



# ANTI-BRIBERY & CORRUPTION

Company Policy, Guidelines & Related Information

PUBLIC VERSION

# Anti-bribery policy

**It is illegal to offer, promise, give, request, agree, receive or accept bribes.**

**Diaquip operates a no-bribes policy. Diaquip does not tolerate bribery or any other form of corrupt business behaviour. Diaquip extends this policy to its agents. Any suspected event of bribery or corruption must be reported to Diaquip management.**

Diaquip Limited takes a zero-tolerance approach to bribery and corruption and sets high standards of impartiality, integrity and objectivity in relation to the management of its activities.

The Board of Directors of Diaquip Limited have formally endorsed this Policy and the related guidelines; and fully support initiatives designed to foster its implementation. Please take the time to read both the policy and guidelines and make efforts to implement it in all your daily business activities and be mindful to use the resources listed in addition to any related training to keep yourself up-to-date with best practice in this area.

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# Anti-bribery guidelines

Diaquip has a responsibilities under anti-corruption laws and regulations. In addition, large companies increasingly expect distributors to comply with anti-corruption laws. These guidelines aim to increase awareness and understanding of the corruption risks that Diaquip may face.

## ***What is bribery?***

A bribe is the offering, giving, receiving or soliciting of any item of value of an advantage to another person to induce that person to improperly perform a relevant function of activity, or to reward them for improper performance. Many definitions talk about *giving* or *taking an advantage* or *inducement* in order to perform a function *improperly*.

The UK Bribery Act (2010) defines the circumstances of bribery as where:

- A person is guilty of bribing where the person offers, promises or gives a financial or other advantage to another person, intends the advantage (i) to induce a person to perform improperly a relevant function or activity, or (ii) to reward a person for the improper performance of such a function or activity; *and where*
- A person is guilty of being bribed if the person requests, agrees to receive or accepts a financial or other advantage intending that, in consequence, a relevant function or activity should be performed improperly.

**UK anti-bribery legislation applies extra-territorially i.e. Diaquip are responsible in the UK and on its activities Internationally outside of the UK.**

## ***Why countering bribery matters.***

An estimated USD \$ 1.5 trillion is paid globally in bribes by businesses and individuals each year.<sup>1</sup> Bribery and corruption are damaging to democratic institutions and the governance of corporations. Corruption and fraud cost companies on average 5% of annual turnover.<sup>2</sup> Bribes discourage investment and distort International competitive conditions.<sup>3</sup>

Bribery is a two-way transaction – it requires both a bribe-payer and a bribe-taker. Each time a company pays a bribe it is contributing to perpetuating a system of corruption that embeds poverty and inequality. That is why so much emphasis is placed on stopping people and companies paying bribes, even if they appear relatively small. If you cut off the supply-side of bribery, you can start to solve the problem of corruption.<sup>4</sup>

Bribery affects all countries. Bribery is a key risk for companies worldwide. There are many countries and circumstances in which a company may encounter a request for a bribe. A third of compliance professionals suspect that their businesses have lost contracts to unethical competitors.<sup>5</sup> Among companies losing business, nearly 70% cite non-compliant competitors and more than 70% mention losses to companies not required to comply with anti-bribery regulations.

All areas of the world are affected by bribery, although it is prevalent in certain countries more than others. Don't be misguided by justifications such as local custom; bribery is a crime that is prohibited by law in every country.

## ***What is a bribe?***

A bribe can be anything of value to the person being bribed, such as a holiday for a purchase manager disguised as a business trip. A bribe might not necessarily be money exchanged in secret. The thing of value can be disguised as a gift, hospitality, travel or to can be a payment to an intermediary. These activities should be “red flags” for further investigation into the circumstances surrounding the event and to determine if there is any level of bribery and corruption.

**A bribe can be anything of value to the person being bribed. The thing of value can be disguised as a gift, hospitality, travel or to can be a payment to an intermediary. These activities should be “red flags” for further investigation.**

The method of payment might be concealed, such as false invoices, consultant fees or a payment through a third-party.

