

Pacy & Wheatley Construction

Bribery Act Policy



"Objection."

Anti Bribery Policy

Opening Statement

The new UK Bribery Act 2010 prohibits bribery, or attempted bribery and is effective from July 1st 2011. Bribery includes business kickbacks, corrupt commissions, and other forms of illicit business payments to secure business or government contracts. Bribery does not have to involve cash or an actual payment exchanging hands and can take many forms such as a gift, lavish treatment during a business trip or tickets to an event.

Some simple examples follow:

- bribery in order to secure or keep a contract.
- bribery to secure an order.
- bribery to gain any advantage over a competitor.
- bribery of a local, national or foreign official to secure a contract.
- bribery to turn a blind eye to a health safety issue or poor performance or substitution of materials or false labour charges.
- bribery to falsify an inspection report or obtain a certificate.

This list is not exhaustive.

Pacy & Wheatley will not tolerate any act of bribery. The company has acted diligently and completed necessary risk assessments to assess any possible exposure to bribery from or to any external or internal source.

Any employee or agent who is offered a gift or other benefit from an external or internal source must not accept such and disclose that offer to his / her supervisor or manager immediately.

Any agent or employee of the company found to have operated or been involved in a bribe will be subject to immediate dismissal, and may be referred to the authorities for criminal proceedings to be taken.

These instructions may well be amended as risk assessments proceed. You should make yourself aware of changes in the staff handbook.

Policy and Procedures

1.0 Introduction

The Company (Pacy & Wheatley Construction Ltd) strives to undertake our business fairly with honesty and with transparency. This must be reflected in every aspect of our business affairs.

The action and conduct of company officers, directors and employees (collectively known as 'Company personnel') as well as others acting on the company's behalf are essential to maintaining these standards. To that end, all the company personnel, including agents, consultants and contractors as well as suppliers involved in the company's business must become familiar and comply with this Anti Bribery Policy and the Gifts and Entertainment Policy

2.0 Definitions

The Act applies to bribery offences if any part of the activities concerned takes place within the UK. If the activities concerned occur wholly outside of the UK, an offence can still arise if the person involved has a close connection with the UK. A 'person' with a 'close connection with the UK' is defined as:

- 1) A British Citizen or British passport holder.
 - 2) A UK resident.
 - 3) An organisation incorporated in the UK.
 - 4) A Scottish partnership.
- Fraud: Intentional misrepresentation or concealment of the truth in order to secure something of value from another. The Fraud Act 2006 includes fraud by false representation, by failing to disclose information and by abuse of position.
 - Corruption: Illegal, immoral or dishonest behaviour.
 - Bribe: to ask or make someone do something for you, in return for payment (for example, but not limited to) payment, gifts, money or favours
 - Associate Company: A company where between 20% and 50% of the equity share capital is owned by the company or companies.
 - Employee: Any full or part-time director, officer, manager or employee of the company or a subsidiary company, whether unionised or non-unionised.
 - Joint Venture: A commercial undertaking entered into by two or more parties (one being the Company), by setting up a separate company in which all partners generally have equal shares.

3.0 Compliance with Anti-Bribery Laws

It is the Company's Policy to comply with all laws, rules, and regulations governing anti bribery and corruption law, in all the countries where we operate. The Company has a zero tolerance approach to acts of Bribery and corruption, by employees or anyone acting on our behalf.

Any breach of this policy will be regarded as a serious matter by the Company of which is likely to result in disciplinary action.

Under UK law (UK Bribery Act 2010), bribery and corruption is punishable for individuals by up to ten years imprisonment. If the company is found to have taken part in the corruption or lacks adequate procedures to prevent Bribery, it could face an unlimited fine and, be excluded from tendering for Government contracts and face untold damage to its reputation.

The payment or offer to pay bribes, or provisions of, or offer to provide gifts or anything of value for improper purposes, to obtain or retain business or any other benefit, (whether for the company or any other party) is prohibited. Such payments or gifts are also forbidden under the terms of this policy and may result in immediate dismissal for those involved in their payment or receipt.

The Company is required to keep financial records and to have appropriate internal controls in place which will evidence the business reason for making payments to third parties.

4.0 Application of the Policy

This policy applies to individual employees, agents, sponsors, intermediaries, consultants or any other people or bodies associated with the company or any of its subsidiaries and employees. Bribery is committed when an inducement or reward is provided, in order to gain any commercial, contractual, regulatory or personal advantage for the company or another party.

No bribes of any sort may be paid or accepted from customers, suppliers, politicians, Civil Servants, government advisors or representative's private person or Company. It is not permitted to establish accounts or internal budgets for the purpose of making facilitation bribes or influencing transactions (slush funds).

Whereas work which may be required to be undertaken internationally (such as acoustic installations) The Company recognises that to refuse a gift in certain circumstances and/or countries would cause offence to our trading partners. The test to be applied in all circumstances is:

- Whether the gift or entertainment is reasonable and justifiable.
- What is the intention of the gift?
- Is the gift being offered for something in return (quid pro quo).

