



## BRIBERY GUIDANCE

### Scope

This guidance applies to all employees of Fortel Group companies ('Fortel').

### Purpose

Fortel has a policy of strict compliance with bribery laws. This guidance describes how the bribery 2010 Act applies to Fortel.

### Definitions and Notes

None

### Associated Documents

Gifts and Hospitality Policy and Procedure

### Guidance

#### What the Bribery Act 2010 is and how it applies to Fortel

The UK Bribery Act is a large step forward by the UK in joining the international community under the auspices of the OECD Anti-Bribery Convention to fight bribery and corruption. Unfortunately bribery causes a lot of damage, particularly within developing nations and to international business.

The Bribery Act is of great relevance to organisations such as Fortel in or carrying on business in the United Kingdom. Due to its wide interpretation and far reaching jurisdiction, it presents heightened liability risks for companies, directors and individuals. To avoid corporate liability for bribery, Fortel must make sure that they have strong, up-to-date and effective anti-bribery policies and systems in place. The Bribery Act unlike previous legislation places strict liability upon companies for failure to prevent bribes being given (active bribery). The only defence a company can use is being able to show that they had in place adequate procedures designed to prevent persons associated with it from undertaking bribery.

#### Fortel's stance on bribery and why we are taking this approach

Fortel takes the effective prevention and detection of bribery and any other corrupt activity extremely seriously, it will not tolerate them in any form. Subsequently the Board is committed to promoting a zero tolerance approach across the group.

However Fortel's case for countering bribery extends beyond complying with law. A company committed to countering bribery communicates a strong message that it is determined to act responsibly. It will have a more resilient business, be an employer of choice for recruiting and can gain a competitive advantage as a preferred choice of ethically concerned customers, investors, suppliers and other stakeholders.

#### What is classed as an offence?

The Bribery Act creates four prime offences:



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## Core Guidance on Bribery (Ethics and Compliance)

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- A new offence of failure by a commercial organisation to prevent a bribe being paid to obtain or retain business or a business advantage (should an offence be committed, it will be a defence that the organisation has adequate procedures in place to prevent bribery);
- Two general offences covering the offering, promising or giving of an advantage, and requesting, agreeing to receive or accepting of an advantage; and
- A discrete offence of bribery of a foreign public official;

The section 7 offence of failure to prevent bribery is engaged when a person associated with a company bribes another person intending to obtain or retain business for that company. The associated person must be providing services to the company and could cover employees, agents, other forms of intermediaries and subsidiaries. It is not essential for the person performing the services to have been convicted of the bribery offence for the company to be held liable.

### **Jurisdictional reach and how it effects Fortel**

The Bribery Act has extra-territorial reach for UK companies operating abroad. A company can commit an offence under section 7 of failure to prevent bribery if an employee, subsidiary, agent or service provider ('associated persons') bribes another person wherever in the world to obtain or retain business or a business advantage. A foreign subsidiary of a UK company can cause the parent company to become liable under section 7 when the subsidiary commits an act of bribery in the context of performing services for the UK parent. If the foreign subsidiary were acting exclusively on its own account it would not cause the UK parent to be liable for failure to prevent bribery under section 7 as it would not then be carrying out services for the UK parent. However, the UK parent might still be liable for the actions of its subsidiary in other ways such as false accounting offences or under the Proceeds of Crime Act 2002.

### **Consequences for offending companies**

#### Penalties

The Bribery act has dramatically raised the penalties given for acts of bribery. The Bribery Act provides that an offence committed by a body is punishable by a fine (which is unlimited if the company is convicted on indictment). On the other hand, an individual guilty of an offence would be liable on conviction on indictment to imprisonment for a term not exceeding ten years or to a fine, or to both.

#### Debarment risk

If a company is dependent on selling to EU governments it should not disregard the risk of debarment arising from a conviction under the Bribery Act. In compliance with the Public Contracts Regulations 2006 (which gives effect to EU law in the UK), a company is automatically and perpetually debarred from competing for public contracts where it is convicted of a corruption offence. Although the risk of such a severe penalty may advocate that companies reliant on public contracts will be reluctant to report any incidents they discover for fear of conviction and subsequent debarment, this approach is not advised. In the case of detecting an issue or offence, the company should consult its lawyers about self-reporting.

### **How to report non-compliance**

To report a concern, you can either report the matter to your line manager or the Commercial and Compliance Director.

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