



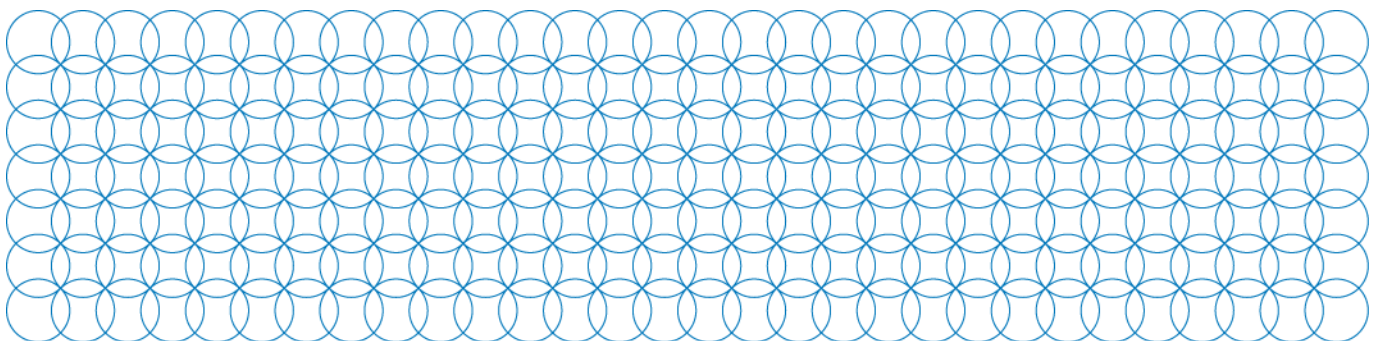
Ministry of
JUSTICE

Consultation on guidance about commercial organisations preventing bribery (section 9 of the Bribery Act 2010)

Consultation Paper CP11/10

This consultation begins on 14 September 2010

This consultation ends on 8 November 2010





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A consultation produced by the Ministry of Justice. It is also available on the Ministry of Justice website at www.justice.gov.uk

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Foreword by the Lord Chancellor and Secretary of State

Bribery, if left unchecked, destroys the integrity and ethical foundations of all institutions, public and private. Economic globalisation means that the damaging impact of commercial bribery that seeks to subvert open competition in business transactions, has now moved beyond unilateral national policies and has become a global problem. The OECD, World Bank, the UN, the Council of Europe, G8, G20 and a number of respected NGOs among others have secured an international consensus on the need to address bribery. Many nations are now signed up to sets of standards through a number of instruments that focus across the range of all forms of bribery. For example, the UN Convention Against Corruption has been signed by over 140 countries and requires that these countries make it a criminal offence for their public officials to request or accept an undue advantage for themselves or another, in return for acting or not acting in the exercise of their official duties. New wide ranging national anti-bribery measures have also emerged often, but not always, as fulfilment of international commitments.


The United Kingdom is committed to play an important role in maintaining the momentum towards the establishment of the highest international standards and the promotion of bribery prevention good practice on both the demand and supply side of commercial bribery. More recently this has been achieved by balancing a range of practical advice and promotion of corporate good practice with proactive civil and criminal law enforcement. The UK has supported the ongoing review and development of key international instruments on corruption, including through recent negotiations on the 2009 OECD Anti-Bribery Recommendation and on an effective review mechanism for the UN Convention Against Corruption. The UK has also contributed to the establishment of international transparency mechanisms such as the Extractive Industries Transparency Initiative, and provided technical and legal assistance to a wide range of overseas law enforcement and anti-corruption agencies. This forms an integral part of the UK's effort through our international development programmes to bear down on corruption which is now recognised as a significant brake on sustainable economic development and poverty reduction.

Section 7 of the Bribery Act 2010 creates a criminal offence of a failure to prevent bribery on the part of commercial organisations and reflects a general recognition that there is an important role to be played by business itself in ensuring that commerce is undertaken in an open and transparent manner. The new law will introduce a clear and robust approach and is intended to encourage commercial organisations to take steps to address the risks of bribery. Section 7 provides a statutory defence to a charge where a commercial organisation can demonstrate that it has put adequate bribery prevention procedures in place.

In deciding what bribery prevention measures best suit their particular circumstances, commercial organisations should be assisted by the guidance published under section 9 of the Act. It is essential that any guidance the Government publishes is informed by the wealth of knowledge, experience and expertise to be found outside Government, in for example the business community and non-governmental organisations.

The devolved administrations share the Government's concern that a consistent approach to tackling bribery is taken across the UK. Therefore, although bribery law is devolved, the Scottish Parliament agreed that the Act should extend to Scotland and this consultation paper has been produced in liaison with Scottish Government. The Act, in accordance with the arrangements in place when it was passed, extends to Northern-Ireland. Since then criminal law has become devolved in Northern-Ireland and accordingly it will fall to the Justice Department of Northern Ireland to publish proposals for guidance to apply there. The intention is that the Northern-Ireland consultation will coincide with that launched by the publication of this paper so that the sum effect will be to draw on all our reserves of expertise in the formulation of bribery prevention guidance for commercial organisations throughout the United Kingdom.

I am confident that the proposals we are making, with the benefit of the scrutiny this and the Northern Ireland consultation will provide, will produce a practicable but flexible framework for the development of risk-based bribery prevention procedures suitable for commercial organisations of all types and sizes and wherever they do business.

A handwritten signature in black ink, appearing to read 'K. Clarke', written in a cursive style.

Kenneth Clarke
Lord Chancellor and Secretary of State for Justice

About this consultation paper

1. Section 9 of the Bribery Act requires the Secretary of State to publish guidance about procedures that relevant commercial organisations can put in place to prevent persons associated with them from bribing.
2. Further to the Secretary of State's Written Ministerial Statement on 20 July 2010¹ this consultation paper seeks views on guidance the Government proposes to publish under section 9 of the Bribery Act 2010 before the Act comes into force in April 2011. The consultation period will last 8 weeks. It is shorter than the standard 12 week period in order to allow enough time for views to be considered and for guidance to be published early in the New Year in advance of the Act coming into force in April 2011.
3. The objective of the Government in providing guidance under section 9 of the Act is to support businesses in determining the sorts of bribery prevention measures they can put in place. The timetable for the publication reflects the need to give as much notice as possible of the guidance before the Act comes into force.
4. The Government proposes guidance formulated around six general principles, included at Annex A, designed to be of general applicability across all sectors and for all types and size of business. It is not intended to be prescriptive or standard setting, or impose any direct obligation on business.
5. This consultation is confined to the guidance about bribery prevention procedures to be published under section 9. Your comments are invited on the questions set out below.
6. This consultation document also includes, at Annex B, a number of illustrative scenarios. These illustrative scenarios are intended to focus on those areas of business which can present real risks of bribery for many commercial organisations. Each scenario is accompanied by a series of questions that are indicative of questions that organisations may wish to ask themselves when applying the guiding principles to their individual circumstances. The scenarios cover the use of intermediaries and agents, hospitality and promotional expenditure, political and charitable donations, facilitation payments and dealing with business partners.

