

**babcock**<sup>TM</sup>

**Anti-Bribery and  
Corruption / Ethical Policy**

**This arrangement applies to all employees**  
**This is a Global arrangement**

# **Anti-Bribery and Corruption - Ethical Policy**

## **BAB-LG-POL-27**

### **Version 2**

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**1 Purpose**

Policy, procedures, and guidance on preventing or minimising the risk of bribery and corruption/ethical practices in Babcock's business.

**What is bribery?**

Bribery, in its general sense, can take many forms, but in essence it is an offence for a person to offer or give a financial or other advantage to a person in one of two ways:

- a) Where the briber intends the advantage (whether the advantage goes to the target of the bribe or not) to bring about the improper performance by another person (whether a public official or not) of a relevant function or activity or to reward such improper performance (even if there is no intention to gain a business or other advantage for anyone as a result); or
- b) Where the briber knows or believes that the acceptance of the advantage offered or given is an improper performance of a relevant function or activity. So, simply offering, say, hospitality to someone who is known to be subject to his employer's code of conduct which forbids his acceptance of hospitality could be bribery - even if there is no intention that he will otherwise behave improperly.

In addition, there are also specific bribery offences where the target is a public official.

**Foreign (Non-UK) Public Officials**

Bribery as described above - in the sense of seeking to influence a person to behave improperly (act in breach of his duties) can of course be targeted at someone who is a public official.

But where a foreign (i.e. non-UK) public official is involved, there is also a standalone separate offence of simply seeking to influence the official in his role even if there is no attempt to get him to behave in a way that would be improper.

However, in this case there does have to be an intention of obtaining or retaining business or a business advantage by offering or giving the advantage because of the "bribe".

A "foreign public official" is an official, whether elected or appointed, who holds a legislative, administrative, or judicial position of any kind in a country outside the UK. It also includes any person who performs public functions in any branch of the national, local, or municipal government of such country or who exercises a public function for any public agency or public enterprise of such a country, such as professionals working for public health agencies and officers exercising public functions 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.

Because of the sensitivity of dealing with public officials (whether UK or non-UK) you will find that this Guidance has specific advice on how to treat them in the context of specific topics such as Corporate Gifts and Hospitality

**Important points to bear in mind:**

Bribery is not a concept that is limited to dealings with public officials, although dealings with public officials are particularly sensitive and carry additional risks. It is still bribery if the person who is sought to be influenced works for a private sector business.

The test for “improper performance” of a function or activity is what a reasonable person in the UK would expect in relation to the performance of that function or activity if it were being performed in the UK.

Where the intention is to cause someone to perform duties improperly, there is no need for this to be done with a view to someone gaining a business or other advantage (though of course it typically will be).

Local custom or practice must be disregarded. It may not always be obvious whether something could be interpreted as involving bribery, particularly as local customs and behaviours vary from one country to another. A sensible, objective assessment should be made, perhaps after having consulted reputable legal advisers or embassies in the territory concerned.

The fact that something is an accepted or officially tolerated business practice, a “necessary evil” or that “everyone does it” or “it is the only way we will stand a chance of being taken seriously” cannot make lawful what is otherwise unlawful.

Bribes need not be in monetary form or even have a monetary value - anything that seeks to influence can be a bribe: getting someone invited to an exclusive event, for example, or arranging for his son or daughter to be given work experience.

So corporate hospitality and gifts can amount to bribery – please see the below.

The bribe need not go to or be for the benefit of the person sought to be influenced. For example, making a substantial donation to a charity that he runs or supports; donating to a political party or offering benefits to his family or friends can be a bribe.

The person sought to be influenced need not request the bribe (tacitly or otherwise).

The bribe need not actually be paid or handed over – it is the promise or offer of it or even the creation of an expectation that you will confer a benefit, if the intention in so doing is to influence someone.

Babcock personnel should be alert to bribery risk not only where Babcock might be a direct beneficiary but also where the benefit could be indirect – for example the award of a contract to a consortium of which Babcock is a member, but where it will only be acting in a subcontract role.

Neither is there a requirement that the bribe relates to new work or a new contract – a bribe could equally relate to a contract being renewed or not cancelled or the customer not invoking any penalty regime (for example, KPIs or liquidated damages).

We also need to be alert to, and guard against, the risk of persons associated with Babcock (such as an agent or sub-contractor) offering bribes – even where we have no knowledge of the bribe and the benefit that the associated person receives is indirect (i.e. if we benefit, then we pass some of that benefit on to them) – for example a local adviser or agent paying a bribe so that we win a contract and as a result they secure a success based-fee or simply enhance their reputation with us or others as “winners”.

Another example: a subcontractor to Babcock paying a bribe to someone at Babcock’s prospective customer either to ensure Babcock gets the work so he can be awarded the subcontract, or to cause the customer to recommend him as the authorised sub-contractor.

Equally, we must be aware of the scenarios where our employees are offered bribes for them to exercise their discretion improperly. This is called “passive”

bribery. For example, a Babcock employee may be offered a financial or other inducement to grant the award of business to a third party, such as a supplier or sub-contractor.

**2 Scope**

This policy applies to all employees.

**3 Policy**

This document contains detailed background and guidance on Babcock’s approach to mitigating, in support of its Code of Business Conduct, Anti-Bribery & Corruption (“ABC”) risks relating to its business.

It is intended as a reference work containing the background and explanations against which the ABC risks should be assessed and monitored.

**4 Introduction to this Policy**

Our Code of Business Conduct which is available on the Babcock International website is a public statement of our commitment to conduct all aspects of our business to the highest standards of honesty and integrity.

The Code is intended to be available to:

- Our clients – current or prospective
- Our Business Partners – current or prospective
- Our Business Counterparties – current or prospective
- Our employees – current or prospective
- People in the communities in which we work
- Our shareholders

This Guidance aims to ensure that Babcock always acts responsibly and ethically when pursuing and awarding business and that we fulfil the principles expressed in our Code of Business Conduct relating to avoiding acts of bribery and corruption.

This Guidance contains rules and guidelines that Babcock employees must follow to help ensure that we do not become involved, either directly or indirectly, in bribery or corruption and that we do what we reasonably can to reduce the risk of those we work with engaging in corrupt or unethical activities in connection with their dealings for us.

It covers all aspects of Babcock’s business, including the award of business for the provision of services by suppliers to Babcock; the appointment of sub-contractors by Babcock at any stage of a supply chain (i.e. whether Babcock is the prime contractor or not); the establishment of joint ventures, consortiums, teaming arrangements or other business partnerships; and appointment of agents and other business advisers.

It applies to both public-sector awarded business and business transacted between private-sector commercial entities.

**Who are our “Business Partners” and our “Business Counterparties”**

The concept of “Business Counterparties” is incredibly wide. In essence, anyone who has a business relationship with Babcock is a “Business Counterparty”. This will cover the full ambit of Babcock’s business activities, including customers, suppliers, service providers, subcontractors, advisers, consultants, and agents.

It is essential that before entering any relationship with a Business Counterparty we have protected Babcock's interests and reputation by doing an appropriate level of due diligence on that Business Counterparty so that we know who they are and that they are a "fit and proper" person for Babcock to be doing business with. What this means is discussed more fully in paragraph 15. However, it is important to stress that the requirement is to do an "appropriate" level of due diligence, which means that the due diligence done should be proportionate to the risk posed by the relevant Business Counterparty. For example, only minimal (or, indeed, no) due diligence would be required on the appointment of the supplier of office stationery in a low-risk territory, whereas in-depth due diligence is required before appointing an agent. What is important is that the question of due diligence from an ABC/reputational perspective is considered.

