

FACILITATION PAYMENTS

**Anti-Bribery Guidance
Chapter 8**

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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Editorial:

Editor: Peter van Veen
Editorial staff: Alice Shone, Rory Donaldson
Content author: Peter Wilkinson
Project manager: Rory Donaldson
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Design: 89up, Jonathan Le Marquand, Dominic Kavakeb
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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

Small bribes are commonly demanded in certain transactions or activities, typically during travel, logistics or seeking approval of some kind such as a visa, licence or regulatory approval. Typically a public official demands a bribe for a service to which a person or company is entitled. They may also be demanded by police or other officials backed by a threat of a fine or other adverse consequence.

Countering small bribes can be exceptionally challenging for companies. Resisting these bribes can have costs for the business and demands for small bribes are often made at times of operational vulnerability. The factors which create demands for small bribes are often entrenched and pervasive and the payments can be hard for management to detect, especially when they are made by third parties and deliberately concealed. However, the legal, reputational and operational impacts of not addressing the challenge can be substantial.

Key elements:

- **Assess the risks:** The company identifies and assesses the risks that small bribes are demanded or paid in its activities and operations, and the factors that cause them.
- **Policies and procedures:** A programme is implemented comprising detailed policies and procedures to counter small bribes.
- **Communications and training:** As part of the programme, communications and training make clear the company's policy of prohibition of small bribes and give requisite information and advice to employees on how to anticipate and resist demands, seek advice and to report concerns or instances of small bribes.
- **Third parties:** As part of the programme, the company has in place appropriate procedures for third parties including due diligence, contract terms, communication, training and monitoring.
- **Accounting controls:** As part of the programme, the company's internal accounting controls are modified and extended to counter small bribes.

BEST PRACTICE

- **Understand:** Understand and define what small bribes are and know the provisions of laws. Recognise that systemic use of small bribes is to gain business advantage and can amount to substantial sums.
- **Assess the risks:** Through risk assessments identify if small bribes are a significant risk for the company.
- **Policy:** Make clear that the company's policy of prohibition of bribery includes small bribes.
- **Strategy:** If identified as a significant risk, obtain management and board commitment to a strategy to counter small bribes.
- **Anti-bribery controls:** Design and implement anti-bribery controls to counter the specific risks of small bribes.
- **Communication and training:** Provide tailored guidance and training to directors, employees on how to anticipate and resist demands, seek advice and to report concerns or instances of small bribes.
- **Protection of employees:** Make clear that the company's priority is the safety of employees and others. Where there are genuine threats to life, limb or liberty, demands for small bribes should be met. Provide a procedure for emergency guidance and support.
- **Books and records:** If small bribes are paid, ensure these are recorded accurately in the accounts and supported by documentation.
- **Influence the operating environment:** Where small bribes are a concern, invest in methods to counter the underlying factors that create the conditions for bribery demands. This is best carried out by making representations to the authorities where the problem lies in a specific area such as a port and by working collaboratively with other companies and civil society.
- **Incident management:** Appropriate actions are taken if small bribes are detected. There is a procedure to deal with any incidents including investigation and review, disciplinary action and consideration of reporting systemic payments to the relevant authorities.
- **Monitoring:** Monitor and audit for the presence of small bribes. Management and board review regularly the issue of small bribes as part of a wider review of the implementation of the anti-bribery programme.

GUIDANCE

8.1 Introduction

Small bribes, commonly termed 'facilitation payments', are typically demanded in everyday transactions, for example at border crossings. There is growing international recognition that facilitation payments are not easily separated from other forms of bribe and increasingly, companies are following a zero-tolerance policy throughout their global operations, with no exemptions for facilitation payments.

Characteristics of small bribes

- **Situational:** They occur in situations where a public official demands a bribe for a service to which a person or company is entitled. They may also be demanded by police or other officials backed by a threat of a fine or other adverse consequence.
- **Transactional:** Small bribes are commonly demanded in certain transactions or activities, typically in travel, logistics or seeking approval of some kind such as a visa, licence, certificate, utility service or regulatory approval.
- **Private sector risk:** Small bribes can be also demanded by private sector employees especially as a consequence of privatisation.
- **Many forms:** Small bribes can take the form of cash, vouchers, pre-paid phone cards, alcohol, perfume, cigarettes, and tickets to events.