Other guidance on the Act

7. The guidance to be published under section 9 and included here in draft at Annex A is designed to complement, not replace or supersede other forms of bribery prevention guidance published by industry or sector representative bodies or by non-governmental organisations. In addition, it does not seek to undermine the rules set by the Financial Services Authority for the financial services industry. Organisations must continue to comply with sector-specific regulations and standards at all times.
8. Joint guidance for prosecutors is currently being drawn up by the Director of Public Prosecutions and Director of the Serious Fraud Office to encourage a broad consistency of approach to the Act between the police, CPS and SFO. The Lord Advocate will govern the issuing of prosecutor guidance in Scotland. In Northern

¹ Official Report: Column 12WS

Ireland guidance will be issued by the Director of Public Prosecutions for Northern Ireland in consultation with the Attorney General for Northern Ireland and the Advocate General for Northern Ireland

9. Finally, the Ministry of Justice will be publishing a circular on the Act as whole, which may also be of assistance to anyone seeking more understanding of the provisions.

How to respond

10. The Ministry of Justice has prepared a number of questions to help individuals provide feedback on the draft guidance. These can be found at paragraph 16 of this consultation paper. This consultation covers all of the UK, other than Northern Ireland where there will be separate but simultaneous consultation, and individuals can provide feedback in a number of ways:

By email to: Bribery.Act@justice.gsi.gov.uk

By post: The Bribery Act Implementation Team, Ministry of Justice, 7.42,
102 Petty France, London SW1H 9AJ

Via online questionnaire: <http://survey.euro.confirmit.com/wix5/p476673099.aspx>

The deadline for responses is 5pm on 8 November 2010.

Alternative formats

11. This consultation paper is being produced in electronic format only. If you require an alternative format, please contact the team as above.

Publication of response

12. A response to this consultation exercise is due to be published in early 2011 alongside the final version of the guidance. The response paper will be available on-line at www.justice.gov.uk/index.htm. It is anticipated that the Act will be implemented in April 2011.

Representative groups

13. Representative groups are asked to give a summary of the people and organisations they represent when they respond.

Confidentiality

14. Information provided in response to this consultation, including personal information, may be published or disclosed in accordance with the access to information regimes (these are primarily the Freedom of Information Act 2000 (FOIA), the Data Protection Act 1998 (DPA) and the Environmental Information Regulations 2004). If you want the information that you provide to be treated as confidential, please be aware that, under the FOIA, there is a statutory Code of Practice with which public authorities must comply and which deals, amongst other things, with obligations of confidence. In view of this it would be helpful if you could explain to us why you regard the information you have provided as confidential. If we receive a request for

disclosure of the information we will take full account of your explanation, but we cannot give an assurance that confidentiality can be maintained in all circumstances. An automatic confidentiality disclaimer generated by your IT system will not, of itself, be regarded as binding on the Ministry. The Ministry will process your personal data in accordance with the DPA and in the majority of circumstances, this will mean that your personal data will not be disclosed to third parties.

Supporting events

15. The purpose of this public consultation exercise is to provide a framework to facilitate engagement with those with an interest in the promotion of anti-bribery measures in commercial organisations. The Government, for the duration of the consultation period, is holding a number of open discussion events during the consultation period to further encourage the sharing of views on what is being proposed. The detail on these events will be separately announced. The Government intends that these events will provide a helpful additional means of identifying key factors for consideration for all interested parties and will in particular afford small and medium sized businesses based in the regions an opportunity to make sure that their particular needs are taken in to account.

Questions for consultees

16. The Government welcomes any comments on the form or content of the draft guidance at Annex A and on the illustrative scenarios at Annex B. It would be helpful however if consultees could comment by way of response to the following questions:

Question 1: Are there principles other than those set out in the draft guidance that are relevant and important to the formulation of bribery prevention in commercial organisations? If so what are they and why do you think they are important?

Question 2: Are there any procedures other than those set out in the draft guidance that are relevant and important to a wide range of commercial organisations? If so what are they and why do you think they are important?

Question 3: Are there any ways in which the format of the draft guidance could be improved in order to be of more assistance to commercial organisations in determining how to apply the guidance to their particular circumstances?

Question 4: Are there any principles or procedures that are particularly relevant and important to small and medium sized enterprises that are not covered by the draft guidance and which should be? If so what are they and why do you think they are they important?

Question 5: In what ways, if any, could the principles in the draft guidance be improved in order to provide more assistance to small and medium sized enterprises in preventing bribery on their behalf?

The consultation criteria

The seven consultation criteria are as follows:

1. **When to consult** – Formal consultations should take place at a stage where there is scope to influence the policy outcome.
2. **Duration of consultation exercises** – Consultations should normally last for at least 12 weeks with consideration given to longer timescales where feasible and sensible.
3. **Clarity of scope and impact** – Consultation documents should be clear about the consultation process, what is being proposed, the scope to influence and the expected costs and benefits of the proposals.
4. **Accessibility of consultation exercises** – Consultation exercises should be designed to be accessible to, and clearly targeted at, those people the exercise is intended to reach.
5. **The burden of consultation** – Keeping the burden of consultation to a minimum is essential if consultations are to be effective and if consultees' buy-in to the process is to be obtained.
6. **Responsiveness of consultation exercises** – Consultation responses should be analysed carefully and clear feedback should be provided to participants following the consultation.
7. **Capacity to consult** – Officials running consultations should seek guidance in how to run an effective consultation exercise and share what they have learned from the experience.

Consultation Co-ordinator contact details

If you have any complaints or comments about the consultation **process** rather than about the topic covered by this paper, you should contact Julia Bradford, Ministry of Justice Consultation Co-ordinator, on 020 3334 4492, or email her at consultation@justice.gsi.gov.uk.

Alternatively, you may wish to write to the address below: **Julia Bradford
Consultation Co-ordinator Ministry of Justice 6.36, 6th Floor 102 Petty France
London SW1H 9AJ**

If your complaints or comments refer to the topic covered by this paper rather than the consultation process, please direct them to the contact given under the **How to respond** section of this paper at page 5.

About you

Please use this section to tell us about yourself

Full name	
Job title or capacity in which you are responding to this consultation exercise (e.g. member of the public etc.)	
Date	
Company name/organisation (if applicable):	
Address	
Postcode	
If you would like us to acknowledge receipt of your response, please tick this box	<input type="checkbox"/> (please tick box)
Address to which the acknowledgement should be sent, if different from above	

If you are a representative of a group, please tell us the name of the group and give a summary of the people or organisations that you represent.

ANNEX A

GUIDANCE ABOUT PROCEDURES WHICH RELEVANT COMMERCIAL ORGANISATIONS CAN PUT IN PLACE TO PREVENT PERSONS ASSOCIATED WITH THEM FROM BRIBING

Introduction

The Bribery Act creates a new offence under section 7 which can be committed by commercial organisations which fail to prevent persons associated with them from committing bribery on their behalf. It is a defence for an organisation to prove that despite a particular case of bribery it nevertheless had adequate procedures in place to prevent persons associated with it from bribing. Section 9 of the Act requires the Secretary of State to publish guidance about procedures which commercial organisations can put in place to prevent persons associated with them from bribing. This document sets out that guidance.

This guidance is designed to help commercial organisations of all sizes and sectors understand what sorts of procedures they can put in place to prevent bribery from occurring within them. It is designed to be of general application.

