



ANTI-BRIBERY AND CORRUPTION POLICY

MSM Corporation International limited

June 2020

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ANTI-BRIBERY AND CORRUPTION POLICY

AS AT 30 JUNE 2020

1. Introduction

MSM Corporation International Limited (“**MSMCI**” or “**the Company**”) is committed to conducting business in accordance with all applicable laws, rules and regulations in all the jurisdictions in which the Company operates. It is the Company’s policy to conduct all business in an honest and ethical manner.

The Company adopts a zero-tolerance approach to bribery and corruption. It is committed to acting professionally, fairly and with integrity in all business dealings and relationships wherever they operate and implementing and enforcing effective systems to counter bribery. It is committed to ensure that its corporate culture strongly discourages bribery and corruption, including foreign bribery.

2. Scope

The Company expects all employees (whether permanent, fixed-term or temporary), officers, directors, contractors, intermediaries and company agents and representatives (collectively referred to as “**Company Representatives**”) will observe this policy (referred to as the “**Policy**”). This Policy may be amended at any times at the discretion of the Company and a copy of the amended policy will be communicated in writing to all Company Representatives.

Complying with the Policy is a condition of your employment or contract. Breaches are considered a serious matter and may result in disciplinary action, including dismissal and reporting to appropriate authorities for further action.

Non-compliance with the Policy and international laws could also result in criminal consequences and penalties for both the individual involved and the Company.

3. Expectation

You are expected to perform and work with honesty and integrity and comply with all applicable laws in the course of your employment or engagement with the Company, whether or not specially covered by this policy.

You must ensure that you read, understand and comply with this Policy.

The prevention, detection and reporting of foreign bribery and other forms of corruption are the responsibility of all Company Representatives. You are required to avoid any activity that might lead to, or suggest, a breach of this Policy.

Our culture of compliance and zero-tolerance approach to bribery and corruption must be communicated, where practicable in writing, to all third parties at the outset of our business relationship with them and as appropriate thereafter.

You must notify the Chairman or Company Secretary as soon as possible if you believe or suspect that a breach of this policy has occurred or may occur in the future.

4. Purpose

In Australia, anti-corruption legislation (principally the Criminal Code Act 1995 (Cth) (the “**Code**”) makes it illegal for companies, their officers, directors, employees, agents and any shareholders acting on their behalf, to bribe foreign officials. The Code has extra-territorial operation which means that it applies to offences committed overseas by Australian citizens, residents and corporates, as well as offences committed in Australia.

Australia ratified the OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transaction in 1999. In Order to comply with the OECD Convention, Australia introduced a new offence into the Code: Division 70 (the offence of “bribing a foreign public official”). Although it is not the only applicable legislation which employees have to comply with, it is the principal legislation and the focus of the Company’s Policy.

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The Company may also be subject to the United States' Foreign Corrupt Practices Act 1977 ("FCPA") which contain similar provisions.

The purpose of this Policy is to:

- Ensure compliance by the Company in Australia and overseas with the Code;
- Set out the Company's responsibilities, and of those working for and associated with the Company, in observing and upholding the Company's position on bribery and corruption, including foreign bribery;
- Provide information and guidance to those working for the Company on how to comply with their obligations under the foreign bribery laws and recognise and deal with bribery and corruption issues generally; and
- Set out policies, procedures and guidelines for people working for the Company in relation to gifts, hospitality and charitable donations.

5.Division 70 of the Criminal Code, 1995 (CTH): Foreign Bribery

Division 70 of the Code creates the offence of "bribing a foreign public official". Any person or company who commits the offence when in Australia (or on an Australian aircraft or ship) can be prosecuted in Australia, and any Australian citizen, Australian resident or company incorporated in Australia who commits the offence, whether or not the offence is committed in Australia, can also be prosecuted in Australia.

You must be aware of the types of activities that are legal and those which are illegal when interacting with foreign officials. The offence applies regardless of the outcome or result of the bribe or the alleged necessity of the payment. **It is not possible to argue that you did not realise that your conduct constituted bribery.**

The offence of bribing a foreign public official is contained in section 70.2 of the Code. It has a number of elements which can be divided into steps. All of these elements must be present for the offence to apply.

You are guilty of an offence if:

- (a) you provide, offer to provide or promise to provide a benefit to another person, or cause a benefit to be provided or cause an offer to the provision of a benefit or a promise of the provision of a benefit to be made to another person;

AND

- (b) the benefit is not legitimately due to the other person;

AND

Step (a) was carried out:

- 1) with the intention of influencing a foreign public official (who may or may not be the person receiving or promised the benefit);
- 2) in the exercise of the official's duties as a foreign public official;
- 3) in order to obtain or retain business or obtain or retain a business advantage;

and which business or business advantage is not legitimately due to the person providing or promising the benefit.

If you are acting on behalf or another person, including the Company, that other person, including the Company, may also be liable because your actions, but that does not affect your personal responsibility.

6.What is a "benefit"?

