**REFERENTIAL TABLE FOR UK BCRS FOR DATA CONTROLLERS**

N.B: References to Articles (Art(s)) in Text of Reference are to the UK GDPR.

References to the DPA 2018 are to the Data Protection Act 2018, as amended.

| **Criterial for approval of UK BCRs** | **Must be included in the BCRs** | **Must be included in the application form** | **Text of reference** | **Comments** | **Specific reference to requirements in the application and BCRs (for completion by Applicant)** |
| --- | --- | --- | --- | --- | --- |
| **1 – BINDING NATURE** | | | | | |
| **INTERNALLY** | | | | | |
| **1.1 The duty to respect the BCRs** | YES | YES | Arts.47.1(a) and 47.2(c) | The BCRs must be legally binding and shall contain a clear duty for each participating member of the Group of undertakings or group of enterprises engaged in a joint economic activity (‘BCR member’) including their employees to respect the BCRs. | Click or tap here to enter text. |
| **1.2 An explanation of how the rules are made binding on the BCR members of the group as well as employees.** | NO | YES | Arts.47.1(a) and 47.2(c) | The Group will have to explain in its application form how the rules are made binding:  i) For each participating company/entity in the group by one or more of:   * Intra-group agreement, * Unilateral undertakings (this is only possible if the BCR member taking responsibility and liability is legally able to bind the other members subject to BCRs), * Other means (only if the group demonstrates how the binding character of the BCRs is achieved)   ii) On employees (both permanent and temporary) by one or more of:   * Individual and separate agreement(s)/undertaking with sanctions, * Clause in employment contract with a description of applicable sanctions, * Internal policies with sanctions, * Collective agreements with sanctions, * Other means (but the group must properly explain how the BCRs are made binding on the employees) | Click or tap here to enter text. |
| **EXTERNALLY** | | | | | |
| **1.3 The creation of third-party beneficiary rights for data subjects. Including the possibility to lodge a complaint before the Commissioner and before the UK courts.** | YES | YES | Arts.47.1(b), 47.2(c) and 47.2(e) | The BCRs must expressly confer rights on data subjects to enforce the rules as third-party beneficiaries.  Data subjects must at least be able to enforce the following elements of the BCRs:   * Data protection principles (Art. 47.2(d) and Section 6.1 of this referential); * Transparency and easy access to BCRs (Art. 47.2(g) and Section 6.1, Section 1.7 of this referential); * Rights of access, rectification, erasure, restriction, objection to processing, right not to be subject to decisions based solely on automated processing, including profiling (Arts. 47.2(e) and Arts. 15, 16, 17,18, 21, 22); * National legislation preventing respect of BCRs (Art. 47.2(m) and Section 6.3 of this referential); * Right to complain through the internal complaint mechanism of the companies (Art. 47.1(i) and Section 2.2 of this referential); * Cooperation duties with the Commissioner (Art. 47.2(k) and (l), Section 3.1 of this referential); * Liability and jurisdiction provisions (Art. 47.2(e) and (f), Section 1.3, 1.4 of this referential). In particular, the BCRs must confer the right to lodge a complaint with the Commissioner, pursuant to Art. 77 and before a competent UK court pursuant to Art.79 (see also section 180 of the DPA 2018).   The BCRs should expressly confer to the data subjects the right to judicial remedies and the right to obtain redress and, where appropriate, compensation in case of any breach of one of the enforceable elements of the BCRs as enumerated above (see Articles 77 – 82).  Companies should ensure that all those rights are covered by the third-party beneficiary clause of their BCRs by, for example, making a reference to the clauses/sections/parts of their BCRs where these rights are regulated or by listing them all in the said third party beneficiary clause.  These rights do not extend to those elements of the BCRs pertaining to internal mechanisms implemented within entities such as details of training, audit programmes, compliance network, and mechanism for updating of the rules. | Click or tap here to enter text. |
| **1.4. A The company accepts liability for paying compensation and to remedy breaches of the BCRs.** | YES | YES | Art. 47.2(f) | The BCRs must contain a duty for a BCRs member established in the UK to accept responsibility for and to agree to take the necessary action to remedy the acts of other BCRs members established outside the UK. The duty to pay compensation for any material or non-material damages resulting from the violation of the BCRs must be included.  The BCRs must also state that, if a BCRs member not established in the UK violates the BCRs, the courts or other competent authorities in the UK will have jurisdiction and the data subject will have the rights and remedies against the BCRs member that has accepted responsibility and liability as if the violation had been caused by them in the UK instead of the BCRs member not established in the UK.  There must always be a UK entity which assumes ultimate liability for any breaches of the BCR by a group member. If there are any restrictions that prohibit an entity from assuming liability, please ensure that the BCRs provides provision for another UK entity to take responsibility if the entity assuming liability for any specific transfer is unable to fulfil their obligations. | Click or tap here to enter text. |
| **1.5 The company has sufficient assets.** | NO | YES | Art 47.2(f) | The application form must contain a confirmation that any BCRs member that has accepted liability for the acts of other members bound by the BCRs established outside of the UK has sufficient assets to pay compensation for damages resulting from the breach of the BCRs. | Click or tap here to enter text. |
