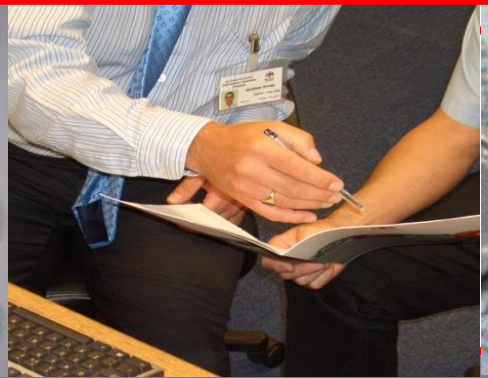




**Isle of Man
Government**

Reilys Ellan Vannin



**The Isle of Man Government
Anti-Bribery
Policy and Procedure**

**Office of Human Resources
Cabinet Office
September 2016**

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Updated
August 2019

Introduction by the Chief Minister Hon Allan Bell MHK

This Anti-Bribery Policy has been produced in response to the Bribery Act 2013 which came into force on 16 December 2013.

Bribery is a criminal offence. The Isle of Man Government takes pride in holding itself accountable to high international standards and to promoting ethical business practices. It is committed to the detection, deterrence and prevention of bribery. The Government does not, and will not pay bribes or offer improper inducements to anyone for any purpose; nor does it, or will it, accept bribes or improper inducements.

This Policy, which has been developed by the Office of Human Resources, Cabinet Office, has been subject to local consultation with appropriate trade unions and professional associations and is endorsed by the Council of Ministers.

The Policy comes into effect on 1 September 2016.

Hon Allan Bell MHK
Chief Minister

Executive Summary

1. Background

The Bribery Act 2013 came into force in December 2013. Replacing the Corruption Act 2008, it was developed to combat bribery in both the public and private sectors and is intended to compliment and strengthen existing anti-corruption regulatory regimes.

2. Key Points of the Bribery Act 2013

There are four key offences under the Bribery Act:

- i. Offering/promising/giving of a bribe;
- ii. Agreeing to/receiving/accepting a financial or other bribe;
- iii. Bribery of a foreign public official;
- iv. Failure of an organisation to prevent a bribe being paid for or on its behalf.

Of significance within the Act is the introduction of a 'corporate offence' whereby employers will be liable to criminal prosecution for the action of employees involved in bribery, whether or not they were aware of it, unless they can show that they had adequate measures in place to prevent bribery happening.

3. Risk

Non adherence to the requirements of the Bribery Act 2013, whereby the Isle of Man Government commits a 'corporate offence,' could result in both financial loss and reputational damage to the Government.

4. Mitigation

The only defence available for the organisation is to show that it has 'Adequate Procedures' in place to prevent bribery. The Act acknowledges that each organisation's response to the Act will need to be commensurate with its risk of exposure to bribery.

The Anti-Bribery Policy provides a response by the Isle of Man Government to the Bribery Act 2013. It defines bribery and clarifies the concept of 'Adequate Procedures.' The Policy is designed to foster a culture within the Isle of Man Government in which bribery is never acceptable. This will rely on top level commitment and ensuring that the Policy is embedded and understood throughout the Isle of Man Government at all levels.

5. Responsibility and Procedure

The Policy sets out a summary of statutory obligations of certain public officials to report bribery as well as the penalties both for failing to report bribery as well as for being convicted of bribery.

The prevention, detection and reporting of bribery is the responsibility of all those working for the Isle of Man Government or under its control. All members of staff are required to avoid activity that breaches this Policy, which sets out a safe, confidential procedure to follow to report any suspicious activity. The Policy highlights the need for bribery to be reported externally (to the Police) as well as via the internal measures set out within the Whistleblowing Policy. A flowchart is included to illustrate the procedure when considering and reporting a suspected instance of bribery.