To offer or provide someone a benefit has a broad meaning and covers more than just a direct conferral of a benefit. For example, someone can offer or provide a benefit to a foreign public official even where they have not actually made the offer or given the benefit themselves but have helped or told someone else to do so.

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A benefit can be anything of real value to the intended recipient. Examples of things that might benefit someone are:

- direct and indirect payments;
- shares or options;
- gifts;
- meals and entertainment;
- assumption or forgiveness of debt;
- offer of employment;
- payment of travel expenses; or
- personal favours.

7. Foreign Public Official

The definition of 'foreign public official' is very broad, and includes:

- (a) an employee/official of a foreign government (for example; taxation officers, an employee of a state-run bank or other state-run enterprise and government department workers, such as employees in the Department of Mines or Ministry of Industry, Mining and Exploration);
- (b) a member of the executive, judiciary or magistracy of a foreign country;
- (c) a person who performs official duties under a foreign law;
- (d) a member/officer of the legislature of a foreign country; or
- (e) an employee/official of a public international organization (such as the United Nations).

The definition does not include a company, statutory corporation or government department.

Whether a person falls within the definition of a foreign public official will be considered on a case by case basis.

8. Intention to Influence

To commit the foreign bribery offence there needs to be both:

- (a) intent to carry out particular conduct (i.e. influence the foreign public official); and
- (b) intent to achieve a particular result (i.e. to obtain or retain business or to obtain or retain a business advantage that is not legitimately due).
- (c) You will have an intent to achieve a particular result if you are aware that the result will occur in the ordinary course of events, irrespective of whether or not the conduct actually occurs or the desired result materialises.
- (d) The influence must be with respect to:
- (e) obtaining or retaining business; or
- (f) obtaining or retaining a business advantage that is not legitimately due.

It is not necessary that business, or a business advantage, was actually obtained or retained.

9. Not Legitimately Due

This phrase is intended to be given its ordinary meaning.

In working out if a benefit is not legitimately due, it does not matter that:

- (a) the benefit may be, or be perceived to be, customary, necessary or required in the situation;
- (b) the value of the benefit is small; or
- (c) there is a measure of official tolerance of the benefit.

In working out if a business advantage is not legitimately due, it does not matter that:

- (d) the business advantage may be, or be perceived to be, customary, in the situation;
- (e) the value of the business advantage is small; or
- (f) there is a measure of official tolerance of the business advantage.

If a person has a right under relevant law to the benefit or business advantage, then it is likely the benefit or business advantage is 'legitimately due'. But, if there are conditions to be complied with or some discretion to be exercised, and the benefit is intended to procure the favourable exercise of the discretion, then there will be a breach of the law.

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10. Defences Available

There are two defences to the offence:

- (a) The advantage was permitted or required by the written laws that govern the foreign public official.

This applies where a written law applicable to the foreign public official expressly permits or requires the benefit to be provided.

It is important that the written law expressly permits the benefit to be provided to the relevant official and does not just waive punishment in certain circumstances. In such cases, the payment itself will still be unlawful and the defence will not apply.

- (b) The payment is a facilitation payment.

This provision applies where a payment is a "facilitation payment" made to expedite or secure the performance of a routine government action of a minor nature and the payment is of a minor value.

An act of a foreign public official will not be a routine government action if it involves a decision (or involves encouraging a decision) about whether to award new business, continue existing business with a particular person, or change the terms of new or existing business.

Routine government action is that which is ordinarily and commonly performed by the foreign public official and constitutes any of the following:

- I. granting a permit, licence or other official document that qualifies a person to do business in a foreign country or in a part of a foreign country;
- II. processing government papers such as a visa or work permit;
- III. providing police protection or mail collection or delivery;
- IV. scheduling inspections associated with contract performance or related to the transit of goods;
- V. providing telecommunications services, power or water;
- VI. loading and unloading cargo;
- VII. protecting perishable products, or commodities, from deterioration; or
- VIII. any other action of a similar nature.

For example, a business person arrives in a foreign country without a valid visa and pays a foreign public official a small fee in order to expedite the issue of a new visa. This would be considered a "facilitation payment" and a defence to the offence of bribing a foreign public official.

The Code does not specify when a payment will be considered of a "minor nature".

In order to satisfy the defence, a company or individual who makes a facilitation payment must make record of that payment.

11. Facilitation Payments

Because of the Code's strict prohibitions, the Company is generally opposed to making facilitation payments. Company Representatives should not make or authorize any gift, payment or offer any other benefit to any foreign official (or third party), whether on the local, regional or national level, except in the manner set out below. The Company's Policy is that:

- (a) the making or authorising of any gift, payment or offer of any other benefit to any foreign official (or third party), whether on a local, regional or national level is only permitted in very limited circumstances: where a written law applies or the payment is a facilitation payment; and
- (b) the making or authorising of such gift, payment or offer of any other benefit may not be made unless it is permitted by the Chairman or Company Secretary and they have provided prior written approval.

