show me where the requirement for the 'entry fee' is displayed?"

Officer: "Well we don't have this notice on display today."

Paul: "In that case I can't pay the fee."

Officer: "What's the problem? Everyone else is paying the fee."

Paul: "Well, the problem is that paying such a 'fee' would be against the law in my country and I could be prosecuted for that."

Officer: "Sorry, but if you'd like to pass you have to pay the fee."

Paul: "OK. Can I please see your supervisor?"



Trainer's notes:

Learning point

Ask the immigration official where the requirement for the 'entry fee' is displayed.

Learning point

Refuse to pay if the official cannot supply official validity of the 'entry fee'.

Learning point

Make the point that paying such a 'fee' would be against your home country law, and that you would be subject to company and legal actions on return to your home country.

Learning point

If the official still demands the payment, ask to see the official's supervisor.

Getting through the airport

Officer: "I'm afraid that's not possible. My boss only sees VVIPs. In any case if you don't pay the fee you will need to turn back."

Paul: "OK. I will pay. But can you give me a receipt for the fee?"

Officer: "What? We don't issue receipts for any payment."

Paul: "But, I'm willing to pay the fee if you can give me a receipt."

Officer: "I don't want to argue on this point. I have to reject your entry."

Paul: "OK. In that case I will need to phone my embassy to inform them that I am making this payment."



Trainer's notes:

Learning point

If the request to see a supervisor is refused, or if the supervisor also asks for payment, there may be no option other than paying the fee. However, make that subject to being given an official receipt - a formal document that identifies the immigration official's name and relevant identification number.

Learning point

If the official refuses to provide a receipt, restate willingness to pay the fee but not without a receipt.

Learning point

If no receipt is forthcoming then the employee should telephone the local embassy and make clear to the official he is doing so and will wait until he is given entry.

Getting through the airport

Paul: "I have phoned my embassy, and they have told me I need to need to take your name and position so that I can make a proper record of this payment."

Officer: "No you may not. And you are wasting my time. I have other passengers to look after. I'm going to reject your entry unless you pay me right now."

Paul: "OK then, here's the \$50."



Trainer's notes:

Learning point

Paul has now used a number of techniques to refuse the demand for a bribe:

- Asking the Officer for proof the demand is official
- Refusing to pay when he thinks it is a bribe
- Stating it would be illegal to pay
- Asking the Officer for documentation of the payment
- Referring to his local embassy
- Asking for the Officer's details.

In doing so, he has clearly demonstrated that he knows he is being asked for a bribe and is unwilling to pay. At any one of these points, the Officer might have stopped making the demand and waved Paul through. This scenario continues by assuming Paul pays the \$50, in order to illustrate what he should do next.

Learning point

If it is evident that you will be denied entry to the country, agree to pay the fee subject to being given the immigration official's name and relevant identification number. If the official refuses to give these, you can note down the time, place and an approximate description of the official.

Learning point

If you decide to pay, then you must report the incident to the company as soon as possible. The company will then decide whether or not to report the incident to the authorities in the country concerned and/or report the incident to the British Embassy, and take its advice. It is only acceptable to pay if a genuine effort has been made not to pay, and if the company uses this experience to inform a programme to phase out making such payments.

Getting through the airport

When he has passed through the airport, Paul does three things:

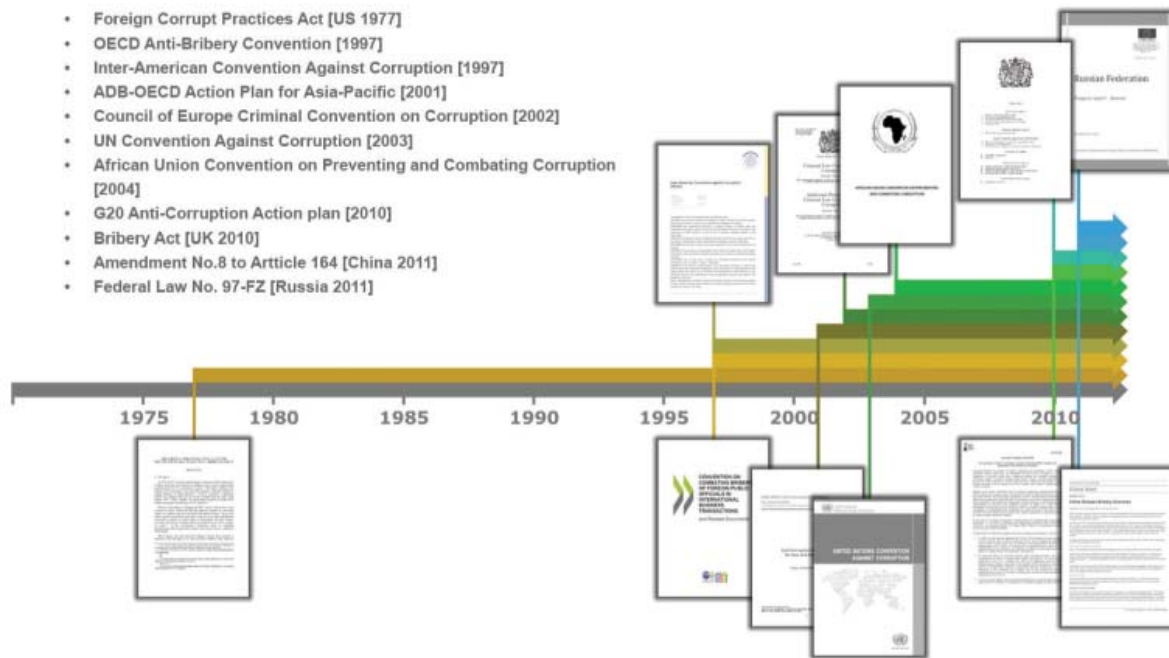
- He gives full details of the incident to his company, so that they can try to avoid this situation in future – for example, by joining with other companies that are being harassed in this way, and using the local embassy to intervene with the local authorities.
- He reports the incident to the local embassy and asks his local managers to raise it in local business forums to see if other companies are experiencing the same problem.
- He reports the incident to the local police.





Legal framework: cutting off the supply-side

- Foreign Corrupt Practices Act [US 1977]
- OECD Anti-Bribery Convention [1997]
- Inter-American Convention Against Corruption [1997]
- ADB-OECD Action Plan for Asia-Pacific [2001]
- Council of Europe Criminal Convention on Corruption [2002]
- UN Convention Against Corruption [2003]
- African Union Convention on Preventing and Combating Corruption [2004]
- G20 Anti-Corruption Action plan [2010]
- Bribery Act [UK 2010]
- Amendment No.8 to Article 164 [China 2011]
- Federal Law No. 97-FZ [Russia 2011]



Trainer's notes:

Since the 1997 OECD Convention, a global legal framework of national and international law has been put into place to fight bribery.

The United Nations Convention Against Corruption (UNCAC) has established broad global principles that accept bribe-paying is wrong. It has been ratified by 144 countries.

The FCPA stands out as the grand-father of anti-bribery laws. But recently, several other countries, including the UK and China, have introduced or updated laws that are compliant with UNCAC and the OECD Convention.

With anti-bribery laws becoming ever stricter and having greater reach, the corrupt ways in which some business transactions have been done in the past will need to change.

UK BRIBERY ACT

- Came into force on July 1st 2011
- Widely regarded as a strict law
- Covers bribe-paying anywhere in the world
- Covers bribes of any size
- Applies to
 - anyone living in or 'closely associated with' the UK
 - any company 'carrying out business' in the UK
- Several tiers of liability:
 - Personal liability
 - Corporate liability
 - Director & Officer liability

Trainer's notes:

The UK Bribery Act 2010

The Bribery Act introduces four new offences:

- the offering, promising or giving of an advantage with the intent to induce a person to act improperly
- requesting, agreeing to receive accepting of an advantage intending that a function be performed improperly
- a discrete offence of bribery of a foreign public official
- a new offence of failure by a commercial organisation to prevent a bribe being paid for or on its behalf (it is a defence if the organisation has 'adequate procedures in place to prevent bribery').

Directors and senior officers of a company are also personally liable if they 'consent or connive' in bribery – i.e. they know it is happening or turn a blind eye.

Companies can be liable if an 'associated person' pays a bribe, even if the company did not know or approve of the bribe-paying. The penalties up to ten years' imprisonment and unlimited fines.

Bribery and the law: extra-territoriality

In the UK and in some other jurisdictions, the anti-bribery legislation now applies extra-territorially, i.e. outside the home country. For instance, a UK company can be prosecuted by the UK authorities for paying bribes anywhere in the world.