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Anti-Bribery Policy and Procedure

1. Policy Statement

Bribery is a criminal offence. The Isle of Man Government has zero-tolerance towards bribery and is committed to the prevention, deterrence and detection of bribery. The Isle of Man Government does not, and will not, pay or accept bribes or offer or accept improper inducements to or from anyone for any purpose. The use of a third party as a means to channel bribes to others is a criminal offence. The Isle of Man Government does not, and will not, engage indirectly in or otherwise encourage bribery.

2. Aims and Objectives

This Policy aims to:

- i. Provide a coherent and consistent framework to enable Government staff to understand and implement procedures to enable compliance with the law;
- ii. Enable members of staff to identify and effectively report a potential breach, in conjunction with related policies and key documents.

The Government requires that all members of staff and those with whom it deals:

- i. Act honestly and with integrity at all times;
- ii. Safeguard Government's resources and good reputation;
- iii. Comply with the spirit, as well as the letter, of the laws and regulations of all jurisdictions in which Government operates, in respect of the lawful and responsible conduct of activities.

3. Scope

This Policy applies to all in the employment of any Statutory Board, Government Department or Office (all hereinafter referred to as "the Government"), whether full-time, part-time, temporary, casual or agency workers, volunteers, consultants or contractors, agents, Office Holders, Public appointees and Members of Tynwald. Reference to 'member(s) of staff' within this document encompasses all of the above.

The Policy applies to all of Government's activities and to all suppliers to Government of goods or services.

The Clerk of Tynwald's Office is not part of the Government, but has agreed that this Policy will be applied in that Office as if it were. References to the Government should therefore be taken to be, in so far as the Clerk of Tynwald's Office is concerned, the Tynwald Management Committee.

The responsibility to control the risk of bribery occurring resides at all levels throughout Government and everyone within the scope of this Policy should be aware of its contents.

4. Government's Commitment to Action

Government commits to:

- i. Setting out a clear Anti-Bribery Policy and keeping it up to date;
- ii. Making all members of staff aware of their responsibilities to adhere strictly to this Policy at all times;

- iii. Training staff so that they can recognise and avoid the use of bribery by themselves and others;
- iv. Encouraging staff to be vigilant and to report any suspicions of bribery, providing them with suitable channels of communication and ensuring sensitive information is treated appropriately;
- v. Rigorously investigating instances of alleged bribery and assisting police and other appropriate authorities in any resultant prosecution;
- vi. Taking firm and vigorous action against any individuals involved in bribery;
- vii. Providing information to all staff about how to report breaches and suspected breaches of this Policy;
- viii. Include appropriate clauses in contract documents to prevent bribery.

5. What is Bribery?

Bribery is an inducement or reward offered, promised or provided to gain personal, commercial, regulatory or contractual advantage.

6. What is Corruption?

Corruption is wrongdoing on the part of an authority or individual through means that are dishonest, fraudulent or immoral; it may involve the use of a position of trust for dishonest gain. Corruption often results from patronage¹ and is associated with bribery.

7. The Bribery Act 2013² highlights four key offences:

- i. Bribery of another person (Section 7)
- ii. Accepting a bribe (Section 8)
- iii. Bribing a foreign public official (Section 9)
- iv. Failing to prevent bribery (Section 10)

The Bribery Act 2013 makes it an offence to offer, promise or give a bribe. It also makes it an offence to request, agree to receive, or accept a bribe. Section 9 of the Act creates a separate offence of bribing a foreign public official with the intention of obtaining or retaining business or an advantage in the conduct of business.

There is also a corporate offence under Section 10 of failure by a commercial organisation³ to prevent bribery that is intended to obtain or retain business, or an advantage in the conduct of business for the organisation.

An organisation will have a defence to this corporate offence if it can show that it had in place **adequate procedures** designed to prevent bribery by or of persons associated with the organisation.

¹ Patronage is the support, encouragement, privilege or financial aid that an organisation or individual bestows to another

² http://www.legislation.gov.im/cms/images/LEGISLATION/PRINCIPAL/2013/2013-0007/BriberyAct2013_1.pdf

³ For the purposes of the Bribery Act, The Isle of Man Government is considered to be a commercial organization (See 8).