8.1.1 Terminology

Small bribes are given various names depending on context and country; for example, 'tea money' in Kenya or 'baksheesh' in Egypt. The term *facilitation payment* originates from the FCPA and usually covers payments made to officials to obtain or speed up routine services which the officials are required to provide. It does not include payments made directly to obtain or retain business. Facilitation payments are allowed as an exception in the bribery laws of only four countries: Australia, New Zealand, South Korea and the USA. These laws apply only when they are made abroad and paradoxically, remain illegal in their own domestic laws. It should be noted that as facilitation payments are often hidden in the books, they can lead to a books and records offence under the FCPA. The UK Bribery Act makes no exception:

Facilitation payments, which are payments to induce officials to perform routine functions they are otherwise obligated to perform, are bribes. There was no exemption for such payments under the previous law nor is there under the Bribery Act.'

Guidance to the UK Bribery Act, UK Ministry of Justice, 2010

Transparency International UK uses the term *small bribes* rather than *facilitation payments* as this expresses the true nature of such transaction, provides precision of definition and gives a basis for countering this form of bribery transaction.

8.2 The risks of small bribes

The guidance that follows is based on TI-UK's publication [Countering Small Bribes: Principles and good practice guidance for dealing with small bribes including facilitation payments.](#)

Countering small bribes can be exceptionally challenging for companies. Resisting these bribes can have costs for the business and demands for small bribes are often made at times of operational vulnerability. The factors which create demands for small bribes are often entrenched and pervasive and the payments can be hard for management to detect, especially when they are made by third parties and deliberately concealed.

Often, small bribes are made systemically and business operations are dependent on them being made. However, consequences of not addressing the challenge can be substantial. The company may face the following risks:

- **Legal:** Legal risks (including criminal prosecution, settlement and investigation costs).
- **Reputational:** Reputational damage (including market and financing issues, loss of confidence by business partners, and increased vulnerability to bribe solicitation and demands).
- **Operational:** Operational impacts (including the cost to the business of systematically paying small bribes, market distortion, entrenching a corrupt bureaucracy and putting employees at risk).
- **Threat to personal safety:** The bribery demands may be accompanied by threats to staff safety.

8.3 The damage from small bribes

At a broad level, making small bribes feeds a climate of corruption, creating an unstable operating environment for companies. It destroys trust in government and public administration, undermines the rule of law, impacts human rights and distorts business transactions. Small bribes are not confined to demands made to companies, as there are no boundaries for officials and others who demand bribes. The effects in countries with high levels of corruption can be widespread. In such circumstances, businesses and citizens may face daily demands for payments for essential transactions, increasing the costs of living to citizens and adding costs and uncertainties to business, often the smaller and vulnerable SMEs. Small bribes are part of a cycle of bribery that corrodes public and business standards and provides a climate for larger public sector bribery and state theft.

Although many companies ask how they can be expected to operate in certain markets without paying small bribes, growing numbers are adopting policies and strategies to eliminate the practice. They are now finding that their reputation for not paying bribes means they are no longer asked; whereas those that pay small bribes can be subject to an ever-increasing spiral of demands.

8.4 How small bribes are demanded

Typically, a bribe demander will use explicit or implied threats of delay, inconvenience, business cost or some other undesirable outcome. Bribes can also be solicited by an official with the inducement of a faster service, overlooking incomplete paperwork, or some other benefit, and may also be offered by the bribe payer to obtain such benefit. Payments made in response to genuine threats to life, limb or liberty are payments made under duress, and this may provide a legal defence for the payment. Economic or other coercion such as travel delay, however costly or inconvenient, may appear valid reasons for making a payment but are not legal grounds for paying a small bribe.

What constitutes 'small' is clearly relative. A bribe of \$20 paid to a passport official may seem small to the business traveller, but the average daily wage in the country may be only \$2. A bribe of \$200 in a developed country may be relatively small. A single bribe may be small in itself, but – very often – small bribes are paid regularly and over time the amounts can be considerable and amount to large-scale systemic bribery. A company might easily discover that it is paying hundreds of thousands of pounds each year in so-called facilitation payments or small bribes.

