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# **THE COMPLIANCE GUIDE: Anti-Bribery and Corruption**

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**Upholding Our Core Values:  
Honesty, Integrity and Transparency**

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## Letter from the CEO

Addressed to all Anvil Employees, Joint Venture Partners, Agents, Consultants, Contractors, Suppliers and Representatives (the latter five will be collectively referred to as "Representatives").

Dear All

Anvil's core values of honesty, integrity and transparency are central to all of its relationships with its employees, Representatives and joint venture partners. To ensure that Anvil's core values are reflected in all of its business dealings, Anvil is committed to upholding both the letter and spirit of the laws, regulations and international standards that apply to its operations.

Anvil is a company incorporated in Canada, with an executive office in Perth, Australia and operations in the Democratic Republic of Congo and other areas in the world.

In 1999, both Canada and Australia implemented the *OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions* ("OECD Convention"). Canada implemented the OECD Convention by adopting the *Corruption of Foreign Public Officials Act*. Australia implemented the OECD Convention in the Commonwealth Criminal Code (the "Australian Criminal Code"). The Canadian *Corruption of Foreign Public Officials Act* and the Australian Criminal Code both form a key part of the legislative framework within which Anvil operates. Additionally, it is possible that in some limited circumstances, Anvil's operations may arguably be subject to the Foreign Corrupt Practices Act (U.S.) and the Bribery Act (U.K.) Anvil will endeavour to ensure that its employees, Representatives and joint venture partners comply with these laws.

Ethics and behaviour are individual responsibilities, and high standards of behaviour are expected of all of Anvil's employees and Representatives, including joint venture partners, regardless of their position in, or relationship with, Anvil. Anvil has prepared this Guide to ensure that all employees and Representatives, including joint venture partners, are able to understand and adhere to the provisions of the Canadian *Corruption of Foreign Public Officials Act* and the Australian Criminal Code relating to bribery of foreign public officials ("the Anti-Bribery Laws").

Anvil employees and Representatives, including joint venture partners, are expected to adhere to all of the laws and regulations that govern Anvil's conduct. Violation of the law by any Anvil employee or Representative, including a joint venture partner, will not be tolerated. A violation of the law, or unethical behaviour which may affect Anvil's reputation, will be subject to immediate disciplinary action, which, in the case of employees, may include the termination of employment. Anvil reserves the right to terminate any association or business relationship with any Anvil Representative, including a joint venture partner, that violates the law.

This Guide only represents a part of Anvil's compliance program. Anvil employees and Representatives, including joint venture partners, are expected to be familiar with, and adhere to, Anvil's compliance programme in its entirety, including Anvil's Code of Business Conduct and this Guide. If you have any questions or comments regarding Anvil's compliance program, please contact Anvil's Compliance Officer, Mr Stuart McKenzie, on (+61 8) 9481 4700 or by email [stuartm@anvilmining.com](mailto:stuartm@anvilmining.com).

Yours sincerely

**BILL TURNER**  
Chief Executive Officer  
Anvil Mining Limited

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## INTRODUCTION

### Why bribery is a global issue

Bribery and corruption have a serious impact on the social, economic and political environment of many countries. Bribery is not a victimless crime. It debases human rights and destroys confidence in democracy and the legitimacy of government. The effects of bribery and corruption are most felt by the world's poorest people. It is universally condemned by the world's major religions.

#### Fact

The Organisation for Economic Cooperation and Development describes the bribery of public officials as a "widespread phenomenon in international business transactions including trade and investment". It is estimated that bribery caused honest competitors to lose 77 of 294 international contracts awarded from 1994 through 1997. The World Bank estimates that 5% of exports to developing countries– \$50 to \$80 billion a year– goes to corrupt officials. ('improper payments' published by United Technologies Corporation)

Bribery and corruption globally have reached such a scale, and penetrated business dealings in both the developing and industrialised world to such an extent, that policy makers internationally are being forced to confront the issue. Both developed and developing countries are taking steps to eliminate corruption world wide.

As part of the global effort to combat bribery, 38 countries have ratified the *OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions*. Australia and Canada, together with many other countries worldwide, have implemented the OECD Convention into their domestic legislation, making bribery of foreign public officials an offence punishable, in Canada, by a term of imprisonment of up to 5 years, and in Australia, by a fine and/or a term of imprisonment of up to 10 years.

The Canadian *Corruption of Foreign Public Officials Act* and the anti-bribery provisions in the Australian Criminal Code have extra-territorial operation and regulate the conduct of Canadian and Australian citizens, residents and corporations overseas. Additionally, it is possible that in some limited circumstances, Anvil's operations may be subject to the Foreign Corrupt Practices Act (U.S.) and the Bribery Act (U.K.). Anvil expects all of its employees, Representatives and joint venture partners to comply with both the letter and spirit of the laws that govern Anvil's operations worldwide and with Anvil company policy, including this Guide and Anvil's Code of Business Conduct.

Anvil is committed to the fight against bribery and corruption. We aim to achieve our goals whilst supporting and fostering development in the communities in which we operate.