8. Are we a “Commercial Organisation”?

Only a “relevant commercial organisation” can commit an offence under section 10 of the Bribery Act 2013. A “commercial organisation (defined in Section 10.5 of the Act) is a body or partnership incorporated or formed in the Island and “...it does not matter if it pursues primarily charitable or educational aims or purely public functions. It will be caught if it engages in commercial activities, irrespective of the purpose for which profits are made.”⁴ The Departments of Government are each also bodies corporate under seal.

The Isle of Man Government is therefore a “commercial organisation.”

9. What are “Adequate Procedures”?

Adequate procedures need to be applied proportionately, based on the level of risk of bribery in the organisation. It is recommended that individual organisations determine proportionate procedures.

The Isle of Man Government is committed to proportional implementation of the following six principles:

9.1 Proportionate Procedures

Government’s procedures to prevent bribery by persons associated with it are proportionate to the bribery risks it faces and to the nature, scale and complexity of its activities. They are intended to be clear, practical, accessible, effectively implemented and enforced.

9.2 Top Level Commitment

The commitment to preventing bribery by persons associated with it is undertaken at the highest level within the Isle of Man Government, which seeks to foster a culture within the organisation in which bribery is never acceptable.

9.3 Risk Assessment

The nature and extent of Government’s exposure to potential external and internal risks of bribery on its behalf by persons associated with it is assessed. The assessment is periodic, informed and documented.

9.4 Due Diligence

Government takes a proportionate and risk based approach, in respect of persons who perform or will perform services for or on its behalf in order to mitigate identified bribery risks.

9.5 Communication (including training)

Government seeks to ensure that its bribery prevention policies and procedures are embedded and understood throughout the organisation through internal and external communication, including training that is proportionate to the risks it faces.

9.6 Monitoring and Review

This Policy has been drawn up in consultation with other employing authorities and staff organisations and will be monitored and reviewed as and when necessary.

⁴ [The Bribery Act 2013 Guidance](#)

10. Statutory Obligations

10.1 Duty of certain public officials to report bribery

In terms of Section 13 of the Bribery Act 2013, "a person exercising a function on behalf of a public body⁵ who:

- i. is offered or receives an advantage in circumstances which may constitute an offence under this Act must disclose as soon as reasonably practicable and in the prescribed manner⁶:
 - a. the existence and nature of the advantage, or the offer of it; and
 - b. the name, if known, of the person by whom it was given or procured or offered or who agreed to give or procure it.
- ii. knows or reasonably suspects, or ought reasonably to have known or reasonably to have suspected, that a person has committed, is committing or is about to commit an offence under this Act must disclose, as soon as reasonably practicable and in the prescribed manner, that knowledge or suspicion, and the information on which it is based, or cause such knowledge or suspicion to be so disclosed."

10.2 Failure to report bribery

- i. Section 14 of the Bribery Act 2013 states that a person who fails to comply with Section 13 commits an offence.
- ii. It is a defence for a person charged with an offence under Section 13 subsection (1) to prove that the person reasonably believed that if the required disclosure had been made, serious physical harm would be done to that person, to another person or to the property of either such person.

11. Penalties with regard to bribery

11.1 A person guilty of an offence under section 7, 8 or 9 of the Bribery Act 2013 is liable:

- i. On summary conviction, to custody for a maximum term of 12 months or to a fine not exceeding £10,000, or to both;
- ii. On conviction on information, to custody for a maximum of 10 years, or to a fine, or to both.

11.2 A person guilty of an offence under section 10 is liable on conviction on information to a fine.

11.3 A person guilty of an offence under section 14 or 15 is liable:

- i. On summary conviction, to custody for a term not exceeding 6 months or a fine not exceeding £5,000 or to both;

⁵ This excludes a foreign public official

⁶ This means: i. to a Constable in the Isle of Man Constabulary Economic Crime Unit; or ii. where the employer of the person exercising the function on behalf of a public body has established a procedure for that person to make disclosures of the kind mentioned in subsections (1) or (2), in accordance with that procedure, **and** to a Constable in the Isle of Man Constabulary Economic Crime Unit.