Case study: Small bribes were systemic and aggregated to U.S. \$2 million over 2.5 years. [Click here.](#)

8.5 Eight challenges of small bribes

- **Resisting has costs:** Refusing to pay bribes may be costly; for example, by creating delays in moving goods, especially if shipments are time-sensitive. There may be competitive disadvantage if competitors continue to pay small bribes and move goods faster.
- **Entrenched and pervasive:** Small bribes originate from underlying structural and cultural issues which do not easily lend themselves to change.
- **Systemic:** Demands for small bribes are not usually isolated instances. A company can find that it is facing continuing demands, which aggregate to substantial costs. Systemic bribery means the company's operations are effectively underpinned by bribery.
- **Hard to detect:** Small bribes can easily be hidden in expense claims or invoices especially those made by third parties.
- **Books and records:** Such bribes are miscoded and hidden in the books, exposing a company to an offence under books and records provisions in FCPA.
- **Driving underground:** Prohibiting small bribes may drive the practice underground with payments paid by employees out of their own pockets.
- **Vulnerability:** Demands are often related to urgent issues when employees may not be able to obtain advice or support in time.
- **SMEs at particular risk:** SMEs can be more vulnerable to demands to pay bribes and have less influence if they want to promote change.

Case studies: Caught unawares

1. An employee lost their departure card, paid a fine at the border but did not get a receipt. The employee later thought about it and realised it was an unofficial payment. The employee reported the incident to management.
2. An employee was travelling back from a large company convention held abroad and was in a long queue at the airport check-in desk. A representative of the agency organising the convention came up and surprised the employee by taking her to the head of the queue. Subsequently, the employee wondered how this favoured treatment could have taken place. Was it a formal agreement with the airport authorities or a 'special arrangement' by the convention organiser? She reported the incident to her management.

8.6 Countering small bribes

See the TI-UK guidance [Countering Small Bribes](#) for full description of the topics summarised below.

8.6.1 Assess the risks

Through risk assessment, the company can identify and prioritise the risks from small bribes, and then design and implement mitigating controls.

The next step in the risk assessment is to gather information to identify where small bribes are happening or could happen, and finds out how employees and third parties are dealing with demands when made. It will be important to use the knowledge of front-line employees who are encountering the demands for small bribes.

The risk assessment process could be assigned to the country business unit to carry out. This can have the benefit of not only bringing local knowledge, but also bringing the local management into the process for developing the controls. Surveys and questionnaires can be supplemented by face-to-face interviews which will also bring out areas which people may be reluctant to put into print.

8.6.2 Develop a strategy and plan

Having assessed the scale and nature of the issue, a strategy and plan should be developed for countering and, where possible, eliminating small bribes. This may involve changing routes to market, supply chains or even business processes.

The strategy should be supported by a long-term commitment to countering small bribes, from the board and senior management and with provision of adequate resources. Employees should be encouraged to resist bribes so that responsibility is embedded across the company. The leadership should make clear they will not penalise employees who resist bribes and thereby incur delay or losses in operations.

An implementation plan should be prepared and then rolled-out which will provide for:

- Design of anti-bribery controls, roll-out the plan across the company.
- Communication and training for employees and third parties on how to resist demands for small bribes.
- Creation of task forces or local teams to deal with particular issues.
- Accurate recording of payments in the books.
- Influencing the operating environments (see below).
- Monitoring review and improvement.

8.6.3 Influence the operating environment

Factors that create demands for small bribes are likely to be deep-rooted – involving poverty, poorly paid officials, grasping senior officials and politicians and institutional corruption as well as corrupt companies seeking to gain advantage. The company should consider addressing these structural factors by working in collaboration to achieve fundamental change. Work can be at macro level – discussions with governments and addressing societal issues such as poor pay - or more commonly, at micro level; tackling an issue in depth in a particular government function or process. Most commonly, this will be done best through collective action. A key tool in collective action is obtaining changes in processes so that opportunities to extract small bribes are removed. This can be achieved in ways such as:

- **Standardising and simplifying:** Pressing for clarity of procedures and reduction in red tape: unclear or complex procedures can be exploited by officials to create reasons for payments.
- **Redesigning and automation of government processes:** Encouraging use of new systems and technology to remove officials from processes, and automate decisions and transfer of payments.
- **Transparency of rules and procedures:** Public functions and relevant private sector functions should be encouraged to publish their rules and charges; this removes uncertainties which can be exploited, and allows companies and the public to know their rights, enabling them to stand up to demands for bribes.
- **Contracts for non-standard services:** If public officials demand money or other benefits to cover additional services such as policing or certification or to compensate them for lost income, expenses, poor salary or overtime, formalise the arrangement by a transparent documented contract with the public body.