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## Purpose of this Guide

Anvil is committed to ensuring that its corporate culture, in all of its offices and operations worldwide, discourages conduct which violates the Anti-Bribery Laws. Anvil will immediately terminate the employment of any employee, or its association with any Representative or joint venture partner, who seeks to illegitimately influence any foreign public official in the exercise of his or her official duties.

The fact that bribery may be tolerated or encouraged in some of the countries in which Anvil operates does not affect Anvil's commitment to best business practice. Anvil will make every effort to ensure that it adheres to the laws and regulations which govern its operations, including Anti-Bribery Laws.

The purpose of this Guide is to educate and inform Anvil employees, Representatives and joint venture partners about the application of the Anti-Bribery Laws. This Guide is intended to be a commonsense manual to enable Anvil employees, Representatives and joint venture partners to understand and comply with the Anti-Bribery Laws.

### Effect of International Bribery

International bribery assumes many guises, but wherever the practice occurs, it inhibits economic development and distorts competition. It disrupts distribution channels, destroys incentives to compete on quality and price, undermines market efficiency and predictability, and ultimately denies many people the right to a minimal standard of living. It creates non-tariff barriers to foreign trade and causes economic deadweight losses that reduce firms' and nations' long-term competitiveness. One of bribery's most sinister features is its corrosive effect on the public's respect for the rule of law and therefore on the entire structure of a society. It can swiftly undermine a government's legitimacy, and it often destabilizes the fragile process by which democratic ideals and institutions develop. (Bribery in International Business Transactions and the OECD Convention:

Benefits and Limitations by W Hamra, Business Economics Journal, October 2000, [http://www.findarticles.com/p/articles/mi\\_m1094/is\\_4\\_35/ai\\_67978515](http://www.findarticles.com/p/articles/mi_m1094/is_4_35/ai_67978515))

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## What is bribery?

The elements of the offence of bribery of a foreign public official are explained in detail throughout this Guide.

Although not identical, there are substantial similarities in the anti-bribery laws of Australia and Canada,, as summarised below.

It is an offence for a person (which includes a corporation) to:

### Canadian

#### *Corruption of Foreign Public Officials Act*

- in order to obtain or retain an advantage in the course of business
- directly or indirectly give, offer or agree to give or offer
- a loan, reward, advantage or benefit of any kind
- to a foreign public official or to any person for the benefit of a foreign public official
- for an act or omission of the official in connection with the performance of the official's duties or functions, or to induce the official to use his or her position to influence any acts or decisions of the foreign state or public international organization for which the official performs duties or functions

### Australian Criminal Code

- in order to obtain or retain business, or obtain or retain a business advantage which is not legitimately due
- provide, cause to be provided, offer to provide, or cause an offer to provide
- a benefit which is not legitimately due
- to another person with the intention of influencing a foreign public official
- in the exercise of the official's duty

## Permissible and Prohibited Payments

### The Importance of Compliance

In October 2002, the UN released a report detailing how 85 foreign companies illegally exploited Congo's resources. So far none of the British companies it named appears to have been properly investigated. Congo's population of 70 million lives in abject poverty. Despite fabulous mineral deposits, the country's GDP is only a quarter of what it was in 1990. Ensuring that companies play by the book in Congo would make a real difference to the country. (Bribery Begins At Home, Susan Hawley and Andrew Phillips, Wednesday October 6, 2004, The Guardian).

The payment of normal discounts and allowances, commissions, fees, entertainment expenses, expenses for normal sale promotion activity and services, expenses related to a contract with a foreign state and other customary payments or courtesies in the ordinary course of business should only be made in accordance with this Guide. The use of Anvil's funds or assets, either directly or indirectly, for any bribe, kickback or payoff is strictly prohibited.

## **Contacting Anvil's Compliance Officer**

All Anvil employees, Representatives and joint venture partners must ensure that they understand which payments are permissible and which payments are not in accordance with this Guide. If any Anvil employee, Representative or joint venture partner has any questions or comments in relation to the Anvil policies set out in this Guide, they should contact Anvil's Compliance Officer, Mr Stuart McKenzie:

Mr Stuart McKenzie, Compliance Officer  
Company Secretary  
Anvil Mining Limited  
Level 1, 76 Hasler Road  
Perth, Western Australia 6017  
  
Email: [stuartm@anvilmining.com](mailto:stuartm@anvilmining.com)  
  
Telephone: +61 8 9481 4700

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## Key Provisions

Each of the key elements of the anti-bribery offences contained in the Canadian *Corruption of Foreign Public Officials Act* and the Australian Criminal Code are explained in the following sections.

### Who is a “foreign public official”?

A wide range of people who may not be directly linked to, or employed by, a foreign government are considered to be foreign public officials for the purpose of the Anti-Bribery Laws including:

#### Case Study

##### Foreign Public Officials

In 2002, an American pharmaceutical company was found, through the actions of its subsidiaries operating in a number of foreign countries, to have violated The Foreign Corrupt Practices Act, which prohibits bribery in the USA. The subsidiaries were making payments to foreign doctors for the purpose and effect of influencing the doctors' decisions so that the pharmaceutical company could obtain or retain business with them, and the hospitals that employed them. The doctors, being employed by hospitals owned by foreign authorities, were accepted as foreign officials within the meaning of the USA anti-bribery laws.