- ii. On conviction on information, to custody for a term not exceeding 2 years, or to a fine, or to both.

12. Bribery is not tolerated

It is unacceptable to:

- 12.1 Give, promise to give, or offer payment, gift or hospitality with an expectation or hope that a business advantage will be received, or to reward a business advantage already given;
- 12.2 Give, promise to give, or offer a payment, gift or hospitality to a government official, agent or representative to 'facilitate' or expedite a routine procedure;
- 12.3 Accept payment from a third party that you know or suspect is offered with the expectation that it will obtain a business advantage for them;
- 12.4 Accept a gift or hospitality from a third party if you know or suspect that it is offered or provided with an expectation that a business advantage will be provided by us in return;
- 12.5 Retaliate against or threaten a person who has refused to commit a bribery offence or who has raised concerns under this Policy;
- 12.6 Engage in activity in breach of this Policy.

13. Facilitation payments

Facilitation payments are not tolerated and are illegal. Facilitation payments are unofficial payments made to public officials in order to secure or expedite actions. This, for example, includes customs officers.

14. Gifts and hospitality

For clarification of the Isle of Man Government policy regarding Gifts, please refer to [FD A3 'The Acceptance of Gifts and Rewards'](#) and [FN A.02 'Gifts & Rewards'](#) in the Financial Regulations. The ['Bribery Act 2013 Guidance'](#) published by the Department of Home Affairs also offers useful advice and examples in this regard.

It is not the intention of the policy to prevent the following activities:

- Normal and appropriate hospitality
- The giving and receiving of ceremonial gifts.

Such hospitality or gifts must be in moderation and should also be proportionate to the type of business being conducted, and should not place any expectation on the recipient to reciprocate either in like or by performing, or failing to perform, any other task in return.

15. Staff responsibility

The prevention, detection and reporting of bribery and other forms of corruption are the responsibility of all those working for the organisation or under its control. All staff and members are required to avoid activity that breaches this Policy.

You must:

- i. Ensure that you read, understand and comply with this Policy;
- ii. Raise concerns as soon as possible if you believe or suspect that a conflict with this Policy has occurred, or may occur in the future.

You should:

- i. Report any concerns to your Manager/ Designated Officer/ Audit Advisory Division and to a Constable in the IOM Constabulary Economic Crime Unit;
- ii. Note all relevant details, what was said, dates, times and names of parties involved
- iii. Keep a record or copy of documents that aroused your suspicion.

You should not:

- i. Confront the individual with your suspicions;
- ii. Try to investigate the matter yourself;
- iii. Convey your suspicions to anyone other than those with proper authority to investigate;
- iv. Do nothing.

As well as the possibility of civil and criminal prosecution under the Bribery Act 2013, staff and members that breach this Policy will face disciplinary action, which could result in dismissal for gross misconduct.

The Bribery Act 2013 Guidance, published by the Department of Home Affairs, is formulated around six guiding principles set out above, each followed by commentary and examples in that Guidance.

16. How to raise your concerns

- 16.1 Government is committed to ensuring that all of us have a safe, reliable and confidential procedure to report any suspicious activity. Every member of staff should know how they can raise concerns. We all have a responsibility to help detect, prevent and report instances of bribery. If you have a concern regarding a suspected instance of bribery please speak up – your information and assistance will help. There are a number of channels to help you raise concerns. Please refer to the Confidential Reporting ([Whistleblowing](#)) Policy to determine the most appropriate course of action.
- 16.2 Staff who refuse to accept or offer a bribe, or those who raise concerns or report wrongdoing may, understandably, be worried about possible repercussions. The Isle of Man Government aims to encourage openness and will support anyone who raises a genuine concern in good faith under this Policy, even if they turn out to be mistaken. Government is committed to ensuring nobody suffers detrimental treatment through refusing to take part in bribery or corruption, or because of reporting a concern in good faith.
- 16.3 An officer of your Board, Department or Office has been appointed to act as a Designated Officer under the Whistleblowing Policy and it is to that officer that you should refer your concerns. If you do not know who your Designated Officer is, a list can be found on the [Government Intranet Whistle Blowing and Designated Officers](#) site. Alternatively, if you do not have access to the Intranet, please call the Audit Advisory Division, Treasury, on the Confidential Reporting telephone line 686546 or email enquiries.audit@gov.im. Your query will be dealt with on a confidential basis and you will be directed to your Designated Officer. You are

