

WHAT IS BRIBERY?



**Anti-Bribery Guidance
Chapter 5**

Transparency International (TI) is the world's leading non-governmental anti-corruption organisation. With more than 100 chapters worldwide, TI has extensive global expertise and understanding of corruption.

Transparency International UK (TI-UK) is the UK chapter of TI. We raise awareness about corruption; advocate legal and regulatory reform at national and international levels; design practical tools for institutions, individuals and companies wishing to combat corruption; and act as a leading centre of anti-corruption expertise in the UK.

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Transparency International UK's Global Anti-Bribery Guidance

Best practice for companies operating internationally

This is a guidance section from Transparency International UK's Global Anti-Bribery Guidance. The full guidance is available at www.antibriberyguidance.org.

About the Guidance

This flagship guidance presents anti-bribery and corruption best practice for companies, drawing upon expertise from over 120 leading compliance and legal practitioners and Transparency International's extensive global experience.

This free-to-use online portal expands and updates all of TI-UK's Business Integrity guidance over the last decade. This includes our original Adequate Procedures Guidance to the UK Bribery Act; a leading resource for compliance and legal professionals, which has been downloaded over 45,000 times from TI-UK's website. The guidance has been kindly supported by FTI Consulting and DLA Piper.

For each area of practice, we provide a summary, best practice tips, full guidance, and links to further resources. This is a dynamic resource and we will continue to update it with new content and features. If you have anything you would like further guidance on, or other suggestions, please do contact us at businessintegrity@transparency.org.uk

Many companies are facing increased bribery risks as they continue to expand internationally and become increasingly reliant on diffuse supply chains and complex third-party networks. There are also additional risks around stakeholder expectations, a global strengthening of anti-bribery legislation – requiring better internal mechanisms to ensure compliance – and enhanced enforcement.

Companies will always design their own bribery programme according to their particular circumstances but those following this guidance can take reasonable assurance that they are well positioned to counter risks of bribery, comply with anti-bribery legislation in jurisdictions across the world and to act ethically and positively in the markets in which they operate.

Transparency International UK's Business Integrity Programme

The goal of our Business Integrity Programme is to raise anti-corruption standards in the private sector. We aim to ensure that individuals and organisations do not participate in, enable or endorse corruption. Our approach is to engage positively with the private sector, governments and leading anti-corruption initiatives to identify and advocate best practice.

For more information, please visit <http://www.transparency.org.uk/our-work/business-integrity/business-integrity-forum/>

QUICK READ

TI defines bribery as 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. This covers 'active bribery' whereby an employee of the company offers, promises or gives an advantage, and 'passive bribery' which is when an employee requests, agrees to receive or accepts an advantage.

It is important to understand the key definitions and types of bribery in order to assess and mitigate the risks. For example 'Kickbacks' which have an elements of both active and passive bribery, are a particular risk in procurement and purchasing.

GUIDANCE

5.1 Defining bribery

There is no universal definition of bribery but all definitions have in common that it involves someone in an appointed position acting voluntarily in breach of trust in exchange for a benefit. The benefit does not have to involve cash or a payment exchanging hands. It can take many forms such as lavish gifts, hospitality and expenses, access to assets or a favour made to relative, friend or favoured cause.

TI defines bribery as: 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. Inducements can take the form of money, gifts, loans, fees, rewards or other advantages (taxes, services, donations, favours etc.).

5.2 Active and passive bribery

When a person offers, promises or gives a bribe, it is called 'active bribery' and when a person requests, receives, or accepts a bribe, it is called 'passive bribery'. Both forms are of concern to companies and are outlawed in most countries. Until the advent of the UK Bribery Act, the focus of anti-bribery legislation had been on active bribery of foreign public officials as this is the main arena for bribery because of the harm it brings to societies and the way it undermines fair trading. For example, the OECD Anti-bribery Convention and the U.S. Foreign Corrupt Practices Act (FCPA) address only active bribery.

