



GLOBAL COMPLIANCE

Anti-Bribery and Corruption (ABC) Risk Assessment Roadmap



For more information on this roadmap, and any of the others in our Global Compliance Roadmap series, please get in touch with the Osborne Clarke team [here](#).



Introduction

The UK's Bribery Act 2010 (UKBA) enacted a new corporate offence of failing to prevent bribery. The only defence to this offence requires a commercial organisation to demonstrate that it had adequate procedures in place to prevent bribery.

The starting point for any commercial organisation wishing to ensure that it has adequate procedures in place is to conduct an objective and comprehensive risk assessment to identify any ABC risks that it may face. That risk assessment should not be viewed as a one off exercise, but should be repeated at regular intervals, and whenever significant new business

is undertaken that may alter the overall profile of the organisation.

Set out below is a 'roadmap' of questions designed to identify information that will enable a business to determine what ABC risks it may face.

Having answered these questions, an assessment can then be made of the ABC risks faced by the commercial organisation and the extent to which its policies and procedures adequately address those risks. Thereafter, any further necessary measures can be adopted and implemented with a view to ensuring that the business has adequate procedures in place that are UKBA compliant.



1. Assessing your external ABC risk

- Has your organisation undertaken any assessment or consideration of the ABC risks it faces and, if so, when was that assessment last undertaken?

1.1 Sector/business risk

- How would your sector generally be perceived in terms of ABC risk: Highest: High: Medium: Low: Lowest
- Other than your principal areas of business, do you have any other business lines that ought to be considered for ABC risk, for example, human resources?

- Is any of the business that you do undertaken in any permits, licences or other regulatory regimes in any country in which you do business?
- Does the business make (or plan to make) any charitable or political donations or make on its behalf charitable or political donations?
- Could situations arise where your organisation or persons performing services on behalf of your organisation could be required to make payments, commonly known as facilitation payments, to government officials to procure product approval?

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2. Assessing your current approach to ABC

2.1 Policies and procedures

Do you have:

(i) An ABC policy?

(ii) A Code of Ethics?

(iii) A Supplier Code of Ethics?

(iv) A Gifts & Hospitality Policy?

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● 3. Adequate Procedures: UK Guidance

The UK's Ministry of Justice and Serious Fraud Office (SFO) have issued guidance relating to adequate procedures and, separately, the SFO has a section in its Operational Handbook detailing what it would view as constituting an effective ABC compliance policy. Each document refers to, and stresses the importance of six principles:

3.1 Proportionate Procedures

- Objectively, would your organisation be viewed as having adopted ABC procedures that are proportionate to the risks that you face?

3.2 Tone from the Top

- To what extent, and in what ways, does your Board/senior management provide leadership to the business on the

- How often does the Board/senior management discuss and issue ABC issues?

- What resources has your organisation allocated to ABC?

- Is the Board/senior management aware of the relevant laws related to ABC?

3.3 Risk Assessment

- Are your risk assessment procedures integrated into your overall risk management?

- Does your organisation allocate resources to conduct a risk assessment, proportionate to the risks that you may face?

- Do you utilise relevant internal and external sources when conducting a risk assessment?

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● 3. Adequate Procedures: UK Guidance

- What steps do you take to address or manage the ABC risk arising through third parties?

For example, does your organisation:

- (i) Have a systematic approach for engaging third parties consistently across the business?
- (ii) Have ABC or other contractual clauses in your contracts with third parties to mitigate against ABC risks (such as requiring them to comply with applicable laws, comply

3.5 Communications and Training

- Does your organisation provide relevant employees?

- (i) Is that training tailored so that the training is relevant to their role?
- (ii) How often is the training provided?
- (iii) Does this differ for persons who are involved in high-risk ABC activities?

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4. Specific concerns

- Have any potential ABC issues (red flags) been identified as part of any internal or external audits conducted within the past 5 years? If so, how were these dealt with?
- Have any whistleblower reports referred to potential ABC issues within the past 5 years? If so, how were these dealt with?
- Are you aware of any allegations, inquiries, investigations, prosecutions or other actions by a State regulator or prosecutor which may indicate an ABC issue connected to your organisation or a third party that performs

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Contacts



Jeremy Summers
Partner

T +44 20 7105 7394
jeremy.summers@osborneclarke.com



Chris Wrigley
Associate Director

T +44 117 9174322
chris.wrigley@osborneclarke.com

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