encouraged to disclose your name to the Designated Officer whenever possible; however, concerns can be raised anonymously.

- 16.4 In the event that an incident of bribery is reported in terms of Section 13 of the Bribery Act 2013, it needs to be reported to a Constable in the Isle of Man Constabulary Economic Crime Unit on +44 01624 631313 (ask for a Police Officer within the team) as well as to the Designated Officer. When reporting a suspected incidence of bribery, you may wish to request that the Designated Officer reports the matter to the Constabulary on your behalf or supports you with such report. Reporting the incident to the Designated Officer does not absolve your personal liability to make the report to the Constabulary pursuant to Section 13, so if the Designated Officer reports on your behalf, this should be done by telephone or in person by the Designated Officer, in your presence.
- 16.5 The Designated Officer and the Constable in the Economic Crime Unit should liaise at an early stage to reach an agreed assessment of the information known at that time. This will inform any subsequent action, identify primacy and ensure all actions taken are legal in an investigatory sense and in compliance with staff's rights.
- 16.6 If you are considering raising a concern and require further advice you may contact the Manx Industrial Relations Service which is independent and impartial. The Service is available to any individual or organisation free of charge and can be contacted by telephone on 672942 (fax 687050) or by email at iro@mirs.org.im
- 16.7 Alternatively you may seek advice from the UK independent charitable body "Public Concern at Work". This organisation operates a helpline and can be contacted by telephone on 0207 404 6609 or by email at helpline@pcaw.co.uk Public Concern at Work will give free, independent, confidential advice at any stage of the process, but may not be familiar with Isle of Man legislation or our governmental system.

17. Other relevant Legislation, Policies, Procedures, Codes and Regulations

(Note, in relation to the Isle of Man Financial Regulations 2019, FD relates to Financial Direction and FPN relates to Financial Practice Note).

[Acceptance of gifts and rewards \(FD A3\)](#)

[Acceptance of gifts, hospitality and travel See 2.30 and 6.35 in Government Code](#)

[Anti-Fraud and Corruption Strategy](#)

[Asset Management and Disposal \(FD D3 and F4\)](#)

[Bribery Act 2013](#)

[Bribery Act 2013 Guidance about procedures which relevant commercial organisations can put into place to prevent persons associated with them from bribing](#)

[Bribery Awareness Briefing - 2014](#)

[A Brief Guide to Whistleblowing December 2016](#)

[CIPFA Model Anti Bribery Policy and Procedures](#)

[Civil Service Regulations](#)

[Civil Service Code](#)

[Code of Conduct](#)

[Code of Conduct for Public Servants](#)

[Code of Practice on Disciplinary and Grievance Procedures](#)

[Commitment to Combating Money Laundering and the Financing of Terrorism & Proliferation](#)

[Conflicts of Interest](#) See 6.28 Government Code

[Conflicts of Interest: Staff Guidance Note April 2007](#)

[Criminal Proceedings \(CS Regs\)](#)

[Data Protection Act 2018](#)

[Data Protection \(Application of GDPR\) Order 2018](#)

[Disciplinary Procedures](#) See relevant Ts & Cs

[Employment Act 2006](#) (Part IV 'Protected Disclosures' and 'Detriment' Part V

[Financial Regulations](#)