Examples of active bribery

- Bribing a public official in order to:
 - Be awarded a contract in the briber's favour.
 - Obtain an inspection report or to be awarded a license.
 - Circumvent planning or safety controls. For a case study, [click here](#).
- Channelling bribes to win public contracts through a consultant.
- Payment of small bribes to customs officials to expedite passage of goods through a port.
- Employing a public official's son to influence award of contracts.
- Providing sponsorship fees and excessive travel expenses for doctors to influence them to prescribe a pharmaceutical company's products.

Examples of passive bribery

Passive bribery takes place most often in certain operating functions; examples of instances are below:

- **Security:** A security officer in a company accepts a bribe from criminals to allow access for theft.
- **Purchasing and procurement:** A procurement executive demands a 'kickback' to award a contract. This involves a portion of the contract fee being given back to the individual who made the decision to award the contract. The consequences of such bribery can include financial loss through overpaying for goods, projects or services and purchase of sub-standard, counterfeit or otherwise non-compliant goods or services. See the UK retailer case study.
- **Allocation of goods and services:** An employee favours a customer by expediting delivery at the expense of other customers or giving preferential allocation of goods or services.
- **Recruitment:** An executive demands a bribe to appoint or promote a person who would otherwise not have been selected. A senior buyer awards a contract on the strength of promise of a lucrative appointment with the supplier after a suitable interval.
- **Insider fraud:** A bank employee accepts a bribe to provide details of the bank's customers. See case study.
- **Illegal information brokering:** An executive accepts a bribe to provide contract specifications to be used in a tender ahead of time. Bribery might also be accepted to alter the specification in favour of a bidder.

CHAPTER APPENDIX

5.3.1 Case study: The deadly consequences of bribery to avoid planning and safety rules

A Chinese court in 2016 gave the head of a logistics company a suspended death sentence and a fine of more than 700,000 yuan (about U.S. \$100,000) over a massive explosion on 12 August 2015 at a chemical warehouse in the eastern port city of Tianjin that killed 173 people. The dead included 99 firefighters and 11 police officers. Another 798 people were injured, largely because the company illegally built its warehouse too close to residential apartments. The cost of damage was estimated to be U.S. \$1 billion according to a report by the Chinese government.

The court ruled that Ruihai International Logistics Chairman Yu Xuewei paid bribes to obtain permission to illegally store more than 49,000 tons of sodium cyanide and other highly toxic chemicals at the company's warehouse in the city's port between 2013 and 2015. The explosion was among China's deadliest industrial accidents in recent years and the resulting investigation was directly overseen by the Cabinet.

Various other Tianjin courts gave lesser sentences to 48 other people. They included 25 local government officials and workers accused of dereliction of duty, abuse of power and bribe taking, 12 other Ruihai employees accused of taking part in the scheme and 11 employees of a company that provided phoney certificates supporting the company's operations.

5.3.2 Case study: Passive bribery by bank employees: Bank's customers robbed of £113 million

Along with his accomplices, Feezan Choudhary stole £113 million from a UK bank's customers. He paid a £250 bribe every time corrupt staff at a UK bank provided information about the bank's customers. In September 2016, he was jailed for 11 years and a total of 19 people were convicted including three of the bank's employees.

5.3.3 Case study: Passive bribery in a UK retailer

Two former IKEA staff and a supplier were found guilty in the UK in 2007 in a £1.3m bribes case. The convicted parties set up a number of companies to supply goods to the UK operation of IKEA. IKEA operated a policy whereby it would not take more than 40 per cent of a supplier's turnover. This 'turnover rule' was designed to prevent suppliers being overly reliant on IKEA's business. In this case virtually the entire turnover of these companies was with IKEA. In addition, by supplying goods through the supplier's various companies the true extent of the scale of turnover of the supplier's business with IKEA was masked. To help keep this fact from being discovered and to ensure that the companies' supplies and invoices would be approved, corrupt payments were made to two IKEA executives in influential positions in purchasing and retail sales. Ultimately the position was reached where the supplier was dictating what would be ordered by IKEA according to what goods the supplier had available.

RESOURCES

[How to Bribe: A Typology of Bribe Paying and How to Stop It, Transparency International UK, 2014](#)

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