

EXTRACT FROM REPORT TO GOVERNANCE AND CONSTITUTION  
COMMITTEE ON 27<sup>TH</sup> MARCH 2013

Core Provisions of the Bribery Act

1. Bribery is defined in general terms as “giving someone a financial or other advantage to encourage that person to perform their functions or activities improperly or reward that person for having already done so”.
2. The Act contains two general bribery offences:
  - i. Section 1, is concerned with offences of bribing another person;
  - ii. Section 2, is concerned with offences relating to being bribed.
3. The Act (Section 3) defines the type of function or activity to which bribery relates if certain conditions apply:
  - i. Functions of a public nature;
  - ii. Activities connected with a business;
  - iii. Activities performed in the course of a person’s employment;
  - iv. Activities performed by or on behalf of a body or persons (corporate or unincorporated).
4. Section 3 goes on to explain that the offences will apply if a person performing the function or activity is expected to:
  - i. Perform it in good faith; or
  - ii. Perform it impartially; or
  - iii. Is in a position of trust by virtue of performing it.
5. The Act introduces an offence in Section 7, entitled “Failure of commercial organisations to prevent bribery”. The Authority is a commercial organisation for the purpose of the Act. Section 7 states that:

“A relevant commercial organisation is guilty of an offence ... if a person associated with [it] bribes another person ... intending to obtain or retain business ... or to obtain or retain an advantage in the conduct of business...”
6. Persons associated with the organisation include employees, agents or subsidiaries. Section 7 comes into play if such persons associated with it commit the offences in Sections 1 and 2.

7. It is a defence for a relevant commercial organisation to prove it had in place adequate procedures designed to prevent persons associated with it from undertaking such conduct (Section 7(2)).
8. Prosecutions for offences under the Act can only be pursued with the consent of the Director of Public Prosecutions or Director of the Serious Fraud Office. However, successful convictions will attract potentially significant penalties:
  - i. For offences under Sections 1 and 2, an unlimited fine or up to 10 years imprisonment;
  - ii. For Section 7, an unlimited fine.
9. The Act is obviously relevant to individuals and organisations. The Authority could be liable in certain circumstances. For example:

If a very senior person in the organisation commits a bribery offence, that person's activities could then be attributed to the Authority.
10. Where someone who performs services for the Authority (e.g. an employee, or agent) pays a bribe specifically to get business, keep business, or gain a business advantage for the Authority.