The guidance sets out six principles, each followed by commentary and explanation. The guidance is not prescriptive and is not a one-size-fits-all document. The question of whether an organisation had adequate procedures in place to prevent bribery in the context of a particular prosecution is a matter that can only be resolved by the courts taking into account the particular facts and circumstances of the case. The onus will remain on the organisation, in any case where it seeks to rely on the defence, to prove that it had adequate procedures in place to prevent bribery. However, by considering the general principles set out in this document, and establishing and maintaining policies and procedures in line with those principles, commercial organisations will do much to help prevent bribery from taking place on their behalf.

The first section below is a “Quick Start Guide” providing a summary of the main points of the guidance for ease of reference.

The language used in this guidance reflects its non-prescriptive purpose. The six principles are intended to be of general application and are therefore expressed in neutral but affirmative language. The commentary following each of the principles is expressed more broadly. Where actions or options are listed by way of examples they are not exhaustive.

QUICK START GUIDE

Bodies and partnerships incorporated or formed in the UK, or that carry on their business in the UK, wherever they are incorporated or formed (referred to as “relevant commercial organisations” in the Bribery Act) can be convicted of a new criminal offence under section 7 of the Bribery Act if they fail to prevent bribery on their behalf

However, it is a defence if the organisation can show that it has adequate bribery prevention procedures in place. This guidance, which is based on six broad management principles, is provided by the Government to help relevant commercial organisations decide what bribery prevention procedures they can put in place.

Although the six principles reflect UK and international good practice and ought to be generally applicable, they do not propose any particular procedures in themselves. They are intended to be used as a flexible guide to deciding what procedures are right for an organisation. If your organisation is small or medium sized the application of the principles is likely to suggest procedures that are different to those that may be right for a large multinational organisation. The guidance suggests certain procedures but you may decide that they are not applicable to your circumstances or that there are others that suit your particular circumstances better. Whether procedures are adequate can only ever be determined by the particular circumstances of a case, so there are likely to be procedures which are nevertheless adequate but which have not been described in this guidance.

Six Principles for Bribery Prevention

Risk Assessment – this is about knowing and keeping up to date with the bribery risks you face in your sector and market;

Top level commitment – this concerns establishing a culture across the organisation in which bribery is unacceptable. If your business is small or medium sized this may not require much sophistication but the theme is making the message clear, unambiguous and regularly made to all staff and business partners;

Due diligence – this is about knowing who you do business with; knowing why, when and to whom you are releasing funds and seeking reciprocal anti-bribery agreements ; and being in a position to feel confident that business relationships are transparent and ethical;

Clear, Practical and Accessible Policies and Procedures – this concerns applying them to everyone you employ and business partners under your effective control and covering all relevant risks such as political and charitable contributions, gifts and hospitality, promotional expenses, and responding to demands for facilitation demands or when an allegation of bribery comes to light.

Effective implementation – this is about going beyond ‘paper compliance’ to embedding anti-bribery in your organisation’s internal controls, recruitment and remuneration policies, operations, communications and training on practical business issues.

Monitoring and review – this relates to auditing and financial controls that are sensitive to bribery and are transparent, considering how regularly you need to review your policies and procedures, and whether external verification would help.

THE SIX PRINCIPLES

The Government considers that procedures put in place by commercial organisations wishing to prevent bribery being committed on their behalf should be informed by six general principles.

These general principles are outcome-focussed and flexible. This is to allow each commercial organisation to tailor its policies and procedures so that they are proportionate to the nature, scale and complexity of its activities. Clearly there is a huge variety of circumstances; small and medium sized organisations will, for example, face different challenges compared to large multi-national enterprises. As a result, the detail of how organisations will address these principles will vary, but the outcome should always be robust and effective anti-bribery systems and controls.

PRINCIPLE 1: Risk Assessment

The commercial organisation regularly and comprehensively assesses the nature and extent of the risks relating to bribery to which it is exposed.

A full understanding of the bribery risks an organisation faces is the foundation of any effective efforts to prevent bribery. Bribery risks will evolve over time. An organisation's risk assessment will also therefore need to evolve over time.

Risk assessment procedures

What constitutes adequate risk assessment procedures will vary enormously depending on the size of an organisation, its activities, its customers and the markets in which it operates but organisations should consider:

- Whether those undertaking the assessment are adequately skilled and equipped to do so, or whether using external professionals may be appropriate;
- How best to inform the risk assessment, for example by tapping into existing information held by the organisation, such as annual audit reports, internal investigation reports, focus groups and staff /client/customer complaints; and by analysing publicly available information on bribery issues in particular sectors or overseas markets and jurisdictions.

Key bribery risks

Factors affecting internal risk include for example deficiencies in employee knowledge of the organisation's business profile and understanding of associated bribery risks, deficiencies in employee training or skills sets, the organisation's remuneration structure or lack of clarity in the organisation's policy on gifts, entertaining and travel expenses.

External risk factors include for example:

- Country risk – perceived high levels of corruption as highlighted by corruption league tables published by reputable organisations, and factors such as absence of anti-bribery legislation and implementation and a perceived lack of capacity of the government, media, local business community and civil society to effectively promote transparent procurement and investment policies;

- Transaction Risk – transactions involving for example charitable or political contributions, licences and permits, public procurement, high value or projects with many contractors or involvement of intermediaries or agents.
- Partnership risks – business partners located in higher-risk jurisdictions, associations with prominent public office holders, insufficient knowledge or transparency of third party processes and controls.

Risk Mitigation

Principles 2 to 6 below deal with how the risk assessment will inform the development, implementation and maintenance of effective anti-bribery policies and procedures.

Ongoing risk review and monitoring

As the business evolves, and external circumstances change, an organisation will need to ensure that it is devoting sufficient resources to the assessment and mitigation of bribery risks as they emerge. For example, a small or medium sized organisation that enters a new market in a part of the world in which it has not done business before and therefore uses intermediaries and agents, may not be able to rely on anti-bribery policies designed for domestic purposes. For further information on this, please refer to Principle 6.

PRINCIPLE 2: Top level commitment

The top level management of a commercial organisation (be it a board of directors, the owners or any other equivalent body or person) are committed to preventing bribery. They establish a culture within the organisation in which bribery is never acceptable. They take steps to ensure that the organisation's policy to operate without bribery is clearly communicated to all levels of management, the workforce and any relevant external actors.

Those at the top of an organisation are in the best position to foster a culture of integrity where bribery is unacceptable within the organisation. Effective leadership in bribery prevention will take a variety of forms depending on the circumstances in which an organisation does business, but by way of example the kinds of leadership procedures that may be effective include:

A statement of commitment to counter bribery in all parts of the organisation's operation

Such a statement could include commitments to carry out business fairly, honestly and openly; to adopt a zero tolerance policy towards bribery and set out the consequences of breaching the provisions of the regime for employees and management or for any contractual bribery prevention provision with business partners; and to avoid doing business with others who do not commit to doing business without bribery. A top-level statement may be made public and communicated to subsidiaries and business partners.

Reflecting commitment against bribery in the organisation's management structure

Personal involvement of top-level managers in developing a code of conduct or ensuring anti-bribery policies are published and communicated to employees, subsidiaries and business partners helps embed an anti-bribery culture within an organisation. Maintenance of a clear top-level commitment to anti-bribery policies may be assisted by the appointment of a senior manager to oversee the development of an anti-bribery programme and to ensure its effective implementation throughout the organisation.

