

# 11 Anti-Bribery

EY Brazil – Anti-Bribery Policy

## 1. Administrative Provisions

Released to: All EY Brazil Professionals

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Issuer: EY Brazil Ethics and Compliance Committee (CEC)

## 2. Executive summary

This Global Policy is in line with the provisions of the EY Global Code of Conduct and the new provisions introduced in the Brazilian legal system by Law No. 12846/2013, which determines the prohibition of bribery in all its forms, including facilitating payments and bid rigging.

This Policy identifies our obligation to comply with anti-bribery laws, provides a broader definition of bribery, and identifies the responsibilities for disclosing any potential bribery-related situations involving EY and its Professionals, both actively and passively, as well as what we should do when we identify a bribe at our clients.

The Ethics and Compliance Committee is hereby established to operate as provided for in its own Internal Regulation, and it shall be responsible for any actions relating to compliance with this Policy.

Law No. provides for the (administrative and civil) strict liability of legal entities for any acts against the Public Administration, either domestic or foreign, committed by their representatives. Strict liability is the one that arises from tort or violation of the right of others that, in order to be proven and questioned in court, does not depend on the investigation of fault, or the degree of involvement, of the agent causing the damage.

Bribery is the promise, offer or payment of any sum of money or any other favors for a public official or a representative of the private sector to cease to behave ethically in performing his(her) professional duties.

Bribery is a crime in most countries where EY operates. Bribery exposes EY and its Professionals to the risk of prosecution, administrative sanctions, fines and imprisonment. Failure by EY Professionals, or anyone who works on behalf of EY, to implement correct procedures to prevent bribery, regardless of where the bribery takes place, exposes EY to the risk of fines and exclusion from certain contracts with the Government. It also exposes EY to a significant damage to its reputation. Additionally, many clients request that EY confirm the adoption of appropriate procedures to prevent any bribery or facilitating payments during projects.

This Policy applies to all EY Professionals and their activities in the public and private sectors, both domestically and globally, as well as to EY's suppliers and service providers.

EY undertakes to take appropriate action against bribery and corruption, which includes submitting the fact to the government department responsible for investigating it, the regulatory agency or the police; taking internal disciplinary action against the Professionals involved; and/or terminating contracts with third parties.

All EY Professionals, including those in the administrative function, as well as Partners and Directors, and other Professionals who provide services to clients, shall confirm annually that they understand and comply with this Policy and the determinations of Law No. 12846/2013.

EY Professionals will also comply with the Global Procurement Policy, the Global Business Relationship Policy, and the Gifts and Business Courtesies Policy. The Gifts and Business Courtesies Policy may be helpful in identifying the circumstances in which a gift or courtesy may be accepted and does not constitute bribery. The interpretation and application of these Policies will be literal, and the Ethics and Compliance Committee is responsible for clarifying any doubts.

This Policy is applicable to all EY Professionals, including its Partners, Directors and other Professionals, as well as EY's suppliers.

Law No. 12846/2013 defines as an illegal act against the Government, in addition to bribery, any activities seen as undermining Public Bidding processes. This topic will also be addressed in this Policy.

### 3. Application and objectives

EY Professionals must not offer or accept bribes. The offering, payment, giving, soliciting or acceptance of bribes in any form, either directly or indirectly, is prohibited.

Bribery includes facilitating payments, i.e. the act of seeking facilitation by means that are neither expressly permitted nor duly regulated by law, by EY Professionals while conducting the firm's business.

EY Professionals may not give money or anything of value (goods, service or facilitation) to any person in the Public or Private Sectors, even if it has not been requested as a bribe, if the circumstances indicate that it is probable that all or a part of the money or anything of value is given to another individual in order to influence an action of public officials or to gain business advantage.

Any EY professional from whom a bribe is requested should immediately report this issue to the Ethics and Compliance Committee ([comite.etica-conformidade@br.ey.com](mailto:comite.etica-conformidade@br.ey.com)), the EY Legal Department or the EY Ethics Hotline ([www.eyethics.com](http://www.eyethics.com)).

This Policy applies to all EY activities and all EY Professionals. We point out that we must comply with all applicable laws, regulations and standards while conducting our professional activities.

