

PLMJ

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# ANTI-CORRUPTION BEST PRACTICE MANUAL



LITIGATION AND ARBITRATION PRACTICE AREA  
CRIMINAL LAW TEAM





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## CHAPTER I

### INTRODUCTION

In the context of European incentives to fight corruption, the governments of a number of Member States have been introducing, in a relatively incisive way, legislative measures designed to combat the phenomenon of corruption.

In enacting the Bribery Act 2010, the United Kingdom has taken a groundbreaking approach to this fight. The act, which has been in force in England, Scotland, Wales and Northern Ireland since 1 July 2011, establishes, among other things, a new crime without precedent that purely and simply targets companies or, in the words of the act, “relevant commercial organisations”. This has come about at a time when, in Portugal in particular, the punishment of commercial organisations under the criminal law is still a recent development that is surrounded by a certain degree of caution.

Inspired by the passage of this legislation, and because it takes a transnational or cross-border approach, PLMJ took the decision to create this “Anti-Corruption Best Practice Manual” aimed not only at explaining the most relevant current legislation in this field but also at helping all companies that have an internal anti-corruption policy to adapt their procedures to cutting edge European legislation on the subject.

### EXECUTIVE SUMMARY

- The European Union has begun efforts to fight corruption in the public and private sectors through the imposition of minimum rules regarding the definition and scope of the applicable criminal offences and penalties, convinced that, in both sectors, corruption is a threat to a law-abiding society, which can lead to distortions of competition in the procurement of goods or commercial services and, in turn, impede economic development.
- Following those efforts, on 22 July 2003 the European Council issued the Framework Decision 2003/568/JHA, which calls on Member States to criminalise acts of active and passive corruption in the private sector and adopt the necessary measures to ensure the criminal liability of legal persons for acts committed on behalf of their companies.
- The UK, pursuing a policy of cutting edge law-making within Europe, adopted the Bribery Act 2010 on 8 April 2010. This act differs from Council Framework Decision 2003/568/JHA in that it extends the provisions for liability of commercial organisations to the acts of anyone - including employees, agents or subsidiaries - providing services to the organisation or on its behalf, regardless of the capacity in which they act.



- Commercial organisations may, however, avoid criminal liability under the Bribery Act 2010 if they can demonstrate clearly that, despite the fact that a person associated with the organisation has committed a crime of corruption, the organisation has implemented adequate procedures designed to prevent the risk of corruption within the organisation.
- Also under Portuguese criminal legislation - Law 20/2008 of 21 April in particular - organisations can be held criminally liable for crimes of corruption when improper tangible or intangible advantages are promised or given by a person that occupies a leading position or who is acting under such authority.
- Like the Bribery Act 2010, the Portuguese Penal Code provides an exemption from criminal liability for legal persons and similar entities for acts of corruption within the company but this exemption is confined to cases where the perpetrator has acted against express orders or instructions from a person occupying a leading position. For this reason, the obligation to manage and direct the activities of the organisation so that its employees do not commit the crime of corruption in pursuit of collective interest lies with the organisation itself which must establish prevention mechanisms, particularly through written orders and specific instructions on how to prevent the commission of unlawful acts.
- When implementing an internal policy to prevent the risk of corruption that meets both the requirements of the Bribery Act 2010 and the Portuguese Penal Code, companies should take the following steps:
  - Carry out an assessment (due diligence) of the risk of corruption inherent to the markets where the company operates, broken down by geographical location and sector of activity, as well as the professional and academic backgrounds and reputation of the people who represent the company in external acts, or otherwise act on its behalf, as well as persons providing services to the company, including business partners;
  - Prepare a written document with anti-corruption practices, signed by the management supervisory board, which contains an extensive and detailed range of standards of conduct tailored to a variety of situations with which the company's employees have to deal;
  - Publicise the internal anti-corruption policy of the company to all employees and provide specific training in the field;
  - Keep accounting books and records up to date and include a comprehensive description of all payments made by the company or on its behalf, in accordance with applicable legal accounting practices;
  - Maintain an effective compliance system by monitoring the effectiveness of the company's anti-corruption policy in respect of all employees and business partners;

- To better assist businesses to adopt an internal anti-corruption policy, which allows them, by definition, to avoid criminal liability for acts committed on behalf of the company, Chapter V of this Guide identifies and analyses situations where the risk of corruption most often arises. Finally, this Guide also suggests - although not exhaustively - some concrete steps to mitigate the risk of corruption and, ultimately, the risk of criminal liability on the part of the company.