- a person who holds a legislative, administrative or judicial position of a foreign state, including any political subdivision of a country and any department, branch or agency;
  - a person who performs public duties or functions for a foreign state, including any political subdivision of a country and any department, branch or agency, or any board, commission, corporation or other body or authority of a foreign state;
  - an employee or official of a foreign government body;
  - an individual who performs work for a foreign government body under a contract;
  - an individual who holds or performs the duties of an appointment, office or position under a law of a foreign country or of part of a foreign country;
  - an individual who holds or performs the duties of an appointment, office or position created by custom or convention of a foreign country or of part of a foreign country;
  - an individual who is otherwise in the service of a foreign government body (including service as a member of a military force or police force);
- a member of the executive, judiciary or magistracy of a foreign country or of part of a foreign country;
  - an employee of a public international organisation;
  - an individual who performs work for a public international organisation under a contract;

- an individual who holds or performs the duties of an office or position in a public international organisation;
- an individual who is otherwise in the service of a public international organisation;
- a member or officer of the legislature of a foreign country or of part of a foreign country; and
- an individual who is, or who holds himself or herself out to be, an authorised intermediary of a foreign public official.

Although it is important to recognise who is, and isn't, a foreign public official, please note that Anvil company policy in relation to payments, gifts and other benefits applies regardless of someone's position or status.

### **What is a “benefit”?**

A loan, reward, advantage or other benefit (“benefit”) is not limited to money or property. A benefit can be any advantage. Examples of benefits include:

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

## **What does “indirectly” and “cause” mean in connection with giving or offering a benefit?**

If an Anvil employee, Representative or joint venture partner offers or gives a benefit, whether it is a cash payment, gift or advantage, to a public official, then they are “causing” that benefit to be conferred on the official. However, the terms “*indirectly*”, “*offer*” and “*cause*” as used in the Anti-Bribery Laws have a broad meaning which covers more than just the direct conferral of a benefit.

For example, someone can be said to have “indirectly” offered a benefit, or “offered” a benefit, or “caused” a benefit to be offered to a public official even where they have not actually made the offer or given the benefit themselves, but have directed someone else to do so.

Therefore, if an Anvil employee, Representative or joint venture partner directs another person or entity to pay or offer to pay a bribe, their actions could potentially implicate themselves and the other person or entity (including another employee, Representative, or joint venture partner) by their conduct, as well as Anvil itself, in the commission of an offence. In other words, all the persons or parties involved directly or indirectly in the payment or offering of a bribe may be found to have committed the offence of bribery.

### **Question**

I work for a Canadian company headquartered in Australia which has local subsidiaries to conduct its African mining operations. One of the employees was in the operations administration building and answered the phone. It was one of the company's major suppliers back in Australia. They had just heard that the Governor of the local area in Africa had called for tenders to build new roads in the region. The supplier was putting together their tender but was hoping to invite the Governor to be the special guest at their annual formal dinner (all expenses paid) in an attempt to impress the Governor with their expertise and professionalism. The supplier told the employee that they would be doing them a massive favour if they could get into the system and provide them with the personal contact details of the Governor and then ask around in the office to see if anyone would be able to help set up an introduction. Would this breach the Anti-Bribery Laws?

### **Answer**

The employee may be committing an offence in accordance with anti-bribery laws. In Anvil's case, this would also be a breach of its Code of Conduct. Even though the supplier would actually be committing the offence and not the employee, aiding and abetting a potential offence is still a breach of anti-bribery Laws. Australian and International legislation includes an offence of 'Accessorial Liability' which provides that any person who intentionally aids, abets, counsels or procures the offence of bribery by another person is also guilty of that offence. In other words, if the employee followed out this request, they and the company may be held complicit and equally guilty of the actual offence of bribing the foreign public official.

If you are ever approached for a request that you believe may be in breach of Anvil's anti-corruption regime please go directly to a manager, director, the Ethics Committee or Anvil's Compliance Officer.

## When can Anvil be guilty of an offence?

Anvil will have committed the offence of bribery if one of its employees or Representatives:

- commits the offence of bribery in contravention of the Anti-Bribery Laws;
- whilst acting within the scope of their actual or apparent authority;
- in circumstances where Anvil expressly, tacitly or impliedly authorised or permitted the commission of the offence.

A key issue is the circumstances in which Anvil can be said to have authorised or permitted the payment of a bribe by one of its employees or Representatives.

## Constructive Knowledge

Anvil and its Directors may be guilty of an offence even if they do not have actual knowledge of an offence.

Recent United States (*US v Bourke*) and United Kingdom (*Aon Limited*) court decisions have held companies and their directors responsible for the actions of employees and agents, in the absence of actual knowledge of their actions, because they did not adequately question procedures in circumstances where it ought to have been reasonably obvious, or there was a high probability, that a breach may occur.