The requirement to do due diligence is particularly important where Babcock is looking to appoint a "Business Partner". A "Business Partner" is any Business Counterparty who performs services for or on behalf of us. For example, a "Business Partner" will include an agent (or any other type of consultant or adviser appointed by Babcock to sponsor its business), a joint venture/bid team/consortium (as well as the Babcock's fellow joint venture/bid team/consortium parties), a business adviser or a subcontractor (where the subcontractor is delivering a service direct to a customer for Babcock). Before anyone may appoint a Business Partner, you must ensure that you have the right due diligence and approvals in place (please refer to the Delegated Authorities, which is available on the Babcock intranet). The process for appointing a Business Partner is dealt with more fully in paragraph 11.

Once Babcock has appointed a Business Counterparty, that relationship should be appropriately monitored. Any monitoring should be proportionate to the potential risk.

#### **How does the Guidance apply to each Babcock business?**

This Guidance is designed as a proportionate group-wide response to ensure compliance with our Code of Business Conduct and applicable laws, and capable of being applied across the Group.

Whilst all businesses must adhere to our Code and consider and be alert to bribery and corruption risks, the extent to which a particular Babcock business will need to take action to implement the different aspects of the Guidance will depend on a considered assessment of the risk attached to its specific bids or contracts, the customers and other parties it deals with and the markets and territories in or with which it does business.

#### **Who is responsible for compliance with the Code?**

The Board has ultimate responsibility for Babcock's ethical conduct, with overall management responsibility for compliance with the law and with our Code of Business Conduct, resting with the Group Chief Executive Office.

#### **Delegation of responsibility**

At an operational level, responsibility for compliance with our Code of Business Conduct is delegated to Sector / DRC Chief Executives. For Group functions, the Head of function is responsible.

#### **Is bribery and corruption a real concern in all of Babcock's markets?**

The brief answer is "no, not in all of them".

Many, if not most, of our markets are in low-risk countries but we should not ignore the fact that even in those markets corruption is not unknown.

The reality is, however, that whatever we do and wherever we do it, our reputation is on the line – it isn't enough to act properly, we must anticipate how the world at large (including the regulatory authorities in the jurisdictions in which we work) may perceive our actions.

Mere exposure to allegations or perceptions of bribery and/or corruption or other questionable behaviour is always a concern wherever we work as it could lead to lasting reputational damage, even when that association is subsequently proven to be unfounded or innocent.

Although we work mainly in low corruption risk countries, some of our businesses are already working, or from time to time will consider working, in or with countries, or with businesses based in countries, which are perceived to be high corruption risk. That doesn't mean that a business must be corrupt to work or succeed there, but it does mean that we must be more on our guard and our actions are more likely to come under public, regulatory and media scrutiny.

Babcock's exposure in some countries with ostensibly high-risk profiles is reduced by the fact that in many of those countries, we are actually working for third party government or international agencies based in low-risk countries or are not doing anything in or with people based in the territory itself. That doesn't mean that Babcock's business is entirely risk free in terms of bribery and corruption, but it does mean that our risk mitigation actions can be much more focused.

For these reasons, we need to ensure that, as far as possible, employees are prepared to address the ethical challenges they might reasonably be expected to face in the course of their work for Babcock.

#### **Where could Babcock be most at risk?**

A general understanding of the legal definitions is helpful in appreciating the underlying risk and the reasons for procedures in this guidance.

As a company, the level and extent of ethical risk to which we are exposed is mainly determined by:

- Our employees – the extent to which our people can recognise ethical risk, and how they can take appropriate steps to mitigate that risk
- Our business locations – some of the territories in or with which we do business may present higher risk from unethical behaviour by clients, business advisers or partners and other third parties
- Our choice of Business Counterparties and in particular Business Partners – the extent to which we have satisfied ourselves, and can continue to be satisfied, that that our Business Counterparties will not behave in any ways that breach our Code of Business Practice.
- The markets in which we work and, therefore, the clients and intermediaries for or with whom we work may present different ethical challenges that will inform the way we work, and the way we manage relationships with our clients.

#### **Why does the Guidance apply to Business Counterparties and Business Partners?**

If someone "associated with" Babcock is guilty of bribery and the bribe was intended to obtain or keep business or a business advantage for Babcock, Babcock

might be guilty of “failure to prevent bribery” - even if Babcock did not authorise the bribery and even if Babcock didn’t know of it.

The only defence to this charge is to be able to show that Babcock had in place “adequate procedures” designed to prevent our associated persons from undertaking bribery.

Even where a third party with whom Babcock does business is not strictly someone Babcock is treated as “associated with” for this purpose, unethical behaviour on their part, especially if connected to work or activities in which Babcock is involved, could put at risk contracts Babcock is working on and/or seriously damage Babcock’s reputation just by association.

So, we have to do all we reasonably can to ensure that Babcock deals with reputable and ethical people and businesses by making appropriate enquiries, so as to determine and mitigate related risks.

### **Is the Code of Business Conduct in any way negotiable?**

The Code of Business Conduct together with its implementation through compliance with this Guidance is mandatory across Babcock.

### **What if we want to act other than in accordance with this Guidance?**

This Guidance has been designed to reflect the needs of a global business to exercise regional or market flexibility, based upon objective assessment of the risks of operating in those regions or markets and a proportionate response to those risks.

Changes to the Guidance or departures from it in any given case require the express approval of the Chief Executive.

### **Further help**

If you have any questions as to how to use, interpret or apply the Guidance or you encounter a situation that makes you feel uneasy as to whether it is entirely “proper”, but the Guidance does not cover it, you should discuss it further with either your Sector/DRC legal counsel or the Group General Counsel.

## **5 Approvals and red flags**

Babcock’s approval scheme is set out in our Delegated Authorities which are available on the Babcock intranet. The Delegated Authorities establish a comprehensive scheme of the approvals required before you can act in Babcock’s name. You must always act in accordance with the Delegated Authorities. Please remember that certain matters such as political donations, appointments of business agents, entering into joint ventures or teaming agreements and the seeking business in new territories require the prior and express approval of the Group Chief Executive.

As part of the approval process, you will want to undertake a risk assessment. For a discussion on how to approach the risk assessment please see Appendix A below.

As part of the risk assessment or due diligence, you may discover “red flags” or items of concern.

Potential red flags include:

- A “**Heightened Risk Person**” (as defined below) is involved as a potential direct or indirect beneficiary or target of a proposed arrangement or action (for

example, as a recipient of hospitality, as an adviser or agent, or as a sub-contractor, supplier, or joint venture partner)

A “Heightened Risk Person” is

- any person (which includes any individual, company, charity, political party or other body) who is involved (or has in the past been materially involved in or is likely to become involved) in deciding or advising on the award of any contract or contract extension/renewal or the allocation or placing (or the setting of the terms) of orders under any framework contract, or the variation of contracts, or any assessment of performance by Babcock (or any other entity in whose performance Babcock may directly or indirectly have an interest) under a contract – for example, as to KPI assessment or the seeking of penalties or deductions or termination on the grounds of performance or as to the assessment of amounts due under the contract, where the contract is one in which Babcock directly or indirectly has, has had or is likely to have a material interest; or
- a person (B) known or believed to be connected with any person described in the above paragraph (P) in a way that might reasonably give rise to a suspicion that an arrangement or action with B (or a refusal to enter into such an arrangement or action) could directly or indirectly influence P. Examples of such a connection might include: family connections, close friendship, public or known support or sponsorship of each other; political, business or investment links, cross or common directorships or shareholdings.
- **No clear legitimate need.** There is no convincing legitimate business case for the proposed arrangement or action – for example, when appointing a Business Partner, Babcock (or any other party in whose arrangements Babcock directly or indirectly has an interest) already has the necessary capabilities and experience from its own internal resources or has available to it other service providers with whom it already has established and trusted links.
- **Not suitable or unclear contribution.** It is not obvious that the other party has the requisite resources, qualifications, or experience for the purported role, or it is not apparent what the other party will be doing.
- **Not Babcock’s idea.** For example, a customer running a tender process (or any of its employees or advisers), or an official connected with the conduct or evaluation of a tender, has arranged the introduction to the other party or has recommended, mandated, or indicated as being beneficial to the prospects for winning the tender that the arrangement be entered into, or action taken.
- **No real connection.** The other party is not based and has no real business presence in the country where the project or customer concerned is located or where his services need to be provided.
- **Secrecy.** Requests to keep an arrangement or relationship confidential, where this is not obviously needed to protect legitimate commercial interests. Or you instinctively want to keep it quiet.
- **Strange Payment Requests.** Requests to make payments to someone other than the person or entity providing the services or materials in question (for example, an agent requests the payment to go to a director or employee or to another company).