## CHAPTER II

### THE FIGHT AGAINST CORRUPTION AT EU LEVEL

1. Under the Treaty on the Functioning of the European Union, the Union aims to provide citizens with a high level of protection in an area of freedom, security and justice, an goal which will only be achieved by preventing and combating crime, organised or not, including corruption.
2. In this context, the Treaty gives the European Parliament and the Council the power to establish minimum rules concerning the definition of criminal offences and sanctions in the areas of major criminality with a cross-border dimension, particularly corruption both in international or European organisations and the private sector, through Directives or Framework Decisions.
3. Member States attach particular importance to tackling corruption in the public and private sectors, convinced that in both sectors, corruption is a threat to a law-abiding society and can lead to distortions of competition in the procurement of goods or commercial services which, in turn, undermines sound economic development.
4. Thus, the Commission has issued several Communications focused on the area of judicial cooperation in criminal matters which identify corruption as criminal behaviour falling under the scope of organised crime. This is meant to be an area for priority action, namely by means of the drafting and adoption of measures defining minimum rules regarding the constituent elements of this type of crime and the respective penalties.
5. The most recent Communication published by the European Commission (see COM/2003/0317) is dated 7 February 2003 and alerts Member States to the need to develop incentives for the private sector to refrain from corrupt practices, such as the obligation of keeping codes of ethics or the preparation of a list containing names of companies with anti-corruption practices.
6. Following the efforts of the Commission, the Council issued Framework Decision 2003/568/JHA on 22 July 2003. This Decision aimed to ensure that both active and passive corruption in the private sector are criminal offences in all Member States and that all legal person will be held responsible for offences and that, in turn, these offences should incur effective, proportionate and dissuasive sanctions.



7. To achieve this goal, the Framework Decision calls on Member States to criminalise, in their jurisdictions, the conduct that amounts to promising, offering or granting, directly or through an intermediary, undue advantages of any kind to a person who manages or works for a private sector entity in any capacity, to persuade that person, in violation of their duties, to perform or refrain from performing certain acts.
8. Express provision was also made for each Member State to take all steps necessary to ensure that companies and other legal entities could be held liable for acts of active and passive corruption in the private sector, committed for their benefit by any person who occupies a leading position acting either individually or on behalf of a corporation.
9. Finally, it was decided that each Member State should introduce the measures necessary to ensure that a legal person held liable for a crime of corruption should be subject to effective, proportionate and dissuasive sanctions, including fines and other sanctions such as exclusion of subsidies or public aid, the temporary or permanent disqualification from the practice of trade, placement under judicial supervision or judicial winding up.

### CHAPTER III

#### **WHAT IS THE BRIBERY ACT 2010 AND HOW CAN IT AFFECT YOUR COMPANY?**

10. The UK, pursuing a policy of cutting edge law-making within Europe, adopted the Bribery Act 2010 on 8 April 2011, in order to modernise and simplify existing legislation on the matter and ultimately allow a more effective combat against corruption committed within and outside its borders.
11. The big innovation of the Bribery Act 2010 in view of Framework Decision 2003/568/JHA is the extension of the provisions for the liability of commercial organisations for acts of corruption perpetrated by people associated with them in order to obtain or maintain business or any improper advantage in the conduct of its business, in relations with public or private parties.
12. Accordingly, commercial organisations may be held criminally liable for the acts of any person, who provides services to or on behalf of the company in any capacity.
13. Therefore, unlike the Portuguese law, the Bribery Act 2010 extends criminal liability beyond the company's employees to its partners in outsourcing or joint ventures, agents, brokers, consultants, and also to vendors.
14. The Bribery Act 2010 also creates a separate crime of bribery of a foreign official or public authority. The crime is committed when a person offers, promises or grants an unlawful financial or other benefit to a foreign public official with intent to influence the official in the performance of their duties in order to obtain or retain business or benefit from an advantage of a commercial nature.