<sup>1</sup> The World Bank Group – Combating Corruption (26<sup>th</sup> September 2017) [<http://www.worldbank.org/en/topic/governance/brief/anti-corruption>]

<sup>2</sup> GAN Anti-Corruption Learning Course (Accessed November 2017) [<http://www.business-anti-corruption.com/compliance-training/anti-corruption-learning-course>]

<sup>3</sup> OECD Guidelines for Multinational Enterprises; 2011 edition section VII 74.

<sup>4</sup> Transparency International

<sup>5</sup> Dow Jones Annual State of Anti-Corruption Compliance Survey 2015 [<https://www.dowjones.com/press-room/companies-taking-active-role-responding-unethical-conduct-according-dow-jones-anti-corruption-compliance-survey/>]

## ***Bribes via agents***

Third parties are considered high risk and should always undergo proper due diligence. The use of a third-party or *agent* to channel a bribe is a common practice of corruption.

A company can still be prosecuted even if a bribe is paid by an agent *and* even if the company itself had no knowledge that an agent was offering a bribe.

The UK Bribery Act covers a company's "Associated Persons". This is a deliberately wide-ranging phrase that can encompass employees, agents, suppliers, contractors, re-sellers and others.

**Agents are major conduits for bribes. Diaquip are responsible for the activities of its agents under guidelines for anti-bribery and corruption.**

## ***Facilitation Payments***

A facilitation payment, or a grease payment, is a bribe designed to give you access to, or speed up receipt of, something you are entitled to anyway, e.g. payments made for police guard, to speed up getting goods through ports/customs, to get the electricity switched on and so on.

Some people argue that facilitation payments are harmless and should not be classified as bribes but this is not true. They are bribes and paying them helps to perpetuate a culture of bribery and corruption within the country concerned. Since they are bribes, they are illegal.

Facilitation payments are illegal under the UK's Bribery Act and in many other countries.

**Facilitation payments are considered bribes and should be prohibited.**

Under US law, small facilitation payments are permitted if the purpose of the payments is to expedite or secure the performance of a "routine governmental function" – something the company is entitled to receive anyway. However, this is a very narrow exception. However, note that under the UK Bribery Act 2010, a facilitation payment is considered a bribery offence, even if payments occur abroad. A company that pays serial facilitation payments without attempting to stop them may also breach US law.

## **“Red-Flags”**

A “Red Flag” is anything indicating a higher risk of corruption. A Red-Flag event is not necessarily an act of bribery or corruption. However, a Red-Flag event should raise significant concern to warrant further investigation in order to establish the risk and or likely-hood that bribery and corruption are taking place; and to then take adequate steps to stop any potential corruption and report it where necessary.

There are several warning signs that a potential payment could be improper. Some of them are general, like selling to a country known for widespread corruption or being involved in an industry known to be corrupt. Others are more specific, for example when a consultant or agent engaged by Diaquip refuses to sign a written anti-bribery agreement, has family or business ties with government officials, has a bad reputation, asks for an unusually high commission, makes odd or irregular requests or is recommended by the customer.

## **Red-Flag Examples**

**A “Red Flag” is anything indicating a higher risk of corruption. If you spot any red flags in your daily work, then please seek your manager’s advice before you proceed.**

The following examples help to illustrate how bribes and corruption might be performed and the circumstances under which a “Red Flag” might be raised.

### **Agents as a conduit**

The use of a third-party or *agent* to channel a bribe is a common practice of corruption.

For example, if a company pays a 20% commissions to an agent – then there is the opportunity for the agent to pay a bribe to the decision-maker on a contract, with or without the company’s knowledge.

Third parties are considered high risk and should always undergo proper due diligence.

### **Charitable Donations**

A company may contribute to the building of a school, which is hailed as a charitable act but, there is the opportunity to use the donation to influence a decision or for part of the funds to be channelled to the decision maker. Charitable donations should always undergo proper due diligence.

### **Gifts, Hospitality or Travel Expenses**

Gifts and hospitality are legitimate expenses and a common way of building good business relationships or expressing appreciation for service.

However, gifts, hospitality or travel expenses may be another route for bribery. You should never offer or accept any gifts or benefits with the purpose of influencing a business decision.