Bribery and the law: extra-territoriality

Similarly, a foreign company carrying on business in the UK can be prosecuted by the UK authorities for bribes paid anywhere in the world



COMMON FEATURES OF ANTI-BRIBERY LAWS

- Bribery laws often seek to punish both bribe givers and takers. Common features of anti-bribery laws are:
 - **Extra-territoriality**
 - **Criminal offence**
 - **Foreign public officials**
 - **Penalties for individuals**
 - **Corporate liability**

Trainer's notes:

Extra-territorial – you can be prosecuted in your home country or a third country such as the US for bribes paid anywhere in the world.

Criminal offence – international pressure has strongly increased to make bribery a criminal offence and to encourage prosecution of offenders.

Foreign public officials – most laws make a special reference to bribes paid to overseas public officials as transaction involving such public officials are regarded as high-risk. However, bribery within the private sector is increasing, and more recent anti-bribery laws reflect this.

Penalties for individuals – penalties range from heavy fines to imprisonment and the death sentence.

Corporate liability – companies are increasingly being held liable for bribes paid by their employees and agents – and the fines and associated costs are growing.

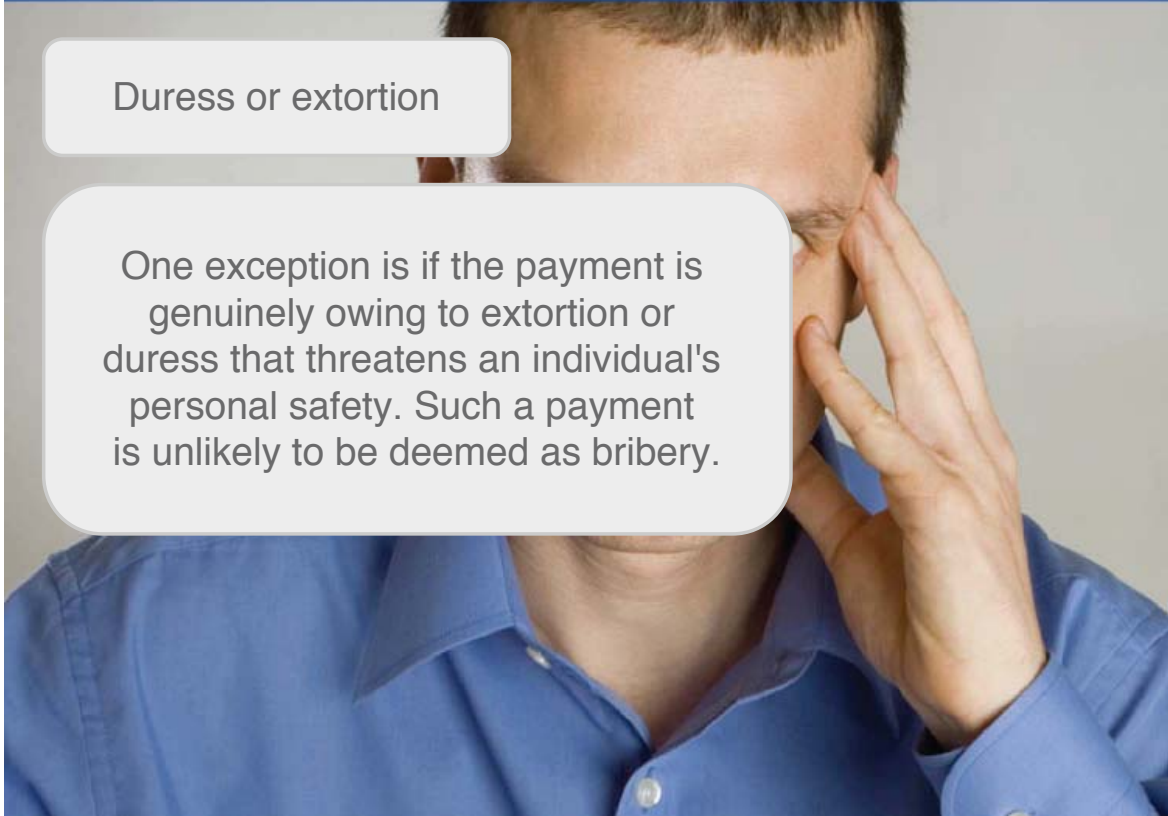
What is a Foreign Public Official?