15. By “foreign public official” the Bribery Act 2010 means a person, whether elected or appointed, who occupies legislative, administrative or judicial office in any country or territory outside the UK. Thus the Act covers any person who performs public duties in any branch of the national, local or municipal government of a country or territory or who exercises a public function for any agency or public enterprise, particularly in public health agencies and organisations, or non-governmental organisations like the UN or World Bank.
16. Moreover, the provisions of Bribery Act 2010 apply to all acts or omissions committed in the UK, even if the person or company responsible is domiciled or headquartered abroad.
17. Thus, even if based outside the UK, a Portuguese company will be subject to the Bribery Act 2010 if, in the course of its business in England, Wales, Scotland or Northern Ireland, a person associated with it performs any act or omission that amounts to a bribery offence.
18. The Act entered into force on 1 July 2011, in England, Wales, Scotland and Northern Ireland.

### **HOW CAN YOUR COMPANY AVOID CRIMINAL LIABILITY UNDER THE BRIBERY ACT 2010?**

19. Under the Bribery Act 2010 a company may escape criminal liability if it can demonstrate clearly that, despite the fact that a person associated with the company has committed a bribery offence, the company has implemented all appropriate procedures to mitigate the risk of corruption within the company.
20. In order to determine what are considered to be «appropriate procedures» to mitigate the risk of corruption for the purposes of the Bribery Act 2010, the UK Ministry of Justice published a Guidance note on 30 March 2011 containing general guidelines for procedures to be adopted within each commercial organisation as a means of avoiding criminal punishment for commission of an act of corruption.
21. However, the Guidance does not - and could not – contain a comprehensive list of rules of conduct to be adopted by all companies in all circumstances, but only the principles that should guide companies in formulating their own internal rules of conduct.
22. It is therefore necessary, based on the guiding principles developed by the UK Ministry of Justice, to determine what the practices to be followed by companies in order to avoid their criminal liability under the Bribery Act 2010 should be. This matter is covered in Chapters IV and V of this manual.





## CHAPTER IV

### **COULD YOUR COMPANY BE LIABLE FOR CRIMES OF CORRUPTION COMMITTED IN PORTUGAL?**

23. Under the Portuguese Penal Code legal persons can be held criminally liable for crimes of corruption when an improper tangible or intangible advantage is promised or given to a person that occupies a leading position or who is acting under such authority.
24. In respect to this matter, Portuguese Law 20/2008 of 21 April, which transposes Council Framework Decision 2003/568/JHA of 22 July, establishes the terms of liability for commission of crimes of corruption in international trade and private activities.
25. The bill provides for the criminalisation of what are known as facilitation payments, in other words, those who by themselves or by consent or ratification, through an intermediary, give or promise to give a domestic or foreign official an undue tangible or intangible advantage in order to obtain or retain business, to conclude a contract or to obtain some other improper advantage in international trade.
26. It also provides for and punishes bribery in the private sector, defined as the concession or promise of advantage or other gain to private-sector employees in order to encourage them to do any act or omission which constitutes a violation of their functional duties.
27. The prison sentence can be increased if the conduct is intended to obtain or is apt to cause a distortion of competition or an economic loss to third parties.
28. In the case of legal persons, prison sentences will be replaced by one of the following sanctions: i) fines; ii) dissolution iii) alternative admonition penalties, iv) a pledge of good conduct and judicial supervision; v) judicial injunctions, vi) a ban on exercising activities, vii) a ban on entering into certain contracts or agreements with certain entities; viii) removal of the right to grants, subsidies or incentives, or ix) closure of the establishment and publication of the sentence.

### **HOW CAN YOUR COMPANY AVOID CRIMINAL LIABILITY UNDER THE PORTUGUESE LAW?**

29. The Portuguese Penal Code provides for exemption from liability for companies and similar legal person when the agent has acted against express orders or instructions of those in an appropriate position, that is, a leading position.
30. In other words, the company will only be exempt from criminal action if the agent acts against specific orders or instructions.




31. This means that it is up to management to organise and direct the activities of the company so that its employees do not commit bribery offences in pursuit of the collective interest. To achieve this it must establish prevention mechanisms, particularly through orders and specific instructions on how to act to avoid the commission of unlawful acts.
32. These are the reasons why it is important for companies that have headquarters or branches in Portugal to implement internal written rules setting out clear instructions on how to avoid the commission of acts of bribery acts on behalf of the company regardless of where it is conducting business, and which apply to all employees, especially those occupying leading positions.
33. The procedure that companies should adopt establishing such rules and their possible content are dealt with in Chapters IV and V of this manual.

