

## Corruption (Jersey) Law 2006

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#### Introduction

Pursuant to its obligations under the Council of Europe Convention on Corruption 1999 and the OECD Convention on Combating Bribery of Foreign Officials in International Business Transactions the States of Jersey enacted the above law (the “Law”) which came into force on 6 March 2007.

#### The offences

The Law creates new offences in relation to corruption concerning public bodies and public officials and corrupt transactions with agents. The offences cover both “active” corruption (criminalising the person corruptly giving or offering an advantage) and “passive” corruption (criminalising the person receiving or agreeing to accept an advantage), whether the giving or receiving or the advantage is direct or indirect.

The term “advantage” is not restricted to money or financial benefit, and can include a wide range of inducements including gifts, the release of a liability, protection from prosecution, the granting of a contract, employment, or the exercise (or forbearance from the exercise) of any right or duty.

“Corrupt” and “corruptly” are not defined in the Law, and it will be up to the courts to determine how they should be interpreted. On this point the courts may consider by English case law (although the impact of the Bribery Act 2010 on English case law going forward would require to be carefully considered), which emphasises the need for the person deliberately to offer an inducement to another with the intention that this should influence the other to act corruptly.

“Agents” and “public body” are given very broad definitions within the Law. “Agents” can include agents of both public and private persons and organisations as well as public officials themselves, and “public bodies” can include not only the Jersey public bodies listed in Article 3 of the law, but also their foreign equivalents.

## **Extended jurisdiction**

The Jersey Courts will have jurisdiction where any of the acts which are alleged to constitute an offence under the Law are committed in Jersey, notwithstanding that other (possibly more important) acts are committed elsewhere. However, the jurisdiction of the Jersey Courts also extends to the prosecution of UK nationals resident in Jersey, Jersey companies and Jersey limited liability partnerships carrying out corrupt acts wholly outside Jersey which, if carried out in Jersey, would be an offence here.

## **Liability of directors**

Where a body corporate or a limited liability partnership is found to have committed an offence, their directors, managers or other similar officers will also be guilty of an offence where the offence has been committed with their consent or connivance or it is attributable to their neglect.

## **Facilitation payments**

Unlike legislation in the US and certain other countries, the Law does not exempt facilitation payments, i.e. payments made to government officials to encourage them to perform routine non-discretionary governmental tasks. However, where a facilitation payment is made to preserve life, limb or liberty, it is likely that the customary law defence of duress will apply, as is the case with the UK's Bribery Act 2010.

## **The customary law offence of bribery**

The Law expressly abolishes the customary law offence of bribery, although in the 2010 case of Bhojwani, Jersey's Court of Appeal concluded that the customary law offence hadn't existed in any event, and therefore its abolition was an example of "excessive caution".

## **Implications to Jersey financial service businesses**

The Law does not include any procedures to prevent and detect corruption, and unlike the UK's Bribery Act 2010, there is no statutory defence that a company has in place adequate procedures to prevent corruption taking place.

Notwithstanding the Court of Appeal's decision in Bhojwani, since 6 March 2007 the proceeds of corruption fall within the remit of Jersey's Proceeds of Crime legislation and it is likely that the handling of the proceeds of corruption will engage that legislation.

Similarly, the JFSC Handbook for the Prevention and Detection of Money Laundering and the

Financing of Terrorism (January 2015 as amended) focuses on the risk of corruption-derived funds in a number of places, notably in the context of PEPs (politically exposed persons) and in ensuring that an appropriate risk-based approach is adopted pursuant to Article 11(1) of the Money Laundering (Jersey) Order. Article 11 (1) requires a relevant person to maintain policies and procedures for the application of customer due diligence measures that are appropriate having regard to the degree of risk of money laundering and the financing of terrorism.

Jersey financial services businesses, even those which do not fall within the jurisdiction of the UK's Bribery Act 2010, may find the UK Ministry of Justice's Bribery Act 2010 Guidance useful in considering whether they have adequate risk-based measures in place to prevent corruption. A copy can be found at <http://www.justice.gov.uk/guidance/making-and-reviewing-the-law/bribery.htm>.

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