- **Offshore Payments.** Requests for payment to be made to accounts outside the territory in which the other party is based.
- **Cash in hand.** Requests for payment in cash or other non-traceable form.
- **Payment before performance.** Requests for significant payments “up front” with no legitimate commercial reason.
- **Rushed payment.** Demands for payment at short notice.
- **No or misleading or poor paperwork.** Requests for payment without the need for invoices, requests to invoice third parties, requests to omit, misdescribe or make vague or opaque what the invoice is really for where there is no legitimate need to do so).
- **Success fees.** The paying of significant success fees for, or commissions on, business won.
- **Too rich.** Fee rates or prices that are significantly out of line with local market rates or that, having allowed for exchange rates or other legitimate reasons why it is the case, appear disproportionately large for the work to be done. Guidance as to market rates in a particular jurisdiction not well known already to Babcock companies can be obtained from reputable local advisers, such as lawyers and accountancy firms, or from the British Embassy.
- **Profit Sharing.** Requests to share profits in a way not commensurate with the other party’s contribution or where, having regard to normal and legitimate business practice, it would be unusual to enter such an arrangement in the circumstances.
- **Poor reputation.** The reputation of the other party or of associates of the other party or its managers/owners or of other people or entities (for example, its other customers) dealing with them is poor.
- **Uncomfortable.** You feel ill at ease with the arrangement or situation, even if you “can’t put your finger on it”. You feel unsure that you have the full picture or fear what might be going on behind the scenes.
- **It might look bad or be misinterpreted.** You believe that if things were made public it would raise eyebrows at the least.
- **Reluctance to confirm compliance.** A refusal or obvious reluctance on the part of the other to sign a commitment to follow our or an equivalent ethical policy where it is a reasonable request for them to do so.

For further discussion of red flags, please see Appendix A below.

**6 Gifts and Hospitality**

It is a normal aspect of business practice that companies like Babcock should wish to entertain customers, potential customers, and others they would like to work with (for example, bankers, prime or sub-contractors or joint venture or teaming partners).

It is not unusual for gifts to be given in the course of business by an employee in one organisation to an employee in another (for example, at religious or cultural festivals or on the closing of a contract).

Hospitality can also be extended in the form of meeting expenses incurred by someone; for example, by visitors to a Babcock facility or a Babcock organised or sponsored event (perhaps for the purpose of evaluating whether to invite us to contract with them, or to work with us in a consortium).

**Could gifts or hospitality be regarded as bribes?**

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In themselves, hospitality and corporate gifts are usually not a problem legally. But they can amount to bribery or be perceived as being bribes, or at least suspicious, especially with hindsight.

Bona fide hospitality and promotional or other business 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 and it is not the intention to criminalise such behaviour. However, hospitality and promotional or other similar business expenditure may cross the line or others can perceive it as bribes.

The extent to which any gifts or hospitality given or received could be potentially corrupt all depends on the circumstances:

- **What is the cost or value?** Is it reasonable and proportionate in the circumstances?
- **What is the context?** Is it a normal part of an existing business relationship, or does it arise from a specific event, e.g. contract signing, completion of a contract milestone etc? Is it a “one-off” or is it part of a series of gifts or similar events?
- **What is the intent and who suggested it?** Is the gift or hospitality in any way intended to influence the recipient to do anything improper, or that they would not have otherwise done as a normal part of business?
- **Who is the recipient?** If the recipient is a public official, or is connected to a public official, the offer could be misconstrued. Additionally, they may be subject to stringent rules regarding accepting gifts or hospitality, and the offer could therefore put them in a potentially difficult situation. **It is the responsibility of the Babcock employee extending or authorising the hospitality to first take adequate steps to check that there will be no breach of those rules if the offer is made or accepted.**

#### What gifts or hospitality are acceptable?

Whilst there is no threshold below which all hospitality is “OK” or above which it is all illegal, some common-sense guidelines can be applied with a view to staying out of trouble and avoiding even the suspicion of improper behaviour:

- The cost and nature of the gift or hospitality should be reasonable and proportionate on each occasion.
- It should not, without clear justification, be repeated so often with either the same people or the same organisation that, in the aggregate, it could be seen as excessive.
- Its intent (both on the occasion in question and when taken together with other occasions with the same individuals or individuals from the same organisation) should be no more than simply promotional or a cordial means of progressing legitimate business discussions or “getting to know” each other. It must not be intended to affect the way the person being entertained or receiving the gift carries out his job.
- It should be open and transparent – would the giver or the recipient be embarrassed if the event became publicly known?

#### Is the gift or hospitality “reasonable and proportionate”?

Look at this in the context of the original reason for the gift or hospitality involved and consider whether it would be regarded as being reasonable, recognising lawful

local custom and practice in the industry, having regard to the status of the individuals who will receive the gifts or hospitality. Is it suspiciously lavish?

Consider whether whatever you wish to achieve could be done in a more appropriate way – for example, could the parties meet at either party’s offices for coffee as opposed to a lavish lunch?

**Could the intent be misunderstood?**

For a gift or hospitality to amount to “bribery” it must be given with the intention of inducing someone to perform their duties improperly. However, if the recipient is a non-UK public official, then merely offering a financial or other advantage to obtain or retain business may amount to bribery. In addition, it should be noted that for bribery to occur, the person being influenced or bribed need not be the person who directly receives the gift or hospitality.

If you observed a competitor making a gift or offering hospitality to an existing or prospective customer in similar circumstances, would you be suspicious of any wrong doing? If the answer is yes, reconsider.

**Should we aggregate the values of other gifts or hospitality?**

Care must be taken not only to stay within the bounds of what is reasonable and proportionate on each occasion, but also to guard against entertaining the same people or different people from the same organisation so often that, looked at in the round, it appears excessive.

It is, of course, possible for there to be perfectly good reasons for repeat or aggregated entertaining; for example, different Babcock business units may all have perfectly legitimate relationships with a common client or associate.

**Hospitality for Public Officials**

Merely seeking to influence a public official so that a business advantage is obtained or retained (without him having to behave improperly) may constitute bribery. So, if the recipient of the hospitality is a public official or is someone to whom the hospitality is offered at the request of the public official or with the public official’s knowledge and/or agreement, this creates additional risk and should be considered carefully before you give the hospitality or gift.

**Hospitality extended by a person “associated with” Babcock**

Persons “associated with” Babcock (see paragraph 11 for who this includes) wishing to extend hospitality in Babcock’s name or for Babcock’s benefit to representatives of third parties should be made aware of our policy and guidance on hospitality and especially of the need to understand the rules and policies applicable to the intended recipient in respect of accepting hospitality and ensure that they have been followed.

**What gifts or hospitality can I give as part of normal business?**

It will be for each Sector and DRC to set its own specific rules as to corporate gifts and hospitality. However, the key principle should be that if in any doubt, seek further guidance from relevant management and ensure an appropriate record is maintained of the event, who was involved, the reason for it, its estimated cost, and any advice sought and advice/approval given.