## CHAPTER V

### **HOW TO IMPLEMENT AN INTERNAL POLICY FOR THE PREVENTION OF THE RISK OF CORRUPTION THAT MEETS BOTH THE REQUIREMENTS OF PORTUGUESE LEGISLATION AND THE BRIBERY ACT 2010?**

#### ***(A) Risk Assessment***

34. How demanding the level of the anti-corruption measures to be adopted by companies will be depends greatly on the following factors: i) the countries in which it operates; ii) the business sector, iii) the amount of capital involved; iv) the duration of the project; and also iv) who the business partners with whom the company establishes business relations are.
35. In this context companies should start by using the Internet to evaluate the historical track-record of corruption in the country in which they wish to pursue commercial activity. Then the companies should consult a Portuguese diplomat in that country, or even seek information from the members of local business associations or advisory bodies in the sector concerned.
36. After finishing the above preliminary research companies should carry out due diligence in respect of the history, curriculum and reputation of the people who represent the company in its external acts, or otherwise act on its behalf, as well as the people who provide services to the company and its business partners.
37. In conducting the due diligence, the company should require all employees, partners, brokers and consultants to present a well documented curriculum vitae. The company should also conduct searches of the professional profile of all persons acting on behalf of the company -including through the Internet - with companies operating in the same sector, local chambers of commerce, business associations, or even through the analysis of financial statements of the new business partners.

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38. All steps taken in assessing the risk of corruption should be properly recorded and documented in a file opened for this purpose. The board must also prepare a report containing the findings of the said due diligence and a company statement making a commitment to the adoption of an internal anti-corruption policy appropriate to the risks of corruption identified.
  39. Due diligence must be renewed whenever the company enters a new market, carries on commercial activity in a new line of business, hires new employees or establishes a business relationship with new business partners, consultants or intermediaries.

***(B) Written document of anti-corruption best practice***

40. After the due diligence, the company seeking to avoid criminal liability should prepare a written document of anti-corruption best practice, which should contain a detailed and extensive range of standards of conduct tailored to a variety of situations with which the company's employees have to deal.
41. The members of the board of directors and the supervisory and accounting board should adopt the anti-corruption standards of conduct and issue a written declaration of commitment to strict compliance with all rules of conduct laid down.
42. It is also important that the anti-corruption best practice document binds all employees, business partners, intermediaries and consultants acting on behalf of the company. To this end they must all be invited to read and sign the document. The hiring of new employees or business partners should depend on the signing of this document.

***(C) Disclosure of an internal anti-corruption policy***

43. The internal policy should be publicised and enforced by all company employees. For this purpose it is recommended that companies provide adequate training to all employees, subjecting them to a written exam in order to ensure a clear understanding of the anti-corruption policy. This procedure is especially important in companies that are at a greater risk of exposure to corrupt practices.
44. Companies should make sure that the anti-corruption measures adopted are promptly communicated to all its business units, branches or affiliates, irrespective of geographical location, with the caveat that different markets may require different measures to combat corruption and bribery.
45. A statement of transparency and zero tolerance for corruption in pursuit of the business must be issued by the board of directors of the company and communicated to all business partners, brokers, agents and consultants, in general, to all external contacts, such as the local chamber of commerce.



#### ***(D) Maintenance of accurate accounting***

46. Companies should also seek to adopt good accounting practices in book keeping and present a comprehensive description of all payments made by the company or on its behalf, in accordance with the applicable accounting standards of practice.
47. Records that are false, misleading, incomplete, inaccurate or unrealistic are strictly prohibited and may cause the company to incur in criminal liability if the corrupt act is found to be camouflaged by an inaccurate accounting of the material advantage at issue.