Implement internal financial controls: Internal controls should be designed with the aims that:

- Payments of small bribes are prevented.
- There are no miscellaneous expenses: No reimbursement for expenses categorised as 'miscellaneous' and audit of any existing expenses categorised as such.
- Payments for transactions and expenses are for what they are said to be and not a cover for payment of small bribes.

- Transactions are accurately recorded: All expenses are recorded accurately in clearly categorised accounting codes.
- Transactions are supported by documentation.
- When small bribes are paid they are:
 - Likely to be detected
 - Not mischaracterised or inappropriately recorded in the company's books and records
 - Reviewed by management
 - Reported to the board
 - Reported appropriately to the authorities

8.6.4 Give employees the skills and knowledge

Tailored training should be given to employees identified as being at risk of demands for small bribes to make them aware of when and where demands could happen and how to handle them. The emphasis in the training should be on providing the practical skills and knowledge to resist such demands. Case studies, scenarios, dilemmas and red flags can be used in training. Incorporating experienced employees in training groups can help to bring extra relevance and a degree of reality to the training. Emphasise to employees that they will not be penalised for refusing to pay small bribes even if this results in delay and costs. The input and comments of those taking part in training should be captured as this can be valuable in contributing to the company's knowledge about risks and ways of tackling bribe demands.

A key aspect of training is guidance on how to negotiate situations and role playing. Click [here](#) for a model approach.

8.6.5 Monitor to check how controls are working

This means examining expenses documentation and the books and accounts for red flags and talking to front-line employees and third parties to ask for honest feedback on the challenges they are facing. For a list of red flags, [click here](#). Absence of evidence of payment of small bribes can be an indicator of an issue especially where activities or transactions are taking place in countries known for risks of small bribes.

Annual certifications by business units and third parties on implementation of controls with reports on any issues can be helpful to focus attention on small bribes. Internal audits can be used as a check and also audits of intermediaries' books and records but it may be difficult to detect evidence of small bribes. Management should review the results of monitoring and make regular reports to the board as part of their reporting on the anti-bribery programme.

8.6.6 Public reporting

As part of public reporting on the anti-bribery programme, if the company has identified that small bribes are an issue for the sector and it has adopted a strategy, it should report on progress. For an example from the maritime sector, [click here](#).

CHAPTER APPENDIX

8.7 Case study: Small bribes aggregated over time to U.S. \$2 million

In October 2016, the German authorities reached a settlement with logistics provider DB Schenker over allegations that it bribed Russian customs officials in the port of St Petersburg. Schenker agreed to a fine of €2m (U.S. \$2.19 million) in settlement of the matter. The relatively low penal element was said by the prosecutor to be mostly due to the very high level of cooperation during the investigation and to the fact that the case was started by a report by DB Schenker's parent, Deutsche Bahn, to the Public Prosecutor's Office. As a result of the scandal, 30 Schenker executives lost their jobs in 2013.

The bribery scheme allegedly involved payments made to speed up the extremely slow customs clearing process in Russia for delivery of supplies to the nearby Ford plant. It was alleged that DB Schenker paid local tax collectors a 'service fee' for fast clearance. The money was not handed over to the customs officers directly. Instead, Schenker paid a 'service fee' to a Russian agency who then transferred the funds to accounts in Switzerland and Cyprus belonging to a financial holding entity, registered in the Caribbean and owned by the Russian agency. DB Schenker was said to have transferred up to €2.25 million to the Russian agency over 2.5 years.

8.8.1 Model negotiation steps for resisting demands

If the employee feels it is safe to do so some or all of the following steps can be followed when a demand is made. If the demand is accompanied by a threat to life, limb and liberty of the employee or others working in a country then the employee should not resist the demand.