Gifts or hospitality paid for personally by an employee or other representative of Babcock to give to an employee or representative of another body or entity – for example, because of personal friendship - would not normally be regarded as a corporate gift. Nevertheless, the giving of gifts or hospitality to anybody working for

an entity that does business with or might be considering awarding business to Babcock or one of its connected businesses could be misconstrued and give rise to concerns about improper influencing, especially if the recipient is in any way able to influence directly or indirectly a decision that might lead to benefit for Babcock.

Promotional Babcock branded items (pens, diaries, umbrellas for example), are a safe option, as by their nature their origin is wholly transparent.

Each Sector and DRC must maintain a record of all hospitality and gifts given or received by Babcock employees during the course or because of their employment and review them periodically.

You should seek approval for giving gifts and/or hospitality in advance. No gifts or hospitality may be given where approval is pending or has not been granted. The only exception to this requirement is where it is impracticable to seek approval in advance. Impracticable for these purposes is to be interpreted narrowly to cover, by way of example, circumstances where a gift is received without warning or hospitality is offered spontaneously, such as a drink in a bar after a meeting. In all such circumstances, approval must be sought immediately upon receipt or return to the office.

#### **Being offered hospitality or gifts by a business contact?**

The same guiding principles, including with regards the requirement to obtain prior approval, apply to Babcock employees who are offered hospitality or gifts.

However, innocent the intent, acceptance may be misconstrued as an attempt to bribe that employee to act improperly.

We therefore encourage all our employees who are offered gifts and/or hospitality, to follow the same guidance, and supporting procedures – notify management and get clearance to accept it as if you were making the gift.

### **7 Reimbursement of Expenses for Third Parties**

Where Babcock or a person associated with Babcock is to meet fully or partially the expenses of a third party (for example, if representatives of a prospective customer (who may also be public officials) visit the UK on site visits to assess our capabilities), the same issues and questions arise as with other forms of hospitality.

Above all, we must make sure that all payments and reimbursements are reasonable and proportionate.

Care should be taken in the case of public officials, as Babcock might held guilty of ABC offences even where there is no intention for the public official to act improperly. The threshold is that Babcock just wanted to gain a business advantage.

Paying for or entertaining family members or other persons not directly and legitimately involved in the visit will almost always be inappropriate.

### **8 Making charitable, political, or other donations or sponsorship**

#### **Charitable donations**

The world at large may perceive a charitable donation (whether in cash or kind) as an attempt to influence someone (for example, making a donation to a charity sponsored by a customer or potential customer, or on the board of which sits someone with influence at a customer or potential customer in awarding business, or such a person is known to be a keen supporter of the charity, or someone from his or her family benefits from the charity).

Even if there is no intent to influence anyone, then this might be misconstrued and create reputational damage for Babcock.

Any donations made should also be evaluated against the “Red Flag List” set out in paragraph 5.

### **Sponsorship**

Sponsorship can, of course, be linked to fund-raising by charities, in which case the same policy and procedures apply, as for charitable donations.

Requests for sponsorship that is more in the nature of corporate promotion or advertising, such as sponsoring an event in return for which Babcock’s name is given prominence at the event and in accompanying publicity, should not normally give rise to ethical bribery and corruption issues.

This particularly applies if the event is well-known or is regular or is general in its “audience” or where Babcock is one of several companies sponsoring the event, and it is not linked to other transactions or potential transactions affecting Babcock, the outcome of which might reasonably be expected to be influenced by the fact of the sponsorship.

However, there may be issues associated with the sponsorship that could give rise to sensitivities, for example, hospitality at the event itself. In this regard, the hospitality should be evaluated under the guidance for Hospitality (see paragraph 6 above)

The sponsorship itself should also be evaluated against the “Red Flag List” set out in paragraph 5.

### **Procedure for approval of any charitable donation or sponsorship**

Before you make any charitable donation or sponsorship for Babcock, you must consider:

- the charity or other organisation to which it is to be made
- the amount or type
- the frequency of the donation
- who sought it or suggested it be made
- the reasons why it is considered appropriate to make it
- who approved it together with confirmation that the approval was obtained in advance of such donation or sponsorship being given
- whether a person working in a position of influence (for example, with the authority to make decisions on or influence any business done with Babcock) at or for an entity or other person with whom that Babcock does or hopes to do business is known or believed to be particularly connected to the recipient charity or organisation (or the causes it supports) and why this is not an ethical concern.

Donations or sponsorship should not be made to any charity or other cause at the direct or indirect request or suggestion of any person who is known or suspected to be directly or indirectly linked to or involved in a position of influence with:

- any public official
- any bid or re-bid or contract extension process in which Babcock directly or indirectly has an interest in the outcome

- any placing of orders under framework contracts in which Babcock is directly or indirectly interested
- the negotiation on behalf of a customer or potential customer or business partner (e.g. a potential joint venture partner) of a contract (or an amendment or extension to a contract); or
- the making of any assessment of performance by Babcock (or any other entity in whose performance Babcock may directly or indirectly have an interest) under a contract – for example as to KPI assessment or the seeking of penalties or deductions or termination on the grounds of performance or as to the assessment of amounts due under the contract.

If it is felt that it would nonetheless be appropriate and lawful to donate or to offer sponsorship in any of the above cases, this must be cleared through the Delegated Authorities.

No donation or sponsorship may be given without prior approval. If approval is pending or has not been given, the donation or sponsorship may not be given.

**Political Donations**

Just as donations or other support to charities can be indirect bribery, so can donations or other support for political parties: for example, donating to the political party in Government in a country in which Babcock is bidding for government contracts could be misinterpreted as an attempt to influence the outcome of a current or prospective future tender evaluation.

**Babcock policy is not to make political donations, either in cash or in kind.**

This includes not only financial donations but also indirect support: for example, making facilities available for use by political parties or campaigns; lending staff or giving them time off (unless legally obliged to do so) to support the campaign of a particular party or candidate.

It is accepted, however, that it may be desirable for Babcock to want to attend party conferences to monitor political developments. Any such attendance may be considered but would need prior approval from the Head of Government Relations.

Care needs also to be taken in some countries to understand who stands behind organisations which might in fact be operating as another branch of or a front for a political party or candidate. Advice on this can be sought via your Sector/DRC Legal Counsel who has access to advisory services that can provide country specific political and cultural information.

Babcock, of course, cannot control political donations or contributions made by employees in a personal capacity. However, it is essential that any employee considering making such donations or contributions must not allow any direct or indirect connection to be made to Babcock, or to give rise to a misconception that the “real” donor is Babcock.

Under no circumstances Babcock reimburse any employee for any political donations or contributions directly or indirectly reimbursed.

Special rules apply in the United States to declaring political donations even made privately by employees. Babcock Group employees covered by these rules must of course comply with them and let their local companies have the necessary information. If similar rules apply in any other country, it is local management’s responsibility to ensure that they are aware of them and take steps to ensure employees and the company complies.

**9 Political Lobbying**

Political lobbying can be a legitimate means by which companies may seek to further their interests, by ensuring that governments (national, regional, or local) understand concerns held at a company or industry level. These concerns are often about the practical effects of current legislation or policy or the anticipated effects of planned or possible legislation or policy changes.

It can also, however, attract unfavourable publicity even if lawful and it can also stray into difficult territory if it is accompanied by hospitality extended to politicians or public officials.

This may especially be the case where paid lobbyists are used.

All political lobbying will only be conducted by, or under the scrutiny of, Group Head Office. No employee or business unit within the Babcock Group may conduct or appoint any other individual or organisation to conduct any political lobbying on Babcock's behalf without the prior written approval of the Group Chief Executive.

**10 Facilitation Payments**

Facilitation payments are unofficial payments that are requested or expected for the delivery of goods or services to which the payer would otherwise be legally entitled.

Facilitation payments (often referred to as "grease payments") are normally relatively small sums, although the connection is often not made between monetary value for the payer and purchasing power for the recipient. Their size may therefore encourage the payer to believe that, because the sum is so insignificant, it "doesn't really count".