If a company or its directors takes active steps to avoid acquiring knowledge of any breaches, this may amount to "wilful blindness" and deliberate or reckless conduct, which will attract elevated penalties.

The United States and United Kingdom experience clearly shows that having inadequate controls in place to identify deficiencies in procedures and payments is no defence.

## What does "intention" mean?

A key element of bribery is the *intention to influence* a foreign public official in the exercise of his or her duties. Under the Canadian *Corruption of Foreign Public Officials Act* the equivalent element is *to obtain* an act or omission of a foreign public official in the performance of his or her duties or to induce a foreign public official to influence acts or decisions of the foreign state or public international organization, which also involves intent.

Whether a person or a corporation *intends* to influence someone is a matter of fact. Intention to influence or obtain a certain result can exist whether or not the desired result is actually achieved.

### **Question**

Someone I know works for a contractor who we sometimes use to fix plant and equipment. He told me that he tried to pay a bribe to an official to get a permit. The official took the money but, as it turns out, didn't have the power to grant the permit. Would this still breach the Anti-Bribery Laws even though he didn't get the permit?

### **Answer**

It is not necessary to show that the desired result of someone's illegitimate conduct has been achieved for there to have been a breach of the Anti-Bribery Laws. Although the contractor did not receive the permit, the fact that the contractor intended to obtain the permit as a result of the payment means that, if he is a Canadian or Australian citizen or resident, his behaviour may constitute a breach of the Anti-Bribery Laws.

Responsibility extends to the actions of Anvil's agents and Representatives. If an Anvil employee ever doubts the conduct of a particular contractor or agent they should promptly refer their concern to an Anvil Director, Manager, the Ethics Committee or to Anvil's Compliance Officer.

## **How can Anvil, as a corporation, be said to have “intended” to bribe someone?**

Anvil will have committed the offence of bribery if an Anvil employee, acting within the scope of their actual or apparent authority, acts in contravention of the Anti-Bribery Laws in circumstances where Anvil either expressly, tacitly or impliedly authorised or permitted the commission of the offence. One way in which it can be established that Anvil authorised the commission of an offence is by showing that Anvil's board of directors or a “high managerial agent” (an employee, agent or officer with duties of such responsibility that his or her conduct may be fairly assumed to represent company policy), intentionally, knowingly or recklessly engaged in the relevant conduct or expressly, tacitly or impliedly authorised the commission of the offence.

## Turning a 'Blind Eye'

Another way in which Anvil can be found to have committed the offence of bribery is if a *corporate culture* existed within Anvil that directed, encouraged, tolerated or lead to non-compliance with the Anti-Bribery Laws, or if it can be shown that Anvil failed to create a corporate culture that required compliance. This means that were a culture of non-compliance found to exist, Anvil could be held responsible for a bribe paid by an employee even if the bribe was not directly authorised by Anvil's board of directors or management.

To ensure that Anvil has a culture of compliance, Anvil requires that every director, officer, employee, Representative and, as far as possible, joint venture partner is aware of the laws and regulations prohibiting bribery.

Anvil will provide training in accordance with this Guide, and will enforce its policies to ensure that a culture of compliance exists throughout Anvil's global operations.

As well as ensuring that Anvil has a corporate culture which requires compliance, it is essential that the culture of compliance is recognised outside the company. Anvil employees must ensure that, prior to engaging agents or contractors to act on behalf of the company, they receive approval from a manager or company director. All agents, contractors and other third parties acting on Anvil's behalf, together with Anvil's joint venture partners, are required to enter into a Compliance Agreement. For more information please refer to *Anvil Compliance Agreement*.

### Case Study: Turning a blind eye

*US v Bourke*: Frederic Bourke was convicted of conspiring to violate the FCPA by acting through third parties to influence public officials in the Republic of Azerbaijan in connection with the privatisation of a state-owned oil company. He was sentenced to one year imprisonment and ordered to pay a \$1 million fine. The Court expressly acknowledged that Bourke did not have actual knowledge of the FCPA violations, but nevertheless found that he had himself breached the FCPA because he "knew of the high probability that the bribes were being paid" to Azerbaijan officials and "took steps to ensure that he did not acquire knowledge" of any wrongdoing.

**Question**

You overhear a contractor telling one of his workers, "If they give you any trouble, just give them cash. We really need to get this through so that our work can get done. Anvil is relying on us. If we don't get this job done, production will stop and lots of money will be lost. We don't want to let anyone down."

This person is not an Anvil employee, they are an independent contractor. What should you do?

**Answer**

Anvil can be responsible for the actions of its agents and Representatives.

If an Anvil employee ever doubts the conduct of a particular contractor or agent they should refer their concern to an Anvil Director, Manager, the Ethics Committee or to Anvil's Compliance Officer.

N.B. all concerns are confidential and Anvil employees have full protection under Anvil's Whistleblower Policy.

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## What is a “business advantage”?