| **1.6 The burden of proof lies with the company not the individual.** | YES | YES | Art.47.2(f) | BCRs must state that the BCRs member that has accepted liability will also have the burden of proof to demonstrate that the BCRs member established outside the UK is not liable for any violation of the rules which has resulted in the data subject claiming damages or remedy.  If the BCRs member that has accepted liability can prove that the BCRs member established outside the UK is not responsible for the event giving rise to the damage, it may discharge itself from any responsibility/liability. | Click or tap here to enter text. |
| **1.7 Transparency and easy access to BCRs for data subjects** | YES | NO | UK GDPR Art. 47.2(g) | BCRs must contain the commitment thatall data subjects benefitting from the third-party beneficiary rights are provided with the information as required by Arts. 13 and 14.  In addition, there must be a commitment to provide all information on third-party beneficiary rights regarding the processing of their personal data, information on the means to exercise those rights, the clause relating to the liability and the clauses relating to the data protection principles. The BCRs must state the right for every data subject to have easy access to them.  In order to demonstrate easy access and to ensure that the data subject has been provided with the relevant information, the BCRs should be published on the internet or the intranet (when data subjects are only the company staff having access to the intranet).  The BCRs should be published in full. If there is a valid reason as to why full publication cannot be given, the minimum required must include full information on third-party beneficiary rights regarding the processing of their personal data, information on the means to exercise those rights, the clause relating to the liability and the clauses relating to the data protection principles. | Click or tap here to enter text. |
| **2. EFFECTIVENESS** | | | | | |
| **2.1 The existence of a suitable training programme** | YES | YES | Art.47.2(n) | The BCRs must state that appropriate training on the BCRs will be provided to personnel that have permanent or regular access to personal data, who are involved in the collection of data or in the development of tools used to process personal data.  The Commissioner may ask for examples and explanations of the training programme during the application procedure. The training programme should be specified in the application. | Click or tap here to enter text. |
| **2.2 The existence of a complaint handling process for the BCRs** | YES | YES | Arts.47.2(i) and 12.3 | An internal complaint handling process must be set up in the BCRs to ensure that any data subject should be able to exercise his/her rights to complain about any BCR member.  The complaints must be dealt with, without undue delay and in any event within one month, by a clearly identified department or person with  an appropriate level of independence in the exercise of his/her functions. Taking into account the complexity and number of the requests, the one-month period may be extended by a maximum of two further months, in which case the data subject should be informed accordingly.  The BCRs must explain how data subjects will be informed about the practical steps of the complaint system, in particular:   * Where to complain * In what form * Delays for the reply on the complaint * Consequences in case of rejection of the complaint * Consequences in case the complaint is considered as justified * Consequences where the data subject is not satisfied by the replies (right to lodge a claim before the Court and a * complaint before the Commissioner).   Data subjects must also be told that they may bring a claim before a Court or complain to the Commissioner without first exhausting the Group’s complaints process. | Click or tap here to enter text. |
| **2.3 The existence of an audit programme covering the BCRs** | YES | YES | Art.47.2(j) and (l) and Art.38.3 | The BCRs must create a duty for the group to have data protection audits on regular basis (by either internal or external accredited auditors) or on specific request from the privacy officer/function (or any other competent function in the organisation) to ensure verification of compliance with the BCRs.  The BCRs must state that the audit programme covers all aspects of the BCRs including methods of ensuring that corrective actions will take place. Moreover, the BCRs must state that the result will be communicated to the privacy officer/function and to the highest management board of the Group. Where appropriate, the result may be communicated to the ultimate parent's board.  The BCRs must state that the Commissioner will, without restrictions, be provided with any audit reports upon request.  The BCRs must also state that the Commissioner may, without restrictions, carry out a data protection audit of any BCRs member.  The application form will contain a description of the audit system. For instance:   * Which entity (department within the group) decides on the audit plan/programme * Which entity will conduct the audit * Time of the audit (regularly or on specific request from the appropriate Privacy function.) * Coverage of the audit: e.g applications, IT systems, databases that process Personal Data, onward transfers, decisions taken as regards mandatory requirement under national laws that conflicts with the BCRs, review of the contractual terms used for the transfers out of the Group (to Controllers or Processors of data), corrective actions * Which entity will receive the results of the audits. | Click or tap here to enter text. |