PRINCIPLE 3 - Due diligence

The commercial organisation has due diligence policies and procedures which cover all parties to a business relationship, including the organisation's supply chain, agents and intermediaries, all forms of joint venture and similar relationships and all markets in which the commercial organisation does business.

Organisations will need to know who they are doing business with if their risk assessment and mitigation are to be effective. The particular types of due diligence listed below are examples of enquiries that can help identify bribery risks associated with a particular business relationship and will enable the organisation to take appropriate preventive measures.

Location

Enquiries about the risk of bribery in a particular country in which an organisation is seeking a business relationship, the types of bribery most commonly encountered, and any information about the preventive actions which are most effective. Organisations may wish, for example, to be advised of relevant civil, administrative and criminal law and the existence of any procedures for reporting bribery to the relevant local authorities.

Business opportunity

Enquiries about the risks that a particular business opportunity raises, e.g. establishing whether the project is to be undertaken at market prices, or has a defined legitimate objective and specification.

Business partners

Enquiries to establish whether individuals or other organisations involved in key decisions, such as intermediaries, consortium or joint venture partners, contractors or suppliers have a reputation for bribery and whether anyone associated with them is being investigated or prosecuted, or has been convicted or debarred, for bribery or related offences. Organisations may also wish consider the risks associated with politically exposed persons where the proposed business relationship involves, or is linked to, a prominent public office holder.

Organisations may wish to ensure that enquiries are made of partners' internal anti-corruption measures.

PRINCIPLE 4: Clear, Practical and Accessible Policies and Procedures

The commercial organisation's policies and procedures to prevent bribery being committed on its behalf are clear, practical, accessible and enforceable. Policies and procedures take account of the roles of the whole work force from the owners or board of directors to all employees, and all people and entities over which the commercial organisation has control.

Having undertaken a risk assessment and due diligence, a commercial organisation will be in a better position to develop effective bribery prevention policies and procedures. Tapping into the expertise of its work force to develop policies can serve to secure buy-in from those who will be responsible for applying them.

Policy and Procedure Documentation

Organisations may wish to consider how comprehensive, clear, practical and accessible policy and procedures documentation is to all within the organisation, and to other people and entities over which it has control. Such documentation could include:

- a clear prohibition of all forms of bribery including a strategy for building this prohibition into the decision making processes of the organisation;
- guidance on making, directly or indirectly, political and charitable contributions, gifts, and appropriate levels and manner of provision of bona fide hospitality or promotional expenses to ensure that the purposes of such expenditure are ethically sound and transparent;
- advice on relevant laws and regulations;
- guidance on what action should be taken when faced with blackmail or extortion, including a clear escalation process;
- The organisation's level of commitment to the Public Interest Disclosure Act 1998 (employment law protection for whistle-blowers) and an explanation of the process;
- Information on anti-corruption programmes relevant to the sector.

Organisations may also wish to consider issuing a code of conduct, which sets out expected standards of behaviour and which can form part of the employment contract.

Support and Operational procedures

Organisations may wish to consider how existing procedures can be used for bribery prevention purposes. For example, financial and auditing controls, disciplinary procedures, performance appraisals, and selection criteria can act as an effective bribery deterrent. Other bribery prevention procedures may include modification of sales incentives to give credit for orders refused where bribery is suspected; and "speak up" procedures to allow any employee to report allegations of bribery or breaches of corporate anti-bribery policy in a safe and confidential manner.

Managers may wish to consider the resistance to bribery of particularly vulnerable operational areas such as procurement and supply chain management mechanisms and address any issues they have identified.

Management of incidents of bribery

Organisations could also consider putting in place procedures to deal with incidents of bribery, should one arise, in a prompt, consistent and appropriate manner. This could include designating a senior manager to oversee the organisation's response. The organisation will need to decide whether to refer the matter to law enforcement agencies. There may need to be oversight of the sanctions process and a communications strategy to reassure investors, employees, customers, business partners and others possibly exposed to consequences from the incident.

PRINCIPLE 5: Effective implementation

The commercial organisation effectively implements its anti-bribery policies and procedures and ensures they are embedded throughout the organisation. This process ensures that the development of policies and procedures reflects the practical business issues that an organisation's management and workforce face when seeking to conduct business without bribery.

Appropriate bribery prevention policies and procedures will vary enormously from organisation to organisation depending on the nature of the business, the assessment of risk and the nature of its operational and support functions. But whatever the policies they will require effective implementation if they are to be successful.

Implementation strategy

Organisations may wish to consider planning how to bring their high-level anti-bribery commitment to life. Like all corporate programmes, anti-bribery policies and procedures cannot manage the risk of bribery if left in a file on a shelf but need to be implemented through the allocation of roles and responsibilities and by setting milestones for delivery and review.

Larger organisations may wish to establish an implementation strategy that clearly sets out how policies and procedures are to be implemented across the organisation's various groups and functions, including for example:

- who will be responsible for implementation;
- how the policies and procedures will be communicated internally and externally;
- the nature of training and how it will be rolled out;
- the internal reporting of progress to top management;
- the extent to which external assurance processes will be engaged;
- the arrangements for monitoring compliance;
- the timescale of implementation;
- a clear statement of the penalties for breaches of agreed policies and procedures; and
- the date of the next review.

Internal communication

Organisations may wish to consider how best to communicate anti-bribery policies and procedures to relevant staff, and the need for bribery prevention training. If training is necessary, it could cover the bribery risks the organisation is exposed to as well as the organisation's anti-bribery policies and procedures. It can also be tailored for different functions within the organisation. Larger organisations may also wish to consider offering or even requiring the participation of business partners in anti-bribery training courses.

External communication

External communication can promote better implementation of policies and procedures as well as providing support for business partners and employees seeking to implement the organisations policies and procedures. External communication can range from the provision of information on the organisation's web-site to direct face to face communication with key players at meetings. Messages could include an indication that employees will be subject to robust internal sanctions (in addition to any criminal justice outcome if criminal offences are committed) if they accept bribes and that corrupt vendors risk being removed from the list of approved suppliers.

PRINCIPLE 6 - Monitoring and review

The commercial organisation institutes monitoring and review mechanisms to ensure compliance with relevant policies and procedures and identifies any issues as they arise. The organisation implements improvements where appropriate.

Policies and procedures are likely to require monitoring and adaptation to changing circumstances or in response to any incidents involving bribery in order to remain effective. Organisations may wish to consider the following examples of monitoring and review procedures.

Internal monitoring and review mechanisms

Organisations could consider what internal checks and balances are needed to monitor and review anti-bribery policies.

In smaller organisations, this might include effective financial and auditing controls that pick up potential and actual irregularities, combined perhaps with a means by which the views and comments of employees and key business partners are incorporated into the continuing improvement of anti-bribery policies.

In larger organisations, this might include financial monitoring, bribery reporting and incident management procedures. Large organisations may also wish, for example, to consider periodically reporting the result of such reviews to the Audit Committee, the Board of Directors or equivalent body. In turn, the Audit Committee, Board or equivalent body may wish to make an independent assessment of the adequacy of anti-bribery policies and disclose their findings and recommendations for improvement in the organisation's Annual Report to shareholders.