[Government Code](#)

[Guidance for Public Servants participating in political activities and standing for election](#)

[Land Acquisition and Disposal \(FD F4.6\)](#)

[Official Orders for Goods and Services \(FD C8 – C114\)](#)

[Official Secrets Act Form](#)

[Payment of Invoices \(FD C1 – C14\)](#)

[Procurement and Tender \(FPN C.08\)](#)

[The Public Interest Disclosure \(Prescribed Persons\) Order 2007](#)

[Register of Members' Interests Rules](#)

[Suspected Irregularity Reporting Guidelines](#) (FD A04)

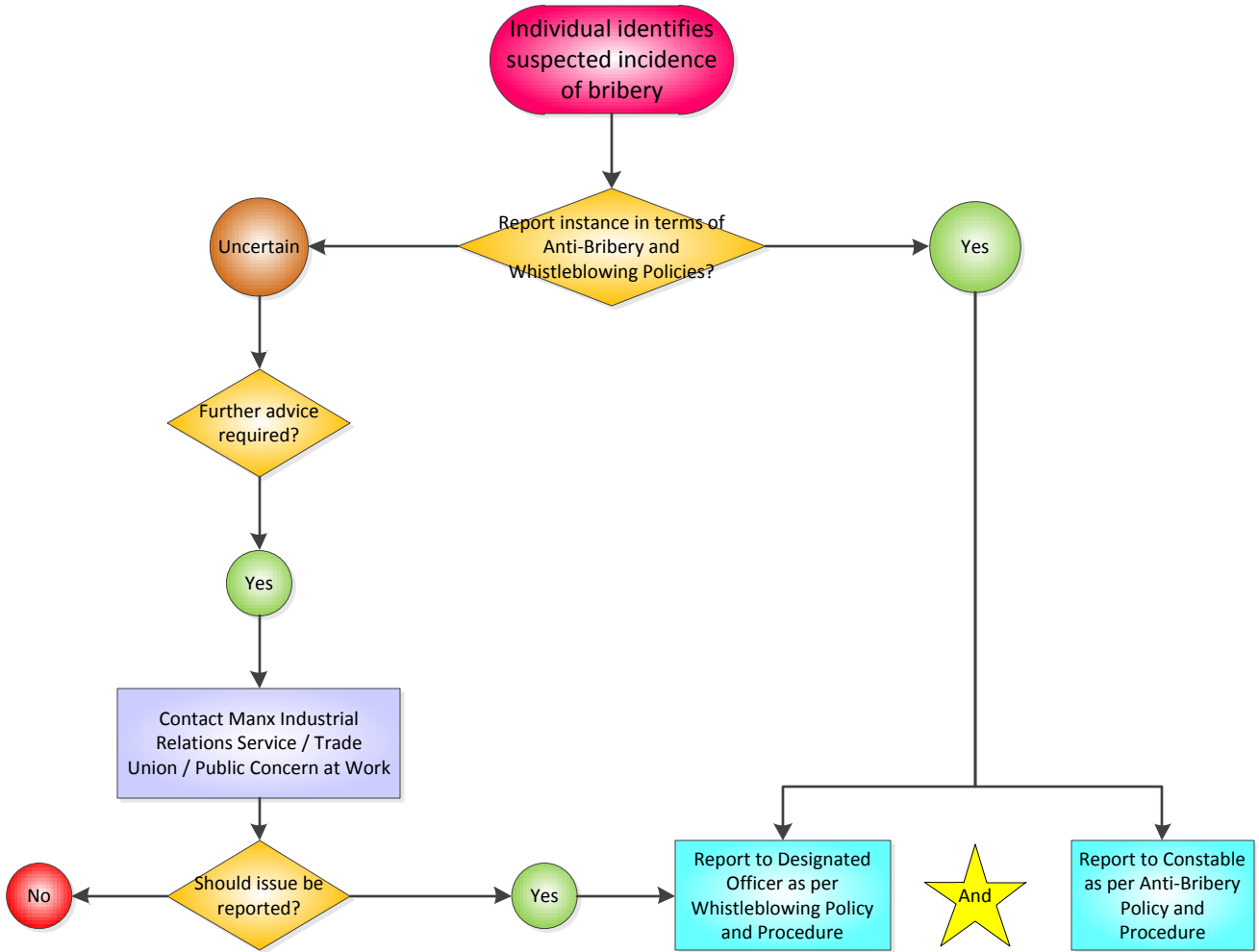
[Whistleblowing Policy and Procedures](#)

