



# Anti-Bribery Compliance Policy & Guidance Manual

| <b>Anti-Bribery Compliance Policy &amp; Guidance Manual</b> |                                 |                                 |              |
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## 1. POLICY STATEMENT

Invest NI's policy has been and continues to be that all personnel and agents of Invest NI must comply strictly and in good faith with the letter and spirit of all applicable laws and regulations in any location in which Invest NI transacts business.

Invest NI has a zero tolerance of bribery and corruption.

I have reviewed the principles contained in the Bribery Act 2010 and, in the light of the organisation's current operating policies and practices, I do not see anything that should impact significantly on the ongoing activities of the business. Rather, the Act enshrines in law many of the high standards of business practice already evident throughout our global operations.

All Invest NI staff are expected to conduct our business in a legal and ethical manner. The use of Invest NI funds or assets for any unlawful, improper or unethical purpose is prohibited. In the conduct of business, all employees must avoid making or receiving payments that may be or may be perceived to be improper. Specifically, Invest NI prohibits any act of corruption or bribery by any of its employees or agents.

This policy extends to all of Invest NI's domestic and foreign operations, without exception, including operations conducted by any of Invest NI's divisions, subsidiaries, external delivery organizations, agents, consultants or other representatives.

As a Board and Executive Leadership Team we are fully committed to ensuring compliance with the requirements of the law and have endorsed the range of procedures, as set out in the attached Guide, to ensure adherence to the highest principles and practices in the discharge of our functions in all jurisdictions.

It is of the utmost importance that all staff and agents of Invest NI should be aware of and fully compliant with this policy.



**ALASTAIR HAMILTON**  
Chief Executive

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## 2. INTRODUCTION

- 2.1 The Bribery Act 2010 ('The Act') modernised the law on bribery. It came into force on 1 July 2011. This manual offers a guide to what you need to know about the Act and the procedures that are in place to prevent bribery.
- 2.2 It is Invest NI's policy to conduct all of its business in an honest and ethical manner. Invest NI takes a zero-tolerance approach to bribery and corruption and is committed to acting professionally, fairly and with integrity in all its business dealings and relationships wherever it operates, and implementing and enforcing effective systems to counter bribery and corruption.
- 2.3 The UK Government has also produced detailed guidance (available here: [www.justice.gov.uk/guidance/bribery.htm](http://www.justice.gov.uk/guidance/bribery.htm)).
- 2.4 The aim of this manual is to provide employees at all levels and other individuals working for or with us (including directors, officers, consultants, contractors, seconded staff, casual workers, agency staff, volunteers, agents, sponsors or any other person associated with Invest NI who provide services on its behalf, including external delivery organisations and service providers) ('Associated Persons') with the knowledge they need to identify potential bribery and corruption issues.
- 2.5 This policy has been supported by an online training module rolled out to employees. Training on this policy will also form part of the induction process for all individuals who work for us. Neither this manual nor compliance training will provide definitive answers to all questions regarding anti-bribery legislation. Accordingly, if you have any doubts as to the scope of applicable laws or if you need more specific information, you should contact the Executive Director of Finance and Operations or the Risk Manager.
- 2.6 This policy should also be read in conjunction with those policies which ensure Invest NI operates with integrity in an ethical and professional manner including:
- Invest NI's Values and Behaviour Framework
  - The Staff Handbook
  - Gifts and Hospitality Guidance
  - The Anti-Fraud Policy / Fraud Response Plan
  - The Invest NI Whistleblowing policy and guidance manual
  - Finance Policies & Procedures (including Procurement & Expenses)
- 2.7 All employees and associated persons must read and observe the requirements of this Anti-Bribery Compliance Policy and Guidance manual. Employees and associated persons must also act with honesty and integrity

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and comply with all applicable laws, whether or not specifically covered by the manual, the training or any other of the organisation's policies.

2.8 Our zero-tolerance approach to bribery and corruption will be communicated to all suppliers, contractors and business partners at the outset of our business relationship with them and as appropriate thereafter.

## 2.9 Consequences of Non-Compliance

2.9.1 Invest NI may take appropriate disciplinary action, up to and including termination of employment, against any employee who fails to comply with the Anti-Bribery Compliance Policy & Guidance Manual, or applicable laws. In addition, an employee who breaks the law may be reported to the police and may face criminal proceedings, fines or imprisonment.

2.9.2 For associated persons, non-compliance with the Anti-Bribery Compliance Policy & Guidance Manual and the Bribery Act 2010 will be considered to be a material breach of contract and may result in the termination of any relationship with Invest NI and the matter being reported to the police.

## 2.10 Protection

2.10.1 Individuals who refuse to accept or offer a bribe, or who raise concerns or report another's wrongdoing, are sometimes worried about possible repercussions. Invest NI aims to encourage openness and will support anyone who raises genuine concerns in good faith under this policy, even if they turn out to be mistaken.

2.10.2 Invest NI is committed to ensuring no one suffers any detrimental treatment as a result of refusing to take part in bribery or corruption, or because of reporting in good faith their suspicion that an actual or potential bribery or other corruption offence has taken place, or may take place in the future. Detrimental treatment includes dismissal, disciplinary action, threats or other unfavourable treatment connected with raising a concern. If you believe that you have suffered any such treatment, you should inform the Executive Director of Finance and Operations immediately. If the matter is not remedied, and you are an employee, you should raise it formally using our Grievance Procedure.