Organisations could also identify appropriate ways of identifying when a review of bribery risk and the corresponding policies and procedures is necessary; for example, external trigger events like government changes, corruption convictions, or negative press reports. Where appropriate, organisations may also wish also consult the publications of relevant trade bodies or regulators that could highlight examples of good or bad practice.

Organisations may also wish to ensure that their procedures take account of external methods of issue identification and reporting as a result of the statutory requirements applying to their supporting institutions e.g. money laundering regulations reporting by accountants and solicitors.

Transparency

Transparency is an important anti-bribery tool. Secrecy within an organisation and the failure to disclose important information about specific projects can facilitate the payment, receipt and concealment of bribes. Given the challenges posed by distance and unfamiliarity with overseas customs and regulations, organisations may wish to consider how to monitor the implementation of anti-bribery procedures in overseas offices and business partners.

External verification

The senior management of higher risk and larger organisations may wish to consider whether to commission external verification or assurance of the effectiveness of anti-bribery policies, or to seek membership of one of the independently-verified anti-bribery code monitored by industrial sector associations or multilateral bodies. An independent review can be helpful in providing organisations undergoing structural change or entering new markets with an insight into the strengths and weaknesses of its anti-bribery policies and procedures and in identifying areas for improvement. It may also enhance its credibility with business partners or restore market confidence following the discovery of a bribery incident, help meet the requirements of both voluntary or industry initiatives and any future pre-qualification requirements.

FURTHER INFORMATION ABOUT THE ACT

The Bribery Act 2010 received Royal Assent on 8 April 2010. A full copy of the Act and its Explanatory Notes can be accessed at:

www.opsi.gov.uk/acts/acts2010/ukpga_20100023_en_1

The principal provisions of the Act include:

- two general offences covering the offering, promising or giving of a bribe (active bribery) and the requesting, agreeing to receive or accepting of a bribe (passive bribery) (sections 1 and 2);
- a discrete offence of bribing a foreign public official in order to obtain or retain business or an advantage in the conduct of business (section 6);
- an offence which can be committed by commercial organisations which fail to prevent bribery committed on their behalf (section 7);
- extra-territorial jurisdiction to enable the prosecution in the UK of bribery committed abroad by persons ordinarily resident in the UK as well as British nationals, and UK corporate bodies;
- raising the maximum sentence for bribery committed by an individual from 7 to 10 years imprisonment. The maximum sentence for an offence committed by a corporate body is an unlimited fine;
- a requirement that prosecutions for any of the new offences in England and Wales and in Northern Ireland are subject to the personal consent of the Director of the relevant prosecution authority;
- extra-territorial application.

Section 1: Offences of bribing another person

Section 1 makes it an offence for a person (“P”) to offer, promise or give a financial or other advantage to another person in one of two cases:

Case 1 applies where P intends the advantage to bring about an improper performance by another person of a relevant function or activity or to reward such improper performance.

Case 2 applies where P knows or believes that the acceptance of the advantage offered, promised or given in itself constitutes the improper performance of a relevant function or activity.

‘Improper performance’ is defined at sections 3, 4 and 5. In summary, this means performance which amounts to a breach of an expectation that a person will act in good faith, impartiality, or in a position of trust. The offence applies to bribery relating to any function of a public nature, connected with a business, performed in the course of a person’s employment or performed on behalf of a company or another body of persons. Therefore bribery in both the public and private sectors is covered.

For the purposes of deciding whether a function or activity has been performed improperly the test of what is expected is a test of what a reasonable person in the UK would expect in relation to performance of that function or activity. Where the performance of the function or activity is not subject to UK law (for example it takes place in a country outside UK jurisdiction) then any local custom or practice must be

disregarded - unless permitted or required by the written law applicable to that particular country. Written law means any written constitution, provision made by or under legislation applicable to the country concerned or any judicial decision evidenced in published written sources, and in the case of an international organisation, the applicable written rules of that organisation.

Section 6: Bribery of foreign public officials

Section 6 creates a standalone offence of bribery of a foreign public official. The offence is committed where a person offers, promises or gives a financial or other advantage to a foreign public official with the intention of influencing the official in the performance of his or her official functions. The person offering, promising or giving the advantage must also intend to obtain or retain business or an advantage in the conduct of business by doing so. However the offence is not committed where the official is permitted or required by the applicable written law to be influenced by the advantage.

A “foreign public official” includes any person, whether elected or appointed, who performs public functions in any branch of foreign national, local or municipal government. It includes officials holding a legislative, administrative or judicial position of any kind. It also covers a person who exercises a public function, such as professionals working for public health agencies and officers in state-owned enterprises. Foreign public officials can also be an official or agent of a public international organisation, such as the UN or the World Bank.

Section 6 is wide in scope in order to cater for the many different ways in which this kind of bribery can occur and to provide a robust response commensurate with the gravity of the mischief towards which it is directed.

Section 7 – Failure of commercial organisation to prevent bribery

A commercial organisation will be liable to prosecution if a person associated with it bribes another person intending to obtain or retain business or an advantage in the conduct of business for that organisation.

A “relevant commercial organisation” is defined by the Act as a body or partnership incorporated or formed in the UK irrespective of where it carries on business, or an incorporated body or partnership which carries on business or part of a business in the UK irrespective of the place of incorporation or formation. For the purposes of section 7, a person associated with the organisation will be considered to have bribed another person if their actions would be capable of constituting an offence under sections 1 or 6 of the Act, though it is irrelevant whether the person has been convicted of such an offence. Where the prosecution cannot prove beyond reasonable doubt that a section 1 or 6 offence has been committed the section 7 offence will not be triggered.

A person associated with a commercial organisation is defined by section 8 as a person who performs services for or on behalf of the organisation including employees, agents or subsidiaries. Employees are presumed to be performing

services for their employer but otherwise the question is to be determined by reference to all the relevant circumstances.

There is a defence if the organisation can prove that it had in place adequate procedures designed to prevent persons associated with the organisation from bribing on its behalf. The legal burden of proving that the defence applies is on the defendant, to be satisfied on the balance of probabilities.

It is important to note that, in addition to any liability which might arise under section 7, the offences under section 1 and 6 apply to incorporated and unincorporated bodies as well as individuals.

Extra-Territorial application

Section 12 of the Act sets out the territorial extent of the offences in the Act. Courts will have jurisdiction over the sections 1, 2 or 6 offences committed in the UK, but they will also have jurisdiction over offences committed abroad where the person performing them is a British national or ordinarily resident in the UK, a body incorporated in the UK or a Scottish partnership.

In relation to the offence in section 7, provided the organisation is incorporated or formed in the UK, or that the organisation carries out its business or part of its business in the UK (wherever in the world it may be incorporated or formed) then courts will have jurisdiction irrespective of where in the world the acts or omissions which form part of the offence may be committed.

Some specific issues

Local law under section 6

For the purposes of section 6 prosecutors will be required to show that the advantage given to the foreign public official must be one that the official is not permitted or required to be influenced by as determined by the written law applicable to the foreign official.

“Offset” arrangements, whereby some kind of additional investment is offered or required as part of an organisation’s tender are unlikely to give rise to any difficulties under section 6 where such arrangements are subject to legislative or regulatory provision. So, for example, local land use planning law may permit community investment or require a foreign public official to minimise the cost of public procurement administration through cost sharing with contractors, thereby providing for the official to be influenced by a prospective contractor’s offer of free training.

