



# Bribery and corruption

This page includes background information about the risks of bribery and corruption and provides information and guidance on anti-bribery and corruption legislation and obligations for businesses and third sector organisations.

The States of Guernsey takes a zero tolerance approach to acts of bribery and corruption, which are illegal both under Bailiwick legislation and under certain overseas legislation with extraterritorial reach.

The participation of businesses in corrupt or potentially corrupt practices or in acts of bribery undermines the integrity of business and third sector activity conducted in or from the Bailiwick and risks damage to social and economic development.

Overarching measures to combat bribery and corruption have been agreed by international anti-corruption conventions. The [United Nations Convention against Corruption](#) (UNCAC) and the [OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions](#) (the OECD Convention) have both been extended to the Bailiwick. While the Bailiwick's position as a major international financial centre means that the matters addressed under the conventions are more readily applicable to financial services businesses, they are not confined to this sector and apply to all businesses, including small and medium enterprises (SMEs), as well as to third sector organisations.

- **Scope of Bribery and Corruption**
- Definitions of bribery and corruption vary. Among those most commonly used internationally are the following definitions provided by Transparency International:

- *Bribery: "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 gifts, loans, fees, rewards or other advantages (taxes, services, donations, etc)."*
- *Corruption: "The misuse of entrusted power for personal gain. Corruption can be classified as grand, petty and political, depending on the amounts of money lost and the sector where it occurs."*
- Bribery may be described as a single and specific form of corruption, but there are other forms such as misappropriation of assets which do not necessarily involve the act of giving or receiving bribes.
  
- The bribery of foreign public officials in the course of international business transactions, including trade and investment, is a particular concern for the international community. Foreign public officials for these purposes are:
  - people holding legislative, administrative or judicial offices at both national and local level in foreign countries, whether appointed or elected; or
  - people exercising public functions for a foreign country, including for a public agency or public enterprise; or
  - officials or agents of public international organisations.
- A weak control environment (for example, surrounding the making of payments to overseas third parties) has been identified as a major factor in businesses or other organisations being inadvertently involved in corrupt transactions. It is recognised that bribery and corruption are more likely to flourish in opaque circumstances where the proceeds of corruption are laundered and cannot be traced back to the underlying corrupt activity. This is a particular risk when the ownership and control of assets is obscured, and transactions leave incomplete or misleading audit trails.
  
- **High risk activity**
- The following sectors, projects and types of contract have been identified internationally as examples where there is potentially higher bribery and corruption risk:
  - large public procurement projects, particularly where individual components are divided (and subdivided) into smaller projects where public tenders, publicity or other checks and balances are not required;

- very significant, highly centralised and capital intensive projects;
  - very significant, complex projects with many actors;
  - very significant projects with complex chains of agents and/or other third parties;
  - major construction or onfrastructure projects/contracts;
  - energy sectors;
  - extraction sectors;
  - telecommunications sectors;
  - arms sectors;
  - pharmaceuticals/life sciences sectors;
  - services, for example consultancy services, in relation to the above elements.
- The existence of public officials and other politically exposed persons in connection with any transaction or business relationship which includes one or more elements from the above list further increases bribery and corruption risk.
  - Clearly, sectors, projects and contracts involving more than one aspect from the list above have enhanced bribery and corruption risk.

- **Legislation applicable in the Bailiwick**

- The [Prevention of Corruption \(Bailiwick of Guernsey\) Law, 2003](#) (the Law) gives effect to UNCAC and the OECD Convention in domestic Bailiwick law. As well as applying to any activity carried on within the Bailiwick, it has extraterritorial effect as it extends to overseas activities of natural British persons ordinarily resident in the Bailiwick and those of to legal persons incorporated in the Bailiwick. In addition, it extends to cases where part of the act of bribery takes place within the Bailiwick, even if most of it takes place overseas, and this applies whether or not a natural British person ordinarily resident in the Bailiwick or a legal person incorporated in the Bailiwick was involved.
- Transparency of transactions and asset ownership is essential, because the offences in the Law are predicate offences for the purposes of the money laundering offences in the [Criminal Justice \(Proceeds of Crime\) \(Bailiwick of Guernsey\) Law, 1999](#). This means that it is an offence to conceal or transfer the proceeds of corruption, to assist another person to retain the proceeds of corruption or to acquire possess or use the proceeds of corruption, unless any such act is done with the consent of the Financial Intelligence Service (FIS). It also means that assets linked to corruption come within the scope of the reporting obligations in the [Disclosure \(Bailiwick of Guernsey\) Law, 2007](#). It is a criminal offence to fail to disclose to the FIS knowledge, suspicion or reasonable grounds for suspicion that another person is engaged in laundering the proceeds of

corruption or that certain assets are or are derived from the proceeds of corruption, if the relevant knowledge, suspicion or reasonable grounds for suspicion are acquired in the course of a business.