| **2.4 The creation of a network of data protection officers (DPO) or appropriate staff for monitoring compliance with the rules.** | YES | NO | Art.47.2(h) and Art.38.3 | A commitment to designate a DPO where required in line with Article 37 or any other person or entity (such as a chief privacy officer) with responsibility to monitor compliance with the BCRs. This person or entity shall enjoy the highest management support in exercising this function.  The DPO or the other privacy professionals can be assisted by a team, a network of local DPOs or local contacts as appropriate. The DPO shall directly report to the highest management level (Art.38.3).  The BCRs should include a brief description of the internal structure, role, position and tasks of the DPO or similar function and the network created to ensure compliance with the rules. For example, that the DPO or chief privacy officer informs and advises the highest management, deals with the Commissioner, investigates, monitors and annually reports on compliance at a global level. Also, that local DPOs or local contacts can oversee the handling of local complaints from data subjects, reporting major privacy issues to the DPO, monitoring training and compliance at a local level. | Click or tap here to enter text. |
| **3. COOPERATION DUTY** | | | | | |
| **3.1 A duty to cooperate with the Commissioner** | YES | YES | Art.47.2(l) | The BCRs should contain a clear duty for all BCRs members to co-operate with and to accept, without restrictions, to be audited by the Commissioner.  In relation to the interpretation of and the application of the BCRs there should also be a clear duty to:   * Consider any communication or recommendation from the Commissioner; and * comply with any formal decisions or notices issued by the Commissioner | Click or tap here to enter text. |
| **4. DESCRIPTION OF PROCESSING AND DATA FLOWS** | | | | | |
| **4.1 A description of the material scope of the BCRs (nature of data transferred, type of data subjects, countries).** | YES | YES | Art.47.2(b) | The application form and the BCRs should give a general description of the material scope of the BCRs.    In order to provide a clear picture of processing, including data transfers within scope, the application form and BCRs should include the following information relating to personal data processed: -   * Each category of data subject, (e.g. Staff/employees, customers/consumers, vendors/suppliers) * Categories of personal data processed (e.g. name, address, date of birth, etc) for each category of data subject * Details of any special category data or children’s data processed. * The purposes for which those data can be transferred and what processing is carried out after the transfers.   Purposes should be linked to categories of data subjects and personal data processed rather than a general description of possible purposes without any link.  In each case, identify the countries, specifically third countries, to which the data is expected to be transferred. | Click or tap here to enter text. |
| **4.2 A statement of the geographical scope of the BCRs** | YES | YES | Art.47.2(a) | The BCRs shall specify the structure and contact details of the group of undertakings or group of enterprises engaged in a joint economic activity and of each of its members.  The BCRs should indicate if they apply to:   * All personal data transferred from the UK within the Group or * All processing of personal data within the Group. | Click or tap here to enter text. |
| **5 - MECHANISMS FOR REPORTING AND RECORDING CHANGES** | | | | | |
| **5.1 A process for updating the BCRs** | YES | YES | Art.47.2(k) | The BCRs can be modified (for instance to factor in modifications of the regulatory environment or the company structure) but they should impose a duty to report all changes without undue delay to all BCR group members and to the Commissioner.  Not all changes will require re-application for approval of the BCRs  Administrative changes, including changes to the list of entities bound, must be reported to all group members on a regular basis. They should be reported to the Commissioner at least annually.  More significant changes, such as those that:   * potentially affect the data protection compliance; * are potentially detrimental to data subject rights; * potentially affect the level of protection offered by the BCRs * affect the binding nature of the BCRs,   must be promptly reported to the Commissioner and all Group members.  Further, the BCRs must include the following:   * An identified person or team/department that keeps a current list of the BCRs members and keeps track of and records any updates to the rules and provides the necessary information to the data subjects or the Commissioner upon request. * A statement that no transfer is made to a new BCRs member until the new BCRs member is effectively bound by the BCRs and can deliver compliance. * A statement about the process for reporting administrative changes and more significant changes as referred to above.   When reporting any changes to the Commissioner a brief explanation of the reasons justifying the changes should be provided. | Click or tap here to enter text. |
| **6 - DATA PROTECTION SAFEGUARDS** | | | | | |