Where local law is silent, then any person offering, promising or giving an advantage intending to influence a foreign public official and intending to obtain or retain business or an advantage in the conduct of business will be at risk of prosecution. Prosecutorial review of cases will provide an appropriate backstop for those cases where it would not be in the public interest to proceed.

Hospitality and promotional expenditure

Hospitality and promotional expenditure can be employed improperly and illegally as a bribe. For example, recent UK convictions for corruption of foreign public officials have documented how contrived 'professional education' schemes can use promotional expenditure as a cover for bribery. But reasonable and proportionate hospitality or promotional expenditure which seeks to improve the image of a commercial organisation, better to present products and services, or establish cordial relations, is recognised as an established and important part of doing business.

In order to amount to a bribe under section 1, hospitality or promotional expenditure must be intended to induce a person to perform a function improperly (as defined in sections 3, 4 and 5).

Under section 6 there must be an intention for a financial or other advantage to influence the official in his or her official role and thereby secure business or a business advantage.

In some circumstances it may be that hospitality or promotional expenditure in the form of travel and accommodation costs does not even amount to "a financial or other advantage" to the relevant official as required by section 6 because it is a cost that would otherwise be borne by the relevant foreign Government rather than the official him or herself.

So for example, providing a foreign public official with information about a company's track record and expertise and promoting this through the provision of ordinary travel and lodgings to visit an overseas site is different from providing a foreign public official with a five-star holiday which is not specifically related to the work of the business.

Where the prosecution is able to establish a financial or other advantage has been offered, promised or given but there is no sufficient connection between the advantage and the intention to influence and secure business or a business advantage then section 6 is unlikely to be engaged.

The question as to whether a particular item of expenditure constitutes a bribe will depend on all the surrounding circumstances. But it is unlikely, for example, that a routine and incidental business courtesy where the advantage involved is of small value, or where hospitality is standard, will have any impact on decision making in the context of a business opportunity of high value and therefore engage section 6.

Generally, the higher the expenditure and the more lavish the hospitality or expenditure provided to a public official the greater the inference that it is intended to influence the official to grant business or a business advantage in return. But reasonable and proportionate hospitality in itself is unlikely to trigger the section 1 offence. It is, however, for individual businesses, or business representative bodies to fulfil any expectations as regards the establishment and dissemination of any appropriate standards for hospitality and promotional expenditure.

Facilitation payments

Small bribes paid to facilitate routine Government action – otherwise called 'facilitation payments' are likely to trigger the section 6 offence and the section 1 offence (where

there is an intention to induce improper conduct, including where the acceptance of such payments is itself improper).

As was the case under the old law, the Bribery Act does not (unlike US foreign bribery law) provide any exemption for such payments. The 2009 OECD Anti-Bribery Recommendation recognises the corrosive effect of facilitation payments and asks adhering countries to discourage companies from making such payments. Exemptions in this context create artificial distinctions that are difficult to enforce, undermine corporate anti-bribery procedures, confuse anti-bribery communication with employees and business partners, and have the potential to be abused.

Prosecutorial discretion

Whether to prosecute an offence under the Act is a matter for the prosecuting authorities. In deciding whether to proceed, prosecutors must apply a two stage test: whether there is sufficient evidence to provide a realistic prospect of a conviction and if so, whether a prosecution is in the public interest. If the evidential test has been met, prosecutors will consider the general public interest in ensuring that bribery is effectively dealt with. The more serious the offence, the more likely it is that a prosecution will be required in the public interest.

In cases where hospitality, promotional expenditure or facilitation payments do on their face trigger the provisions of the Act the exercise of prosecutorial discretion provides the degree of flexibility required to ensure the just and fair operation of the Act.

ANNEX B

ILLUSTRATIVE SCENARIOS

This section (which does not form part of the guidance to be issued under section 9 of the Act) looks at how the application of six anti-bribery principles might relate to a number of problem scenarios commercial organisations may encounter. Although bribery prevention is not exclusively an issue relating to obtaining business in foreign markets the mischief to be addressed has a much higher profile in this context than within the UK domestic markets, and is targeted as a discrete issue by both US legislation and the OECD Convention Against Bribery of Foreign Public Officials in International Business Transactions. Accordingly, all the scenarios have been formulated as hypothetical circumstances that may be encountered by commercial organisations doing business in foreign markets. In each case, reference is made to questions that a commercial organisation might ask themselves in response to the application of each of the six principles to a particular set of facts. These questions are not intended to provide an exhaustive or prescriptive list of the factors that organisations might consider if faced with similar circumstances but rather as illustrative context to the six principles. The Government believes that this illustrative context can assist commercial organisations in deciding what procedures to prevent persons associated with them from bribing on their behalf might be most suitable to their needs.

Intermediaries and agents

You are a medium sized UK based pharmaceutical distribution company. You have your own wholly owned subsidiary operating in Altruria and in Ambrosia you act as an agent for a large multi-national. Your subsidiary in Altruria has well implemented bribery prevention procedures. The implementation of your anti-bribery measures in Ambrosia is poor despite a contractual requirement to implement bribery prevention measures that comply with your multi-national principal's standards. The Government of Beneficia announces a tender exercise for pharmaceutical distribution. Bribery is rife in Beneficia. The multi-national arranges and pays for an agent to act for you in Beneficia. In particular the agent is to help you navigate your way through the local regulatory scheme applying to the pharmaceutical importation and distribution business in Beneficia. Relations with the agent are handled by your management in Ambrosia. With your agent's assistance you submit a tender for the Benefician business. Before the contract is awarded your management in Ambrosia discover that the Benefician agent has used its close relations with members of the Benefician government to secure corrupt transactions on behalf of the multi-national.

Principle 1 Risk Assessment

- *Was your bribery risk assessment at the time of setting up operations in Altruria updated for the purposes of doing business in Ambrosia and Beneficia as or through intermediaries?*
- *Did you consider the bribery risks you face across all of your operations or in a locality specific manner?*

Principle 2 - Top level commitment

- *Did your top management provide leadership on bribery prevention in a way that helped in negotiating the bribery prevention conditions of the Ambrosian contract?*
- *Did your top-level management consider the arrangements surrounding the agent's role as your intermediary in Beneficia?*

Principle 3 - Due diligence

- *Have you undertaken any research of the levels and nature of bribery in Beneficia beyond relying on the multi-national's status and assurances, in particular about the agent in Beneficia?*
- *Did you take steps to establish the background, status and qualifications of your Benefician agent, including connections to any politicians or other public officials involved in decisions related to the transaction?*
- *Did you enquire as to your agent's expertise in the Benefician regulation of pharmaceutical imports and distribution?*

Principle 4 - Clear, Practical and Accessible Policies and Procedures

- *Do your anti-bribery policy documents deal clearly with your policy on reliance on intermediaries and agents?*
- *Does your documentation set out clearly your procedures for the reporting of bribery, and the steps the organisation will take to address any instances of bribery?*

Principle 5 - Effective implementation

- *Were your bribery prevention procedures in Altruria and Ambrosia developed as locally focussed initiatives?*
- *Did you approach the multi-national in order to initiate an assessment of your compliance with their contractual standard?*
- *Have you ensured that your policies on bribery been communicated externally to your agent and the government in Beneficia?*
- *Are there procedures in place for your staff to report allegations or suspicions of bribery on your behalf in Beneficia in a safe and confidential manner?*