Nevertheless, they do count, and they are illegal under UK law, and as such, they are strictly forbidden in the Babcock Group globally.

A facilitation payment is a bribe. Its size, however small, will not be a mitigating factor. Anyone making such payments potentially leaves themselves, their colleagues and Babcock exposed to prosecution, with the resulting risk of commercial penalties and loss of reputation.

Examples of a facilitation payment could include (but are not limited to) a payment in order:

- to ensure that an application for a visa or licence is dealt with speedily or pushed to the top of the pile, even though it is clear the applicant meets the criteria to receive visa or licence anyway
- to secure the early or prompt passage of goods through customs formalities
- to progress more quickly through immigration or a checkpoint rather than being deliberately kept waiting
- to ensure the return of a passport handed over to border guards for inspection.

Such demands are commonplace in some of the countries where Babcock employees may travel and work on Babcock business.

If such a payment is demanded, you should politely ask for evidence that the payment is due and is legitimate, ideally evidenced on a visible and official tariff. You should request an official receipt on payment.

If the person demanding the payment cannot produce evidence to satisfy you that the payment is legitimate, you should politely refuse to pay, citing the fact that

making such a payment would be against your employer's policy and UK law, and that you could be prosecuted for doing so.

**Exceptional Circumstances:** If, as a result of not making what you think will be an illegal payment, you *genuinely* feel that *your liberty or personal safety and security*, or that of your colleagues or associates would be at serious risk and that you are under duress *with no reasonable alternative course of action open to you*, you may pay the demanded sum, following which you should promptly report the incident to Group General Counsel or your Sector Legal Counsel.

This advice should not be taken to mean that Babcock in any way condones such payments – they are still likely to be illegal, and as a company we have a responsibility to help reduce the incidence of such demands.

However, Babcock also recognises and accepts our corporate responsibility to safeguard the personal health and safety of our employees. Whilst this may not be a complete answer in law against the payment being treated as a bribe, it could be a mitigating circumstance, in the event of a prosecution being considered or brought against either the employee or the company.

Using “personal safety” as an unjustified excuse to make an FP is unacceptable and a serious breach of our Code of Business Conduct. It will only ever genuinely apply in exceptional circumstances.

## 11 **Appointing and using Business Partners (e.g. Consortium Partners and Agents)**

A commercial organisation, such as Babcock, may be liable 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.

This means that Babcock may be responsible for the actions of a person associated with Babcock where that associated person commits a corrupt act – **even if Babcock was completely unaware of the act.**

The only defence is if we can show that Babcock has in place adequate procedures to prevent associated persons from bribing.

Accordingly, Babcock companies must take all reasonable steps to ensure that we only work with associated persons:

- on whom we have carried out appropriate due diligence
- who have agreed appropriate terms and conditions with us
- who are aware of and undertake to (and do) comply with our policies and procedures (or their equivalent)

Appendix A below sets out guidance as to what issues you should be thinking about in any risk assessment of the appointment of any associated person and certain red flags which you should be looking out for.

### **Associated Persons**

An Associated Person is a person who performs services for or on behalf of an organisation. This clearly includes our employees, but it is much broader than that.

An Associated Person can be an individual or an incorporated or unincorporated person. This definition is intentionally broad in scope to embrace a whole range of persons connected to an organisation, such as Babcock, who might be capable of committing bribery.

Any of the following could be an Associated Person (depending on factual circumstance - the key test being are they performing services for us or on our behalf):

- Anyone helping or advising or facilitating us to win or retain business or to enter a new market (such as an agent or consultant or even a distributor of products supplied by us) (very likely “associated”)
- A fellow member of a joint venture or a consortium or a teaming arrangement (unlikely, but possible)
- A prime contractor for whom we will be a sub-contractor (unlikely, but possible)
- A sub-contractor to us where we are the prime contractor or even a sub-contractor to a joint venture where we are a member of that joint venture (quite likely).

Whether someone is providing services “for or on behalf of” a Babcock company is always a question of fact, which needs to be assessed based on an honest and frank appraisal of all the circumstances, including, but not by any means limited to what they will be doing (irrespective of any label that might be applied to the relationship or their business), and having regard to the risk factors that might surround their role.

For example, in a situation where they are engaged because there is a belief that their involvement will improve the chances of success of a bid in which a Babcock company is interested: what exactly is the reason for that; what will they be doing; who will they be interacting with both up front and behind the scenes; what is their financial or other interest in the outcome of the bid?.

**Business Partners (for example, Consortium Partners and Agents)**

As we have seen above the categories of person who fall within the definition of “Associated Person” for Babcock is wide. Our “Business Partners” (being those who provide services for or on our behalf, such as our consortiums/teaming arrangements/joint ventures as well as our consortium/teaming/joint venture partners, our agents, our advisers and even in certain cases our subcontractors or customers (where we are not the prime contractor) will all be “Associated Persons”. As such, they can present a heightened risk of non-compliance with our Code of Business Conduct.

This is because:

- they often expect to be remunerated on a “success” or commission basis (with the risk that they go too far in trying to ensure they get this). For distributors the prize is the profit on re-sale
- they might have connections that mean they - or those directly or indirectly connected with them - can directly or indirectly influence contract award decisions or benefit from them
- they or persons connected to them may have other interests in the outcome of the bid
- they might come from or operate in cultures or jurisdictions (especially those in which we are “outsiders” and reliant on them to guide us) where there is a real risk of corruption or where local perceptions of acceptable business conduct are not the same as our Code of Business Code

- their use has been recommended, mandated, or indicated as likely to be beneficial by the customer or any of its employees or advisers or by an official connected with the conduct or evaluation of the tender.

Professional advisers such as lawyers, accountants or tax advisers would not normally be covered by this paragraph if they are regarded as reputable within the local market or have been recommended by one of the Group's UK based law or accounting firms and are simply advising on legal, accounting or tax matters at the going rate for that advice. They could be covered, however, if: they are also playing an important role in the promotion of the bid or effecting introductions to the customer; are being remunerated on the basis of a success fee; are known or suspected to have connections to anyone involved in deciding the tender award or to anyone who might stand to benefit from the award of the contract (appropriate diligence and reassurance on this should be sought before they are appointed).

### Joint Ventures, Consortiums and Teaming Arrangements

A joint venture or a fellow member of a joint venture or consortium with Babcock can also present a risk. It is not the existence of a joint venture that will mean that the joint venture or a fellow member is associated with Babcock but whether either the joint venture or the fellow member is performing services for or on behalf of Babcock. So, where the joint venture is established and operating through contractual arrangements where it is not easy to show which organisation was responsible for delivering which services and that joint venture members are taking an active part in the delivery of the required services, then there is a real danger that the joint venture and fellow joint venture members could be found to be Associated Persons of Babcock. Where the joint venture is a "thick" joint venture with an identity of its own and Babcock's role is more akin to that of a shareholder then it will be unlikely, though not certain, that the joint venture or a fellow member is performing services for or on behalf of Babcock.

If a Babcock company is the majority "partner" or shareholder in a joint venture or consortium, the joint venture or consortium must be treated for the purposes of our Code of Business Conduct and this Guidance as a Babcock company, and its directors and employees required to comply with Babcock policy and procedures. This should be stated explicitly in the joint venture agreement or formally adopted as the policy of the joint venture.

If, however, the other parties to the joint venture have significant "blocking" or "minority" rights that mean that in practice Babcock cannot alone control the management, policy or operations of the venture - or it is otherwise not commercially acceptable to the other joint venture parties for it to be treated as a Babcock company – the joint venture or consortium should be required to adopt its own anti-bribery and corruption policy which is consistent with the Babcock policy and equivalent in its procedures (either by simply taking that policy and rebranding it in the name of the joint venture or by adopting a bespoke policy which has been approved as meeting Babcock's requirements (advice can be sought from a group lawyer)). This should either be explicitly required in the agreements establishing the joint venture or by way of a decision of its management board.