To constitute a bribe, a benefit must be given or offered in order to:

- obtain or retain business; or
- obtain or retain a business advantage.

In general terms, a business advantage is an advantage gained that assists in the conduct of the business. Examples of things that would constitute a business advantage include a tax concession, the granting of a licence or permit in circumstances where it may not otherwise be granted and access to information concerning upcoming tenders not publicly available which provide the company with an advantage over the other prospective tenderers.

### Case Study: Business Advantage

In 2009 an employee from construction company Brilliant Ray, was sentenced by Hong Kong's Independent Commission Against Corruption to two months imprisonment for violating Hong Kong's Bribery Ordinance. The employee had offered 15 boxes of moon cakes to police officers who he had dealings with during the end of his company's project. This occurred 11 days before the Mid–Autumn Moon Festival, a time when the cakes are traditionally offered as gifts.

This case highlights that irrespective of the value of the benefit or the customary nature of the benefit, if it is held that the intention behind the benefit is to obtain or retain business or a business advantage, the benefit will be held to be a bribe.

(Asialaw: Moon cake case exposes risks of Hong Kong bribery ordinance, Candice Mak, March 2009, <http://www.asialaw.com/Article/2163660/Channel/16709/Moon-cake-case-exposes-risks-of-Hong-Kong-bribery-ordinance.html>)

## When is a benefit or business advantage “not legitimately due”?

The Australian Criminal Code prohibits the giving or offering of a benefit that is “not legitimately due” in order to obtain or retain business, or obtain or retain a business advantage which is “not legitimately due”. Similarly, the Canadian *Corruption of Foreign Officials Act* provides that a benefit is not bribery if it is given or offered in the circumstances described in this section.

A benefit or a business advantage is legitimate when, for instance, it is given or offered in accordance with the law of the foreign state, it is a facilitation payment (see below), or it is given or offered to pay legitimate, reasonable expenses related to sales promotion activities or performance of a contract with the foreign state.

In some circumstances, illegitimate (or illegal) payments will be disguised as government charges, levies or taxes. A business advantage awarded because of the making of a payment or giving of a gift, rather than on the basis of merit, will be illegitimate.

If you are asked to make a payment, give a gift or confer a benefit that is not in accordance with Anvil's standard business practice, as set out in the Code of Business Conduct or this Guide, you must seek advice from an Anvil manager or director (who can, if necessary, refer the matter to Anvil's legal advisors) or Anvil's Compliance Officer, before the payment is made or the gift or benefit is conferred. A key point to remember is that transparency is one of Anvil's core values and therefore any payment, gift or benefit which does not stand up to careful independent scrutiny cannot be considered to be legitimate and should not be made.

The following factors are not relevant to the determination of whether a benefit or business advantage is legitimately due:

- the fact that the benefit or business advantage is customary, or perceived to be customary;
- the value of the benefit or business advantage; or
- any official tolerance of the benefit or business advantage.

### Question

It is a tradition in Africa to give money to the family of the bride to honour the upcoming nuptials. A supervisor asks an employee to give an official's family members packets of money in honour of his daughter's wedding and this tradition. The supervisor tells the employee, that if they ignore this custom and do not provide this offering, the official may look upon them less favourably in the future. The employee is told that it is ok because the money is classified as a customary gift and therefore it will not be seen as a bribe.

### Answer

No, this may still be in breach of anti-bribery laws.

When assessing whether a benefit is "not legitimately due" you must disregard whether the benefit happens to be customary. As illustrated by the Moon cake case, it is the intention behind the gift/ benefit that will be investigated.

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## LEGITIMATE CONFERRAL OF BENEFITS

### Gifts, Meals and Entertainment

#### Gifts

Reasonable entertainment expenses will not violate the principles set out in this Guide, the Code of Business Conduct or the Anti-Bribery Laws unless they are made with the intention of obtaining or retaining future business or a business advantage. Gifts can take many forms. A gift can be a payment, payment in kind (which includes the provision of goods or services), personal favours or entertainment. Accepting or offering gifts of moderate value is acceptable in situations where it is legal and in accordance with Anvil's best business practice.

#### Examples of Appropriate Gifts

Flowers, chocolates, merchandise bearing Anvil logo (hats/t-shirts/umbrellas), inexpensive wine

#### Examples of Inappropriate Gifts

Cash, expensive jewellery, airline tickets, holidays, electronic goods, extravagant purchases of any description

Anvil employees and representatives must not give or accept gifts of any kind that could be reasonably regarded as unduly influencing the recipient or creating a business obligation on the part of the recipient. The approval of an Anvil manager or director or Anvil's Compliance Officer must always be obtained before giving or offering a gift. If there is any doubt about whether a gift should be given or accepted, the question should be referred to an Anvil manager or director who must then seek advice from the Compliance Officer (who can refer the matter to Anvil's lawyers if necessary).

It is essential that all Anvil employees and Representatives comply with Anvil company policy in relation to gifts, and that they be seen to comply with Anvil's policies and the laws and regulations that govern Anvil.

