



**FAIR COMPETITION AND COMPETITION LAW COMPLIANCE IS A CORE GOVERNANCE AND ETHICAL REQUIREMENT OF AFAN GROUP BUSINESS.**

**Notes and Instructions**

This Fair Competition and Competition Law Compliance briefing is intended for all Relevant

Employees namely:

- All Directors
- All Partnering Directors/Managers
- All Commercial Directors/Managers
- All employees engaged in new business, bid or contract negotiation or management and procurement, including central resources and those within clusters/subsidiaries.

This sets out Afan Group's policy on fair competition and competition law compliance. It

is intended to assist Relevant Employees in understanding and complying with the Company's policy and with the law. The briefing will be provided in hard copy to all Relevant Employees in accordance with the instructions below.

Our HR Department will ensure that this briefing (or any update) is included in the induction information provided to employees promoted or transferred into a position outlined above and to new employees who join the business in the same or a similar capacity.

**Framework of Responsibilities**

- The Board has overall responsibility for monitoring compliance and shall periodically review and update the Company's Fair Competition policy, the need for updated legal guidance and training and the need to implement additional measures to ensure compliance with the fair competition policy and competition law into the business.
- All levels of management shall be responsible for supporting the policy and ensuring so far as possible that anti-competitive practices do not occur within the operational areas for which they have accountability.

- Each individual is responsible for conducting business on behalf of Afan Group in accordance with the letter and spirit of the Company's Fair Competition policy, the law and the guidance provided.
- The HR Dept., is responsible for maintaining a record of annual compliance certification for all relevant employees including for new employees where applicable.

## **FAIR COMPETITION POLICY AND GUIDANCE**

### **Fair Competition Policy**

Afan Group acknowledges the social and economic importance of fair and open competition in the markets which it serves. It is the Company's policy to conduct its operations in a way which supports fair and open competition and complies with competition law. Pursuant to this policy the Board undertakes to the Company's stakeholders including its investors, public sector clients, customers and employees to maintain all reasonably practicable and proportionate compliance measures to prevent anti-competitive practices arising in any of the Company's businesses.

### **Chairman's Statement**

The importance of maintaining fair competition in all areas of our business cannot be underestimated. The consequences of anti-competitive or unfair practices which restrict or distort competition are wide ranging and include the destabilisation of economic markets and for the companies and individuals involved, significant fines and prison sentences. In many legal jurisdictions, including the United Kingdom, anti-competitive practices such as price fixing or market sharing agreements and bid rigging are rightly regarded as serious Criminal Offences.

The company's policy and the guidance which follows are for your benefit.

The Board of Afan Group has adopted a Fair Competition Policy and has resolved to maintain additional measures to assist all employees engaged in new business, contract negotiation and management to comply with the Company's policy and with the law. These measures include:

Written Guidance, Periodic Training and Annual Compliance Certification.

Together with effective Health, Safety and Environmental management, operating ethical business practices including compliance with competition law is central to the high standards required of all of the Company's businesses and employees. They are also fundamental to the Company's licence to operate, its position as a leading UK landscape contractor to the public sector, and the ability to bid for new contracts and to deliver sustainable growth and improvement.

Ethical business practice is both a collective and individual responsibility to be shared by all. Aside from the severe penalties that can be imposed by competition law on both companies and individuals alike, open and fair competition is overwhelmingly in the best interests of Afan Group, its customers, employees, other stakeholders and the wider economy. I ask you all to adhere to the letter and spirit of the Company's Fair Competition Policy and the guidance provided to you.

## **FAIR COMPETITION POLICY AND GUIDANCE**

### **Guidance**

#### (a) Introduction

This guidance supports the Company's Fair Competition policy. It provides a summary of the law and non-exhaustive examples of anti-competitive behaviour. The guidance also sets out the consequences for the business and individuals for breaching the law in this area.

Compliance best practice relies both on collective and individual responsibility and accountability and is of such importance to the continued success of Afan Group that the Company must make clear that any transgression of the policy or the law by any individual or group of individuals is likely to lead to disciplinary action for those involved.

Important Note: If you have been involved in or are otherwise aware of any anti-competitive practices within the business you are asked to notify the company secretary in confidence, so that appropriate legal advice can be taken.

Any employee who (i) is shown after 1st January 2009 to have engaged in anti-competitive practices (including without limitation bid rigging, cover pricing, or any agreement or understanding with a competitor which distorts terms, pricing or participation in respect of any contract or bid) prior to the issue of this policy or (ii) anyone who engages in such behaviour at any time after the issue of this policy will be liable to disciplinary action up-to and including dismissal from employment without compensation.

#### (b) Training

It is recognised that Competition Law can be a difficult and complex area.

To aid understanding of competition law a preliminary training session will be arranged for all Relevant Employees.

The need for additional training will be reviewed by the Board, periodically thereafter.

#### (c) Legal Guidance

All Relevant Employees should refuse to participate in and distance themselves from any conduct which is or may be viewed as anti-competitive or which could give rise to a suspicion that they or the company are colluding with competitors to fix prices, terms or conditions of bids or contracts, engage in cover pricing or bid-rigging or to share markets or any other similar anti-competitive practice or behaviour.

The following is a summary of the law, including potential penalties and a non-exhaustive list of examples of behaviour, which could constitute anti-competitive practices.

### **UK - Competition Law**

The Competition Act 1998 contains two broad prohibitions:

1 A prohibition on **anti-competitive agreements or concerted practices**, having as their object or effect the prevention, restriction or distortion of competition within the UK; and

2 A prohibition on any conduct on the part of one or more undertakings (companies), which amounts to the **abuse of a dominant position** in a market.

