

# THE BRIBERY ACT 2010

## ANTI-BRIBERY POLICY CHECKLIST

- A. Section 7(2) of the Bribery Act 2010 (the “Act”) provides that it is an absolute defence to the corporate offence in section 7(1) of the Act if a defendant can prove that it had in place adequate procedures designed to prevent persons associated with it from paying or offering bribes. The burden of proof in showing that an organisation had adequate procedures in place is on the organisation itself.
- B. The Guidance published by the UK Government on 31 March 2011 about the procedures which organisations can put in place to prevent bribery puts a great emphasis on organisations putting in place proportionate procedures, commensurate with the bribery risks to which the organisation is exposed. Implementing a policy which mitigates the bribery risks which the organisation faces is an important step for any organisation which wants to have the benefit of the Section 7(2) defence.
- C. The policy should be tailored to the bribery risks which the organisation has identified in its Risk Assessment<sup>1</sup>. It should meet the three aims of: (1) prevention of bribery, (2) monitoring and identification of bribery issues, and (3) effective reaction to any bribery related incidents.
- D. This note provides a checklist of policy considerations which are intended to assist commercial organisations with the process of preparing an appropriate anti-bribery policy which meets the organisation’s risk profile. Each organisation will have its own unique risks and the suggestions set out below will not necessarily deal with each and every area of risk which an organisation faces.
- E. Please note that the policy must be both capable of and subject to effective implementation. An over ambitious policy that is not observed is a serious risk to the availability of the section 7(2) defence. Too heavy an administrative burden will also be counter-productive.
- F. For ease of reference, we have referred to “the policy” in this checklist. However, the issues identified below could be implemented either in a single policy or in a series of related policies, as appropriate to the needs of the organisation.

### Introduction:

- 1 The policy should open with a clear and unequivocal statement of the company’s anti-bribery stance. Zero tolerance is the recommended standard.
- 2 The policy should contain a clear definition of bribery (in compliance with the Act and any other relevant anti-bribery legislation to which the company or its associates may be subject).
- 3 The scope of the policy should extend to all internal and external relationships and include all group entities over which the company has control.
- 4 The policy should refer to the Risk Assessment undertaken by the company and identify the areas of the policy which are intended to address particular identified risks.
- 5 The policy should be a public document and be made available on the company’s website or on demand from the company.

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<sup>1</sup> For further details on the risk assessment, see our Risk Assessment Checklist

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### Training policy:

- 6 The policy should require that high level training on the Bribery Act and the policy be rolled out to all employees.
- 7 The policy should provide for bespoke training to be rolled out to key/senior and/or high risk employees.
- 8 The policy should provide that training on the Bribery Act and the policy be given to material overseas contractors/agents etc.
- 9 The policy should require that a record of the training given be maintained and reviewed to ensure that everyone has the most up to date training.
- 10 The policy should establish a process by which refresher training is provided where necessary and, in any event, following any new Risk Assessment or changes to the policy.

### Corporate hospitality policy:

- 11 The policy should put in place relevant thresholds with respect to:
  - (a) The value of hospitality offered/received; and
  - (b) Quotas (e.g. to ensure that individuals do not offer or receive disproportionate levels of hospitality),pursuant to which the hospitality is either permitted, or permitted subject to necessary authorisations, or prohibited.

- 12 The policy should set out clearly the levels of authorisation which are required, depending on the value/recipient/other relevant considerations.
- 13 The policy should put in place a reporting requirement for all hospitality given and received, and require that an appropriate register of hospitality (given and received) should be maintained.
- 14 The policy should make a regular review of the staff's adherence to the policy a mandatory requirement (perhaps in conjunction with staff performance reviews).
- 15 The policy should make it a disciplinary offence for staff to fail to comply with the policy.

### Charitable/political donations policy:

- 16 The policy should put in place relevant thresholds with respect to:
  - (a) The value of donations;
  - (b) Quotas (e.g. to oversee the cumulative effect of donations).pursuant to which the donation is either permitted, or permitted subject to necessary authorisations, or prohibited.
- 17 The policy should set out clearly the levels of authorisation which are required, depending on the value/recipient/other relevant considerations.

