

## RISK ASSESSMENT 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. Undertaking a thorough risk assessment, and identifying those risks which the organisation faces, is the first step for any organisation which wants to have the benefit of the Section 7(2) defence.
- C. The risk assessment should be a transparent, cogent and explicable process, which is documented and supported by evidence.
- D. This note sets out a series of high level questions which are intended to assist commercial organisations with the process of conducting a risk assessment and identifying potential areas of risk. Each organisation will have its own unique risks and the questions set out below will not necessarily identify each and every area of risk. The below are relatively generic paths of enquiry which may lead those undertaking a risk assessment process either to identify the bribery risks relevant to the organisation or to identify further relevant lines of enquiry which will expose those risks.
- 1 The Organisation:**
- (a) Where is the organisation incorporated?
  - (b) Is it part of a group of companies?
  - (c) Where is overall management located?
  - (d) What is the global spread of the organisation’s subsidiaries and/or parents?
- 2 The Business:**
- (a) In what markets/business sectors does the organisation operate?
  - (b) Is part of its business undertaken in the UK?
  - (c) Does the business involve import/export?
  - (d) Are any of these markets/business sectors known to have general or specific bribery risks?
  - (e) What (if anything) has been done to mitigate these risks?
- 3 Transactions:**
- (a) Are there any high value/particularly significant transactions that the organisation enters into on a regular/irregular basis?
  - (b) Do any transactions involve intermediaries, agents, representatives, consortia, JV partners?
  - (c) Does the organisation depend on a few high value transactions or a mix of transactions?

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### 4 The Locations:

- (a) In which countries does the organisation operate its business?
- (b) Does the organisation have any overseas subsidiaries or parent companies?
- (c) Does the organisation operate its business overseas through agents or representatives?
- (d) Are any jurisdictions in which the organisation operates known to be high risk jurisdictions for bribery and corruption?
- (e) What (if anything) has been done to mitigate or deal with these risks?

### 5 The Management:

- (a) Who is responsible for overseeing compliance within the organisation?
- (b) Is management at a group or company or country level?
- (c) Does management have oversight of all things done on behalf of the organisation or is oversight delegated to committees or local management?
- (d) Is there a clear and coherent anti-bribery message coming from management?

### 6 The Contractors/Agents/Partners:

- (a) Does the organisation use agents or representatives for sales / promotional activities?

- (b) Does the organisation have any joint venture partners?

- (c) Does the organisation impose an anti-bribery policy on its contractual partners?

- (d) What (if any) due diligence has been undertaken into the organisation's contractual partners?

- (e) What are the sanctions (if any) against a contractual partner for breach of a bribery policy?

### 7 Known Bribery Risks:

- (a) Has the organisation faced any bribery incidents in the past?

- (b) If so, where, when and by whom?

- (c) What has been done to prevent such incidents happening again - and has this been successful?

### 8 The Policies:

- (a) Does the organisation have a clear anti-bribery message?

- (b) What general compliance policies does the company already have in place?

- (c) Does it have a specific policy regarding bribery?

- (d) Is there a policy on corporate hospitality/promotional expense/charitable donation/sponsorship?

- (e) Have the relevant policies been implemented and enforced?

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- (f) How are the relevant policies communicated internally or externally?
- (g) Are staff required to acknowledge that they have read, understood and will adhere to the policy?
- (h) What disciplinary sanctions are there for breach of policy? Have they been applied consistently?

### 9 Training:

- (a) What training has been given to staff on bribery?
- (b) What training is planned?
- (c) Is any bespoke training intended for high risk individuals?
- (d) Is bribery training compulsory for all staff or just some?

### 10 Financial Controls:

- (a) What is the organisation's budget for corporate hospitality?
- (b) Does the company allow "off book" accounting?
- (c) Have there been any instances in the past of "off book" accounting?
- (d) Has the organisation ever accounted or budgeted for facilitation payments?
- (e) What financial controls are imposed on expenses? (e.g. must they be documented/explained)?

- (f) Are regular audits/spot checks undertaken to identify anomalies/suspicious transactions?
- (g) How and to whom are anomalies reported?

### 11 Interaction with Government/Public Authorities (UK):

- (a) Does the organisation interact with any domestic public officials in its business?
- (b) Does the organisation need any public licences to operate its business?
- (c) Does the organisation do any public sector contract work?
- (d) Are staff who come into contact with public officials given any particular training?

### 12 Interaction with Government/Public Authorities (foreign):

- (a) Does the organisation interact with any foreign public officials in its business?
- (b) Does the organisation export anything to or import from foreign countries?
- (c) Does the organisation need any public licences to operate its business in foreign countries?
- (d) Does the organisation do any public sector contract work in foreign countries?
- (e) Are staff who come into contact with foreign public officials given any particular training?

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### 13 Corporate Hospitality/Promotional Expense Policy:

- (a) Does the organisation have a policy on corporate hospitality/promotional expense?
- (b) Is there a reporting requirement for hospitality received?
- (c) Is there a financial level at which hospitality must be refused by staff?
- (d) Does the organisation impose quotas on the value of hospitality which can be given to a particular person/entity/organisation?
- (e) Is an authorisation process required for either the receipt or the giving of hospitality?
- (f) How much does the company spend on hospitality?
- (g) Are there any staff who receive a disproportionate amount of hospitality compared with their equivalent colleagues?

### 14 Staff - Remuneration and Bonuses:

- (a) Do any members of staff have their remuneration/bonuses linked with high value or public contracts?
- (b) Do any members of staff have a level of responsibility/influence that is disproportionate to their salary?

### 15 Risk Assessment:

- (a) Who has prepared this risk assessment?
- (b) Where has the information contained in this risk assessment come from?
- (c) When was this risk assessment prepared?
- (d) When will it next be reviewed/updated?
- (e) What are the triggers for an unscheduled review?

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