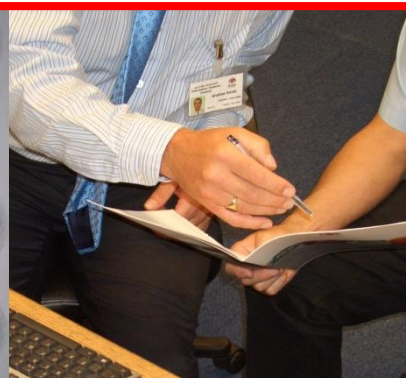
18. Legislation Relevant to Protected Disclosures	
Bribery Act 2013	<p>There is a duty on persons who exercise a function or perform services on behalf of a public body to report bribery or attempted bribery. The legislation applies to all officers at all levels of Government.</p> <p>The terms of this Act overrule confidentiality terms in contracts or agreements of employment that seek to prevent workers from making protected disclosures.</p>
Employment Act 2006	<p>Protected Disclosure:</p> <ul style="list-style-type: none"> • A protected disclosure is one made in the reasonable belief by the worker that a criminal offence has been or will be committed, in good faith to an employer or prescribed person pursuant to sections 51-56 of the Employment Act 2006 or • For example one made in accordance with the Bribery Act 2013 (section 13(1) and (2))
Income Tax Act 1970	<p>You do not have to keep information confidential:</p> <ul style="list-style-type: none"> • If the disclosure is required or authorised by any statutory provision (including a provision in this Act); • If the disclosure is made in the prescribed manner under section 13 of the Bribery Act 2013
Data Protection Act 2002	<p>Confidentiality:</p> <ul style="list-style-type: none"> • Information is lawfully disclosed if it is made for the purposes of civil or criminal proceedings, is in the public interest and is necessary for the discharge of functions under the Act. <p>Crime and Taxation:</p> <ul style="list-style-type: none"> • You can disclose or process personal data processed for the prevention and detection of crime.
Council of Ministers Act 1990	<p>Proceedings of Council of Ministers shall be confidential unless leave given by Chief Minister to divulge information regarding anything done or said in Council.</p>
Financial Regulations	<p>FD A3 and FN A.02– Gifts and Rewards:</p> <p>No Minister, Member or Officer of a designated body may accept, directly or indirectly, any gift, reward, hospitality or benefit from any member of the public or organisation with whom they are brought into contact by reason of his official duties unless it is in accordance with FPN A.02: Gifts & Rewards. Exemption from Financial Direction A 3.1 may be approved by the Accountable Officer, providing that it is in accordance with FPN A.01: Obtaining Approval for Exemptions.</p>

	<p>FD A4 – Financial Irregularities</p> <p>Any officer must notify their Accountable Officer immediately of all financial or accounting irregularities or suspected irregularities or of any circumstances which may suggest the possibility of irregularities (particularly those affecting cash, stores, property, remuneration or allowances). In such circumstances FPN A.03: Financial Irregularities must be adhered to.</p> <p>Exemption from Financial Direction A 4.1 may be approved by the Director of Audit Advisory, providing that it is in accordance with FPN A.01: Obtaining Approval for Exemptions.</p>
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19. Flowchart to Illustrate Anti-Bribery Procedure

Note:
If a concern involves a suspected financial irregularity this should be reported to the Director of Audit Advisory Division or Fraud Liaison Officer as per FPN A.03





This document can be provided in large print or audio tape on request

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