The "facilitation payment defence" is only a defence under Australian law. A facilitation payment could still be considered a bribe under the laws that govern the foreign public official.

You must consider local law requirements as well as Australian law requirements before making any payment or providing or promising any benefits to an official or third party.

The Company recognises that in certain exceptional circumstances, you may have to make a facilitation payment. In some circumstances you may also need to make a payment that is not a facilitation payment but is made under duress. For example, where there is a real and imminent threat to the health, safety, personal security or welfare of any Worker, or a member of his or her family; or the loss or destruction of the Company's property.

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In the event that you encounter such circumstances where there is a request that you feel you can't refuse, or a perceived need, for a facilitation payment to be made, you must notify the Chairman or Company Secretary immediately for approval prior to making the payment, where practicable.

If it is not practicable to inform the Chairman or Company Secretary of a facilitation payment before it is made, or where a payment is made under duress, a signed record of the payment made must be provided to the Chairman or Company Secretary as soon as practical, recording the following details:

- the value of the benefit concerned;
- the date on which the conduct occurred;
- the identity of the foreign public official or other person in relation to whom the conduct occurred;
- particulars of the routine government action that was sought to be expedited or secured by the conduct; and
- the person's signature, where practicable, or some other means of verifying the person's identity, who gave the benefit.

12. Gifts and Hospitality

This Policy does not prohibit normal and appropriate gifts and hospitality (given and received) to or from third parties.

The giving or receipt of gifts is not prohibited, if the following requirements are met:

- it is not made with the intention of influencing a third party to obtain or retain business or a business advantage, or to reward the provision or retention of business or a business advantage, or in explicit or implicit exchange for favours or benefits;
- it complies with local law;
- it is given in the Company's name, not in your name;
- it does not include cash or a cash equivalent (such as gift certificates or vouchers);
- it is appropriate in the circumstances;
- taking into account the reason for the gift, it is of an appropriate type (cash, drugs or other controlled substances should not be given) and monetary value (excessive or expensive gifts should not be given) and given at an appropriate time (gifts should not be given during contract negotiations or the making of important business decisions);
- it is given openly, not secretly; and
- gifts should not be offered to, or accepted from, foreign public officials or local government officials or representatives, or politicians or political parties, without the prior approval of the Chairman or Company Secretary.

The Company appreciates that the practice of giving business gifts varies between countries and regions and what may be normal and acceptable in one region may not be in another. The test to be applied is whether in all the circumstances the gift or hospitality is reasonable and justifiable. The intention behind the gift should always be considered.

If you have any doubt about whether a gift should be given or accepted, the question should be referred to the Chairman or Company Secretary (who can, if necessary, seek advice from the Company's lawyers).

13. Reporting a Concern or Complaint

You are encouraged to raise concerns about any issue or suspicion of malpractice at the earliest possible stage. If you are unsure whether a particular act constitutes bribery or corruption, or if you have any other queries, these should be raised with the Chairman or Company Secretary.

You are entitled to anonymously report a concern or complaint to Chairman or Company Secretary (via writing, email or telephone. However, by their very nature, concerns or complaints submitted by email or telephone (as opposed to being submitted in writing) tend to be more difficult to keep anonymous and confidential.

All reports of alleged violations, concerns or complaints whether or not they were submitted anonymously, will be kept in strict confidence to the extent possible at law and consistent with the Company need to conduct an adequate investigation.

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If you are not comfortable reporting a concern to the Chairman or Company Secretary, you should report the concern to any supervisor or member of management or Board whom you are comfortable approaching. Any supervisor or manager or director who receives a report of an alleged violation, concern or complaint must immediately forward the report to the Chairman or Company Secretary.

Reports of alleged violations, concerns or complaints should be factual, rather than speculative, and should contain as much specific detail as possible to allow for proper assessment. Any report or complaint should clearly set out all the information the individual knows about the alleged violation. In addition, it should contain sufficient corroborating information to support a decision whether or not to formally investigate.

14. If you are a Victim of Bribery or Corruption

You must tell the Chairman or Company Secretary as soon as possible if you are offered a bribe by a third party, are asked to make one, suspect that this may happen in the future, or believe that you are a victim of another form of unlawful activity.

15. Company Protection

Workers and third parties who refuse to accept or offer a bribe, or those who raise concerns or report another's in accordance with this policy, are sometimes worried about possible repercussions. The Company aims to encourage openness and will support anyone who raises genuine concerns in good faith under this policy, even if they turn out to be mistaken.

The Company is committed to ensuring no one suffers any retaliation or detrimental treatment as a result of refusing to take part in bribery or corruption, or because of reporting in good faith their suspicion that an actual or potential bribery or other corruption offence has taken place, or may take place in the future. Detrimental treatment includes dismissal, disciplinary action, threats or other unfavourable treatment connected with raising a concern. If you believe that you have suffered any such treatment, you should tell Chairman or Company Secretary immediately.

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