#### ***(E) Monitoring and controlling the risk of corruption***

48. Companies should maintain an effective control and monitoring system of all transactions flowing into or out of the company's account. This monitoring system should be adjusted to the specific risks of corruption of the company, as detected in the risk assessment carried out previously.
49. For an effective monitoring and control we recommend the creation of a compliance department, working in close cooperation with management and dedicated to developing guidelines, principles and methodologies for identifying, mitigating and monitoring corrupt practices within the company.
50. Of all the monitoring measures that can be taken, we suggest the following:
  - Gather suggestions from the employees of the company on improvements to be implemented in the anti-corruption policy of the company;
  - Create a confidential means of communication so that employees can report external business transactions that are suspected to be carried out on behalf of the company;
  - Require expenses above a certain threshold to be approved in advance by a senior manager;
  - Open a file with bills and receipts for gratuities, hospitality, sponsorship and facilitation payments.
  - Prepare a written memorandum of understanding stating that no policy may be adopted that allocates bonuses in a way that rewards excessive risk-taking;
  - Prepare an annual report containing an analysis of rates of compliance with internal anti-corruption policy by market sector, country and business unit. The report should also highlight examples of anti-corruption best practice followed by company employees.
51. Finally, companies facing a higher risk of corruption should seek an external consultant to audit the anti-corruption practices adopted by the company and their success in mitigating the actual risk of corruption.



## CHAPTER VI

### **WHICH ARE THE MAIN AREAS OF RISK AND HOW YOUR COMPANY CAN MITIGATE THE RISKS IT FACES?**

#### **FACILITATION PAYMENTS**

52. Facilitation payments are low-value payments, common in some countries, made to expedite certain routine steps that the public official has a clear and non-discretionary duty to perform.
53. This practice is treated by the Portuguese law and the Bribery Act 2010 as an offence of bribery in detriment to international trade which is punishable regardless of where the payments are made or the actual circumstances which led to them.
54. The company may, however, avoid criminal liability if such payments are based on rates, fees or other charges provided for by law. In this context, companies that do business abroad must take into account the following rules of conduct:
- Communicate the company's policy of not making payments for the practice of a lawful act to local partners in writing; ;
  - Seek advice on the law of the country with respect to certificates of inspection, legal fees and other charges, in order to differentiate them from unlawful requests;
  - Incorporate realistic deadlines for import / export, transport and delivery of goods into the project plan so as to discourage facilitation payments for customs inspection and import / export of goods;
  - Make local partners aware of the provisions of Portuguese law and / or Bribery Act 2010 and the criminal liability that the company will incur if they make payments for the practice of lawful acts.
55. Companies should seek to include in contracts with local partners a clause on the procedures to be adopted in order to avoid making payments for the practice of lawful acts, including:
- Questioning the legitimacy of the payments required by the authorities or public officials;
  - Requiring the issue of a receipt and detailed identification of the officer who demanded payment;
  - If in doubt, ask to see the immediate superior;
  - Avoid paying «customs inspection fees» or any other administrative charge in cash or directly to the official unless legally required to do so;



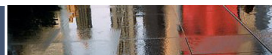
- Require local partners to inform the Portuguese embassy of the nature of the payments required.

## **GRATUITIES AND HOSPITALITY**

56. The main concern of companies subject to criminal liability for acts of corruption done on behalf of companies relates to the degree of hospitality that the company can provide to its customers, employees and business partners.
57. In fact, neither Portuguese law nor the Bribery Act 2010 aim to prohibit hospitality or the allocation of bonuses, since these are considered reasonable and are not apt to cause a distortion of competition or an economic loss to third parties. The touchstone is the specific circumstances that underlie the hospitality, as well as the level of influence they had on the business decision in question.
58. This means that gratuities and acts of hospitality cannot appear to represent any form of pressure or influence on the decision of the person receiving them and should always be kept within reasonable limits of what is commonly and socially accepted in the market sector in which the company operates.
59. Among the acts of hospitality and bonuses that are consistent with commercial practices commonly accepted in most countries, and therefore do not give rise to criminal liability, are the following:
  - Casual offering of lunch or dinner in the context of the company's business;
  - Sporadic supply of tickets to sporting or arts events, as a demonstration of good business relations;
  - Travel expenses of trading partners;
  - Gifts of low value, such as merchandising or small promotional items.
60. To ensure that the rewards and hospitality provided by your company fall within this criterion of reasonableness, companies should evaluate their hospitality and bonuses practices in light of the following questionnaire:
  - What is the intention of the gift or hospitality - to foster good business relations or to influence decisively a business decision?
  - Is the hospitality or gratuity to be granted common practice in the sector in which your company operates? If the details of it were to be published in a newspaper, would the industry consider such practice to be inappropriate?
  - May the actual bonus offered or hospitality granted somehow undermine the free will of the beneficiaries?