4. The definitions that should be considered in this Policy

4.1 Bribery - Definition

"Bribery" means offering, promising, giving, receiving, soliciting or accepting a financial or other advantage, or any other thing of value, where the intention is to influence how a person in a position of trust performs public, commercial or legal roles, as well as makes his(her) decisions. Bribery includes any attempt to engage in any of the above-mentioned activities.

Bribery is prohibited and is considered a crime worldwide and could expose EY and its Professionals to substantial fines, and even to imprisonment and termination of business activities.

While the precise definition of bribery and the scope of the prohibitions may vary from country to country, we operate in an environment where EY Professionals often work in other jurisdictions and in teams in multiple jurisdictions, or where they might relocate or be seconded to a member firm in another country. The application of anti-bribery legislation is also becoming increasingly global. Accordingly, our work could expose us to the laws of more than one country. Law No. 12846/2013 reaches government agencies in and out of Brazil. Therefore, any act will be subject to the law even if it conducted outside the Brazilian borders.

The laws of many countries focus on bribery of public or government authorities and define these terms very broadly. A public or government authority means any minister, elected or appointed authority (e.g., a public official of the Judiciary, Legislative or Executive Branches), political appointees, public servants, as well as a candidate for a public office and members of the military, border or police forces). It could also mean a board member, executive director or employee of any state-owned enterprise or non-governmental organization; individuals working for the private sector and politically exposed persons linked to any of the previously mentioned persons will also be

included in this legal definition, including family members and relatives. However, bribery may also occur in the private sector, which is also prohibited by this Policy.

#### 4.2 Facilitating payment - Definition

A "facilitating payment" is the sum of money paid to someone, regardless of the amount, as a way of ensuring that he/she performs a service, either promptly or not at all, provided that such payment is neither legal nor regulated. Common examples could be payments of small amounts to facilitate routine government action, or for authorities to speed up a customs check or visa application. Facilitating payments are considered bribery and are, therefore, prohibited by this Policy.

#### 4.3 Bidding – Definition

Bidding is the manner by which the Public Administration seeks to take the best proposal at the lowest price, subject to the constitutional principles of morality, impartiality, equal treatment and opportunities that allow a healthy competition between companies interested in providing services to the Public Administration.

Thus, it is expressly forbidden to:

- a) thwart or defraud, by means of an adjustment, arrangement or any other expedient, the competitive nature of a public bidding procedure;
- b) prevent, disturb or defraud any public bidding procedure;
- c) remove or seek to remove a bidder, by means of fraud or by offering any advantage of any kind;
- d) defraud public bidding or a contract arising therefrom;
- e) create, either fraudulently or irregularly, a legal entity to participate in a public bidding or to enter into an administrative arrangement;
- f) fraudulently obtain undue advantage or benefit from an amendment to or extension of contracts entered into with the public administration, without authorization under the law, or under the notice of public bidding or under the respective contractual instruments; or
- g) manipulate or defraud the economic-financial balance of the contracts entered into with the public administration.

#### 4.4 Exception to compliance with this Policy

EY Professionals will not be in breach of this Policy in respect of any payment made for reasons of personal safety and security.

Whenever possible, any such payment can be made after consulting EY Brazil's legal advisors. Where not possible, such payment shall be reported subsequently (see Section 8).

This exception does not rule out the legal implications of the act committed.

#### 5. Scope of Law No. 12846/2013

Law No. 12846/2013 affects all who are in contact with the Government and its Officials, both Domestic and Foreign, whether through a Bidding Procedure or not. Article 5 of that law describes what could be considered tort against the public administration, which would be subject to sanction. These aspects are addressed in this Policy. That Law goes beyond territorial limits and shall be applied even to any act involving a foreign public official that could be defined as the person who, even temporarily or without compensation, holds an office, job or position in government agencies or entities, or in a diplomatic mission of a foreign country, as well as in legal entities controlled, either directly or indirectly, by the government of a foreign country, or in international governmental organizations.

It should be noted that Law No. 12846/2013 includes undue interference in government biddings, including an attempt to stir the bidding, and such action is prohibited under any circumstances.