## 3. THE BRIBERY ACT 2010 – IN BRIEF

3.1 The Bribery Act 2010 applies to the whole of the United Kingdom (UK) and provides for wide extra-territorial jurisdiction to deal with bribery committed outside the UK. The Act provides a revised framework to combat bribery in

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the public and private sectors, removing the need to prove acts were done corruptly or dishonestly.

### 3.2 Definition of a 'bribe'

**A bribe is a financial or other advantage offered, promised or given, requested, received or accepted to induce a person to perform a relevant function or activity improperly or to reward them for doing so.**

3.3 A **relevant function or activity** includes public, state or business activities or any activity performed in the course of a person's employment, or by or on behalf of another company or individual, where the person performing that activity is expected to perform it in good faith, impartially, or in accordance with a position of trust.

3.4 **Improper performance** means performance which amounts to a breach of an expectation that a person will act in good faith, impartially, or in accordance with a position of trust. The test for whether an activity has been performed improperly is that of what a reasonable person in the UK would expect in relation to the performance of that activity.

### 3.5 Scope of the Act

The Act takes a robust approach to tackling commercial bribery, which is one of its principal objectives. The offences are not, however, limited to commercial bribery.

### 3.6 The Offences

The Bribery Act sets out four offences:

3.6.1 ***Offering, promising or giving*** a financial or other advantage or to another person and intending the advantage to induce a person to perform a relevant function or activity improperly, or to reward a person for the improper performance of such a function or activity; or offering, promising or giving a financial or other advantage to another person and knowing or believing that the acceptance of the advantage would itself constitute improper performance of a relevant function or activity.

3.6.2 ***Accepting, agreeing to receive or requesting*** a financial or other advantage and intending that, in consequence, a relevant function or activity will be performed improperly.

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3.6.3 Bribery of a **foreign public official** intending to influence that individual in his/her capacity as a foreign public official in order to obtain or retain business or an advantage in the conduct of business.

3.6.4 **Failure** of a commercial organisation **to prevent** bribery. A commercial organisation is guilty of this offence if an employee or other associated person bribes another person intending to obtain or retain business or a business advantage for the commercial organisation. It is a defence for a commercial organisation to prove that it had in place **adequate procedures** designed to prevent persons associated with it from undertaking such conduct.

### 3.7 The Penalties

3.7.1 Individuals guilty of these offences could be imprisoned for up to ten years, or face an unlimited fine, or both.

3.7.2 Senior officers and officials with whose 'consent or connivance' the bribery was committed or who failed to maintain 'adequate procedures' could be liable to prosecution and face up to ten years' imprisonment.

3.7.3 A director convicted of bribery is likely to be disqualified from holding a director position for up to 15 years.

3.7.4 Organisations guilty of the corporate offence of failing to prevent bribery could face unlimited fines.

3.7.5 Bodies Corporate might also be banned from bidding for public contracts for a number of years.

3.8 The Act applies equally to individuals in the public service of the Crown, such as Invest NI, as it applies to other individuals.

## 4. **THE SIX PRINCIPLES**

4.1 The Ministry of Justice Guidance focuses on six high-level principles and advocates a risk-based, proportionate and common-sense approach to the design of policies and procedures. Invest NI has committed to these principles as outlined below.

### 4.2 Principle 1 – Proportionate procedures

4.2.1 Invest NI has developed and continues to develop appropriate procedures to prevent bribery by persons associated with it, which are proportionate to the bribery risks it faces and to the nature, scale and

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complexity of its activities. It is committed to a programme to counter the risk of Invest NI being involved in bribery.

4.2.2 Invest NI has also carried out, and will continue to carry out, a review of commercial procedures, HR procedures, terms and conditions of business with third parties and commercial agreements. Any necessary changes will be made as a result of the due diligence and procedures review and will be kept under review going forward to ensure that they are clear, practical, accessible, effectively implemented and enforced.

4.3 Principle 2 – Top-level commitment

4.3.1 The Board and the senior management of Invest NI are committed to preventing bribery by employees of Invest NI and persons associated with it and ensuring that the business of Invest NI is carried out fairly, honestly and openly. The Board and senior management will foster a culture within the organisation in which bribery is never engaged in, permitted or tolerated by or on behalf of Invest NI in the UK or anywhere else in the world.

4.4 Principle 3 – Risk assessment

4.4.1 Invest NI is committed to assessing, and has assessed, the nature and extent of its exposure to potential external and internal risks of bribery on its behalf by persons associated with it. This risk assessment will be periodic, informed, documented and kept under review within our Risk Management System.

4.5 Principle 4 – Due diligence

4.5.1 Invest NI has systems in place to apply due diligence procedures, taking a proportionate and risk-based approach, in respect of persons who perform or will perform services for or on behalf of the organisation, in order to mitigate identified bribery risks.

4.6 Principle 5 – Communication (including training)

4.6.1 Invest NI has prepared guidance and will brief its staff on an ongoing basis on the provisions of the Bribery Act 2010. It will roll out periodic training courses as appropriate to ensure that its bribery prevention policies and procedures are embedded and understood throughout the organisation through internal and external communication, including training that is proportionate to the risks it faces. Existing policies and procedures will be updated as necessary to ensure ongoing compliance with the Act.