**All potential joint ventures, consortiums or other teaming arrangements must be approved by the Group Chief Executive or the Group CFO at the earliest stage and before any detailed conversations are held or any commitments, whether informal or formal, made.**

### Other Business Counterparties

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Babcock, of course, works with a whole range of people and businesses in the furtherance of Babcock's business interests – for example, suppliers - who are not necessarily performing services for us or on our behalf (and thus are not "Associated Persons") but in whose reputation for ethical and lawful dealing we have a stake because if they become involved in allegations of bribery and corruption we can, at the very least, by virtue of our links with them, be drawn into unwelcome publicity or suspicions of guilt by association (or accused of poor judgement) and in the worst case face investigation into whether we were involved or colluded in any wrongdoing or attempted cover-up, for example if the allegation relates directly to a project in which we are participating.

Whilst we may not always wish or be able to impose on those entities who are not Associated Persons an obligation to comply with our policies and procedures (or an equivalent) we will normally want reassurance that they too have similar policies and procedures to our own and to have carried out appropriate due diligence on them to minimise these risks. Again, this requires judgment having regard to the risk profile in any given case.

### **Appointing an Associated Person**

Due to the wide range of entities that could potentially be Associated Persons for Babcock, you must always show when appointing or contracting with anyone who might be an Associated Person for Babcock.

The required level of formal vetting of a person who will be an Associated Person for Babcock has to be judged on a case-by-case basis having regard to all factors surrounding their appointment, such as:

- where the person is based or operates - is it in a territory that has a reputation for having a significant risk of unethical business practices
- the cultural background of the person
- the extent of our past dealings with the person and how much we already know about them and their reputation
- the nature of the work/services we are expecting of the person and the scope for unethical behaviour on their part in the performance of such work/services
- whether the customer or an official running the tender has pointed us in their direction
- whether they are known or believed to have connections (directly or indirectly) with anyone involved or interested in the tender process or its outcome
- the level of control or interface that Babcock has over their operations.

These considerations also should be kept in mind even after the relationship is underway and it may, in some cases – for example, where we do not work closely or continuously with our business partner and so may be unable to have a continuing up to date view of their behaviour or standing - be appropriate formally to re-run such checks from time to time.

### **Procedure for appointing (or renewing the Appointment of) a Business Partner, particularly Agents**

Working through or using business advisers, agents, sponsors or consultants or any other persons who help, advise, or facilitate us to win or retain work or enter new markets (all referred to as "Agents") represents a particular danger and special care must be taken. The general principle is that their use should normally be avoided.

In those instances where it is in the best interest of the business to appoint an Agent, all appointments, extensions, or renewals must be pre-approved by the Group Chief Executive.

You should aim to accompany any application for approval with:

- a sound written business case for the appointment (extension or renewal) which describes the Agent's experience, his reputation, the nature of the works or services we are expecting the Agent to deliver, the added value that he can bring and why Babcock cannot reasonably be expected to proceed without his appointment and cannot perform those services itself - or do without them, and an assessment as to the risk of unethical behaviour inherent in the delivery of those works or services
- confirmation that we have not been asked to appoint the Agent by anyone involved in any related tender or project on the client side
- a summary of the due diligence undertaken (which must be appropriate to the case in hand and will normally include investigation so far as reasonably possible and appropriate), any noteworthy limits on the extent of that investigation, and its findings. Please see paragraph 15 for a discussion of the due diligence that should be considered
- details of the key terms of the proposed appointment, especially those relating to the scope of services, the territory, remuneration and expenses, and the duration and termination of the appointment. Remuneration should normally be based on a fee for work done (or a retainer) of an amount that is commensurate with legitimate market rates and that is justifiable for the work involved, rather than based on a success fee or commission, especially if that success fee or commission would represent a significant sum or a significant part of the overall remuneration
- all people who are Associated Persons for Babcock must commit expressly to comply with all applicable laws relating to bribery and corruption and to comply with our Code of Business Conduct. In exceptional circumstances it may not be possible or appropriate to include this commitment – for example, in a joint venture – in which case you should seek an acceptable alternative – for example, with the joint venture, the joint venture should sign up to its own ethical policy that should match our standard
- details of any compensation on termination or continued payment of commission/fees post termination (if required under the contract or by applicable laws).

### Due diligence

What is "appropriate" due diligence (please also see paragraph 15 for a discussion on due diligence) will vary depending on the case but possible questions to consider include:

- where the Business Partner is based or operated: is it a territory that has a reputation for having a significant risk of unethical business practices
- the actual existence of the Business Partner entity concerned (if it claims to be a company, is it a company that is duly registered; does it have the operations, customers, and facilities it claims to have? Has anyone visited them?)
- the Business Partner's local reputation and background

- whether we have done business with them in the past and our experience of them if we have
- its direct and indirect owners, controllers, and key managers of the business (and their reputation)
- its business history and financial standing (including credit checks)
- who its associated companies are and who owns, controls, or manages them (and their reputation)
- whether it or any of its owners, controllers or managers is associated or linked in the public or industry’s mind to other persons who may have a poor or dubious reputation
- direct and indirect connections (including through the associates of the (direct or indirect) owners or managers of the Business Partner) to others involved in the tender award or bid evaluation (such as public officials, the customer or other businesses who might stand to profit from an award of the contract)
- the Business Partner must have been made aware, in writing, of our Code of Business Conduct
- the proposed appointment **must be on written terms**, which must include a commitment by the Business Partner:
  - to comply with the UK’s Bribery Act 2010 (as if it were applicable to them, whether or not it actually is so)
  - to abide by our Code of Business Conduct
  - not directly or indirectly to make or be involved in the making of any payments or the giving of other benefits or inducements seeking to influence or reward the conduct or decisions of others
  - that no such transactions have previously been made in connection with business sought by or on behalf of the Group
  - not to use the services of others in discharging their obligations without prior Group approval
  - to procure that any sub agents will comply with the above
  - that the appointment will be consistent with any obligations imposed in the relevant invitation to tender, contract, or potential contract, in connection with which Babcock is proposing to use the business representative’s services.

There are a different search services that offer various levels of vetting, from online searching of publicly accessible databases and internet reports worldwide in English or in a relevant foreign language to local, on-the-ground “human intelligence”.

**Records**

You should keep adequate records to document the nature and extent of the due diligence carried out on the Business Partner, the services he provides to the Group and the payments made to him.

**Terms & Conditions and Legal Advice**

Whenever appointing a Business Partner, you must ensure that his terms of appointment are duly recorded and reflect the principles of this Guidance. You must involve your Sector legal team in the drafting of the terms of appointment at the earliest stage.

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In addition to involving a Group lawyer, local legal advice should always be sought to ensure that arrangements with Business Partner comply with local laws and as to any non-contractual rights or protections that may be enjoyed by the business representative. The Group lawyer will obtain this advice if necessary.

## 12 Offset Arrangements

In seeking tenders for publicly funded contracts, Governments across the world often permit and, in some cases, require those tendering for the contract to offer, in addition to the principal tender, some kind of additional investment in, or benefit to, the local community.

For example, where the tender will involve the prime contractor setting up a supply chain to deliver the project, the prime contractor may undertake to ensure that a given percentage of the value of the work done will be done within the territory of the country concerned using local contractors. Or the prime contractor may agree to transfer certain technology or know how to the prime contractor's supply chain, again within the relevant territory. Or the prime contractor may agree to sponsor projects to ensure that a local community which is being particularly affected by the project directly benefits from the project.

This activity is known as "offset" and is particularly common in the defence sector. If tendering for a contract which includes an element of offset, regardless of the sector, you must proceed with caution.