- If an identical gift or hospitality was granted to your company, would your free will feel be compromised?
61. If in answering the questionnaire a risk of corruption or bribery arises, the company should prohibit people associated with it from provide the hospitality or gratuity in question. Otherwise it will run the risk of criminal liability.
62. Although the reasonableness of gratuities and acts of hospitality depends heavily on an analysis of the specific circumstances of the case, the following practices should, in any event, be banned within the company:
- Hospitality or gratuities offered on a reciprocal basis;
  - Bonuses in cash or the equivalent (i.e. vouchers, bonds, etc. ...);
  - Entertainment of a sexual nature or similar;
  - Bonuses to employees and public officials and their families (unless this is the social practice in the country concerned);
63. Given the sensitivity of the matter, it is recommended that companies publish and promote an internal memo containing a list of gifts that are consistent with the social and business practices of each country and market in which the company operates, as well as appropriate levels of hospitality in a wide range of cases.
64. The company must also implement an effective system of prior consultation with the administration when the act of hospitality or gratuity to be granted is outside the scope of the memo made by the company in order to ensure effective coordination of practices across the enterprise.
65. In preparing the memo, the company should take into account the following guidelines:
- Hospitality should reflect the desire to cement good relations and aim to show appreciation;
  - Promotional expenses should seek to improve the commercial image of the company, its products or provide services or establish cordial relations;
  - The recipient of the gratuity or hospitality should not be given the impression that by agreeing to receive the gift he or she is bound to give the company any commercial advantage;
  - Advance notice must be given of hospitality provided to public officials and it must agreed with the public body concerned in order to make it clear who will benefit from it and on what terms;



- Keep on file all invoices, receipts and delivery notes related to hospitality, bonuses or costs;
- Monitor and regularly review the internal policy regarding the granting of gratuities and hospitality in order to assess compliance;
- Provide adequate training to company employees in respect of proper hospitality practices.

#### **RECRUITMENT OF BUSINESS PARTNERS (I.E. COMMERCIAL DISTRIBUTORS, BROKERS, CONSULTANTS)**

66. In pursuit of their businesses most companies need to establish business relationships with third parties such as agents, brokers, consultants, subcontractors, associated entities operating in the joint venture, or even suppliers.
67. The engagement of business partners increases exponentially the risk that third parties give undue advantage on behalf of the company, due to the inevitable information asymmetries existing in this type of relationship. Also, the fact that most of these contracts are awarded on a retainer basis increases the risk of corruption, making it difficult to monitor and control the use and destination of money.
68. Companies should, therefore, do everything to prevent its agents, consultants, lobbyists, distributors or sales representatives from giving others undue benefits deemed unlawful by the Bribery Act 2010 and by Portuguese Law.
69. In order to avoid criminal liability, we recommend the following courses of action:
- Carry out due diligence in respect of the history, background and reputation of business partners through Internet searches, contacts with business, consulting with the local chambers of commerce, business associations, or even by analysing the financial statements of the new partners;
  - Reassess the model used in the recruitment of business partners in order to reduce information asymmetries and disagreements regarding the anti-corruption policy;
  - Try to gain an in-depth knowledge of the services to be provided by the new partner and the methods of payment and compensation agreed upon;
  - Issue a statement demanding a policy of transparency and zero tolerance for corruption in pursuit of business. The declaration must be communicated to all employees of the partner company, the consultants and, in general, to all external contacts, such as agencies and local chambers of commerce;
  - Reflect the company's committed to zero tolerance for bribery in the written the agreements signed with external entities and establish clear criteria regarding the bonuses which can be awarded in the name of the company;





- The company should ensure, whenever possible, that third parties with whom it has business relationships are complying fully with its internal anti-corruption policy, including adoption of procedures for monitoring payments made by business partners on behalf of the company;
  - Define the compensation due under the retainer agreement in detail, including any extraordinary expenses paid to the party;
  - Requiring prior authorisation from the company management to make the payments to agents, brokers and consultants;
  - Provide for periodic review and renewal of contracts with third parties;
  - Require that all payments for goods or services are made to the person who supplied or provided them;
70. Also, consortium and other joint venture models give rise to situations of a high risk of corruption since they increase the probability of dissent with respect to internal policies and practices with regard to corruption.
71. To avoid such risks it is recommended that companies adopt some of the following procedures in regard to joint ventures:
- Parity of representation on the board of directors;
  - Write a memorandum of understanding regarding gratuities and hospitality;
  - Unanimity requirement to incur certain kinds of expenses;
  - Requirement for consensus on the hiring of employees and third parties, including due diligence obligation in respect of the history, background and reputation of the candidates;
  - Setting standards of conduct in regard to relations with public officials;
  - Training of employees subject to high risk of corruption;
  - Comprehensive record of all expenses incurred;
  - Creation of an audit committee with at least one representative from each company, with powers to audit the accounts and expenditures. The committee should also be responsible for preparing periodic reports;
  - Include a termination clause in the consortium, association or partnership contract or other similar agreement that will be triggered if any of the companies violate any internal anti-corruption rule.