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- 18 The policy should put in place a reporting requirement for all charitable/political donations given, and an appropriate register of charitable/political donations should be maintained.
- 19 The policy should make a regular review of the staff's adherence to the policy a mandatory requirement.
- 20 The policy should make it a disciplinary offence for staff to fail to adhere to the policy.

### Facilitation payments policy:

- 21 There should be a policy that no facilitation payments be made by or on behalf of the company (either to foreign public officials or to any other third party).
- 22 The policy should ensure that bespoke training is provided to anyone potentially exposed to demands for facilitation payments.
- 23 The policy should put in place processes for the reporting and recording of any demands for facilitation payments and any payments made.
- 24 If appropriate, the policy should require that a bespoke risk assessment be done for any relevant jurisdiction in which facilitation payments are regularly demanded.

### Financial controls policy:

- 25 The policy should require that financial books and records be subject to regular and spot-check audits to identify any bribery related anomalies.
- 26 The policy should establish specific levels of authorisation for high risk/value transactions (to include any risk areas identified in the Risk Assessment).
- 27 The policy should set out clearly the necessary authorisation process for expenses claims, including the implementation of threshold levels and/or special requirements for expenses which relate to high risk markets/jurisdictions/teams/individuals.
- 28 The policy should provide for a robust record keeping policy.

### Overseas business policy:

- 29 The policy should make it a requirement that due diligence be undertaken on (at least) all material overseas contractors (to include past conduct, reputation of principals and anti-bribery credentials).
- 30 The policy should make it a requirement that overseas contractors/agents and staff who operate overseas are given bespoke training on bribery risks.
- 31 The policy should make it mandatory for contractual anti-bribery provisions to be incorporated in all material overseas relationships (to include termination rights for a breach thereof).

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### Staff/employee policy:

- 32 The policy should require that staff confirm (on a regular basis and after any policy change or material development) that they understand and will adhere to the policy.
- 33 The policy should be incorporated by reference into employee handbooks.
- 34 The policy should clearly explain that it is a disciplinary offence for an employee to fail to comply with any aspect of the policy. Sanctions for breach should be clearly identified and communicated to all staff.
- 35 The policy should establish confidential whistle blowing/reporting channels to permit staff to report any issues or grounds for suspicion.

### Supplier/sub-contractor/agent policy:

- 36 The policy should require that contractual anti-bribery provisions be incorporated in all material supplier, sub-contractor and agency contracts (to include termination rights for a breach thereof).
- 37 The policy should set out a requirement for a minimum level of due diligence to be undertaken into suppliers, sub-contractors and agents before the company enters into any form of binding relationship with them.
- 38 The policy should make it a mandatory requirement for suppliers, sub-contractors and agents to confirm that they understand and will adhere to the policy.

### Risk assessment:

- 39 The policy should set out the requirements for an on-going Risk Assessment programme.
- 40 The policy should require that the board consider the Risk Assessment programme on a regular basis.
- 41 The policy should set out the events on the occurrence of which a mandatory review of the Risk Assessment must be undertaken (e.g. discovery of an offence, move to new business sector/country, material growth, significant acquisition or merger, increased market risk).

### Monitoring and implementation:

- 42 The policy must put in place a system for the regular monitoring of compliance of high risk individuals.
- 43 The policy should provide that spot check audits be undertaken to review compliance with the policy.
- 44 The policy should provide a programme for checking that its requirements have been implemented effectively and are being followed.
- 45 The policy should make it clear that the Board has responsibility for overseeing the implementation of the anti-bribery programme and that the programme will be a regular agenda item for board meetings.
- 46 The policy should set out a clear “ownership” structure for the anti-bribery programme (e.g. compliance function, board committee, legal team).

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### Reaction plan:

- 47 The policy should set out a specific action plan where a bribery offence or suspicious circumstances are discovered.
- 48 The policy should require the immediate involvement from any internal legal function in the investigation and, if appropriate, external legal counsel.
- 49 The policy should require that a through investigation be undertaken as quickly as possible and that the conclusions from that investigation be provided to the board.
- 50 The policy should set out clearly the sanctions which are to be applied in response to bribery related incidents.

Wragge & Co LLP  
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**TOM ELLIS**

**Partner**

Tel: +44 870 730 2832

E-mail: tom\_ellis@wragge.com

**JAMIE DRINNAN**

**Associate**

Tel: +44 20 7074 7873

E-mail: jamie\_drinnan@wragge.com