Offset arrangements give cause for concern on several levels:

- The offset arrangements in and of themselves can amount to a financial or other "advantage" to a public official or to another person at the official's request, assent or acquiescence and could be a breach of the duty not to bribe a foreign public official (see paragraph 6); or
- The development and delivery of the offset arrangements provide ample opportunity for difficult situations to arise which might lead to breaches of anti-bribery legislation. For example, the prime contractor may be establishing relationships with a new set of suppliers who are unknown to the prime contractor and in a new environment that the prime contractor is not used to working in. Or, in delivering the projects, the prime contractor may be coming into contract with officials with whom the prime contractor does not ordinarily work in a market or sector that is also new to the prime contractor. Or it is common for the prime contractor to employ agents or other intermediaries to assist the prime contractor in the development and the delivery of the offset arrangements with the heightened risk that agents bring.

If any tender for which any Babcock company is bidding involves any element of "offset", then you must proceed with caution:

- Prior to submission, the tender must receive Group approval through the TAF process
- If you are considering appointing an offset agent or other intermediary to help with the offset obligation, then you must make sure that you comply with the Group policy on the appointment of agents and in scoping the offset arrangement you must be sure that you have undertaken sufficient due diligence on the proposed projects to eliminate any concern that the agent and any offset project or solution he proposes is anything but bona fide.

**13 Whistleblowing**

It is the responsibility of every Babcock employee to bring to the attention of appropriate management any concerns that they have that:

- bribery or corruption has taken place, or is likely to take place
- there may be fraud or other irregularities going on in the way transactions, goods or services are being paid for, recorded or invoiced (or in the failure properly to record or invoice them)
- the way activities are being carried out may endanger the health or safety of any individual
- any other criminal offence has taken place, or is likely to take place
- there has been, or is likely to be, a failure to comply with legal obligations
- there has been, or is likely to be, a miscarriage of justice
- the environment has been, or is likely to be, damaged

in each case, because of acts or omissions of Babcock or any of its employees. Or, indeed, if any of the above result from the acts or omissions of Babcock's agents, advisers, subcontractors, suppliers or customers in their dealings or activities so far as they affect or relate to Babcock, its business, or employees at work.

No action will be taken against an employee who alerts management to these concerns if they turn out to be unfounded so long as the information and any allegations made were passed on in good faith; in the genuine belief that they were substantially true; with no intention of personal gain; and without malice.

**Procedure**

Normally, employees should feel able to bring these matters to the attention of their line managers, who are in turn under a duty to pass on the information to appropriate senior management.

However, if an employee feels that this is an inappropriate route in the circumstances or is uncomfortable with it or believes that the matter has not been dealt with satisfactorily by the line manager, they should (by phone, letter or email) bring the matter to the attention of the Group General Counsel or any of the Group's lawyers.

Alternatively, employees may use the confidential "whistleblowing" telephone service established for employees to report matters of concern.

It is the responsibility of Sector/DRC management to ensure that details of that service and these procedures are made known to existing employees and new joiners.

**14 Importance of Monitoring**

As our business and the risks that we face (as we enter new markets and sectors) will change over time, so the procedures required to mitigate those risks will also need to change to address the new circumstances.

It is not enough that we assess the risks that we face once (for example, at the start of a relationship with a new agent). We must continually monitor and review the risks that we face to make sure our procedures remain appropriate.

Accordingly:

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- **Agents:** Those responsible for the relationship with each agent should monitor their performance and their actions to ensure that the agents continue to act in accordance with our policies.
- **Risk assessment:** Each Sector and DRC should include, as part of its risk register review, an assessment of the nature and extent of its exposure to potential risks of corrupt acts – whether committed by employees or by persons associated with the Sector or DRC (such as agents, sub-contractors, joint ventures, or joint venture partners). This risk assessment should consider matters, such as charitable donations, agents, territory of operations, joint venture partners, and gifts & hospitality.

**15 Due Diligence**

We all have a duty to protect Babcock’s interests and reputation by knowing who we are dealing with – whether a client, a supplier, a sub-contractor (or material sub-sub-contractor), an agent or any other Business Counterparty (being anyone with whom Babcock has a business relationship).

Each Sector and DRC must embed within its procedures thorough and robust due diligence procedures to check that entities we are contracting with are “fit and proper” and will not put Babcock in breach of, or cause us to be associated with any breach of:

- anti money laundering laws
- anti-terrorism laws
- sanctions controls issued by Governments and international bodies
- bribery and corruption risks

This paragraph focuses on ABC risk.

**Risk Assessment**

The appropriate level of due diligence in any given case is a question ultimately of judgement. The starting point in determining what due diligence is needed or desirable is a risk assessment (see the list of red flags in paragraph 5 and for further discussion of issues to consider in a risk assessment see Appendix A below), considering a matrix of issues such as:

- corruption risk of the countries relevant to the project or where the counterparty is based – various organisations produce tables as to their assessment of corruption risk in different countries
- the amounts at stake: for example, is an agent potentially going to receive substantial payments
- is there a “red flag” (see paragraph 5)
- what is the danger of the counterparty trying to influence the outcome of a bid in which we may be bidding (for example, is he potentially in line for a major supply subcontract and the bid has yet to be submitted or evaluated? Is he an agent who will receive a success fee?)

When dealing with a new counterpart, you will want to ensure yourself that you are dealing with a “real” entity and the person that you are dealing with has the appropriate authority to bind the new counterpart. You will no doubt also check on their financial strength, for example, by looking at their financial statements. You will also want to consider their ethical stance but asking for their ethical policies. However, certain appointments present a heightened risk such as the appointment of a business partner (being anyone who is going to provide services for or to

represent Babcock) or an appointment where is a red flag (see paragraph 5). In these situations, you should consider carrying out further background checks on the counter party itself as well as its directors and owners.

There are many providers of background checks. You should ensure that the one that you choose searches public databases, including UN, UK, EU, US sanction lists and court records, and press (both local and international). If the check reveals a red flag, you must investigate it and satisfy yourself that there is no danger in the issue for Babcock. You must not enter a relationship with a counterpart if you have any unresolved red flags.

## 16 Case studies

To bring this policy to life, please consider the following case studies:

### CASE STUDY 1 – TRAVEL & ENTERTAINMENT

#### Facts

To demonstrate Babcock's experience in managing defence sites, Babcock would like a selection of senior procurement managers of a potential UK customer to visit a Babcock managed site in the UK.

During the trip (which will last 7 days) the managers will visit a range of key suppliers operating in or around the site, will participate in a review of a site and Babcock's operation at the site. However, as an added "perk" Babcock would also like to arrange for the managers to enjoy two days of sight-seeing in London. Babcock will cover all related expenses, such as accommodation, food & drink, etc. Babcock will account for this expenditure in an accurate and complete fashion as "Customer promotion and demonstration - travel and entertainment expenses".

#### Analysis

As you need to understand that merely by accepting the hospitality the customer's managers are not in breach of any of their own internal corporate governance, you should ensure that the visit is subject to a written invitation being sent to the supervisor of the senior procurement managers being invited.

Before making the offer of hospitality, you should check the internal approval you need to approve the giving of the hospitality.

However, subject to the checks and approvals, the visit to site would not be problematic as the intent is clearly that of promotion, demonstration and/or explanation rather than any corrupt intent.

The final two days of sight-seeing in London are nonetheless problematic. Such unnecessarily extravagant expenditure should be avoided. It could very well amount to an undue advantage conferred on the managers to influence the future performance of their duties.

If the invitees were non-UK public officials, this would very well be the case as there is a standalone offence of bribery of a non-UK public official.

**Note:** the same or a similar scenario could arise where Babcock is the recipient of entertainment from its suppliers. Care must be taken to avoid both offering and receiving travel and entertainment-related expenditure that could be perceived as extravagant or otherwise improper.