- In addition, Bailiwick businesses should be aware that in many cases their activities will also come within the scope of the UK's [Bribery Act 2010](#) (the Act) because it applies to the activities of natural or legal persons with a close connection with the UK, which includes all British citizens and all legal persons incorporated in the UK. The UK legislation has extraterritorial effect in a similar way to the Bailiwick legislation as it applies to the activities of such persons anywhere in the world.
- Although the Law and the Act are worded differently, broadly speaking their effect is the same. Both criminalise bribery and corruption by offences which apply to the offering of inducements (which need not be pecuniary) to domestic or foreign officials to carry out or refrain from particular acts, whether or not they are within an official's authorised competence, in order to obtain or retain business or to be able to carry out other forms of activity. This includes any use of an official's position, and it applies even where the organisation concerned was the best-qualified bidder or was otherwise an organisation that could properly have been awarded the relevant contract. Bribery also includes inducements to gain an improper advantage in relation to existing activities (such as a permit to carry out work which is in breach of health and safety regulations). This extends to inducements to carry out otherwise legitimate activity in a way that favours the organisation, for example to deal with a permit application that is above board more quickly than would normally be the case. The value of the advantage and the extent of its benefits for the recipient are irrelevant.
- It is also important to be aware that the offering of inducements in countries where this appears to be tolerated by local authorities, or is apparently necessary in order to obtain retain or carry out business, is still an act of bribery under both the Law and the Act.

- **Need for adequate procedures**

- In addition to generally applicable offences, the Act contains a specific offence of failing to prevent bribery that is applicable to commercial organisations only, and this applies to the acts of persons associated with it (who may or may not be employees) that are taken to obtain or retain business for it. This is subject to the defence of having adequate procedures in place designed to prevent this from happening. Although there is no corresponding specific offence in the Law, the failure of businesses or other

organisations to prevent bribery will in many cases be covered by the general offences under the Law. This is because businesses or other organisations that are legal persons will be liable for any acts of bribery that are carried out by someone employed by or acting for them with their express or implied consent, and the courts are likely to find that there was implied consent at the very least if there are not adequate procedures in place to prevent bribery and corruption from taking place. Such a situation is also likely to result in the prosecution of individual officers of organisations that are legal persons, as they are liable under the Law for any corrupt acts by an employee of the organisation that are attributable to their neglect.

- Therefore, in order to avoid liability under both the Law and the Act, businesses and other organisations in the Bailiwick will need to demonstrate that they have adequate procedures to prevent and detect bribery and corruption. This will extend to overseas acts of bribery and corruption in cases that come within the extra-territorial provisions of the Law and the Act.

- **Good practice and procedure**

- Steps to establish effective internal controls, ethics, and compliance measures to prevent bribery and corruption are set out below. These steps are a user friendly articulation of the standards in the OECD Convention and the guidance in Annex II to the OECD Convention. Full information can be found by using the link above to the OECD Convention.
- It is recognised that internal controls, ethics and compliance measures are more likely to be effective if they are integrated within the overall compliance framework of a business. Financial services businesses should therefore also consult the [GFSC Handbook for Financial Services Businesses on Countering Financial Crime and Terrorist Financing](#), which contains sector specific guidance on combating bribery and corruption. Similarly, legal professionals, accountants and estate agents should consult the GFSC Handbook for those sectors which is written in the same terms. eGambling operators should consult the [AGCC Prevention of Money Laundering and Combating the Financing of Terrorism Guidance for the eGambling Industry based in Alderney](#). This document contains guidance for combating bribery and corruption as well as giving some examples of what behavior could amount to such offences.
- As a starting point, there should be explicit support and commitment at senior management level for having appropriate internal controls, ethics and compliance

measures to prevent and detect bribery and corruption. This should be reflected in an assessment of the risk to the organisation of involvement in bribery and corruption and in a clearly articulated and visible corporate policy prohibiting such activity.