For example, a company may pay for the decision maker on a contract, perhaps with his or her family, to go on a lavish holiday described as a training course. Or, the company may entertain a buyer frequently and excessively with the aim of grooming the buyer for more substantial bribery.

- Ⓜ The gift is unusually generous or lavish
- Ⓜ The timing of the gift is suspicious – e.g. during a bidding process
- Ⓜ The official is demanding lavish gifts before commencing or continuing negotiations or the provision of services
- Ⓜ Is any business currently being sought from the person receiving the hospitality?
- Ⓜ Is the hospitality reasonable in scale and amount?
- Ⓜ Is hospitality being properly recorded in the paying company's books and records?

If you have doubts about gifts and hospitality you can also ask your manager if it meet the guidance with company policy. To decide if you should accept a gift or hospitality, ask yourself “is it appropriate in the circumstances, reasonable and not too lavish?” It is not appropriate to offer gifts and hospitality if any business is being sought from the other company at the same time. If gifts and hospitality are too lavish or too frequent, they could be perceived as being bribes.

## **Nepotism or Cronyism**

Nepotism or Cronyism can be used as a bribe. A company may hire a relative or friend of the decision-maker in return for receiving a favour.

An offer of employment has value, even if the recipient is qualified for the job. It is particularly risky to hire a current government official to be a sales representative, which involves paying him to secure business or other benefits for your company. Offering to employ a government official after he retires from the government could also raise problems under the FCPA, the UK Bribery Act and laws implementing the EU and OECD conventions, if the offer is made while he is still a government employee.

## *Reporting*

**If you suspect or know that you are being offered or asked to pay a bribe then you must report it to Diaquip management.**

If you ever find yourself in a situation that potentially involves corrupt behaviour, please speak up and report it to the company management.

If you suspect or know you are being asked to pay, or offered, a bribe you must report it to the company management. If you have paid a bribe or know that someone else has paid a bribe – of any size – then **you must report it**.

Please do not be afraid to report suspicious activity. **All reports will be handled confidentially**. Even if it is determined that activity is legitimate, we can learn from the feedback and ensure that such situations do not arise in the future.

## **REPORTING**

**E-MAIL Diaquip's Management at [contact@diaquip.ltd.uk](mailto:contact@diaquip.ltd.uk) or by direct e-mail to the Director at [NOT DISCLOSED IN PUBLIC VERSION].**

The company has legal obligations to conduct internal investigations into reports of bribery; and to report any events of bribery and corruption to external authorities.

## ***Working Internationally, Legislation & Regulation***

Bribery laws often seek to punish both bribe givers and takers. Common features of anti-bribery laws are:

- **Extra-territorial**  
Individuals and or Companies can be prosecuted in your home country or a third party such as the US, for bribes paid anywhere in the world.
- **Criminal offence**  
International pressure has strongly increased to make bribery a criminal offence and to encourage prosecution of offenders.
- **Foreign public officials**  
Most laws make special reference to bribes paid to overseas public officials as transactions involving such public officials are regarded as high-risk. However, bribery within the private sector is increasing and more recent anti-bribery laws reflect this.
- **Penalties for individuals**  
Penalties range from heavy fines to imprisonment and the death sentence.
- **Corporate liability**  
Companies are increasingly being held liable for bribes paid by their employees and agents – and the fines and associated costs are growing.

### **United Kingdom**

The Bribery Act 2010 sets high anti-corruption standards and is the primary legislation governing Diaquip. In particular, the legislation has global jurisdiction and is therefore not limited to acts of corruption committed in the UK. Diaquip is responsible for all of its International operations too. The act makes no distinction between *bribery* and *facilitation* payments, thereby making both illegal.

UK procurement regulations follow the EU public procurement directives. Regardless of where the act was committed, a company can be debarred from participating in public procurement if it has been previously convicted of a criminal offence or if it has committed an act of grave misconduct.

The UK is a signatory to the OECD Anti-Bribery Convention, the United Nations Convention Against Corruption (UNCAC), the Council of Europe's Civil and Criminal Law Conventions against Corruption and is a member of the Group of States Against Corruption (GRECO).