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#### 4.7 Principle 6 – Monitoring and review

4.7.1 Invest NI will monitor and review its procedures to prevent bribery by persons associated with it and will make improvements where necessary. This will include staff training and feedback from that training, and periodic reviews by top level management.

### 5.0 **INVEST NI RULES FOR COUNTERING BRIBERY**

#### 5.1 General principles

Invest NI considers it unacceptable for employees or associated persons (or someone on their behalf) to:

- give, promise to give, or offer, a payment, gift or hospitality with the expectation or hope that a business advantage will be received, or to reward a business advantage already given;
- give or accept a gift or hospitality during any commercial negotiations or tender process, if this could be perceived as intended or likely to influence the outcome;
- accept a payment, gift or hospitality from a third party that you know or suspect is offered with the expectation that it will provide a business advantage for them or anyone else in return;
- accept hospitality from a third party that is unduly lavish or extravagant under the circumstances.
- offer or accept a gift to or from government officials or representatives, or politicians or political parties;
- threaten or retaliate against another individual who has refused to commit a bribery offence or who has raised concerns under this policy; or
- engage in any other activity that might lead to a breach of this policy.

#### 5.2 Responsibility

Invest NI's anti-bribery and corruption policies and procedures apply not only to employees but to all associated persons. Invest NI could be criminally liable if an employee or an associated person engages in bribery in connection with Invest NI's business, with or without Invest NI's knowledge, in the UK and otherwise. Details of those with responsibility for this policy are outlined in section 7.

#### 5.3 Actions to take if you suspect Bribery/Corruption

5.3.1 The prevention, detection and reporting of bribery and other forms of corruption are the responsibility of all those working for Invest NI or

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under our control. Concerns and violations should be raised as early as possible.

5.3.2 In respect of reporting others' involvement in Bribery, Invest NI provides secure and accessible channels through which employees and associated persons can raise concerns and report violations ('whistle-blowing') in confidence and without risk of reprisal. These are detailed in the Invest NI Whistleblowing Policy and Guidance Manual.

5.3.3 In the first instance you should discuss any issue of concern with your line manager or Director or, if you believe them to be conflicted, the Executive Director of Finance and Operations.

#### 5.4 Actions to take if you are offered a bribe or are asked to make one

5.4.1 All bribes should be refused.

5.4.2 If you are offered a bribe, or are asked to make one, or if you believe or suspect that any bribery corruption or other breach of this policy has occurred, you should inform your line manager and/or a Director and complete an Incident Reporting Form (see Appendix D). The Incident Form should be passed to the Executive Director of Finance and Operations.

#### 5.5 Actions to take if asked for a 'facilitation payment'

5.5.1 'Facilitation' or 'grease' payments are illegal small value payments to public officials to speed up or procure a transaction or administrative process. We do not make, and will not accept, facilitation payments of any kind. You can continue to pay for legally required administrative fees or fast-track services as these are not facilitation payments.

5.5.2 Please see section 6.5 for further details. An Incident Reporting Form (see Appendix D) should be completed in relation to activities involving facilitation payments and passed to the Executive Director of Finance and Operations.

### 6. **INVEST NI PROCEDURES TO PREVENT BRIBERY**

6.1 Invest NI's Board, Chief Executive, Executive Leadership Team and Senior Management Team fully endorse and adhere to all Anti Bribery principles and procedures. The following procedures have been put in place to address the requirements of the Act:

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## 6.2 Risk assessment procedures

6.2.1 Invest NI has conducted a risk assessment to establish those areas of the operation that are at high level risk from Bribery. Both external and internal risks have been assessed. This risk assessment procedure is on-going and will be kept under review within our Risk Management System.

6.2.2 Commonly encountered external risks can be categorised into five broad groups – country, sectoral, transaction, business opportunity and business partnership:

- Country risk: this is evidenced by perceived high levels of corruption, an absence of effectively implemented anti-bribery legislation and a failure of the foreign government, media, local business community and civil society effectively to promote transparent procurement and investment policies.

In transactions with Agents, Contractors and External Delivery Organisations, including any sub-contracted persons/organisations, ('Service Providers') you should be alert to 'country risk'. Does the associated person operate in a country that is ranked by Transparency International as high risk for corruption? Please refer to the Transparency International Corruptions Perceptions Index (TICPI) ([https://www.transparency.org/news/feature/corruption\\_perceptions\\_index\\_2016](https://www.transparency.org/news/feature/corruption_perceptions_index_2016)).

Any associated person that operates in, or a transaction that is connected to a country with a score of 50 or less on the TICPI should be considered as medium to high risk for bribery and enhanced due diligence should be conducted and documented in order to satisfy yourself that it is reasonable in all circumstances to act.

- **Sectoral risk:** some sectors are higher risk than others. Higher risk sectors include the extractive industries and the large scale infrastructure sector.
- **Transaction risk:** certain types of transaction give rise to higher risks, for example, charitable or political contributions, licences and permits, and transactions relating to public procurement.
- **Business opportunity risk:** such risks might arise in high value projects or with projects involving many contractors or

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intermediaries; or with projects which are not apparently undertaken at market prices, or which do not have a clear legitimate objective.

- **Business partnership risk:** certain relationships may involve higher risk, for example, the use of intermediaries in transactions with foreign public officials; consortia or joint venture partners; and relationships with politically exposed persons where the proposed business relationship involves, or is linked to, a prominent public official.