This policy does not prohibit the following practices providing they are customary in a particular market, or are appropriate and properly recorded.

- Normal and appropriate hospitality (given or received).
- The giving of ceremonial gifts on a festival or at another special time eg Christmas, up to and not exceeding the value of £100 / 100 Euros.

For further guidance on applying the policy refer to Appendix 1

5.0 Risk Assessment

Managers must use the risk assessment form at Appendix 2 to decide if there is a risk of bribery.

6.0 Employee Responsibility

The presentation, detection and reporting of bribery is the responsibility of all employees throughout the Company. Suitable channels of communication by which employees or others can report confidentially any suspicion of bribery, which will be maintained through the Company's Whistle Blowing system see information below.

7.0 Reporting incidents of Bribery and Corruption.

If you become aware that an activity or conduct which has taken place which you suspect is a bribe (or corrupt) you have a duty to report this. Any such incidents should be reported to your Supervisor/ Line Manger or, you should follow the Whistle Blowing contacts.

7.1 Whistle Blowing - Who to Contact

For further information please call your immediate Supervisor who in confidence will refer you to a immediately Director.

All information will be treated in the strictest confidence

For further clarification, please contact Anthony Wheatley, Craig Wheatley or of Paul Coleman 01302 760843

Information on global corruption can be found at Transparency International - www.transparency.org

Appendix 1: GUIDANCE AND PRINCIPLES FOR IMPLEMENTING THE BRIBERY ACT 2010 POLICY

1.0 Introduction

The Bribery Act 2010 comes into force on 1st July 2011; contravention of the Act exposes companies and individuals including directors and employees to legal penalties.

The Act applies to bribery offences if any part of the activities concerned takes place within the UK. If the activities concerned occur wholly outside of the UK, an offence can still arise if the person involved has a close connection with the UK. A 'person' with a 'close connection with the UK' is defined as:

1. A British Citizen or British passport holder.
2. A UK resident.
3. An organisation incorporated in the UK.
4. A Scottish partnership.

The Act applies to any business, wherever incorporated, as long as it conducts some of its business in the UK.

2.0 Offences

There are four main offences under the Act:

2.1 Offering, promising or giving a bribe

A person may be guilty of an offence if he / she offers, promises or gives a financial or other advantage to another person where they either:

- a) Intend to bring about or reward the improper performance of a relevant activity or function (which can be either public or private sector activities); or
- b) Know or believe that the acceptance of the financial advantage is itself the improper performance of a relevant activity or function.

'Financial or other advantage' is not defined, so the nature of a bribe could be any benefit to the recipient or another person. In the first scenario (detailed above), it does not matter whether the person to whom the bribe is offered is the person who is to perform/has performed the relevant activity.

The test for whether the performance of an activity is 'improper' is whether a reasonable person in the UK would expect that the person would act in good faith, impartially or in accordance with a position of trust.

2.2 Requesting, agreeing to receive or accepting a bribe

The recipient of a bribe who requests, agrees to receive, or accepts a bribe may be guilty of an offence in the following circumstances:

- a) The recipient intends an activity to be performed improperly (either by him/herself or another person) as a consequence.
- b) The fact that the recipient requested, agreed to receive, or accepted a bribe is itself the improper performance.
- c) The bribe is a reward for the actual improper performance of an activity.

2.3 Bribing a foreign public official to obtain or retain business

The Act creates has established an offence of bribing a foreign public official, such an individual working for a foreign government or an international organisation (bribing a UK public official would be an offence under the first category above). There are two elements to this offence:

- a) Conduct – an individual offers, promises or gives a bribe to a foreign official (either directly or through an intermediary) and the foreign official is not permitted, nor required to be influenced in such a way by any law applicable to that foreign official.
- b) Intention – an individual must intend to influence the foreign official's performance of his or her functions in order to obtain or retain business or a business advantage.

3.0 Corporate liability

A company (or other commercial organisation) can be prosecuted if an individual or organisation 'associated' with it commits one of the bribery offences detailed above. 'Associated' is defined extremely widely as anyone who 'performs services for or on behalf of' the commercial organisation in any capacity. A company may therefore be liable for offences committed by a very wide range of associates, including employees, agents intermediaries, joint venture partners, suppliers, contractors or subsidiaries.

4.0 Adequate Procedures Defence

A company will have a defence if it can show that it had in place 'adequate procedures' aimed at preventing bribery. What amounts to 'adequate' will ultimately depend on the nature of the Company, its size, complexity and the level of control it has over its associated persons. The Ministry of Justice's Adequate Procedures Guidance sets out six principles to help organisations assess their risks and consider what steps to take to prevent bribery:

1. Procedures for preventing bribery should be proportionate to the company's particular risks and characteristics.
2. Top-level management need to demonstrate their commitment to preventing bribery.
3. Risk assessments should be carried out to identify the organisations exposure to internal and external risks of bribery by associated persons.
4. Due diligence should be carried out on all persons who perform services for or on behalf of the organisation.
5. Bribery prevention procedures need to be communicated externally and internally e.g. through employee training.
6. Monitoring of bribery prevention procedures should be carried out regularly and changes made where necessary.