## SPONSORSHIPS

72. A large number of businesses, aware of their role in society, combine the marketing of their products with the promotion of social, sporting or cultural events.
73. In this context companies transfer large sums to companies organising the events by way of sponsorships, which in return undertake to promote the brand among those who participate in the event.
74. The increasing complexity of sponsorship agreements highlights serious risks of private sector corruption, particularly where the allocation of sponsorship is conditional on the attainment or maintenance of other businesses which may cause a distortion of competition or an economic loss to third parties.
75. Accordingly, sponsorship contracts should not be used as a means of exerting pressure or influence on any decision by the companies organising the event, or serve as disguised joint venture. The sponsorships should always be transparent, in compliance, coherent and kept within reasonable common and socially accepted limits.
76. To avoid criminal liability and ensure that their sponsorship agreements are incapable of causing a distortion of competition, companies should develop a written document containing the company policy regarding the allocation of sponsorship, which should encompass the following points:
  - Determine which areas of social, sporting or cultural outreach the company agrees to sponsor;
  - Identify at all times those to whom the company granted sponsorship and the justification for it;
  - Avoid sponsoring entities that have business relationships with the company;
  - Prioritise initiatives that are clearly identifiable with the company, even in symbolic terms;
  - Privilege entities that benefit / target a particular audience considered to be socially or economically relevant and / or pursue activities that are appropriate to the internal political or social policy of the company.
77. The internal politics of the company regarding sponsorships should be communicated to all employees of the company and published on the website so that it can be easily accessed at any time by the general public.



## CHAPTER VII

### CONCLUSION

78. It has become clear that there is heightened awareness in Europe and a sense of the liability of companies in respect of corrupt practices committed by their employees or even senior managers.
79. The legislation that was published a few years ago makes the increased concern for the adoption of measures to combat corruption especially clear.
80. As we have said, the Bribery Act 2010 is cutting-edge legislation in this field. We now believe that this legislation will soon have direct implications for business practices worldwide, whether as a catalyst for introducing similar legislation in other European countries, particularly in the countries of southern Europe, or by its direct effect on the activity of Portuguese companies with businesses in the UK.
81. It is for these reasons that PLMJ has prepared this «Anti-Corruption Best Practice Manual». This manual is necessarily general in nature and is intended to help not only firms that operate abroad, but also those that decide right away that they want to prevent the phenomenon of internal corruption by bringing their procedures into line with cutting-edge European legislation on this issue.
82. Indeed, it is ultimately the liability of companies to work towards the eradication of corrupt practices in business, by constantly improving and updating their internal anti-corruption policies.
83. Moreover, the effective implementation of a comprehensive manual of rules of conduct against corruption is an essential weapon in the defence against criminal liability on the part of the company for acts of corruption committed in their midst.
84. PLMJ is aware that this practice manual should be adapted to each of its clients' individual cases and the manual will also be updated as and when necessary to take into account any relevant legislative changes<sup>1</sup>.

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<sup>1</sup>We expect that changes will be made to the Bribery Act 2010 chiefly as a result of well-publicised expressions of opposition to the legislation which, among other issues, put forward the argument that the Bribery Act places UK companies at a competitive disadvantage in relation to their foreign counterparts.



### CREDITS:

The Anti-Corruption Best Practice Manual has been prepared by PLMJ's crime team headed by partner João Medeiros. The lawyers who make up this team work almost exclusively in the area of criminal law giving them a high level of specialisation.

The team handles all aspects of criminal law from the traditional types of crimes covered by Portugal's Criminal Code to new areas such as tax and social security crime, money laundering and corruption in sports, as well as crime related to the protection of markets and IT law.

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