Principle 6 - Monitoring and reviewing

- *Do you have procedures that allow you to use this Benefician experience to improve our procedures generally and in particular in Ambrosia?*
- *How do you consider the options for referring any evidence of bribery on the part of your agent on our behalf to the UK or local authorities?*
- *When did you last assess your procedures in your Ambrosian subsidiary?*

Hospitality and promotional expenditure

You are a UK company in a tender exercise for a contract to operate a Liquefied Natural Gas ("LNG") plant in Beneficia. In order to demonstrate your proven track record as front runners in LNG expertise as well as your sensitivity to local environmental, social and community issues, arrangements are made locally by your Altrurian management for a Benefician government delegation to visit your plant in Altruria. The Benefician energy Minister and an entourage made up of members of his family, private secretaries, senior officials and members of their families subsequently travel first class to Altruria and stay in a five star hotel at your expense. The visit is organised around a few days of tours and seminars at the plant but the energy Minister postpones the first day of the visit to the plant on the pretext of ill-

health and goes shopping with the rest of the entourage in the Altrurian capital. Over the course of the next few days the Benefician delegation makes short cursory visits to the LNG plant but spends most of the time in leisure activities, before returning to Beneficia unannounced. Shortly afterwards your Altrurian management, in receipt of a tip from contacts in Beneficia that your tender is “looking good”, approves payment of a number of high value “expenses” incurred by the Benefician delegation in Altruria. A competitor in the tender exercise lodges a formal complaint with the Benefician and UK authorities claiming that in seeking to be awarded the contract you bribed the Benefician authorities with lavish hospitality.

Principle 1- Risk Assessment

- Do your procedures provide for a regular assessment of bribery risks associated with hospitality and promotional expenditure that extends across all operations and to your business partners?
- Have you undertaken any assessment of the risk of bribery associated with the Liquefied Natural Gas (“LNG”) sector and in particular did the assessment benefit from any survey of any sectoral anti-bribery codes of conduct or industry standards, and the existence of industry focused anti-corruption alliances in the LNG sector?

Principle 2 - Top level commitment

- Do your procedures require senior UK management to be involved in ensuring that your policy and procedures on hospitality and promotional expenditure are effectively implemented in Altruria?
- Did top-level UK management facilitate an opportunity to discuss levels of hospitality and promotional expenditure for the tender exercise collectively with competitors and the Benefician government?

Principle 3 - Due diligence

- Were any enquiries made to ascertain the level of bribery in Beneficia and the types of bribery most commonly encountered, and the preventive actions which may be most effective?
- Did you research the law of Benefician as regards the extent to which officials are permitted to receive hospitality and if so under what circumstances?
- What enquiries did you make as regards the rules and regulations that applied to the Benefician tender exercise?

Principle 4 - Clear Practical and Accessible Policies and Procedures

- What guidance have you given staff in Altruria relating to the risks associated with lavish hospitality or promotional expenditure and the need to ensure that we are seen to be doing business fairly as well as competitively?
- Did you do enough to ensure our policy was known to business partners and in particular the Benefician government?
- Do your Altrurian procedures provide for checks and balances to ensure that all hospitality and promotional expenditure is bona fide (reporting and transparency requirements, pre-approval procedures, thresholds and criteria for senior management approval, etc)?

Principle 5 - Effective implementation

- What arrangements do you have to manage hospitality and promotional expenditure in line with your policies (for example do employees arranging corporate hospitality in Altruria have access to guidance on levels; are they required to seek pre-approval)?

- *Does your training deal with scrutiny of membership of any government delegation that may receive hospitality or benefit from promotional expenditure and interrogation of the rationale for the inclusion of any ancillary staff or family members?*
- *Were your Altrurian management informed about the bribery risk profile of the Benefician government and did they or UK management consider the extent to which greater than normal oversight of hospitality and promotional expenditure is required, for example the use of transparent reimbursement to clearly identified public accounts?*

Principle 6 - *Monitoring and review*

- *When did you last review your procedures and guidance of procedures and guidance on hospitality and promotional expenditure for the Altrurian operation?*
- *Do your procedures provide for input of views and comments of all employees and key LNG sector stakeholders into the continuing improvement of policies and procedures on hospitality and promotional expenditure?*
- *Do your procedures provide for a report on our involvement in the Benefician tender exercise to the Board of Directors or similar body?*

Business partners - joint ventures, consortia, etc.

You are a medium sized UK based communications systems specialist which has not entered into foreign markets before. You are one of a number of companies that form a joint venture to tender for a large scale public infrastructure and communications contract with the government of Beneficia. Bribery is rife in Beneficia. The joint venture is led by a large multi-national with a very good international reputation for maintaining high ethical standards. The third member of the joint venture is a small but influential Benefician TV concern with excellent UK and Benefician contacts but inadequate anti-bribery procedures. The joint venture agreement stipulates you and the Benefician TV company must comply with the multi-national's anti-bribery regime but does not provide for any continuing monitoring of bribery prevention within the members of the joint venture. Your compliance with the joint venture anti-bribery requirements was delegated to relatively low ranking staff managing the detail of your role in the joint venture. The Benefician tender allows for offset proposals to be taken into account when awarding the contract. Your joint-venture tender includes an off-set and is successful. The multi-national subsequently discovers that an agent of the Benefician TV company arranged for the transfer of a significant bribe on behalf of the joint-venture to the private company hired by the Benefician government to assess the off-set proposals. The multi-national leader of the joint venture insists that the UK and Benefician authorities are made aware of the situation.

Principle 1 - *risk assessment*

- *Have you assessed the various risks arising from your circumstances as a medium sized company entering a new market in a joint venture, possibly relying on the use of intermediaries and agents?*
- *Were the joint venture team the right people to undertake a risk assessment given the commercial significance of the opportunity? How did you guard against risks of a conflict of interest in their assessment?*

Principle 2 - *Top level commitment*

- *When negotiating your involvement in the joint venture did your top-level management take into account the suitability of the multinational's regime to your*

business and consider building in further anti-bribery measures in the joint venture arrangements?

- *How did the delegation of compliance with the joint-venture bribery prevention requirements team fit into the role of your top-level management as envisaged by your bribery prevention policies?*

Principle 3 - Due Diligence

- *Did you make enquiries as to any anecdotal assessment of the integrity of your joint venture partners and whether anyone associated with them is being investigated or prosecuted, or has been convicted or debarred, for bribery?*
- *Did you request information from the Benefician TV company partner in the joint venture about any intermediaries they are proposing to rely on as regards the tender?*
- *Did you ask for or receive any information from the Benefician TV company concerning the terms upon which the intermediary was engaged?*
- *Do you know who within the joint venture is performing services on your behalf?*

Principle 4 - Clear, Practical and Accessible Policies and Procedures

- *Do your procedures include a prohibition of bribery that was clearly communicated throughout the joint venture?*
- *Do you have any special procedures relating to the joint venture in place to deal with any incidents of bribery?*