| **6.1.1 A description of the data protection principles including the rules on transfers or onward transfers out of the UK.** | YES - | YES - | Art. 47.2(d) | The BCRs shall explicitly include the following principles to be observed by any BCR member:   * Transparency, fairness and lawfulness (Art. 5.1(a), 6, 9, 10, 13 and 14); * Purpose limitation (Art.5.1(b)) * Data minimisation and accuracy (Art.5.1(c) and (d)); * Limited storage periods (Art.5.1(e)); * Processing of special categories of personaldata; * Security: (Art.5(f) and 32). This includes the obligation to enter into contracts with all internal and external subcontractors and Processors which contain all requirements as set out in Art.28.3, as well as the duty to notify without undue delay any personal data breaches to the responsible BCRs member established in the UK and the other relevant privacy officer/function and data subjects where the personal data breach is likely to result in a high risk to their rights and freedoms.   Furthermore, any personal data breaches should be documented (including the facts relating to the personal data breach, its effects and the remedial action taken) and the documentation should be made available to the Commissioner on request (Arts.33 and 34).   * Restriction on transfers and onward transfers to Processors and Controllers which are not part of the Group: BCRs members that are Controllers can transfer data to Processors/Controllers out of the group that are located outside of the UK provided that appropriate safeguards are provided according to Arts 45, 46, 47, or that a derogation according to Art.49 applies.   The wording and definitions of the BCRs key principles should be consistent with the wording and definitions of the UK GDPR. | Click or tap here to enter text. |
| **6.1.2 Accountability and other tools** | YES | YES | Art.47.2(d) and Art. 30 | Every entity acting as Controller shall be responsible for and be able to demonstrate compliance with the BCRs (Art.5.2 and 24).  In order to demonstrate compliance, BCR members must maintain a record of all categories of processing activities carried out in line with the requirements as set out in Art. 30.1 UK GDPR. This record should be maintained in writing, including in electronic form, and should be made available to the Commissioner on request.  In order to enhance compliance and when required, data protection impact assessments should be carried out for processing operations that are likely to result in a high risk to the rights and freedoms of natural persons (Art.35). Where a data protection impact assessment under Art. 35 indicates that the processing would result in a high risk in the absence of measures taken by the Controller to mitigate the risk, the Commissioner should be consulted prior to processing (Art.36).  Appropriate technical and organisational measures should be implemented which are designed to implement data protection principles and to facilitate compliance with the requirements set up by the BCRs in practice (data protection by design and by default (Art.25). | Click or tap here to enter text. |
| **6.2 The list of entities bound by BCRs** | YES | YES | Art.47.2(a) | BCRs shall contain a list of the entities bound by the BCRs including contact details.  Include the following details where applicable:   * Company number * Registered office address * A contact email address for each office | Click or tap here to enter text. |
| **6.3 The need to be transparent where national legislation prevents the group from complying with the BCRs** | YES | NO | Art.47.2(m) | A clear commitment that where a BCR member has reasons to believe that the legislation applicable to him prevents the member from fulfilling its obligations under the BCRs or has a substantial effect on the guarantees provided by the rules, he will promptly inform the responsible BCR member established in the UK and the other relevant privacy officer/function (except where prohibited by a law enforcement authority, such as prohibition under criminal law to preserve the confidentiality of a law enforcement investigation).  In addition, the BCRs should contain a commitment that where any legal requirement a BCR member is subject to in a third country is likely to have a substantial adverse effect on the guarantees provided by the BCRs, the Commissioner must be notified. This includes any legally binding request for disclosure of the personal data by a law enforcement authority or state security body. In such a case, the Commissioner should be clearly informed about the request, including information about the data requested, the requesting body, and the legal basis for the disclosure (unless otherwise prohibited, such as a prohibition under criminal law to preserve the confidentiality of a law enforcement investigation).  If in specific cases the suspension and/or notification are prohibited, the BCRs shall provide that the requested BCR member will use its best efforts to obtain the right to waive this prohibition in order to communicate as much information as it can and as soon as possible and be able to demonstrate that it did so.  If, in the above cases, despite having used its best efforts, the requested BCR member is not able to notify the Commissioner, it must commit in the BCRs to annually providing general information on the requests it received to the Commissioner (e.g. number of applications for disclosure, type of data requested, requester if possible, etc.).  In any case, the BCRs must state that transfers of personal data by a BCRs member of the Group to any public authority cannot be massive, disproportionate and indiscriminate in a manner that would go beyond what is necessary in a democratic society. | Click or tap here to enter text. |
| **6.4 A statement about the relationship between national laws and BCRs** | YES | NO | N/A | BCRs shall specify the relationship between the BCRs and the third country national law.  The BCRs shall state that where the local legislation requires a higher level of protection for personal data it will take precedence over the BCRs.  In any event personal data shall be processed in accordance Art.5 and relevant local legislation. | Click or tap here to enter text. |