### **United States**

The most widely enforced anti-corruption law in the world is the US Foreign Corrupt Practices Act. The legislation can be applied to virtually all of the world's largest companies and organisations included companies that Diaquip has a relationship with. The Act makes the bribery of foreign government officials illegal. Like the UK Bribery Act the US FCPA has global jurisdiction and is strongly enforced. However, the US FCPA does include a limited exception for facilitation payments. The Racketeer Influenced and Corrupt Organizations Act (RICO Act) and the Hobbs Act provide for investigation, prosecution and criminal penalties for public corruption, including abuse of office and extortion. The Travel Act criminalises bribery of US government officials and commercial bribery.

Money laundering is criminalised by the Money Laundering Control Act. The anti-corruption legal framework is enhanced by the Sarbanes-Oxley Act (SOX), which addresses fraudulent practices in enterprises, ensures accuracy of corporate disclosures, and provides penalties of up to 10 years in prison for retaliation against whistleblowers. The resource extraction rule of the Dodd-Frank Act requires resource extraction companies to disclose any payments exceeding USD 100,000 made to the US or foreign governments. The Act also introduces rewards to whistleblowers for information that leads to a successful enforcement action.<sup>6</sup>

## Russia

Russian law criminalizes active and passive bribery, facilitation payments, gifts and other benefits. However, effective enforcement of anti-corruption legislation is hindered by a politicized and corrupt judicial system.

The Federal Anti-Corruption Law No. 273 has recently been amended in an effort to comply with the OECD convention on Anti-Bribery. It requires all companies operating in Russia to develop and implement anti-corruption compliance programs with precise requirements.

## Belarus

The Criminal Code of the Republic of Belarus criminalizes attempted corruption, extortion, active & passive bribery, bribery of foreign officials; and money laundering. The legal status of facilitation payments is uncertain.

The Law on Fighting Corruption and the Law on Measures to Prevent Legalization of Income acquired in an illegal way are also part of the anti-corruption legal framework. Likewise, the Anti-corruption law and the Public Service Law governing gifts to public officials are reportedly unclear.

Belarus has developed e-procurement services predominantly in the form of e-auctions; requiring information to be public, the effective and optimal expenditure of budgetary funds, and full anonymity of bidders.<sup>7</sup>

## Ukraine

Ukraine's anti-corruption laws encompass corrupt misconduct in both the private and the public sectors. The Law On Prevention of Corruption introduces measures for monitoring the effective implementation of anti-corruption provisions.

The Criminal Code of Ukraine criminalizes active and passive bribery, attempted corruption, extortion, bribery of a foreign public official, money laundering, abuse of office and facilitation payments. The Law On Principles of Preventing and Counteracting Corruption is aimed at preventing and combating corruption in the public sector and requires financial reporting by state officials. Corporations are criminally liable for committing corruption offenses. Law No.1261-VII provides regulations that expand the jurisdictional reach of the anti-corruption legislation to apply to foreign persons working in the private sector. In 2017, Ukraine announced that certain entities, particularly companies engaging in public procurement processes worth over AUH 20 million, will be obligated to comply with the "Typical Anti-Corruption Program for Legal Entities"<sup>8</sup>. The measures in this program include yearly corruption self-assessments, an obligation to instruct personnel on anti-

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<sup>6</sup> US Corruption Report (Accessed November 2017) [<http://www.business-anti-corruption.com/country-profiles/usa>]

<sup>7</sup> Yuri Krivorotko: Public Procurement System in Belarus: Administrative Aspect 2014. [[http://uni-nke.hu/uploads/media\\_items/yuri-krivorotko\\_publicprocurement-system-in-belorus-administrative-aspect.original.pdf](http://uni-nke.hu/uploads/media_items/yuri-krivorotko_publicprocurement-system-in-belorus-administrative-aspect.original.pdf)]

<sup>8</sup> Lexology: "Ukraine: New Law Creating An Electronic Procurement System Came into Legal Effect", 22 February 2016.

corruption laws, and an obligation to establish internal procedures to protect employees who blow the whistle on internal violations.