Principle 5 - Effective implementation

- *Are there procedures in place for your employees to report bribery in a safe and confidential manner?*
- *Do you have a suitable plan for building this prohibition into the decision making processes of your organisation, including the decision making process for your participation in aspects of the joint venture?*
- *Did you consider offering training to employees and agents of joint venture partners and any intermediaries?*
- *How were the results of the risk assessment reflected in the negotiation and contractual requirements of your organisation's participation in the joint venture?*

Principle 6 - Monitoring and reviewing of bribery prevention procedures

- *Did you consider negotiating for the inclusion of any continuing anti-bribery controls into the joint venture arrangements (e.g. regular risk assessment, auditing and internal accounting controls, joint approval of intermediaries)?*
- *Did you consider disclosing any information that may have revealed a potential bribery risk within the joint venture?*

Facilitation payments

You are a medium sized UK IT installation company that is under contract to a large US consortium to install an IT system in a new hospital in the capital of Beneficia, where corruption is rife. In compliance with a contractual requirement you supplied the consortium with information about your existing anti-bribery regime, which is approved on the basis that it meets US Foreign Corrupt Practices Act (FCPA) standards. These standards exempt facilitation payments. Your installation project is a highly technical process requiring time sensitive management of component importation, storage and on site delivery. At an early stage your staff in Beneficia consider that, in light of the FCPA standards of the consortium and despite the prohibition of facilitation payments in the company's anti-bribery code, they have no choice but to commence payment of local "customs fees" and "transport taxes" in order to facilitate reasonably efficient on

site delivery of their components. After a few weeks your local managers strike a deal with local union leaders in which Benefician transport workers and customs officials agree to stop their demands for facilitation payments in return for free IT services for local union run educational centres. Shortly afterwards the Benefician Government supplies a dossier to the US and UK authorities detailing payments paid by your employees to customs officials and the gratis IT services for the union-based political opposition, alleging that these payments breach Benefician law.

Principle 1 - Risk Assessment

- Did you undertake a risk assessment for the Benefician project informed by the political, social and media environment in Beneficia?
- Was your Benefician project risk assessment informed by an objective analysis of the consortium's contractual standards, their relationship to both the FCPA defence for payments of facilitation payments, the relevant UK law and the law regulatory environment in Beneficia?

Principle 2 - Top level commitment

- Did your senior management provide leadership on developing and implementing anti-bribery policies and procedures tailored to Benefician law and regulatory environment?
- Have you offered any leadership within your Chamber of Commerce or in partnership with local anti-corruption initiatives to develop alternative options for dealing with demands for facilitation payments in Beneficia?

Principle 3 - Due diligence

- Did your enquiries extend to the political connections of the Benefician transport workers and customs officials demanding facilitation payments?
- What did you do to assess the nature of the Benefician government's policy on facilitation payments to officials?
- Did your appraisal of the Benefician contract include any analysis of the potential impact of the local political situation?

Principle 4 – Clear Practical and Accessible Policies and Procedures

- Is your policy on facilitation payments and the applicable legal frameworks clear and accessible to all staff and in particular all staff in Beneficia and all those concerned with the Benefician contract?
- To what extent does the Benefician project solution comply with your policy on facilitation payments?
- Did you tap into the experience and expertise of your Benefician staff and management when formulating our policy on facilitation payments?

Principle 5 - Effective implementation

- Are there procedures in place for employees to feedback on local Benefician management's solution to the facilitation payments problem in a safe and confidential manner?
- Are your procedures linked to operational concerns, such as anticipating and managing the impact of a refusal to pay facilitation payments?
- Do your procedures require management of projects such as the Benefician project to report any changes in circumstances, such as the union brokered Benefician deal on facilitation payments, to top-level management?
- Did your procedures and policies provide for full comparative training in UK law and the FCPA standard?

Principle 6 - Monitoring and reviewing bribery-free business policies

- *Do you have procedures in place to provide a regular review of your risk assessment as regards facilitation payments associated with the Benefician contract?*
- *Do you have a means of using your experience in Beneficia to improve your procedures on facilitation payments?*
- *Have you considered external verification of your policy on facilitation payments with bodies other than the consortium?*

Political and charitable donations

You are a UK renewable energy company that for the last eight years has been under contract with the Government of Beneficia to harness the tidal flows in a river delta in order to provide electricity to Bonneville, a Benefician regional centre. Seven years ago you commenced annual donations to local Benefician charities. Over the years the administration of your Benefician annual donation and the choice of beneficiaries devolved to personnel who are in large part locally recruited. Some of your local employees have close links to the political opposition movement centred in Bonneville. Your last three annual donations include a large donation to a local state funded charitable organisation that funded the Benefician political opposition. Elements of your local Benefician management agree with key opposition leaders that you will have a major role to play in future Benefician energy plans. The opposition is successful in national elections. The new Government advertised for tenders for management of a number of new energy projects. You submit a tender for the development of several projects and secure lucrative new business. While the tenders are under consideration your top level UK management are apprised of the facts surrounding your annual charitable donations in Beneficia. A competitor in the tender exercise challenges the award of contracts to you on the basis that your charitable donations were bribes.

Principle 1 – Risk Assessment

- *Does your Benefician bribery risk assessment take account of the changing social and political landscape there?*
- *Did those undertaking the risk assessment have sufficient expertise and knowledge and an understanding of the political situation?*
- *Did you put in place mechanisms to ensure that risk assessment results are used to fine-tune your systems to Benefician circumstances, including identifying needs for additional training and monitoring?*

Principle 2 - Top level commitment

- *Did your top-level management take any steps at the centre to ensure that local managers were aware of your anti- bribery policies and procedures?*
- *What steps did your top-level management take to familiarise themselves with the changing political landscape in Beneficia?*
- *Did your top-level management take steps to make sure that the implementation of the policy was subject to regular review, taking into account in particular the Benefician political opposition's prominence in the region in which you were most active?*

Principle 3 - Due diligence

- *What steps did you take at any level of management to check the authenticity of the particular charity related to the payments in question?*
- *What due diligence of local employees in key positions did you undertake in particular regards any political affiliations or connections?*

Principle 4 - Clear, Practical and Accessible Policies and Procedures

- *Are your policies and procedures commensurate with the complex political climate in Beneficia and the risk of bribery associated with that climate?*
- *Did your procedures allow for the devolution of the management of the Benefician charitable donations to the local team?*
- *Does your policy documentation make it clear that employees and your intermediaries should not seek to obtain advantage in business transactions by making direct or indirect contributions to political parties, organisations or individuals involved in politics?*
- *Do your policies address identified risks of bribery through additional controls, such as public disclosure of charitable contributions and sponsorships?*

Principle 5 - Effective implementation

- *Why didn't your auditing financial reporting procedures pick up the risks created by the Benefician charitable payments?*
- *Are there procedures in place for employees to report bribery in Beneficia in a safe and confidential manner?*
- *Did the conduct of the local employees in Beneficia in making the payments amount to a breach of your anti-bribery rules?*
- *Is your training in Beneficia informed by an assessment of the risks associated with the payment of charitable and political donations?*

Principle 6 - Monitoring and reviewing

- *Do you have appropriate oversight of your communications strategy and is it responsive to concerns of investors, employees, customers, business partners and others possibly exposed to consequences of the Benefician incident?*
- *What mechanisms did you have in place to monitor and assess charitable contributions in Beneficia?*
- *Do you periodically reporting the result of internal reviews to the Audit Committee, the Board of Directors or equivalent body?*

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