

Circular initially issued February 2016

Summary

The Bribery Act 2010

This circular sets out the Association's policy for the prevention of bribery and corruption, which was originally approved by the Committee at its meeting in October 2011 and is annually re-affirmed.

- Members should be familiar with the policy to ensure that they and the Association remain compliant with the new anti-bribery legislation. The policy statement:
- Affirms the Association's zero-tolerance to bribery and corruption;
- Sets out in summary the procedures that the Association has in place to minimise the risk that it will become involved in bribery and corruption;
- Explains the key role of Members, Correspondents and others who act on the Association's behalf in combating corruption;
- Explains how the policy will be monitored and reviewed over time.

Any queries in relation to this circular should be addressed to your usual contact at the Managers.

TO ALL MEMBERS

Dear Sirs

The Bribery Act 2010: Britannia's policy on the prevention of bribery and corruption

This circular sets out the Association's policy for the prevention of bribery and corruption, which was approved by the Committee at its meeting in October 2011. Members should be familiar with the policy to ensure that they and the Association remain compliant with the new anti-bribery legislation.

The bribery threat and your obligations as a Member of Britannia

1. Recent years have seen increasing international efforts to combat bribery in all its forms. The United States Foreign Corrupt Practices Act was an example of this and, with its entry into force on 1 July 2011, the United Kingdom's Bribery Act 2010 ("the Act") represents a further extension of anti-bribery legislation. Because the Act has a potentially worldwide impact, it is Britannia's policy that its Members and all providers of services to the Association comply strictly with the extensive anti-bribery regime that the Act requires (in addition to any local requirements).
2. This policy also extends to any service providers, including lawyers, experts, surveyors and any other form of agent, both those engaged directly by Britannia and those engaged by you in respect of any entry with Britannia or matter in which Britannia has an insured interest.
3. You must ensure that any service providers engaged by you in relation to any entry with Britannia or matter in which Britannia has an insured interest are aware of and understand the Association's policy and the effect of the Act, and confirm to you that they will comply with it.
4. You are reminded that any individual or company that engages in bribery of any kind does so without the Association's agreement or authority and that such activity is in clear contravention of the Association's policy.

The Act

5. What follows is a brief summary of the provisions of the Act and how they affect you; however, as with any summary, not all possible issues that might arise are covered. If you have any questions as to the applicability of the Act in any given circumstances, it may help you to refer to the Act itself. If that does not resolve your query, please consult us.
6. The three offences of which you most need to be aware are those under sections, 1, 2 and 6 of the Act. These are outlined below.

Section 1: Bribing another person

7. It is an offence for a person to offer, promise or give a financial advantage (a payment or gift, for example) to another person intending the advantage to induce a person, or reward a person for, the improper performance of a 'relevant function' (this term is widely defined) or activity. It does not matter whether the advantage is offered, promised or given directly or through a third party.
8. As to "improper performance", conduct will be considered "improper" if it amounts to a breach of an expectation that a person will act in good faith, impartially or in accordance with a position of trust.

Section 2: Being bribed

9. This section creates offences that generally mirror those under section 1, but criminalise the behaviour of the person receiving the bribe. As before, it does not matter whether the bribed person requests, agrees to receive or accepts the advantage directly or through a third party.

Section 6: Bribing foreign public officials

10. It is an offence to bribe a person who holds a legislative, administrative or judicial position of any kind in a country or territory outside the UK.
11. The offence is committed if a person offers, promises or gives any advantage to such a foreign public official in circumstances where the local written law neither permits nor requires the foreign public official to be influenced by the offer, promise or gift. The bribe must be made with intent to:
 - a) influence the foreign public official in their capacity as a foreign public official; and
 - b) obtain or retain some business, or an advantage in the conduct of business.
12. The three types of offences outlined above apply to individual persons and may also apply to companies. They apply to acts of bribery committed within the UK but also to those committed outside the UK, where the individual person or the company has a 'close connection' to the UK.
13. Individual persons found guilty of any offences under sections 1,2 and 6 can be imprisoned for up to 10 years and/or receive an unlimited fine. Companies can receive an unlimited fine. If a company is found guilty, a senior corporate officer can be imprisoned for up to 10 years and/or receive an unlimited fine if the court decides they have given their "consent or connivance" to the offence.

