There are many laws and rules related to bribery. Compliance with these rules is critical for a variety of reasons:

- First and foremost, good ethical conduct is essential in building and maintaining strong international relationships.
- Compliance is critical in building broad public support for aid and development, and influencing policy makers.
- Bribery and corruption hurt the poor disproportionately in all countries and can create conflict and insecurity.
- When corruption is present, resources for development and humanitarian assistance are often wasted and the cost of public services increases.
- Finally, bribery undermines economic growth and is a barrier to poverty alleviation and good governance.

This practice note is designed to educate and prepare you to be in compliance with the UK Bribery Act and the FCPA. It also identifies best practices for avoiding, detecting and responding to bribery.

1.1. Bribery

The act of directly or indirectly offering, giving, or receiving anything of value with the intent to influence someone’s behaviour. Specifically, behaviour that is illegal, or that would help secure an improper advantage. Remember – even a charitable donation constitutes something of value. A bribe is still a bribe even if masked by another name, such as a gift, consulting services, or a “special fee.”

1.1.2. Facilitation payments

Small payments or fees requested by government officials to speed up or facilitate the performance of routine government actions such as the provision of a visa, customs clearance, permits, license, work order, police protection, utility services, mail service, contract performance and actions of a similar nature.

In many countries these types of payments are considered normal and customary. However, under the UK Bribery Act, even facilitation payments are illegal.

Being prepared is one of the best ways to deal with bribes, should you ever be confronted with one. There are many ways we can prepare ourselves for dealing with bribes, including participating in training and being familiar with Anti-Bribery laws; performing risk assessments and careful due diligence on third parties; drafting contracts with anti-bribery provisions; educating partners about these laws and regulations applicable. Transparency International provides a variety of resources and tools to help organizations develop strong anti-bribery policies.

1.1.3. Loss of life, limb or liberty exception

There may be exceptional situations where it is necessary to make a facilitation payment to ensure the safety of an individual. Where there is NO ALTERNATIVE to protect against loss of life, limb, or liberty, the common law defense of duress is available. If you encounter this, contact your legal team as soon as practical to report the incident.

Comply with your organization’s policy requirements. If it is especially important to document the details of the incident as soon as possible after an event and report such an incident to the appropriate persons within your organization.

1.1.4 Gifts and/or hospitality (reasonableness)

There are several guidelines you should follow regarding gifts and/or hospitality:

- You should keep in mind that the value of all gifts, entertainment and corporate hospitality, both given and received, must be of nominal or insubstantial value and reasonable in light of the particular circumstances of the encounter. Otherwise, it may be interpreted as bribery!

- There is legally no definitive threshold but gifts should be limited to $100 (or less) per individual, per year, or as prescribed by your organization’s policy. Cash or cash-equivalent gifts are prohibited.

For more information, contact your direct report, COO or SG.

There is always some risk involved in bribery. Consider taking steps to reduce the risk of bribery.

1.1.5 Working with third parties (Indirect bribery)

Should indirect bribery occur with a third party, the only available defense is establishing that your organization had “adequate procedures” to prevent bribery by the associated person. “Adequate procedures” may include:

- Procedures related to due diligence
- Safeguards
- Monitoring

For more information, contact your direct report, COO or SG.

1.1.6 Penalties for non-compliance

There are penalties involved as a result of not complying with the Anti-Corruption Act:

- For instance, companies can face unlimited fines unless they have “adequate procedures” in place.
- Individuals can face unlimited fines and prison sentences up to 10 years.
- Senior Executives may face personal liability if an offense is committed with their consent or active consent. Passive consent is when a person has knowledge of, or should have known.
- Liability can attach to third-party actions, such as agents, consultants, members, partners.
- There are also Operational costs and Reputational risks to consider.
- There are comparable penalties under the FCPA.

Remember – if you require more information about this topic, or need help with a specific situation you have encountered, contact your direct report!

1.1.7 Bribery/facilitation red flags

There are many potential indicators of bribery or corruption.

- Abnormal cash payments
- Pressure exerted for payments to be made urgently or ahead of schedule
- Payments being made through a third country, usually via a shell company.
- Abnormally high commission percentage being paid to a particular agent
- Private meetings with public contractors or companies hoping to win a contract
- Lavish gifts being received
- Agreeing to contracts with terms or timing unfavorable to the organization
- Abusing decision process or delegated powers in specific areas
- Company procedures or guidelines not being followed
- Invoices accepted in excess of contract amount without reasonable cause

1.1.8 Key risk areas

There are several key risk areas when it comes to bribery or facilitation payments. Take some time to learn more about these key areas by clicking on each heading in the chart.

1.1.8.1 Cultural

- In certain cultures and work environments, bribes may be seen as “business as usual.”
- Emergency relief – emergency time pressure and security context may increase risk.
- Sector – the nature of the sector in which your organization works may pose specific risks.

1.1.8.2 Partner

- Factors that may impact bribery risk include: the size, structure and/or governance of partners; the adequacy of partners’ control systems; the partner selection processes; the partnership contracts and agreements; the partners’ monitoring and support processes; and, the political involvement or connections of partners.

1.1.8.3 Procurement – where procurement processes are not fair or transparent there is increased risk. Procurement is a high risk area for bribery.

1.1.8.4 Geographic – of the certain transactions may carry higher risk. Some examples include payments to government officials, major contracts, and payments through third parties.

1.1.8.5 Recruitment – bribes can be offered or sought as part of recruitment processes.

New activity – there may be increased risk when your organization starts new activities in which we have limited experience, or activities in a new country.

Geographic – risks may be higher in certain countries or regions within countries. In urban areas may pose different risks than activities in rural areas.

Educate yourself before you visit an area that is considered highly corrupt, or where you may be unfamiliar with the laws and regulations applicable. Transparency International provides a Corruption Perception Index that is frequently updated.