### CASE STUDY 2 - PROCUREMENT

#### Facts

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Various suppliers submit tenders related to a training package for a new air platform which Babcock is supplying as a prime contractor. In the end, XYZ Ltd wins the tender. A week after the contract has been awarded you receive a telephone call from an individual who states that he is calling on behalf of ABC Ltd, who was unsuccessful in the tender. The individual does not provide his name or any other identifiable information. He states that he has documentary evidence indicating that XYZ Ltd promised “sweeteners” to Babcock employees to influence the outcome of the competitive tender. He does not give any further detail regarding the identities of the Babcock employees or the nature of the alleged “sweeteners” but says that he will pass this evidence to the Serious Fraud Office unless Babcock wishes to negotiate to buy these materials so that it can investigate the matter itself, thus keeping the materials out of the SFO’s hands.

### Analysis

Receiving corrupt payments is a criminal offence in the UK. The allegation of “sweeteners” may be a fabrication; it may simply constitute troublemaking by disappointed supplier. Nevertheless, an immediate report of the call and the information provided by the caller should be made to your line manager or to the Whistleblowing Hotline.

Under no circumstances should there be any attempt to “buy” the referenced materials.

### CASE STUDY 3 – DEALINGS WITH MOD

#### Facts

In late spring it is announced that the UK MoD is considering scaling back or eliminating a “Gyrocopter Trainer” package for the Royal Navy. Babcock had been contracted to deliver the package. This would likely result in a reduction in future revenues for Babcock. During a meeting a senior procurement manager at MoD lets it be known that there is an ongoing debate amongst senior military staff regarding the wisdom of this course of action. He names a 3-star general who appears to be a crucial figure in this debate and is very much in favour of maintaining the current package.

Over the course of that summer Babcock treats the general to an unusual amount of entertainment and hospitality. He is taken to top London restaurants on numerous occasions as well as being treated to Centre Court tickets at Wimbledon and the best seats at The Ashes. The events are social in nature and very little, if any, business is discussed. Towards the end of the summer, it’s official: the Gyrocopter Trainer package is to be scrapped.

#### Analysis

These facts suggest that unusual, and rather lavish, entertainment was provided to a military official for improper purposes. Such entertainment is not permissible under the Hospitality Guidelines as it may very well constitute a bribe or attempted bribe. It does not matter that the efforts failed to have their (apparent) desired effect: attempted bribery is an offence under UK law.

In addition, if Babcock was aware that the entertainment lavished on the general was in breach of MoD guidelines that applied to the general, then in fact Babcock will be guilty of active bribery in any event.

**Appendix A – Red flags and risk assessments**

Whilst our procedures require certain matters to go through a formal clearance process, it will always be helpful at the very earliest stage to consider critically the ethical risks that could surround any given situation. This will have the following benefits:

1. It will help identify those matters that the policy and associated procedures may apply to
2. It can identify potential issues that may not otherwise have been apparent
3. It means that advice and further information can be sought in good time
4. It will help smooth any clearance process that needs to be followed
5. It will often provide the answer to whether to go any further
6. It will minimise the risk of problems.

**Red flags (see the list in section 5)**

“Red flags” are indications that something may not be right or that further advice and guidance should be sought as they could be, though are not necessarily, indicators of a real risk of unethical or unlawful behaviour.

If you discover a red flag, you should proceed with extra caution and may need to increase due diligence. You should share your concerns about the red flag with your Sector / DRC lawyer.

If there is a red flag, you should record in your approval the reasons how it has been addressed or satisfied so it is available for future reference. If any matter requiring approval in accordance with this Guidance is considered to have or was at some time assessed as having a red flag, that must be made known to the person whose approval is required and an explanation of why it is thought appropriate to proceed given and recorded.

But an absence of a red flag cannot be a guarantee that everything is fine. Common sense, a reasonable degree of scepticism and intuition should be your guide.

Red flags apply not just to arrangements or situations in which Babcock is directly involved, but also to arrangements between third parties where one or more of them is a person “associated with Babcock” (i.e. who may be performing services on behalf of Babcock) or whose actions may damage Babcock’s reputation by association (for example, a joint venture partner, especially where the arrangement or situation relates to something in which Babcock directly or indirectly has an interest or involvement).

It should be emphasised that the presence of one or more of these Red Flags may have a perfectly legitimate explanation and none is a bar in and of itself to proceeding. They just need thinking about or perhaps more investigation with an explanation of why they are not of concern in the case in question and possibly additional safeguards put in place.

**Risk Assessment**

In assessing risk in any given situation, consider:

1. What is involved in this situation: how much is at stake either to Babcock or anyone who might be affected by the outcome? Examples of situations where someone might be tempted to influence the outcome in a way that could amount to bribery include:

Situation	Who might have a stake (apart from a Babcock company)	How they might be tempted to influence the outcome
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		<b>or where their involvement might be risky</b>
<p>Babcock (or a consortium, joint venture or a team in which Babcock is working or a prime contractor for whom Babcock is a subcontractor):</p> <ul style="list-style-type: none"> <li>qualifying to participate in a bid or re-bid (for a prime or sub contract)</li> <li>Winning a contract bid or re-bid (for a prime or sub contract)</li> <li>Securing contract extensions or renewals (for a prime or sub contract)</li> </ul>	<p>Babcock employees – bonus; job prospects</p> <p>Agents/advisers working on the project and wanting to secure a fee (especially if success related) but maybe just to secure future repeat business with Babcock</p> <p>Sub-contractors to Babcock (or its joint venture, consortium, or team) – their sub contract depends on our success in the “prime”</p> <p>Joint venture or teaming partners</p>	<p>Bribing or seeking to influence (other than by the strength of the bid) the customer’s decision-makers or advisers or their family members or associates, for example by over the top or inappropriate hospitality</p> <p>Close links to the customer or the decision makers for or advisers to the customer (or the customer’s family or associates)</p>
The award of sub-contracts by Babcock	Sub-contractors	Bribery (including inappropriate hospitality) of Babcock decision makers or those advising them or their family or associates
The award of supply contracts by Babcock	Suppliers	Bribery (including inappropriate hospitality) of Babcock decision makers or those advising them or their family or associates
<p>KPI reviews or other contractual assessments which might have a material impact on amounts payable or even as to whether a contract is terminated</p> <p>Disputes over amounts properly due to a party under a contract;</p>	<p>All parties with a financial interest in the outcome or continuation of the contract</p> <p>Their agents/advisers, sub-contractors; suppliers if they will be impacted and have the ability or opportunity to attempt to influence the outcome</p>	Bribing the customer’s decision-makers or advisers or their family members or associates, for example, by over the top or inappropriate hospitality

2. What countries are relevant participants (the customer, Babcock’s agents, advisers, distributors, joint venturers, teaming partners, sub-contractors etc) going to be based or working in or involved with?
3. How well do we know those countries – the culture, how they work, their system of procurement or government, their reputation for ethical business practices; the reputation of their public officials and of their courts and legal system; how business is won; who the influential people are?
4. Who is the customer – is it a government (national or local) body or agency or nationalised industry? Who controls or has influence over its decisions about awarding contracts?

5. Is anyone connected to the customer involved, or do they have an interest, in the outcome of the bid or business opportunity with that customer? Are we going to be dealing or working with them in trying to secure the opportunity or in performing it if we are successful?
6. How material is the stake that anyone involved in the opportunity has in its success; are there significant success fees or further work to be earned as a result?
7. How much actual influence might an interested party be able to exert in any decision to award, or not to terminate, a business deal: what scope or opportunity do they have in practice; what connections do they have or claim to have? Many people may have an interest in the successful outcome of a bid or other business opportunity, but has neither the position, influence nor access in practice to affect that outcome, whereas others may clearly have an advantage.
8. Is anyone involved in the matter under consideration a “Heightened Risk Person”? Are there any Red Flags to investigate?