- Use negotiation skills and remain calm.
- Clarify what is being asked for.
- Question the legitimacy of the request and ask the official where the requirement for the 'fee' is displayed or stated.
- Ask a colleague or fellow traveller to stand nearby as this may discourage the approach if the discussion is being listened to by another.
- If the discussions are in your facility such as a meeting room or on your ship consider video recording all transactions and inform the official that you do this as standard practice.
- Take detailed notes of conversations – with whom and what was said.
- Keep any papers or documents given to you.
- Refuse to pay if the official cannot supply official validity of the 'fee'.
- Make the point in a personalised and soft way that making such a payment would cause problems for the employee: 'I'll get into real trouble' etc.

- If the official still demands the payment, ask to see the official's supervisor.
- If that is refused, or if the supervisor also asks for payment and it is clear there will be no movement by the officials on the demand, offer to pay the fee subject to being given an official receipt - a formal document on official paper that identifies the official's name and relevant identification number if appropriate.
- If the official refuses to provide a receipt, restate willingness to pay the fee but only with a receipt.
- If no receipt is forthcoming, telephone the local embassy and make clear to the official demanding the bribe that this is being done.
- Having exhausted all methods and still not having gained approval from the official then, with the prior support given by management for such an outcome, decide to accept the consequences of delay or loss of goods.
- If possible, get written statements corroborating the demand of a payment as this may be needed if the official claims the employee initiated the attempt to bribe.
- Report the incident to the company as soon as possible.
- Record any payment made accurately in the accounts with a clear description of its purpose.

8.8.2 Red flags for small bribes

Transactions

- Pattern of small payments in repeated situations such as customs, taxation, per diems.
- Expense claims which have no supporting documentation and lack explanation of purpose.
- Cash advances made to employees for no apparent valid purpose.
- Expense payments made in round sums.
- Payments made under self-prepared vouchers rather than third party documents
- Miscellaneous or unspecified sums included in invoices and unchallenged by the company.
- Expenses appear excessive for the activities.
- Evidence of payments that are not recorded in financial records.
- Expenses cannot be satisfactorily explained.
- Petty cash use is excessive.

Evidence from outcomes

- Undue favourable treatment by government officials or private sector companies such as telecommunications or utility companies.
- Agent moves employees quickly through passport control in groups.
- Speedy entry into a country despite known demands and delays at border controls.
- Your company moves goods quicker through ports and customs than competitors.
- Expenses patterns differ between employees in similar circumstances or activities.

Absence

- No anecdotal evidence or reports are made to management related to difficulties regarding small bribes despite operating in an environment where demands for such payments are commonplace.
- No small bribes are reported or recorded in the books as having been made.
- Local contacts and peer companies identify concerns about small bribes demanded by particular government departments but no reports have been made by your company's employees or intermediaries.
- The agent or other third party does not wish your company's employees to be present at negotiations or interactions with officials.
- The agent or other third party shows lack of commitment or interest in countering small bribes.

8.8.3 Example: Reporting on small bribes in the maritime sector

A P Moller-Maersk: 2016 Sustainability Report

“Although the risk of large-scale corruption is low, our shipping businesses constantly liaise with port authorities, customs officials and other inspectors. These encounters can carry a high risk of demands for facilitation payments.”

- **Why this matters to society:** Social and economic development suffers when corruption is present. Societies cannot grow and prosper equitably when fair business is impeded.
- **Why this matters to A.P. Moller-Maersk:** Failure to mitigate the risk of corruption brings both financial and reputational damages to A.P. Moller - Maersk.

- **Our ambitions:** To always conduct our business in an upright manner and to eliminate facilitation payments within the foreseeable future.
- Our progress
 - 87% reduction in facilitation payments for Maersk Line, compared to 2015.
 - 59% reduction in facilitation payments across our vessel operating and logistics businesses, compared to 2015
- **Next steps:** Continued focus on facilitation payment reduction and integration of compliance into daily operations.”

RESOURCES

- [Countering Small Bribes: Principles and good practice guidance for dealing with small bribes including facilitation payments, Transparency International UK, 2014](#)
- [Transparency International's Global Corruption Barometer: Indicates the likelihood of demand for small bribes by country](#)

Transparency International UK

7 - 14 Great Dover Street,
London,
SE1 4YR

www.antibriberyguidance.org
twitter.com/transparencyuk