- The policy should include specific measures along the following lines, adapted as necessary in line with the particular risks of the organisation:
  - Relationships - dealings with agents and other intermediaries, consultants, representatives, distributors, contractors and suppliers, consortia, and joint venture partners should be subject to properly documented risk-based due diligence. An organisation should inform these parties of its commitment to abiding by domestic or foreign laws prohibiting bribery and corruption, as well as its ethics and compliance measures for preventing and detecting this activity, and should seek a reciprocal commitment.
  - Record keeping - the maintenance of books and records, financial statement disclosures, and accounting and auditing standards is essential to prohibit the establishment of off-the-books accounts, the making of off-the-books or inadequately identified transactions, the recording of non-existent expenditures, the entry of liabilities with incorrect identification of their object, as well as the use of false documents, for the purpose of bribing officials or of hiding such bribery. These measures should already be in place for entities subject to Guernsey company law and the regulatory laws applicable to financial services businesses, which impose obligations to maintain proper accounting records which are sufficient to show and explain transactions and disclose with reasonable accuracy at any time the financial position of the entity. In addition, financial statements are required to show a true and fair view (or be properly prepared) in accordance with an appropriate accounting framework. NPOs are also already subject to similar obligations under the [Charities and Non Profit Organisations \(Registration\) \(Guernsey\) Law, 2008](#), which requires them to make, keep and retain records of all financial transactions (with whosoever made) in order to evidence the application or use of their assets, funds and income.
  - Internal ethical standards - there should be rules applicable to all directors, officers, and employees (and any entities over which an organisation has effective control, including subsidiaries), which should address matters such as gifts, hospitality, entertainment and expenses, customer travel, political contributions, charitable donations and sponsorships, facilitation payments, solicitation and extortion.

- Training and guidance - a documented training programme on compliance measures and ethical standards should be in place for all levels of the organisation, as well as, where appropriate, for subsidiaries. This should be supported by appropriate steps to encourage and provide positive support for the observance of these measures and standards at all levels of the organisation, including the provision when necessary of urgent advice on difficult situations in foreign jurisdictions. There should also be internal reporting procedures to protect directors, officers or employees (and, where appropriate, business partners) who are not willing to violate professional standards or ethics but are under instructions or pressure to do so from their superiors. The reporting procedures should also provide for reporting by directors, officers or employees (and, where appropriate, business partners) who are willing to report breaches of the law or professional standards or ethics occurring within the organisation in good faith and on reasonable grounds. In addition, the procedures should also address the appropriate action to be undertaken in response to such reports.
- Oversight - senior officers should have the responsibility, authority, autonomy and resources to report matters of concern directly to independent monitoring bodies such as internal audit committees of boards of directors or of supervisory boards. There should also be appropriate disciplinary procedures to address violations at all levels of the organisation of both bribery and corruption legislation and the compliance measures and ethical standards of the organisation.
- Review - organisations should undertake periodic reviews of their compliance measures and ethical standards, with a view to evaluating their effectiveness in preventing and detecting bribery and corruption, taking into account relevant developments in the field as well as evolving international and industry standards.
- **Other sources of information**
  - Guidance on how to comply with the Act has been issued by the UK authorities, which is available here: <https://www.gov.uk/government/publications/bribery-act-2010-guidance>.
  - Transparency International has also issued guidance and checklists on putting in place adequate procedures, which are available here: <http://www.transparency.org.uk/our-work/business-integrity/bribery-act/adequate-procedures-guidance/>.
  - These documents contain material which is also relevant to compliance with the Law.
  - In addition, local or national business or third sector organisations and professional associations in the UK or elsewhere might play a part in assisting with the development of effective compliance measures and ethical standards. This is likely to

be of particular benefit for SMEs. It may include the dissemination of information relevant to foreign bribery issues (for example, updates on risks presented by specific countries or types of activity); granting access to relevant data bases; providing training, prevention, due diligence, and other compliance tools; providing general advice, for example on carrying out due diligence or on how to resist extortion and solicitation.