6.2.3 Invest NI has identified that the following are particular external risks for our business:

- Operating in foreign countries;
- The provision and acceptance of unauthorised or inappropriate Gifts and Hospitality;
- Abuse of close relationships with Clients or large businesses;
- Improper procurement practice or process application; and
- Inappropriate dealings during property or large service contracts.

6.2.4 To address these risks we have:

- Engaged in constant liaison with the Foreign & Commonwealth Office (FCO);
- Provided country specific guidance for staff;
- Introduced a policy for the use of sponsorship;
- Continued to review and revise the Invest NI Anti-Bribery Compliance Policy and Guidance Manual;
- Provided complementary guidance and policy in relation to fraud, gifts & hospitality, and whistleblowing arrangement;
- Applied a consistent casework and approval process, including agreed delegation levels; and
- Applied ongoing Management oversight and approval of all expenditure.

6.2.5 Additional potential risk scenarios are set out in Appendix A.

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6.2.6 Invest NI has also considered the following internal risks:

- Deficiency in employee training, skills and knowledge;
- Lack of clarity in Invest NI's policies on and procedures for gifts, hospitality and promotional expenditure or charitable contributions;
- Lack of clear financial controls; and
- Lack of clear communication of Invest NI's anti-bribery message from top level management.

6.2.7 To address these risks Invest NI has implemented this policy and guidance manual together with the training referred to at 2.5 and the policies/procedures/guidance listed at 2.6, all of which is and will continue to be kept under periodic review.

### 6.3 Due diligence of existing or prospective associated persons

6.3.1 Invest NI requires that all associated persons including any sub-contracted persons/organisations comply with anti-bribery laws at all times. A person or organisation performing services for Invest NI is considered an 'associated person' under the Act. Invest NI must therefore undertake properly documented due diligence before appointing associated persons.

6.3.2 Due diligence is firmly established as an element of corporate good governance. The appropriate level of due diligence to prevent bribery will vary enormously depending on the risks arising from the particular relationship. For example, selecting an intermediary to assist in establishing a business in higher risk foreign markets will require a higher level of due diligence to mitigate the risks of bribery on behalf of Invest NI.

6.3.3 Invest NI's zero-tolerance approach to bribery and corruption must be communicated to all associated persons at the outset of the business relationship with them and as appropriate thereafter. Invest NI will also ensure that all associated persons have anti-bribery policies and procedures consistent with this policy.

6.3.4 In addition to normal due diligence processes that focus on relevant expertise, experience and qualifications, all Invest NI employees and associated persons, who subcontract or assign services provided to or on behalf of Invest NI to third parties, must take additional steps to secure compliance with anti-bribery laws and ensure that adequate

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procedures are in place to prevent the organisation from undertaking bribery.

- 6.3.5 If any Invest NI business unit or associated person utilises the services of another associated person, a detailed written contract should govern the arrangement. All agreements with associated persons for services and payments require the prior approval of management.
- 6.3.6 Detailed contractual provisions for inclusion in agreements with associated persons have been drafted and should be included in all contracts with them. These are available from Legal Services. All contracts should also provide that all payments to the associated persons shall be by approved means and that travel and entertainment expenses will be reimbursed only when approved in advance and supported by detailed records.
- 6.3.7 In higher risk situations, due diligence may include conducting direct interrogative enquiries, indirect investigations, or general research on proposed associated persons.

Appraisal and continued monitoring of recruited employees or engaged associated persons and third parties may also be required, proportionate to the relevant risks identified.

- 6.3.8 Generally, more information is likely to be required from prospective and existing associated persons that are incorporated (e.g. companies) than from individuals. This is because on a basic level more individuals are likely to be involved in the performance of services by a company and the exact nature of the roles of such individuals or other connected bodies may not be immediately obvious. Accordingly, due diligence may involve direct requests for details on the background, expertise and business experience, of relevant individuals. This information can then be verified through research and the following up of references, etc.
- 6.3.9 Any Invest NI business unit or associated person that secures the services of another associated person, whether abroad or otherwise, must keep a detailed record of the due diligence efforts made in relation to obtaining that associated person.

#### 6.4 Gifts, hospitality and promotional expenditure

- 6.4.1 Giving and receiving gifts, as well as entertaining and being entertained, is accepted practice in many countries when negotiating or conducting business with third parties. However, if the value of the

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gift or entertainment becomes excessive, it can affect, or be seen to affect, business judgment. It can also create expectations of special treatment.

6.4.2 All gifts and entertainment given or received must be of a reasonable value and appropriate to the business relationship in question. The giving and accepting of gifts, hospitality and entertainment is allowed if the following requirements are met:

- it is not made with the intention of influencing a third party to obtain or retain business or a business advantage, or to reward the provision or retention of business or a business advantage, or in explicit or implicit exchange for favours or benefits;
- it is given in our name, not in your name;
- it does not include cash or a cash equivalent (such as gift certificates or vouchers);
- it is appropriate in the circumstances, taking account of the reason for the gift, its timing and value. For example, in the UK it is customary for small gifts to be given at Christmas;
- it is given openly, not secretly; and
- it complies with any applicable local law.

6.4.3 All gifts, hospitality and promotional expenditure must be recorded in the Divisional Gifts & Hospitality Register.

