

1552 — THE UK BRIBERY ACT 2010

Introduction

This Section of the Manual provides policies and guidance relating to key provisions of the United Kingdom ('UK') Bribery Act 2010 (Act), and is designed to facilitate compliance with the Act by Member Firms when providing services in connection with UK Covered Engagements. A UK Covered Engagement is (i) any engagement, business opportunity, or proposal in which the UK Member Firm is, or is reasonably expected to become, the Referring Member Firm; or (ii) any engagement, business opportunity, or proposal in which a Member Firm is, or may be, engaged to provide services directly to a UK Person or Entity, or which involves conduct committed by a person who has a "close connection" with the UK, regardless of whether the engagement involves the UK Member Firm. For this purpose, UK Member Firm encompasses Switzerland, Jersey, Guernsey and the Isle of Man, which are all part of, or are considered to be closely connected to, the UK Member Firm.

The UK Bribery Act 2010

The UK Bribery Act 2010 ('the Bribery Act' or 'the Act') came into force in July 2011. It prohibits criminal offences that may be committed by individuals as well as an offence (the "Failure of commercial organizations to prevent bribery") that may be committed by relevant commercial organizations, of which the UK Member Firm is one.

Although sharing a broad common purpose with its U.S. counterpart, the Foreign Corrupt Practices Act ('the FCPA'), namely to prevent certain classes of individuals and entities from paying or receiving bribes, including bribing Foreign Public Officials in order to obtain an unfair business advantage, the Bribery Act's prohibitions extend beyond those of the FCPA in two important respects. First, under the Bribery Act there is a blanket prohibition on making any Facilitation Payment, whereas under certain circumstances such payments may not violate the FCPA. (See DPM 1551, Para. 5). Second, the Bribery Act is not limited to bribery involving Foreign Public Officials, and thus may apply to bribery in private commercial transactions as well.

While the Act applies to any conduct in the UK, it also applies to conduct outside of the UK where such conduct would be an offence if committed in the UK and where such action is committed by persons who have a "close connection" with the UK. For purposes of this Section of the Manual, a person has a close connection with the UK if, and only if, the person was one of the following at the time the acts or omissions concerned were done or made:

- (a) a British citizen,
- (b) a British overseas territories citizen,
- (c) a British National (overseas),
- (d) a British Overseas citizen,
- (e) a person who under the British Nationality Act 1981 was a British subject,

- (f) a British protected person within the meaning of that Act,
- (g) an individual ordinarily resident in the United Kingdom,
- (h) a body incorporated under the law of any part of the United Kingdom,
- (i) a Scottish partnership.

Both the UK Member Firm and Clients, Partners or Employees of any Member Firm that meet one of the categories above are subject to the Bribery Act. Although the Bribery Act may not apply directly to non-UK Member Firms, the services that such Member Firms provide in connection with any UK Covered Engagements must not involve conduct that would violate the Bribery Act.

Policies and Guidance

1. **With regard to any UK Covered Engagement, Member Firms must not violate the Bribery Act. Specifically, Member Firms, their Partners and Employees should refrain from the following conduct:**
 - a) **Bribing another person by offering, promising or giving a financial or other advantage to that other person intending to induce or reward them for Improper performance of a Relevant Function or Activity. Bribery will also be committed where the request, agreement to receive, or acceptance of the bribe would itself be an Improper performance of the Relevant Function or Activity.**
 - b) **Being bribed, by requesting, agreeing to receive, or accepting a financial or other advantage intending that there be Improper performance of a Relevant Function or Activity.**
 - c) **Offering, promising or giving a financial or other advantage to a Foreign Public Official, intending to influence his or her conduct to obtain or retain business or obtain or retain an advantage in the conduct of business. This is an offence when the Foreign Public Official is not allowed to accept such an advantage under his or her country's written local law or regulations; conduct that may be in accordance with custom or practice, but not the country's written local law or regulations is not permitted.**

In this context, payments which are often termed "Facilitation Payments" (that is, a payment of money or goods to a government official to facilitate a routine action to which there is already an entitlement) are also considered to constitute bribery.
2. **Should any Member Firm Partner or Employee believe that the failure to provide or offer to provide any financial advantage as defined in Paragraph 1 above, including, but not limited to, a Facilitation Payment, in connection with any UK Covered Engagement may cause jeopardy to their personal security or liberty, or that of others accompanying them, any payment made to avoid such jeopardy should be promptly and fully notified to the Member Firm Reputation and Risk Leader (RRL) (or his or her designee) making clear that a Facilitation**

Payment was paid and the reasons why this was considered necessary. In the case of an Engagement in which the UK Member Firm is, or is reasonably expected to become, the Referring Member Firm and any other Member Firm is, or is reasonably expected to become, a Participating Member Firm, the RRL of that Member Firm should contact the UK Anti-Bribery Officer [UK, Deloitte MLRO] as appropriate.