Foreign public officials have been involved in many of the bribery cases to date, and so are specifically referenced in many anti-bribery laws. Recently, bribery within the private sector has also increased significantly, and this is covered in more recent laws. Definitions of a foreign public official can mean anyone employed by the state – this can include

- Civil servants
- Local government officials
- Government ministers
- Health officials including medical staff
- Customs officials
- A judge
- A member of parliament
- Employees of state-owned companies.

Duress or extortion

One exception is if the payment is genuinely owing to extortion or duress that threatens an individual's personal safety. Such a payment is unlikely to be deemed as bribery.



Bribery and the law



Trainer's notes:

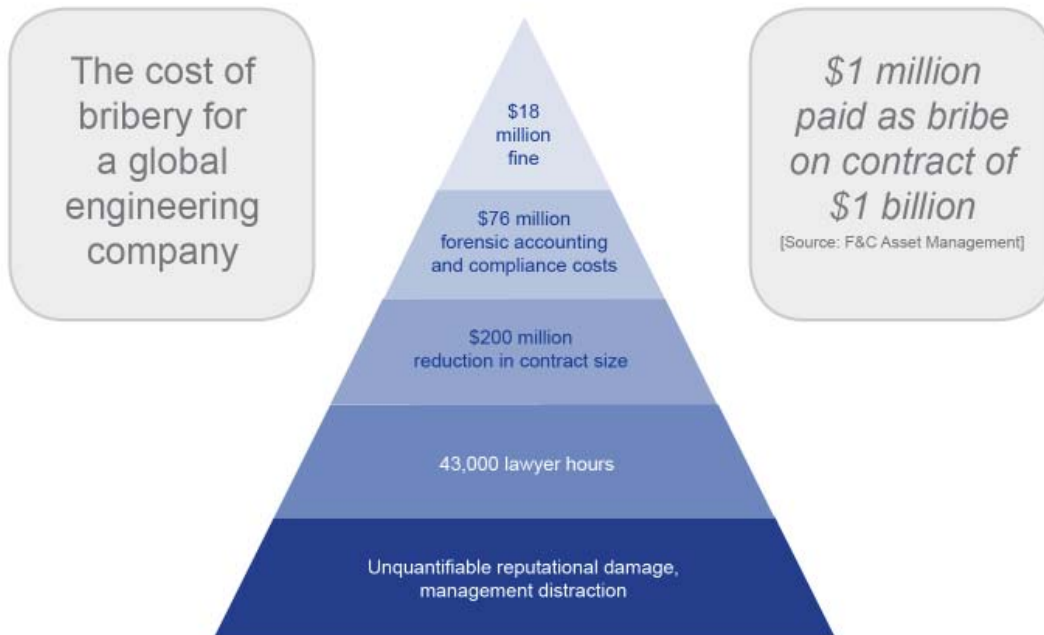
Bribery costs Siemens €2.5 billion, including \$1.6 billion in fines and penalties

Siemens AG, a global powerhouse in energy, infrastructure and health care, pleaded guilty to violating the US Foreign Corrupt Practices Act (FCPA). Siemens AG also agreed settlements with the US Securities and Exchange Commission and the Munich Public Prosecutor's Office in relation to further investigations. In separate proceedings, a former manager at Siemens AG was found guilty of bribery in the course of business, while another was found guilty of assistance to bribery in the course of business.

Following investigations, the company and its subsidiaries were fined. Subsequently, the company replaced almost all of its top management, completely revamped its compliance organisation, and put in place a programme to re-build trust in its business ethics.

However, the Siemens case continues - the US authorities, having settled with the company, continue to pursue several former senior executives suspected of being involved in bribery.

Common excuses



Trainer's notes:

This slide illustrates how the costs of enforcement are usually far greater than the fines. In fact, the fines can be dwarfed by the cost of compliance, including both external investigators and internal compliance.

There can also be personal costs.

Broker jailed for 21 months

October 2010, UK

Julian Messent, 50, the former CEO at reinsurance broker PWS Insurance, has been jailed for 21 months after admitting to paying bribes totalling £1.2 million to officials in Costa Rica when he was a director of the company's international property division there. The sentencing judge said that his offences justified a four-to five-year prison sentence, but this was reduced to 21 months upon taking into account his early guilty plea and good character. Mr Messent was also asked to pay £100,000 compensation to the government of Costa Rica and was disqualified from being a company director for five years. It has been suggested that PWS Insurance went into bankruptcy partly as a result of the bribery scandal.