6.4.4 Promotional gifts of low value such as branded stationery to or from existing customers, suppliers and business partners will usually be acceptable.

6.4.5 Reimbursing a third party's expenses, or accepting an offer to reimburse our expenses (for example, the costs of attending a business meeting) would not usually amount to bribery. However, a payment in excess of genuine and reasonable business expenses (such as the cost of an extended hotel stay) is not acceptable.

6.4.6 We appreciate that practice varies between countries and regions and what may be normal and acceptable in one region may not be in another. The test to be applied is whether in all the circumstances the gift, hospitality or payment is reasonable and justifiable. The intention behind it should always be considered.

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- 6.4.7 If you are not sure whether a gift or entertainment is of a reasonable value, you should discuss it with your line manager. In any case, all Invest NI staff must follow the Gifts and Hospitality Guidance.
- 6.4.8 Hospitality or promotional expenditure which is reasonable, proportionate and made in good faith is an established and important part of doing business. The Act does not seek to penalise such activity.
- 6.4.9 The more lavish the hospitality or expenditure (beyond what may be reasonable standards in the particular circumstances) the greater the inference that it is intended to encourage or reward improper performance or influence an official. Lavishness is just one factor that may be taken into account in determining whether an offence has been committed. The full circumstances of each case would need to be considered. Other factors might include that the hospitality or expenditure was not clearly connected with legitimate business activity or was concealed. Examples of criteria for making such judgments are attached in Appendix C.
- 6.4.10 In keeping with Invest NI guidelines, if any member of staff has any doubts about the propriety of giving or accepting any gift or hospitality, they should seek guidance in the first instance from their line-manager or Director.

## 6.5 Facilitation payments

- 6.5.1 Facilitation payments are typically small, unofficial payments made in order to secure or expedite the performance of a routine or necessary action (for example by a government official). They are sometimes referred to as ‘speed’ or ‘grease’ payments. The payer of the facilitation payment usually already has a legal or other entitlement to the relevant action. Facilitation payments may be requested for routine actions, such as issuing permits, immigration controls, providing services or releasing goods held in customs.
- 6.5.2 Invest NI prohibits the making or receiving of ‘facilitation’ or ‘grease’ payments as these are bribes and are illegal. It is also our policy that we work to ensure that associated persons and service providers (agents and other intermediaries, joint ventures and consortia, contractors and suppliers) do not make facilitation payments on our behalf.
- 6.5.3 Employees and associated persons must avoid any activity that might lead to a facilitation payment being made or accepted by us or on our behalf, or that might suggest that such a payment will be made or

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accepted. If during the course of business an employee or associated person is asked to make a facilitation payment on our behalf, it should be reported as early as possible by completing the Incident Report Form at Appendix D and forwarding this to line management and the Executive Director of Finance and Operations. Employees and associated persons must always refuse to make such payments.

6.5.4 Before travel to foreign countries employees and associated persons should make themselves aware of the risks for facilitation payments and prepare for this situation by:

- Seeking information (from local Invest NI offices, UK Embassy etc) on the localities, methods by which officials make attempts to obtain bribes and suggested counter measures to use; and
- Distinguishing between facilitation payments and legally required administrative fees or fast track services.

6.5.5 The employee/associated person should:

- Refuse to pay if the official or other person involved cannot supply official validity of the ‘fee’;
- Make the point that paying such a ‘fee’ would be against UK law, and the employee/associated person would be subject to company and legal actions on return to the UK; and
- Report as per 6.5.3 above.

6.5.6 See Appendix E Case Study 1 for further guidance.

## 6.6 Donations and sponsorship

In certain circumstances the making of any charitable donations or provision of sponsorship may constitute bribery. Donations and sponsorship by or on behalf of Invest NI require the prior approval of management in line with relevant organisational policies and practices.

All charitable donations should be in line with organisational CSR practices.

All employees should adhere to the Invest NI Sponsorship Policy.

Donations and sponsorship will never be made in an attempt to influence any decision or gain a business advantage.

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## 6.7 Invest NI employees

- 6.7.1 A commercial organisation's employees are presumed to be persons associated with the organisation for the purposes of the Bribery Act 2010. Invest NI therefore incorporates into its recruitment and human resources procedures an appropriate level of due diligence to mitigate the risks of bribery being undertaken by employees which is proportionate to the risk associated with the post in question.
- 6.7.2 Invest NI will ensure that its employment practices for domestic and overseas staff are fully compliant with the respective laws of the UK and those jurisdictions in which we operate.
- 6.7.3 Invest NI also operates a policy for the reporting of conflicts of interest by employees. A conflict of interest arises when an individual has any personal motivation or any interest that might influence their decisions or judgments while working for Invest NI. It is therefore important that employees report all conflicts of interest as soon as possible. Conflicts of interest should be reported even if an employee feels certain that the conflict will not affect their judgments, as that is not their personal decision to make.
- 6.7.4 Consequences of non-compliance with this policy and guidance manual are outlined in section 2.9.