When deciding whether it is appropriate to give or accept a particular gift, a number of issues must be taken into account including:

- (a) the monetary value of the gift - Is the gift excessive or expensive? If so, the gift should not be given or accepted;
- (b) the timing of the gift - Are there any negotiations or contracts being settled? If the giving or receipt of a gift coincides with an important business decision, the gift should not be given or accepted;

- (c) the outside impression conveyed by giving or accepting the gift - If there may be an impression formed by a third party that there is an improper connection between any gift or hospitality and a particular business opportunity, then the gift should not be given or accepted; and
- (d) the type of gift - Certain gifts should never be given or accepted, including cash and drugs or other controlled substances.

#### **Case Example: Inappropriate Gifts**

Between 2000 and 2003, Lucent Technologies Inc. paid travel expenses for approximately 315 business-and-leisure trips by Chinese government officials and inappropriately recorded those trips as legitimate business expenses.

Prior to entering into contracts with Chinese state-owned telecommunications companies, Lucent provided Chinese government officials with trips to the U.S. to attend seminars or visit Lucent facilities and engage in leisure activities. Lucent spent over \$1.3 million in travel, per diems, meals, and lodging expenses for at least 65 pre-sale visits. As a result of these trips, Lucent estimated that it stood to make more than \$80 million in potential contracts.

After entering into contracts with the state-owned telecommunications companies, Lucent paid travel, per diems, meals, and lodging expenses for dozens of trips by Chinese officials ostensibly for training and factory inspection in the U.S., Australia, Germany, and Japan. These trips usually consisted of little or no business and enormous amounts of sightseeing and entertainment. Lucent spent at least \$2 million on these trips and received at least \$50 million in business, with the opportunity for \$2-\$3 billion of revenue in the future.

Lucent also paid or offered to pay for education opportunities for Chinese officials and their relatives, including \$171,000 for tuition and living expenses, \$21,687 for an MBA program in China, and \$8,600 for an internship.

Lucent improperly recorded all of the above payments as sales and marketing expenses and did not implement an oversight program to ensure it complied with the FCPA.

The DOJ entered into a non-prosecution agreement. Lucent agreed to pay a fine of \$1 million.

Lucent agreed, without admitting or denying the SEC's allegations, to pay a \$1,500,000 civil fine.

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## Meals and Entertainment

As with gifts, reasonable entertainment expenses will not violate the principles set out in this Guide, the Code of Business Conduct or the Anti-Bribery Laws unless they are made with the intention of future business or a business advantage being received in return for the meal or entertainment. Meals and entertainment must not be excessive, and must be fairly and accurately accounted for in the company's books and records in accordance with Anvil Company Policy.

### Question

Representatives from a number of government departments are attending a meeting to discuss the company's future plans and pertinent issues that have arisen in relation to a local project. The representatives have requested an allowance to cater for travel, meals and accommodation. It is clear that because of the lack of financial wherewithal of the government, many departments will not be in a position to pay its employees to attend meetings of this nature. Would paying such benefits be classified as a breach the Anti-Bribery Laws?

### Answer

When assessing whether a benefit is in breach of the laws the regulatory authorities will look to the intention behind the provision of the benefit.

If it is NOT made with the view to obtain business or a business advantage; is to assist in routine government services; the benefit is appropriately minor in nature (US\$20 –50 per day); and all expenses and arrangements are adequately recorded it will be held to be a legitimate per diem and an acceptable payment.

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## What is a facilitation payment?

There are some payments, called “facilitation payments”, which can be made to foreign public officials and are not prohibited under the Anti-Bribery Laws. These payments include taxes and charges levied in accordance with the local law. They also include payments that are not intended to influence a decision by a foreign public official in relation to awarding new business to, or continuing to do business with, a particular party, but rather to secure the performance of a routine government action of a minor nature.

However, although the making of facilitation payments is permitted by Anti-Bribery Laws, such payments may be prohibited by local laws. All Anvil employees, joint venture partners and Representatives must ensure that their conduct does not violate Anti-Bribery Laws or the local laws and regulations that govern Anvil's operations.

A facilitation payment is a payment where:

- the value of the benefit is minor;
- the benefit is made to expedite or secure the performance by a foreign public official of a routine government action of a minor nature that is part of the foreign public official's duties or functions; and
- a record of the benefit has been made.

Each of these elements is explained below.

### Routine Government Action

A “routine government action” is an action which is ordinarily and commonly performed by a foreign public official and does not involve a decision about whether to award new business, whether to continue to do business, or the terms of that business, or encouraging someone to make such a decision. Examples of routine government actions include:

- 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;
- processing government papers such as a visa or work permit;
- providing services normally offered to the public, such as police protection, mail collection or delivery, telecommunication services and power and water supply;
- scheduling inspections associated with contract performance or related to the transit of goods;

- loading and unloading cargo;
- protecting perishable products, or commodities, from deterioration; and
- any other action of a similar nature

### Question

We regularly pay government officials to let our trucks, which are loaded with concentrate, through a certain check point. Is this a bribe or a facilitation payment?