Section 7: Failure of commercial organisations to prevent bribery

14. A company is guilty of an offence if there is failure by that company to prevent an offence under section 1 (bribing a person) or 6 (bribing foreign public officials), committed by any person associated with the company. A person is "associated" with the company if they "perform services" on behalf of that company. This may include employees, agents, subsidiaries, contractors, joint venture partners and third party service providers/suppliers.
15. There is a defence that the company had in place 'adequate procedures' designed to prevent persons associated with it from committing bribery. The Association's Policy Statement on the Prevention of Bribery and Corruption (included as the Appendix to this Circular) forms part of our 'adequate procedures' in this respect, but it is important to note that it is not sufficient only for the policy to be created and communicated: it needs to be shown to be working.
16. This offence only applies to commercial organisations (it cannot be committed by individual persons) but could lead to an unlimited fine.

What this means for you as a Britannia Member

17. All this means that if you have sufficient connection with the UK, and engage in bribery or fail to prevent bribery being committed on your behalf, you (the individual, the company and your directors) may be criminally charged under the Act. Even if you have no such connection with the UK, if you are involved in the giving of a bribe, you could expose yourselves or the Association to a conviction under the Act.
18. Most people can recognise when a bribe is taking place: if the action feels morally wrong, it is likely to be wrong as a matter of law. For example, in relation to securing evidence: one should not pay a witness more than reasonable expenses for his or her cooperation, or make a payment to a public or private employee to make available documents or information that they should not provide. We comment below on two particular issues where the UK Government has considered it necessary to provide specific guidance.

Facilitation payments

19. Facilitation payments, otherwise known as “grease payments”, can be summarised as small bribes paid to facilitate routine Government action. They might include payments to secure early release of cargo; to lift a port state detention; to mitigate customs or other fines; or even to be permitted to transit a canal. Some may view them as “the price of doing business” and not recognise them as being a form of bribery. They are clearly prohibited under the Act and, no matter how small, or how well-established the practice is in any jurisdiction, such activities cannot be allowed to happen.

Corporate hospitality

20. The Act does not make corporate hospitality illegal, but care must be exercised to ensure that such hospitality is not disproportionate. Genuine hospitality and promotional or other business expenditure which seeks to improve the image of a commercial organisation, or to establish friendly relations, is acceptable and reasonable expenditure will not be viewed as bribery. On the other hand, hospitality that is too “lavish” according to the usual standards of the industry may be. The test should be: “would my competitors, in my own country and/or other countries, consider the hospitality to be excessive or suspicious?” If so, it should be reduced.

What you should do now

21. If any aspect of the above information is unclear, contact us and we will provide clarification. Ensure that the relevant members of your organisation have read this circular and understand the requirements it sets out.
22. If you engage a third party to provide services in relation to any entry with Britannia or matter in which Britannia has an insured interest, provide them with a copy of this information sheet and ensure that it is a term of the contract with them that they will abide by the requirements of the Association’s Policy Statement on the Prevention of Bribery and Corruption. Where a service provider is, or is likely to be, engaged on multiple occasions, this might be made a standard term of engagement, in order to avoid the need to send the information sheet to them on each occasion.
23. Report any suspected instances of bribery or attempted bribery in relation to any entry with Britannia or matter in which Britannia has an insured interest so that we can direct you as to the appropriate response.
24. Ensure that all claims for disbursements are fully supported by vouchers and explained. Any unsupported claims will not be reimbursed.

Finally

25. As will be clear from the above, Britannia continues to have a ‘zero-tolerance’ approach to bribery in all its forms and expects and requires the same of its Members and those with whom it works. The Association recognises that it is in the nature of the work performed by many Members in respect of handling P&I claims that they come into contact with people who do not maintain those standards. When such situations arise and a bribe is offered or requested, or such activity is suspected, you should not hesitate to contact the Managers.
26. We are continually reviewing and updating our bribery prevention procedures and will provide further information and guidance as those procedures develop.