## 6.8 Financial and commercial controls

- 6.8.1 Invest NI and associated persons must keep financial records and have appropriate internal controls in place which will evidence the business reason for making payments to third parties. All accounts, invoices, memoranda and other documents and records relating to dealings with third parties, such as clients, suppliers and business contacts, should be prepared and maintained with strict accuracy and completeness. No accounts must be kept 'off-book' to facilitate or conceal improper payments.
- 6.8.2 All employees must comply fully with all Finance policies including rules in respect of procurement, expenses and Anti-Fraud processes. See Para 2.6.
- 6.8.3 All associated persons must have commercial controls in place to detect any potential anomalies such as systems for approval of expenditure and appropriate auditing arrangements.

## 7. **RESPONSIBILITY FOR THIS POLICY**

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- 7.1 The Executive Director of Finance and Operations has overall responsibility for this policy, and for reviewing the effectiveness of actions taken in response to concerns raised under this policy.
- 7.2 The Executive Director of Finance and Operations has day-to-day operational responsibility for this policy, and must ensure that all managers and other staff who may deal with concerns or investigations under this policy receive regular and appropriate training.
- 7.3 The Executive Director of Finance and Operations should review this policy from a legal and operational perspective at least once a year.
- 7.4 All staff are responsible for the success of this policy and should ensure that they use it to disclose any suspected incidents of Bribery and report any such incidents which may occur during their work for Invest NI.
- 7.5 Staff are invited to comment on this policy and suggest ways in which it might be improved. Comments, suggestions and queries should be addressed to the Executive Director of Finance and Operations.

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## **THE BRIBERY ACT 2010 – FURTHER DETAILS**

### **Offences of bribing another person – Section 1**

The ways in which the offence of bribing another person can be committed are contained in two ‘Cases’ set out in the Act. The necessary conduct element is when a person ‘offers, promises or gives’ a ‘financial or other advantage’, either directly or through a third party. The offence also requires a ‘wrongfulness element’.

In Case 1, the wrongfulness element is committed where the advantage is intended to induce (or be a reward for) improper performance of a relevant function or activity.

In Case 2, the wrongfulness element is committed where the person 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.

### **Offences relating to being bribed (‘passive bribery’) – Section 2**

Section 2 defines the offence of bribery as it applies to the recipient or potential recipient of the bribe (‘the recipient’), and distinguishes four cases:

- (i) where the recipient requests, agrees to receive or accepts a financial or other advantage intending that, in consequence, a relevant function or activity should be performed improperly, whether by the recipient or by another person;
- (ii) where the recipient requests, agrees to receive or accepts a financial or other advantage, and the request, agreement or acceptance itself constitutes the improper performance by the recipient of a relevant function or activity;
- (iii) where the recipient requests, agrees to receive or accepts a financial or other advantage as a reward for the improper performance, whether by the recipient or by another person, of a relevant function or activity; and
- (iv) where, in anticipation of or in consequence of the recipient requesting, agreeing to receive or accepting a financial or other advantage, a relevant function or activity is performed improperly by the recipient, or by another person at the recipient's request or with his assent or acquiescence.

### **Bribery of foreign public officials – Section 6**

Section 6 creates a discrete offence of bribery of a foreign public official. A ‘**foreign public official**’ is any person who exercises a public function for or on behalf of a country or territory outside the UK, or for any public agency or public enterprise of any country or territory outside the UK; a politician or a candidate for political office in any country or territory; an official or agent of a public international organisation (for example, the United Nations or World Bank); and any person, whether elected or

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appointed, who holds a legislative, administrative or judicial position of any kind of a country or territory outside the UK.

The offence is committed where a person offers, promises or gives, directly or through a third party, a financial or other advantage to a foreign public official or to another person at the official's request or with their assent or acquiescence, with the intention of influencing the official in their capacity as a foreign public official, to obtain or retain business or a business advantage.

The official must not be permitted nor required by applicable written law to be influenced by the offer, promise or gift.

Unlike the general bribery offences in sections 1 and 2, the offence of bribery of a foreign public official only covers the offering, promising or giving of bribes, and not the acceptance of them.

As a global organisation, Invest NI employees and associated persons frequently come into contact with foreign officials. Compliance with anti-bribery laws in these situations is paramount.

### **Failure of commercial organisations to prevent bribery – Section 7**

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, but only if the associated person is or would be guilty of an offence under section 1 or 6 (section 2 'passive bribery' is not relevant to a section 7 offence).

Section 7 does not require a prosecution for the offences under section 1 or 6, but there needs to be sufficient evidence to prove such an offence to the normal criminal standard. For this purpose it is not necessary for the associated person to have a close connection with the UK.

The jurisdiction for this offence is wide. Provided that the commercial organisation is incorporated or formed in the UK, or that the organisation carries out its business or part of its business in the UK, courts in the UK will have jurisdiction, irrespective of where in the world the acts or omissions which form part of the offence may be committed.

The offence is not a substantive bribery offence. It does not involve vicarious liability and it does not replace or remove direct corporate liability for bribery. If it can be proved that someone representing the corporate 'directing mind' bribes or receives a bribe or encourages or assists someone else to do so then it may be appropriate to charge the organisation with a section 1 or 6 offence in the alternative or in addition to any offence under section 7 (or a section 2 offence if the offence relates to being bribed).

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### **The defence of adequate procedures in relation to Section 7**

It is a defence if a relevant commercial organisation can show it had adequate procedures in place to prevent persons associated with it from bribing. The standard of proof the defendant would need to discharge in order to prove the defence is on the balance of probabilities. Whether the procedures are adequate will ultimately be a matter for the courts to decide on a case by case basis.