### Answer

If the payment is made to a government official to secure a **routine action government** of a minor nature and the **value of the benefit is small**, then it is a facilitation payment.

A key issue is whether the official is performing a routine action to which the company is ordinarily entitled.

It is important that you make sure that you keep a **detailed record of the payment** in accordance with the Anti-Bribery Laws.

### Alternatives

- Traffic infringements
- Access to the airport
- Visa and work permits
- Processing of general licenses

Provided these alternatives fit with the requirements (as set out in the answer) these will also be facilitation payments.

## Anvil Company Policy

In accordance with Anvil company policy, all facilitation payments must be approved by an Anvil manager or director or Anvil's Compliance Officer and may only be made if:

- (a) the purpose of the payment is to secure or expedite the completion of a routine service or administrative action to which Anvil is entitled under local law and in the ordinary course of business;
- (b) there is no reasonable alternative to making the payment;
- (c) the payment is of a minor nature;
- (d) the payment is legal under the local law of the country concerned; and

- (e) the payment is accounted for clearly and accurately and disclosed in Anvil company accounts.

## Record Keeping

A record must be kept of all facilitation payments. The record must set out:

- 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 or some other means of verifying the person's identity. ("person" refers to the person who gave the benefit).

The onus of establishing that a payment was a facilitation payment, not a bribe, lies on Anvil. Therefore, accurate records must be kept of all payments made in accordance with Anvil company policy on record keeping and internal company controls set out in this Guide.

Anvil has created a pro forma document that must be filled out by all staff upon the payment of a facilitation payment. Employees and representatives based on site full time must complete this form and provide the completed and executed document to the Compliance Officer within 2 working days following the payment of a facilitation payment. Employees and Representatives travelling on site or passing through must also complete the form at the time of the incident, but are required to provide the completed and executed document to the Compliance Officer within 2 working days of their return to the Perth office or at the cessation of their trip.

The keeping of these records is also important for tax reasons. The *Income Tax Assessment Act 1997* (Cth) has been amended to specifically deny deductions of losses or outgoings that are determined to be a bribe to a foreign or national public official. Any records of facilitation payments that do not fully comply with the record keeping requirements of section 70.7 (3) of the Criminal Code 1995 Commonwealth will not be tax deductible.

### **Case Study**

#### **The Importance of Record keeping**

American Rice company had a large market share in Haiti in the mid 1990's. By shipping bulk rice instead of bagged rice, the company paid a lower import tax and operated more efficiently than its competitors. However, competition from rice smugglers, who paid no import tax, corruption among customs officials and escalating import taxes steadily eroded American Rice's competitive advantage. The company made numerous 'facilitating payments' to Haitian customs officials to reduce import taxes. The payments amounted to approximately \$500,000, which resulted in the reduction of import tax of over a million dollars. American Rice, together with 3 of its officers and employees, was found to be in violation of anti-bribery laws for inaccurately recording bribery payments as routine business expenditures, and for failing to devise and maintain an adequate system of internal accounting controls to detect and prevent improper payments: (In the matter of American Rice, Inc., Joseph Schwartz, Jr., Joes R. Malebranche and Allen W Sturdivant, United States of America before the Securities and Exchange Commission, <http://edgar.sec.gov/litigation/admin/34-47266.htm>)

## **REPORTING AND RECORD KEEPING**

### **Record keeping and internal controls**

Anvil is committed to ensuring that, in accordance with this Guide, effective training programs are in place so that all Anvil employees, joint venture partners and Representatives are aware of the legislation that governs Anvil's operations, including the Anti-Bribery Laws. Anvil has also established strict internal controls and implemented an **Accounts and Record-Keeping Control Guidelines**, describing detailed record keeping procedures and requirements, to ensure that Anvil complies with all of the laws that govern its operations.

### **Integrity of Record Keeping and Accounts**

Anvil is committed to maintaining the integrity of all company books and records so that they provide an accurate account of all transactions. The integrity of records is essential for maintaining stakeholder confidence and ensuring compliance with the laws that apply to Anvil, including Anti-Bribery Laws.

It is Anvil's policy that all books and records be kept so that they fully and fairly reflect all receipts and expenditures by Anvil. In furtherance of the policy, the following shall apply:

- no numbered or secret account or undisclosed or unrecorded funds or asset of Anvil shall be maintained or established for any purpose;
- no false or artificial entries shall be made in the books and records of Anvil for any reason and no employee shall engage in any arrangement that results in such prohibited act; and
- no transaction shall be effected, and no payment shall be approved or made, on behalf of Anvil with the intention or understanding that any part of such payment is to be used for any purpose other than that described by the documents supporting the payment.