Yours faithfully

Tindall Riley (Britannia) Limited

Managers

Appendix

The Britannia Steam Ship Insurance Association Ltd

The Bribery Act 2010

Policy Statement on the Prevention of Bribery and Corruption

The Britannia Steam Ship Insurance Association Ltd (the Association) and Tindall Riley (Britannia) Ltd (the Managers or TRB) have a 'zero tolerance' policy towards bribery and corruption and are committed to carrying out the Association's business in a fair, honest and open manner in order that it may retain its ethical standing and reputation. This policy is supported by the Committee of the Association and the Board of TRB.

This Policy Statement has been prepared in response to the Bribery Act 2010 and the guidelines issued by the Ministry of Justice (MoJ) in March 2011.

The MoJ has indicated that procedures in place to prevent bribery should be informed by the following six principles:

1. Proportionate procedures

The Association is a specialist marine liability insurance company, based in London but operating internationally through a network of correspondents and branch offices in Japan and Hong Kong. It is committed to minimising the risk of bribery and corruption and therefore all employees, agents or consultants who act for and on behalf of the Association and the Managers are prohibited from:

- offering, promising or giving a financial or other advantage to another person that is in itself improper or is intended to bring about the improper performance by another person of any activity relating to the Association's business, or to reward such improper performance.
- accepting any financial or other advantage from another person that is in itself improper or is accepted in return for improper performance of any activity relating to the Association's business, or in reward of such improper performance.

The Act does not prohibit reasonable and proportionate hospitality and promotional or other similar business expenditure intended to establish and maintain business relationships. However, any corporate hospitality or gifts, given or received by employees that might be considered to be unreasonable and/or disproportionate should be discussed with a line manager, director or the Chief Executive of TRB.

All employees, agents and consultants are required to report any suspicions of bribery or corruption. In the case of employees, this should be to their line manager or director, who may then escalate these concerns to the Chief Executive of TRB. In the case of agents and consultants, reports should be made to their normal contact at TRB, who should report in accordance with internal guidance noted above.

Any employee, agent or consultant found to have breached the company's policy on bribery and corruption could face disciplinary action including dismissal or termination of their contract.

1. Top-level commitment

The Committee of the Association and the Board of TRB is committed to this Policy and has delegated to the Chief Executive of TRB the authority and responsibility to oversee the implementation of the Policy.

2. Risk Assessment

A risk assessment has been undertaken which is documented separately. The key risk emerging from the risk assessment is the risk that third parties acting on the Association's behalf in jurisdictions with ineffective anti-bribery legislation will become involved in bribery.

The risk assessment will be reviewed each year and a report made to the Board of Tindall Riley (Britannia) Ltd.

3. Due diligence

Due diligence procedures are in place covering the following areas:

- employing new staff. Risk-based checks are carried out when employing new staff.
- appointing new Correspondents. The Association's policy on the prevention of bribery and corruption is explained when Correspondents are approved for listing. Correspondents are responsible for drawing its policy on bribery to the attention of third parties that they appoint on behalf of the Association.
- where lawyers are instructed directly, they are given written guidelines that include the Association's policy on bribery. They are also responsible for making the Association's policy on bribery known to any third parties that they engage to assist in handling a case on behalf of the Association.

Claims handlers consider the risks when dealing with a claim, taking account of the location and nature of the claim and, where they become aware of possible instances of bribery, they reiterate the Association's attitude to bribery to those involved in dealing with the claim on the Association's behalf.

1. Communication (including training)

All staff are required to receive training on the prevention of bribery and corruption. Following an initial presentation to all staff in 2011, all new employees are given training as part of their induction and annual updates will take place. The TR staff manual also provides guidance on the subject.

2. Monitoring and review

Bribery and corruption is an annually occurring agenda item for the Board of Tindall Riley (Britannia) Ltd and the Chief Executive confirms the steps being taken to monitor and review the company's policy and procedures in this area.

Any questions about the company's anti-bribery policy in this area or any concerns in relation to bribery, should be discussed with the Chief Executive.

This Policy Statement was initially approved by the Committee on 18 October 2011 and has been re-affirmed annually at the January meeting of the Committee.