A single instance of bribery does not necessarily mean that an organisation's procedures are inadequate. For example, the actions of an employee or associated person may be wilfully contrary to very robust corporate contractual requirements, instructions or guidance.

To ensure its procedures are adequate and fit for purpose, Invest NI conforms to the Six Principles as set out by the Ministry of Justice guidance for compliance with Section 7.

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## **POTENTIAL RISK SCENARIOS – ‘RED FLAGS’**

The following is a list of possible red flags that may arise during the course of you working for us and which may raise concerns under various anti-bribery and anti-corruption laws. The list is not intended to be exhaustive and is for illustrative purposes only.

If you encounter any of these red flags while working for us, you must report them promptly to the Executive Director of Finance and Operations or using the procedure set out in the whistleblowing policy:

- (a) you become aware that a third party engages in, or has been accused of engaging in, improper business practices;
- (b) you learn that a third party has a reputation for paying bribes, or requiring that bribes are paid to them, or has a reputation for having a ‘special relationship’ with foreign government officials;
- (c) a third party insists on receiving a commission or fee payment before committing to sign up to a contract with us, or carrying out a government function or process for us;
- (d) a third party requests payment in cash and/or refuses to sign a formal commission or fee agreement, or to provide an invoice or receipt for a payment made;
- (e) a third party requests that payment is made to a country or geographic location different from where the third party resides or conducts business;
- (f) a third party requests an unexpected additional fee or commission to ‘facilitate’ a service;
- (g) a third party demands lavish entertainment or gifts before commencing or continuing contractual negotiations or provision of services;
- (h) a third party requests that a payment is made to ‘overlook’ potential legal violations;
- (i) a third party requests that you provide employment or some other advantage to a friend or relative;
- (j) you receive an invoice from a third party that appears to be non-standard or customised;
- (k) a third party insists on the use of side letters or refuses to put terms agreed in writing;

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- (l) you notice that we have been invoiced for a commission or fee payment that appears large given the service stated to have been provided;
- (m) a third party requests or requires the use of an agent, intermediary, consultant, distributor or supplier that is not typically used by or known to us; or
- (n) you are offered an unusually generous gift or offered lavish hospitality by a third party.

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## **GIFTS, HOSPITALITY AND REIMBURSED EXPENSES**

The following criteria may be helpful to test if gifts, hospitality or reimbursed expenses comply with the anti-bribery policy:

- **Made for the right reason:** if a gift or hospitality, it should be given clearly as an act of appreciation, if travel expenses then for a bona fide business purpose;
- **No obligation:** the gift, hospitality or reimbursement of expense does not place the recipient under any obligation;
- **No expectations:** expectations are not created in the giver or an associate of the giver or have a higher importance attached to it by the giver than the recipient would place on such a transaction;
- **Made openly:** if made secretly and undocumented then the purpose will be open to question;
- **Accords with stakeholder perception:** the transaction would not be viewed unfavourably by stakeholders if it were to be made known to them;
- **Reasonable value:** the size of the gift is small and the value of the hospitality or reimbursed expense accords with general business practice;
- **Appropriate:** the nature of the gift, hospitality or reimbursed expense is appropriate to the relationship and accords with general business practice and local customs;
- **Legality:** it is compliant with relevant laws;
- **Conforms to the recipient's rules:** the gift, hospitality or reimbursement of expenses meets the rules or code of conduct of the recipient's organisation;
- **Infrequent:** the giving or receiving of gifts and hospitality is not overly frequent between the giver and the recipient;
- **Documented:** the expense is fully documented including purpose and approvals given and properly recorded in the books; and
- **Reported:** the gift, hospitality or expense is recorded and reported to management.

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| <b>Incident Reporting Form</b>                |        |
|---|--------|
| Your name:                                    |        |
| Your job title:                               |        |
| Your division/supplier:                       |        |
| Date:   |        |
| Does your report relate to your line manager? | Yes/No |

|   |
|---|
| Summary of Incident:  |
| Please set out the details of the incident (providing as much detail as possible, particularly dates, times and locations). You may attach additional sheets if required. |
| Please provide the names and contact details of any people involved in the incident, including witnesses if possible:   |

|   |
|---|
| Declaration:<br>I confirm that the above statements are true to the best of my knowledge, information and belief. |
| Form completed by:  |
| Signature:  |
| For completion by Invest NI:  |
| Date form received by Invest NI:  |
| Name of recipient and job role:   |
| Signature:  |

## **CASE STUDIES**

### **Case Study 1: Facilitation payments**

A medium sized company (company 'A') has acquired a new customer in a foreign country (country 'B') where it operates through its agent company (company 'C').

Its bribery risk assessment has identified facilitation payments as a significant problem in securing reliable importation into B and transport to its new customer's manufacturing locations. These sometimes take the form of 'inspection fees' required before B's import inspectors will issue a certificate of inspection and thereby facilitate the clearance of goods.