Reporting bribery

REPORTING EXTERNALLY

- If you suspect or know you are being asked to pay, or offered, a bribe, you must report it to the company management.
- If you wish to report anonymously, for example if you suspect your manager of paying bribes, you should use your company's confidential reporting mechanism such as a 'whistleblower hotline'.
- If you have paid a bribe or know that someone else has paid a bribe, of any size, you **MUST** report it to your manager and the company's legal department.



Reporting bribery

REPORTING INTERNALLY

If you have encountered bribery, sharing the experience with other companies can help build awareness and develop collective action.

In many countries, your local embassy should be able to help by giving support and advice and, if necessary, intervening on your company's behalf.

If you know that a bribe has been paid, in the first instance you should report it internally, and your company should report it to the relevant authorities. This is a legal obligation in many countries, and failure to do so may make you personally liable under the law.



For instance, in the UK the Serious Fraud Office operates a confidential anti-corruption hotline (see www.sfo.gov.uk for details).

What is bribery?

Paying or accepting bribes is unethical and also illegal; even small bribes undermine the rule of the law and cause widespread social problems. Many companies operate a no-bribes policy.

The payments don't have to be in the form of cash to be considered as bribes; gifts, hospitality and favours can also be deemed to be bribes.

Offering or demanding a bribe is illegal in most countries and the penalties for individuals can be severe and include imprisonment.

Companies are responsible for the bribes paid on their behalf by officers and employees, and also other associated persons including agents and intermediaries. Again the penalties for violations are severe.

**Get serious about
Bribery & Corruption.**

**Don't pay
bribes.**

This course has been developed by:



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Additional Guidance for Trainers

During this training course, you may find that the group has questions about certain difficult areas. Two common areas for questions are about gifts and the appointment of agents. This section is intended to give you additional guidance on these issues for use during the training session.

Guide to sensible gift-giving

Although gift-giving is common in some countries, bribes can also often be disguised as gifts. Some companies ban all gift-giving. Other companies have a policy that allows modest gift-giving in certain circumstances. You can go through a series of tests to identify whether giving or receiving a gift is potentially a bribe:

- Made for the right reason: it should be given clearly as an act of appreciation
- No obligation: the gift does not place the recipient under any obligation
- No expectations: expectations are not created in the giver or an associate of the giver or have a higher importance attached to it by the giver than the recipient would place on such a transaction;
- Made openly: if made secretly and undocumented then the purpose will be open to question;
- Accords with stakeholder perception: the transaction would not be viewed unfavourably by stakeholders if it were made known to them;
- Reasonable value: the size of the gift is small and accords with general business practice;
- Appropriate: the nature of the gift is appropriate to the relationship and accords with general business practice;
- Legality: it is compliant with relevant laws;
- Conforms to the recipient's rules: the gift meets the rules or code of conduct of the recipient's organisation
- Infrequent: the giving or receiving of is not a frequent happening between the giver and the recipient;
- Reported: the gift should be recorded and reported to management;
- Documented: the expense is fully documented including purpose and approvals given and properly recorded in the books.

Conducting due diligence on agents

Due diligence is a process for carrying out thorough checks to a depth appropriate to the risks. It is required at the start of the relationship and then continued on a regular basis.

Before appointment

Look out for basic red flags, checking whether the agent:

- has faced allegations, investigations or prosecutions for involvement in corruption
- has personal links with government officials
- has been recommended by a government official
- employs apparently unqualified staff or advisers
- is resistant to formal written agreements
- refuses to allow the principal to examine books and records
- has requested payments to be made in unusual ways, e.g. split invoices or via tax havens
- appears able to bypass legal or bureaucratic hurdles more easily than others
- operates within a market or segment of the market in which business practices are prone to corruption
- has been winning orders with uncompetitive products or services.

Enhanced or additional due diligence

Enhanced or additional due diligence may be required at any time that the circumstances change or there is a suspicion of bribery.

This might involve checking whether the agent still:

- has adequate anti-bribery policies and procedures
- has requisite skills and resources
- is a recognised consultancy or part of a company and not a sole operator
- charges fee levels or commissions that are in line with the market norm
- has the necessary expertise or track record in the products and market
- has a reputation for probity within the local market and with other clients.



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