### **Bribery Act 2010**

The Bribery Act 2010 has introduced a new corporate offence: Failure of a commercial organisation to prevent bribery.

A commercial organisation is now guilty of bribery if they fail to prevent bribery occurring through the implementation of adequate procedures and awareness. This includes failing to prevent an associated person (e.g. an employee) from bribing another person with the intention of obtaining business or an advantage in the conduct of business.

This is a strict liability offence, of which the company's only defence will be to prove that they implemented an effective anti-competitive procedure in place.

The Afan Group Board regards ethical dealings as critical to the way the Company does business and takes sound business practice very seriously. Afan Group believes in carrying out business fairly, honestly and openly and expects all employees, partners, agents and contractors to adopt a high standard of business ethics. All directors and senior managers are fully committed to preventing bribery being committed by any employee, person or business that carries out work or performs services on behalf of the Company.

Afan Group has a zero tolerance of bribery and corruption and will not permit or condone any form of bribery regardless of whether it takes place directly or through third parties.

Bribery can lead to heavy fines against the company as well as personal liability for directors, senior managers and individuals who are directly or indirectly involved. In particular, if an employee, partner, agent or contractor bribes another person intending to obtain or retain business or any other advantage for the Company, Afan Group will itself have committed an offence unless it can prove that it has in place adequate procedures designed to prevent employees, partners, agents and contractors from committing bribery on its behalf.

This Policy Statement applies to associated persons of Afan Group and aims to set out the method of how we intend to limit our exposure to Bribery:

- Implementing stringent clear policies which are clearly advertised both internally and Externally
- Training all persons associated with the company to recognise and avoid the use of bribery by themselves and others.
- Encouraging all employees to report any act of bribery to their line manager who will record and investigate accordingly.
- Enforcing serious consequences for those who fail to adhere to this policy. Breach results in a disciplinary offence.

Afan Group Anti-Bribery Policy confirms our commitment to compliance with our legal obligations under the Bribery Act 2010.

The policy is supported by a number of other policies which govern specific activities where there is a greater risk of bribery.

### **Penalties/Consequences**

Penalties for Infringing Competition Law can be severe: Companies found to have infringed the Competition Act are liable to **a fine of up to 10% of entire turnover;**

Any company director implicated in a Competition Act infringement is liable to be **disqualified from acting as a company director for up to 15 years;**

It is a **criminal offence** under the Enterprise Act 2002 for any individual (regardless of their position within the business) to dishonestly engage in bid-rigging, price-fixing or customer/contract allocation agreements with competitors. This is punishable against the individuals involved by **a fine for which there is no prescribed maximum and/or a prison sentence of up to 5 years;**

As well as damaging the company's reputation, companies held to have been a party to a cartel, may be **excluded from future contracts.** This is particularly likely for companies such as Afan Group engaged in public sector contracts;

Customers and any other third parties who have suffered loss are entitled to bring **civil claims** against companies found to have infringed competition law. This may result in the **termination of existing contracts and/or damages claims** running to many hundreds of thousands of pounds or more.

### **Compliance**

Compliance is a shared responsibility. The Company and all Relevant Employees need to take all practicable measures to avoid anti-competitive behaviour or conduct arising within the business.

Also, if you suspect that any of Afan Group competitors, suppliers or other commercial partners are engaged in anti-competitive practices or behaviour affecting our business interests or the markets in which we operate, we may want to bring this to the attention of the OFT and/or take action ourselves to bring this to an end.

### **Prohibited Activity**

Anti-competitive conduct seldom takes the form of a clear written agreement to fix prices or rig bids. It generally takes the form of "understandings" between employees from competing businesses to engage in anti-competitive behaviour. For example, the following are likely to be regarded as evidence of anti-competitive behaviour:

- frequent, unexplained competitor contact particularly in a bid period with a competing bidder (where such contact takes place, the burden may be on you to prove that you did **not** take part in unlawful discussions);
- one or more emails, phone calls or discussions with a competitor confirming or reaching an agreement or understanding that you, or they, do not intend to bid for a contract or intend to withdraw from a tender process;

- one or more emails, phone calls or discussions with a competitor discussing bid pricing, terms or conditions or proposing a cover price for a particular contract; or
- attendance at a trade association or other industry forum where there are discussions in relation to commercially sensitive information such as operating costs, contract prices and profit margins or specific bids. There does not have to be intent to behave in an anti-competitive way. The fact that an agreement or understanding has, or is likely to, restrict or distort competition is all that is necessary to infringe competition law.

Employees at all levels must, therefore, be very careful when communicating with any competitor or employee of a competitor, even on a social or informal level. If a competitor approaches you or your staff to discuss prices, bids or customers, or offers to supply any information about their prices, bids or customers, you must refuse and explain clearly that it is company policy not to participate in any such discussions.

If concerns are reported in good time, the company and any individuals involved may be able to protect themselves from enforcement action. It is extremely important that there is a record of the company's response to any such discussions.

Should you become aware of any such discussion or should any competitor make an approach of this nature you should decline to participate and bring this to the attention of you're the Company Secretary in confidence so that appropriate steps may be taken to protect your and the Company's interests.

By not expressly distancing yourself and the Company from potentially anti-competitive activities, the individual employee and the company risk being held to have tacitly consented to an illegal arrangement.

As with any other criminal or regulatory offence, infringements of competition law may also lead to disciplinary action against individuals, including dismissal from employment without compensation.

### **Further information**

Should you have any general questions or concerns about competition law or require any explanation of the Company's policy or the conduct required of you please contact the Company Secretary [Stephen.young@afanlandscapes.co.uk](mailto:Stephen.young@afanlandscapes.co.uk) Tel 01639 885130 in the first instance.

Signed |



Position | Managing Director

Date | 30<sup>th</sup> January 2022