A could consider any or a combination of the following:

- Communication of its policy of non-payment of facilitation payments to C and its staff;
- Seeking advice on the law of B relating to certificates of inspection and fees for these to differentiate between properly payable fees and disguised requests for facilitation payments;
- Building realistic timescales into the planning of the project so that shipping, importation and delivery schedules allow where feasible for resisting and testing demands for facilitation payments;
- Requesting that C train its staff about resisting demands for facilitation payments and the relevant local law and provisions of the Bribery Act 2010;
- Proposing or including as part of any contractual arrangement certain procedures for C and its staff, which may include one or more of the following, if appropriate:
  - questioning of legitimacy of demands
  - requesting receipts and identification details of the official making the demand
  - requests to consult with superior officials
  - trying to avoid paying 'inspection fees' (if not properly due) in cash and directly to an official
  - informing those demanding payments that compliance with the demand may mean that A (and possibly C) will commit an offence under UK law
  - informing those demanding payments that it will be necessary for C to inform the UK embassy of the demand.
- Maintaining close liaison with C so as to keep abreast of any local developments that may provide solutions and encouraging C to develop its own strategies based on local knowledge; and

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- Use of any UK diplomatic channels or participation in locally active non-governmental organisations, so as to apply pressure on the authorities of B to take action to stop demands for facilitation payments.

### **Case Study 2: Hospitality and promotional expenditure**

A firm of engineers (company 'F') maintains a programme of annual events providing entertainment, quality dining and attendance at various sporting occasions, as an expression of appreciation of its long association with its business partners.

Private bodies and individuals are happy to meet their own travel and accommodation costs associated with attending these events. The costs of the travel and accommodation of any foreign public officials attending are, however, met by F.

F could consider any or a combination of the following:

- Conducting a bribery risk assessment relating to its dealings with business partners and foreign public officials and in particular the provision of hospitality and promotional expenditure;
- Publication of a policy statement committing it to transparent, proportionate, reasonable and bona fide hospitality and promotional expenditure;
- The issue of internal guidance on procedures that apply to the provision of hospitality and/or promotional expenditure providing that:
  - any procedures are designed to seek to ensure transparency and conformity with any relevant laws and codes applying to F;
  - any procedures are designed to seek to ensure transparency and conformity with the relevant laws and codes applying to foreign public officials;
  - any hospitality should reflect a desire to cement good relations and show appreciation, and that promotional expenditure should seek to improve the image of F as a commercial organisation, to better present its products or services, or establish cordial relations;
  - the recipient should not be given the impression that they are under an obligation to confer any business advantage or that the recipient's independence will be affected;
  - the criteria to be applied when deciding the appropriate levels and type of hospitality for both private and public business partners, clients, suppliers and foreign public officials is appropriate in different sets of circumstances;
  - the provision of hospitality for public officials be cleared with the relevant public body so that it is clear who and what the hospitality is for;
  - for expenditure over certain limits, approval by an appropriately senior level of management may be a relevant consideration; and

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- appropriate accounting procedures (book-keeping, orders, invoices, delivery notes, etc) are followed.
- Regular monitoring, review and evaluation of internal procedures and compliance with them; and
- Appropriate training and supervision provided to staff.

### **Case Study 3: Due diligence of agents**

A medium to large sized manufacturer of specialist equipment (company 'G') has an opportunity to enter an emerging market in a foreign country (country 'H') by way of a government contract to supply equipment to the state.

Local convention requires any foreign commercial organisations to operate through a local agent. G is concerned to appoint a reputable agent and ensure that the risk of bribery being used to develop its business in the market is minimised.

G could consider any or a combination of the following:

- Compiling a suitable questionnaire for potential agents requiring for example, details of ownership if not an individual; CVs and references for those involved in performing the proposed service; details of any directorships held, existing partnerships and third party relationships and any relevant judicial or regulatory findings;
- Having a clear statement of the precise nature of the services offered, costs, commissions, fees and the preferred means of remuneration;
- Undertaking research, including internet searches, of the prospective agents and, if a corporate body, of every person identified as having a degree of control over its affairs;
- Making enquiries with the relevant authorities in H to verify the information received in response to the questionnaire;
- Following up references and clarifying any matters arising from the questionnaire or any other information received with the agents, arranging face to face meetings where appropriate;
- Requesting sight or evidence of any potential agent's own anti-bribery policies and, where a corporate body, reporting procedures and records;
- Being alert to key commercial questions such as:
  - Is the agent really required?
  - Does the agent have the required expertise?

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- Are they interacting with or closely connected to public officials?
  - Is what you are proposing to pay reasonable and commercial?
- Renewing due diligence enquiries on a periodic basis if an agent is appointed.

#### **Case Study 4: Due diligence of agents**

A small UK company (company 'N') relies on agents in a foreign country (country 'P') from which it imports local high quality perishable produce and to which it exports finished goods.

The bribery risks it faces arise entirely as a result of its reliance on agents and their relationship with local businessmen and officials.

N is offered a new business opportunity in P through a new agent (company 'Q'). An agreement with Q needs to be concluded quickly.

N could consider any or a combination of the following:

- Conducting due diligence and background checks on Q that are proportionate to the risk before engaging Q; which could include:
  - making enquiries through N's business contacts, local chambers of commerce or business associations, or internet searches
  - seeking business references and a financial statement from Q and reviewing Q's CV to ensure Q has suitable experience.
- Considering how best to structure the relationship with Q, including how Q should be remunerated for its services and how to seek to ensure Q's compliance with relevant laws and codes applying to foreign public officials;
- Making the contract with Q renewable annually or periodically; and
- Travelling to P periodically to review the agency situation.

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