5.0 Corporate hospitality & other risk areas

One risk area relevant to many companies is the use of gifts and corporate hospitality in doing business. Such expenditure should not constitute a bribe under the Act provided that it is given for legitimate commercial purposes. The Act is not intended to prohibit hospitality, promotional or similar business expenditure provided that expenditure is reasonable and proportionate.

'Facilitation payments' i.e. payments made to expedite or secure a routine official function are illegal in the UK.

Other key risk areas include the following:

5.1 Acquisitions or joint ventures - Companies should consider how they should go about imposing

their own ethical standards on an acquired business or joint ventures where their partners may be less willing to be transparent or able to demonstrate a commitment to an ethical code of conduct. Companies should ensure suitable warranties are sought and conduct an appropriate level of due diligence at the start to assess risk and ensure they are sufficiently protected. It may be difficult for companies to remove themselves from an existing joint venture arrangement; however, companies should assess their risks in advance and to take appropriate action.

5.2 Intermediaries - Some companies use intermediaries, such as agents, distributors and contractors, particularly when embarking on new ventures or in new jurisdictions. Another potential risk is where those third parties come into regular contact with public officials and/or tender for business on behalf of the company; due diligence should therefore be conducted on such intermediaries.

5.3 Suppliers - Suppliers also have the potential to expose a company to a liability under the Act. Equally the knock-on effect on business of a supplier being pursued under the Act may be damaging. Companies should therefore conduct an appropriate level of due diligence and consider introducing anti-bribery provisions to ensure compliance with the Act and also to protect business continuity.

6.0 Penalties and consequences

The maximum penalty for individuals under the Act will be 10 years' imprisonment and/or a fine. The maximum penalty for an organisation will be an unlimited fine.

Senior company officers can also be convicted of consenting to or conniving to the giving or receiving of a bribe by the company. Turning a 'blind eye' or omitting to act is also capable of giving rise to criminal liability.

In addition to these penalties, conviction for offences under the Act can severely damage the reputation of both the company and the individual(s) involved. Other consequences could be the disqualification of directors, debarment from public contracts and confiscation of company assets.

7.0 Conclusion

Companies should ensure that their organisations have clearly defined and implemented anti-bribery procedures in place. Any policies that deal specifically with corporate hospitality, referral or introduction payments should be reviewed and updated. Organisations should also ensure that employees at all levels of the organisation are fully informed of the


appropriate risks and that the potential consequences of breaching the Act are widely circulated.

8.0 Action Points

- You should consider the Bribery Act and its potential impact on your business. It is recommended that a risk assessment is undertaken to determine the level of exposure to legal action under the Act. An example risk assessment form is attached for your information and use to help you determine the level of risk that exists. Note that reference is made to Transparency International an organisation dedicated to exposing corruption.
- You should review any third party relationships, particularly where intermediaries, agents or contractors are used extensively.
- If you satisfy yourself that there is little risk of bribery being committed on the Company's behalf, you may conclude that there is a need to put formal bribery prevention procedures in place.
- If, however you conclude that there is a risk of bribery arising, you should put in place a compliance programme to prevent bribes being paid. The Company can only avoid liability if it can show that adequate procedures were in place and that they were enforced. The question of adequacy of preventative measures will depend on the facts of each case, including matters such as the level of control over the activities of the associated person and the degree of risk that requires mitigation. It is recommended that:
 - A formal bribery policy is introduced and communicated to all employees and associates, agents, intermediaries, joint venture partners and contractors.
 - The specific offence of bribery is listed as an action amounting to gross misconduct in the disciplinary procedures.
 - Expense procedures are reviewed to ensure that expenditure on corporate hospitality is reasonable and proportionate.
 - That the issue of bribery is specifically communicated to employees and training provided to employees specifically those involved in marketing, sales and purchasing as well as those employees capable of influencing decision making.
 - That any whistle blowing, codes of conduct, ethical policies that may exist are reviewed and modified in light of the Bribery Act 2010.

A Risk Assessment will be carried out annually and the Bribery Policy will be reviewed after this test. Findings will be analysed, and improvements made should the policy be found to be lacking in any way. This will be a continuous process, with the company's written policy being updated annually as and when is necessary.

Review Date - Continuous review by the management team

A handwritten signature in black ink that reads "Anthony Wheatley". The signature is written in a cursive style with a large initial 'A'.

Signed by Company Director: Anthony Wheatley

Date of Review: **23/01/2019**

Date of Next Review: **23/01/2020**

