

This is the response to supplementary questions put to the UK Anti-Corruption Forum by the UK Parliamentary Select Committee in response to publication of the Draft Bribery Bill on 25 March 2009

Response to supplementary questions to the UK Anti-corruption Forum

- 1) *You stated that there would be a need for guidance for companies on what constitutes “negligence” and “adequate procedures” under the draft Bill (Qq 248-251). Who should prepare this; what principles should it enshrine; and what status should it hold? Please could you also supply any draft guidance that you have already prepared.*

The Forum has established a Business Practices Working Group which will, over the next few months, be identifying and agreeing on the elements of a best practice corporate programme. The Working Group has not yet undertaken this task.

However, we can provide you with three references to existing recommended programmes:

GC100

The GC100 is the association for general counsel and company secretaries in the FTSE 100. It has filed a submission to the Joint Committee. Appendix 1 of that submission contained a summary guidance on an anti-corruption compliance programme. We attach a copy.

Global Infrastructure Anti-Corruption Centre

GIACC is an independent not-for-profit organisation which provides resources and services for the purpose of preventing corruption in the infrastructure, construction and engineering sectors. It has published a template for a corporate anti-corruption programme, together with supporting tools. This template is used both to help companies establish an anti-corruption programme, and to assess their compliance. The template is available at:

http://www.giacentre.org/project_companies.php

Transparency International

TI has produced, in conjunction with several leading international organisations, the Business Principles for Countering Bribery suite of documents designed to assist organisations to implement and manage an effective anti-bribery system. The **Business Principles for Countering Bribery** is an anti-bribery code that organisations can either adopt or use to benchmark against their own systems. This is available at:

http://www.transparency.org/global_priorities/private_sector/business_principles

Formal guidance for companies on what constitutes “negligence” and “adequate procedures” is, in the opinion of the Forum, essential. That guidance should be discussed and agreed by a working group including appropriate representatives of prosecuting authorities, business, Government and civil society. That working group should also consider the status of the guidance. The Forum’s preliminary view is that compliance should not be a legal requirement,

but it could have the status of an approved code of practice. Compliance would be treated as compliance with the law. A failure to follow the guidance would not itself be an offence, but would need to be justified.

- 2) *You raised concerns about the workability of the “improper conduct” model (Q 265). What model would you replace it with in the draft legislation? Can guidance be used to make it workable?*

The Forum’s comments on the model are contained in the written submissions provided on 22 May 2009 entitled “Comments by the UK Anti-Corruption Forum on the proposed bribery bill published by the Ministry of Justice”.

- 3) *Are there specific changes that should be made to the draft Bill (besides any changes that you raised in oral evidence)?*

The Forum proposes no specific changes other than those raised in oral evidence, and in the written submissions referred to above.

- 4) *Is there any further information that you wish to supply in connection with your appearance on 2 June?*

The Forum has no further comments, other than the points already made in its written submissions.

Attached: Appendix 1

Appendix 1 to Submission on behalf of the GC 100 in response to publication of the Draft Bribery Bill on 25 March 2009

**Submission on behalf of the GC 100 in response to publication of the
Draft Bribery Bill on 25 March 2009**

APPENDIX 1

ANTI-CORRUPTION COMPLIANCE

**GUIDANCE FOR ASSESSING WHETHER ADEQUATE PROCEDURES ARE IN
PLACE TO COMBAT BRIBERY AND CORRUPTION**

1. Introduction

The GC 100 recognises that there is a significant divergence in risk profile between its own members, let alone between all commercial organisations, from the smallest to the largest. Notwithstanding this, all need to have in place adequate procedures to prevent bribery if they are to comply with the requirements of the draft Bill and, in appropriate circumstances, avail themselves of the adequate procedures defence. The guidance contained in this paper is not intended to be prescriptive. Its purpose is to highlight the matters a commercial organisation should consider when developing its own procedure, having undertaken a proper risk assessment. It is intended to highlight the key areas which are likely to be considered important by a court, but only where they are appropriate to the particular organisation and the level of risk it faces.

2. Board responsibility for the anti-corruption programme

The board of directors should take responsibility for the effective implementation of the company's anti-corruption programme. The board should take steps to ensure that senior management is aware of its policy in respect of corruption, and accepts the programme. The Chief Executive should make a clear statement about the culture which he expects, and the consequences of breaching these ideals.

3. Compliance Function

A senior officer should be made responsible for oversight of the anti-corruption programme. He should be provided with proper authority to implement and monitor all programme activities.

4. Anti-corruption code

Commercial organisations should have a clear and unambiguous code of conduct which includes an anti-corruption element, should publicise this code adequately internally, and should publish the code on its website.

5. Risk Management

Procedures should be established to assess the likely risks of corruption arising in an organisation's business.

6. Employment procedures

Whilst not appropriate for all organisations, wherever possible:

- a) employees should be vetted before they are employed to ascertain as far as is reasonable that they are the type of person who is likely to comply with the company's ethical policies;
- b) employment contracts should include express contractual obligations and penalties in relation to corruption;
- c) disciplinary procedures should be in place which, where appropriate, entitle the company to take suitable disciplinary action against an employee who commits a corrupt act.

7. Gifts and hospitality policy

A commercial organisation should develop and implement a gifts and hospitality policy whereby it provides guidance to employees of its policies in relation to the giving and receiving of gifts and entertainment, and puts in place measures to monitor this activity.

8. Training

It is important for commercial organisations to ensure that their codes of conduct and other policies are properly embedded throughout their businesses. Anti-corruption training should therefore be provided, with reminders on a regular basis, to all relevant employees to make them aware of the types of corruption, the risks of engaging in corrupt activity, the organisation's anti-corruption code, and how they may report corruption.

9. Due diligence

Before entering into any business relationship or project, the organisation should carry out due diligence on the country in which the business is to be conducted, on its potential business partners, agents used and on the proposed project or business transaction in order to identify as far as reasonably possible the risk of corruption.

10. Anti-corruption contract terms

Consideration should be given to the contracts which are entered into between the company and its business partners to contain anti-corruption contract terms, and whether or not they should provide express contractual obligations and penalties in relation to corruption. Particular care should be taken when agents are being used.

11. Decision-making process

An organisation should formalise its decision-making processes, so that where a greater risk of corruption is perceived to exist, the decision is taken by a suitably senior individual within the organisation.

12. Financial controls

An organisation should ensure that it puts in place financial controls to minimise the risk of the company committing a corrupt act against another individual or organisation (e.g. employees,

clients, business partners, sub-contractors or suppliers), or of any corrupt act being committed against the company by another individual or organisation. This can be done through an organisation's internal audit function, if one exists.

13. Commercial controls

An organisation should ensure that its commercial controls minimise the risk of the company committing a corrupt act against another individual or organisation (e.g. employees, clients, business partners, sub-contractors or suppliers), or of any corrupt act being committed against the company by another individual or organisation.

14. Supply chain management

Wherever possible, an organisation should use procurement and contract management procedures which minimise the opportunity for corruption by sub-contractors and suppliers against the company.

15. Reporting and investigation procedures

An organisation should develop and implement procedures (“whistleblowing”) for reporting corruption which enable employees to report corruption in a safe and confidential manner to a responsible senior officer of the company. Similarly, organisations should ensure that all allegations of corruption are properly investigated by properly qualified individuals, and, where appropriate, the results of those investigations are reported back to the individual who made the original complaint.