## Lithuania

The Criminal Code criminalises corruption in the public and private sectors, covering abuse of office, money laundering, active and passive bribery and the bribery of international civil servants and foreign government officials. Gifts are regulated under Lithuanian law.<sup>9</sup>

Lithuania's anti-corruption legislation is well developed. The Criminal Code criminalises corruption in the public and private sectors, abuse of office, money laundering (also covered by the 1997 Act on Prevention of Money Laundering), active and passive bribery and trading in influence. It also provides for criminal liability for bribery of international civil servants and foreign government officials. Giving and receiving gifts is criminalised in Lithuania, and public officials are not allowed to accept protocol gifts that exceed EUR 29. Gifts that do not give rise to conflicts of interest yet exceed the amount of EUR 145 have to be reported.

Lithuania has ratified the United Nations Convention against Corruption (UNCAC), the Council of Europe Civil Law Convention on Corruption, the Criminal Law Convention on Corruption, the OECD convention, and the Additional Protocol to the Criminal Law Convention on Corruption.

## Key Legislation & Regulation

- Bribery Act (2010) (UK)
- Foreign Corrupt Practices Act [FCPA] (1977) (US)
- OECD Anti-Bribery Convention (1997)
- Council of Europe's Civil and Criminal Law Conventions against Corruption (2002) (EU)
- Public Contracts Regulations (2015) (UK)
- United Nations Convention Against Corruption (UNCAC)

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<sup>9</sup> Lithuania Corruption Report (Accessed November 2017) [<http://www.business-anti-corruption.com/country-profiles/lithuania>]

# Summary

**A bribe is directly or indirectly offering, promising, giving, receiving or soliciting anything of value, intending to influence or reward someone for improperly performing their duties. Under the UK Bribery Act, it includes facilitation payments. Participating in a bribery offence can lead to serious penalties for individuals and companies. You can also be found guilty of bribery offences even if you are not actively involved.**

- Paying a bribe to a government official to win business or gain any other improper business advantage is prohibited by international and domestic bribery laws and conventions.
- Bribes are illegal even if paid indirectly.
- You can be responsible for bribing someone even if you aren't sure a payment has been made.
- A bribe can be anything of value.
- All payments to officials of the EU or its Member States are completely prohibited by the EU Convention.
- Offering employment to a government official or his friends or family can be a bribe.
- It's important to keep accurate records of all payments made to government officials.
- Be alert to warning signs that may indicate the possibility of a bribe.

# Resources

- **UK Legislation**

UK Bribery Act. Visit: <http://www.legislation.gov.uk/ukpga/2010/23/contents>

UK Bribery Act – Guidance to help commercial organisations understand the sorts of procedures they can put in place to prevent bribery. Visit:

<https://www.gov.uk/government/publications/bribery-act-2010-guidance>.

- **Transparency International UK**

Transparency International UK provides independent and impartial advice based on the organisations extensive knowledge of good practice in the anti-corruption field. A comprehensive anti-bribery training course is available online via the URL listed below.

It is recommended for all members of Diaquip to take the course on an annual basis in order to refresh their understanding of anti-bribery and corruption best practice.

Visit: <http://www.doingbusinesswithoutbribery.com/>

- **OECD – Bribery and Corruption**

Visit: <http://www.oecd.org/corruption/>

- **World Bank – Combating Corruption**

Visit: <http://www.worldbank.org/en/topic/governance/brief/anti-corruption>

- **GAN Business Anti-Corruption Portal**

Funded by the Prevention of and Fight against Crime Programme of the European Union European Commission The GAN Business Anti-Corruption Portal is a collection of free anti-corruption compliance and risk management resources, including e-learning training, country risk profiles, and due diligence tools.

Visit: <http://www.business-anti-corruption.com/>

- GAN Anti-Corruption Learning Course**

The course covers: Code of Business Conduct, Bribery, and Gifts & Hospitality. The aim of the course is to increase awareness and understanding of the corruption risks businesses may face.

Visit: <http://www.business-anti-corruption.com/compliance-training/anti-corruption-learning-course>