- 3. Member Firm Partners and Employees should use all reasonable endeavors to ensure that any third party agent or representative utilized by their Member Firm in connection with the performance of their work under a UK Covered Engagement is carried out in accordance with the above.**
- 4. Nothing in this policy obviates or diminishes Member Firms' obligations to comply with Other Anti-Corruption Laws, any other law, rule, or regulation, or any of the Member Firms' policies, as applicable.**
- 5. Should any Member Firm Partner or Employee discover conduct, whether by Client personnel, Member Firm personnel, or other parties engaged by the Client or Member Firm, that he or she reasonably believes would violate the UK Bribery Act, such Member Firm Partner or Employee should report such conduct (a) to his/her Member Firm Reputation and Risk Leader (or his or her designee); and (b), in the case of a UK Covered Engagement referred by the UK Member Firm, the Member Firm Reputation and Risk Leader should report such conduct to the UK Anti-Bribery Officer [UK, Deloitte MLRO], or the UK Member Firm Reputation and Risk Leader (or his or her designee). In addition, the Member Firm Reputation and Risk Leader should also notify the Lead Client Service Partner. Reporting obligations under this paragraph should be undertaken in a manner consistent with privacy or confidentiality laws, if any, that may be applicable to the Member Firm.**
- 6. Questions concerning compliance with this policy should be referred to the Member Firm RRL (or his or her designee).**

Effective Date

Issued and effective July 31, 2014.

Definitions

As used in this Section of the Manual, the following terms have the meanings set forth below:

“Employees” - Persons employed by any Member Firm, whether on a permanent basis or as a temporary worker or contractor, including those who are directly employed or through a company or agency.

“Facilitation Payment” – A payment of money or goods to a government official to facilitate a routine action to which there is already an entitlement.

“Foreign Public Official” - includes officials, whether elected or appointed, who hold a legislative, administrative or judicial position of any kind of a country or territory outside the UK. It also includes any person who performs public functions in any branch of the national, local or municipal government of such a country or territory or who exercises a public function for any public agency or public enterprise of such a country or territory, such as professionals working for public health agencies and officers exercising public functions in state-owned enterprises. A Foreign Public Official can also be an official or agent of a public international organization, such as the United Nations or the World Bank.

“Improper” - The test as to what is "Improper" is defined as what a reasonable person in the United Kingdom would find improper in relation to the type of function or activity performed. Improper performance can either be performance in breach of what is expected by this standard, or where the failure to perform a relevant function or activity is itself a breach of expectation.

“Other Anti-Corruption Laws” - means any law other than the UK Bribery Act the purpose or objective of which is to prevent or prohibit bribery or other forms of corruption.

“Relevant Function or Activity” - means

- (a) any function of a public nature,
- (b) any activity connected with a business,
- (c) any activity performed in the course of a person's employment,
- (d) any activity performed by or on behalf of a body of persons (whether corporate or unincorporate).

And meets one or more of the conditions ‘A to C’ set out below:

Condition A is that a person performing the function or activity is expected to perform it in good faith.

Condition B is that a person performing the function or activity is expected to perform it impartially.

Condition C is that a person performing the function or activity is in a position of trust by virtue of performing it.

“UK Covered Engagement” - means

- a) any engagement, business opportunity, or proposal in which the UK Member Firm is, or is reasonably expected to become, the Referring Member Firm and any other Member Firm is, or is reasonably expected to become, a Participating Member Firm; or
- b) any engagement, business opportunity, or proposal in which a Member Firm is, or may be, engaged to provide services directly to a UK Person or Entity or which

involves conduct committed by a person who has a “close connection” with the UK, regardless of whether the engagement involves the UK Member Firm.

- c) For this purpose, UK Member Firm encompasses Switzerland, Jersey, Guernsey and the Isle of Man, which are all part of, or are considered to be closely connected to, the UK Member Firm.

“UK Person or Entity” - means British citizens, persons ordinarily resident in the UK, British overseas territories citizens, British Nationals (overseas), persons who are British subjects or British protected persons under the British Nationality Act 1981, businesses incorporated in the UK and UK partnerships, as well as the local subsidiaries and affiliates of businesses incorporated in the UK and UK partnerships.