#### 6. Books and records

EY adopts the Policy of maintaining records that accurately and correctly reflect all transactions. In preparing EY documents or records, EY Professionals shall follow all internal controls, practices and procedures, as well as the standards and practices applicable to the disclosure of financial information.

False, misleading or artificial entries should not be made in any way, including the concealment of the purpose or nature of payments, gifts or representation expenses – either given or received. Such artificial entries cannot include posting inappropriate payments under generic or false line items or nomenclatures, e.g. payment of commission, business development charges, or processing fees, recording them as a legitimate expense, when in fact they are not.

An artificial entry could also include incorporating an inappropriate payment into other costs, increasing the amount recorded, or not explaining a particular amount paid or received.

#### 7. Third-party due diligence

In order to protect EY against the risk of bribes or acts that violate Law No. 12846/2013, EY Professionals shall be responsible for, when engaging representatives, advisors or third parties to act

on behalf of EY, conducting proper due diligence process to satisfactorily verify that our arrangements for payment of commissions or fees will not be used for bribery or illegal purposes.

EY Professionals shall also take the necessary measures to obtain reasonable assurance that the representatives, advisors and other third parties that will act on behalf of EY understand and comply with EY's Anti-Bribery Policy and Law No. 12846/2013.

Additional guidance on our relationship with third parties, our Code of Conduct and other applicable Policies can be found in the supplementary materials available on specific bases.

## 8. Consultation and disclosure of Bribery cases

EY Professionals should express/report their concerns about any issues or suspicions of bribery, whenever they:

§ suspect that any other EY Professional or any other Professional acting for EY or on behalf of EY may have resorted to a conduct prohibited by this Policy;

§ receive inappropriate requests or offers involving payments that constitute a breach of this Policy, even if such requests or offers come from their superiors.

The Professional should contact the Ethics and Compliance Committee and/or EY Brazil's legal advisor. The EY Ethics Hotline may also be used to report a conduct that is inconsistent with this Policy.

No EY Professionals will be penalized for reporting, in good faith, a suspected misconduct, even if, eventually, their allegation is not confirmed.

8.1 EY's service line policies and methodologies include processes for reporting cases of illegal activity identified at a client. For further instructions, please refer to the EY Service Line guidelines, where applicable.

8.2 The Global Code of Conduct contains more information on where EY Professionals could obtain advice and guidance.

## 9. Description - Acts Considered Illegal

Illegal acts against the Public Administration, either domestic or foreign, are any acts of legal entities and their Professionals that may harm the national or foreign public treasury, go against the principles of public administration or against international commitments assumed by Brazil, defined as follows:

Active corruption – promising, offering or giving, either directly or indirectly, undue advantage to a public official, or a third party related thereto.

Financing illegal acts against the Public Administration – finance, fund, sponsor or in any way support any illegal acts provided for by Law No. 12846/2013.

Use a representative in an illegal act – use a representative, either an individual or a legal entity, to conceal or disguise their actual interests or the identity of the beneficiaries of the acts committed.

Illegal acts relating to bids and contracts – with regard to bids and administrative contracts, there should be greater attention on the part of all Professionals, including Partners, other Professionals and service providers as regards their involvement in bidding procedures.

Hinder the investigation or inspection by the Public Administration or interfere in its activities – to hinder investigations or inspections conducted by public bodies, entities or officials, or interfere in their activities, including in the context of regulatory agencies and oversight authorities of Brazil's national financial system.

#### 10. Disciplinary measures/sanctions

All EY Brazil Professionals (including service providers) are subject to the content of this policy. Failure to comply with this policy may result in penalties.

The EY/Ethics Hotline is a tool provided by EY for our Professionals and third parties to report behaviors that violate or appear to violate the EY Global Code of Conduct and its policies. It is a secure, confidential line available 24 hours a day, 7 days a week, in several languages. Learn more by visiting the EY/Ethics Hotline website here ([www.eyethics.com](http://www.eyethics.com)), from your computer or smartphone.

#### 11. Responsibility for the policy

The EY Brazil Ethics and Compliance Committee is responsible for preparing, reviewing and implementing this policy.

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Sign-offs	Alexandre Hoepfers