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## REPORTING VIOLATIONS OF THE CODE OF CONDUCT OR OTHER UNETHICAL CONDUCT

### Whistleblower Policy

Anvil's "Whistleblower Policy" governs the process by which Anvil employees and Representatives can anonymously notify the Compliance Officer or Audit Committee of potential or suspected violations of Anvil company policy, as set out in the Code of Business Conduct or this Guide, or of the Anti-Bribery Laws that apply to Anvil. All Anvil employees, joint venture partners and Representatives who report violations of the Code of Business Conduct, this Guide or the Anti-Bribery Laws that apply to Anvil can be confident that all reports will be dealt with and will be treated with absolute confidentiality in accordance with Anvil's Whistleblower Policy, which includes that there will be no action brought against the employee, joint venture partner or Representative making the report.

For more information please refer to *Anvil Whistleblower Policy*.

If an Anvil employee, joint venture partner or Representative believes that a violation of any:

- legal or regulatory requirements;
- company policy as set out in the Code of Business Conduct or this Guide;
- internal policy relating to accounting standards and disclosures;
- internal accounting controls; or
- matters related to the internal or external audit of Anvil's financial statements,

has occurred (or may occur) they should immediately report their concerns to Stuart McKenzie , Anvil's Compliance Officer (see contact details on page 5 of this Guide).

If an employee is not comfortable reporting a concern to the Compliance Officer, he or she should report the concern to any supervisor or member of management whom he or she is comfortable approaching. Any manager or other supervisory employee who receives a report of an alleged violation must immediately forward the report to the Compliance Officer. The Compliance Officer will communicate all reports of alleged violations to the Corporation's Audit Committee who will investigate and otherwise deal with all complaints in accordance with the Audit Committee charter and Anvil's Whistleblower Policy.

## **Investigation of Complaints**

Upon receipt of a complaint alleging a violation, the Compliance Officer must refer the matter to the Audit Committee. The Audit Committee, or a designated member of the Committee, will make a determination as to whether a reasonable basis exists for commencing an investigation into the conduct alleged in the complaint. If the Audit Committee or a committee member concludes that an investigation is warranted, it will ensure that the alleged violation is investigated.

## **Corrective Action**

The Audit Committee is ultimately responsible for determining the validity of each complaint and fashioning, with the input of senior management and Anvil's legal advisors, the appropriate corrective action. The Committee shall report any findings of non-compliance with Anvil company policy or regulatory non-compliance to Anvil's board of directors. The board is responsible for ensuring that the appropriate corrective action is taken which can include:

- dismissal of employees;
- cancelling of contracts with Anvil Representatives or joint venture partners; and
- reporting the alleged violation to the appropriate governmental and law enforcement agencies.

## **No Retaliation**

Anvil employees and Representatives should feel confident that any reports of alleged violations, or assistance with investigations into allegations of misconduct, will be dealt with on a confidential basis, in accordance with Anvil's Whistleblower Policy. There will be no retaliation against Anvil employees for lost opportunity resulting from not offering or not accepting a suspected or potential bribe.

## **Compliance with this Guide**

All Anvil employees, Representatives and joint venture partners must be familiar with this Guide and follow the procedures outlined in this Guide and cooperate with any investigation initiated pursuant to this Guide. Adhering to this Guide and the Code of Business Conduct is a condition of employment or association.

## **Obligation to Comply with Law**

Anvil is committed to building and maintaining a reputation for integrity, honesty and transparency. This reputation depends on its employees, Representatives and joint venture partners complying with the law.

Anvil expects the highest standards of ethical conduct from all of its employees, Representatives and joint venture partners, regardless of their position in, or relationship with, Anvil. Anvil requires adherence to both the letter and the spirit of all laws and regulations that govern Anvil. Adherence is a term of employment or association with Anvil. Violation of the law by any employee, Representative or joint venture partner may be subject to disciplinary action including termination of employment or association with Anvil.

Anvil employees are responsible for ensuring that their actions do not violate the law. If an Anvil employee is directed to do something which they believe to be unlawful, they are expected to report the incident to a member of Anvil management, the board of directors or to Anvil's Compliance Officer in accordance with this Guide. All complaints and reports will be treated confidentially in accordance with Anvil's Whistleblower Policy and no retaliation against a person making a report will be tolerated.

Anvil managers are responsible for their own individual behaviour. To an extent, they are also accountable for the actions of the Anvil employees that report to them. Each manager is responsible for ensuring that the employees who report to them are aware of Anvil company policy as set out in this Guide and the Code of Business Conduct. Managers should ensure that new employees attend the training sessions to ensure that they understand Anvil company policy. Managers must report any violations of the principles set out in the Guide or the Code of Business Conduct to Anvil's Compliance Officer or to Anvil's board of directors.

Anvil will, through its board of directors and senior management, endeavour to maintain a work environment where frank and open discussion is encouraged and expected, without fear of retribution. Anvil will ensure that any allegations of violation of Anti-Bribery Laws or any other law that applies to Anvil will be treated confidentially, investigated thoroughly and dealt with appropriately in accordance with the procedures set out in this Guide.

Every Anvil employee, Representative and joint venture partner is required to understand and comply with the laws that apply to Anvil, including the Anti-Bribery Laws. Anvil's employees, Representatives and joint venture partners must read and consent to be bound by Anvil's Compliance Agreement.