



## COMBATting BRIBERY AND CORRUPTION

Principals or contractual counterparties often ask our Members to confirm that they have adopted methods and procedures to combat behavior that could be considered a bribe, facilitation payment or gift intended to bestow a benefit that might not otherwise be conferred. ASBA strongly recommends that Members adopt an anti-bribery and corruption policy with effective auditing and other enforcement mechanisms targeted to hindering such conduct. Ideally, this policy will be tailored to the Member's particular business model and operational environment.

To assist Members in formulating a policy to address this important issue, ASBA can recommend the following model anti-bribery and corruption policy that can be adapted to the Member's particular circumstances. The policy refers to a company's anti-bribery and corruption officer, so before the policy is implemented the company must designate such an officer and insure that such person is knowledgeable about anti-bribery and corruption laws and be able to respond to employee questions and concerns. Remember that a policy is of little value absent proper implementation and diligent enforcement.

### MODEL ANTI-BRIBERY AND CORRUPTION POLICY

#### **1. Introduction.**

This Anti-Bribery and Corruption Policy ("Policy") reflects our Company's commitment to conduct business honestly and ethically and our success depends on the trust and confidence of our principals, business partners and counterparties. We are committed to acting professionally, fairly and with integrity in all our dealings with public or private persons. We prohibit bribery and corruption in all forms and are committed to implementing and enforcing effective systems to prevent such conduct.

This Policy applies to all employees wherever they work and prohibits bribery of domestic and foreign government officials as well as private sector (commercial) bribery, including offering, promising, authorizing or providing anything of value to any customer, business partner, vendor or other third party in order to induce or reward the improper performance of an activity connected with our business. This Policy takes into consideration the U.S. Foreign Corrupt Practices Act ("FCPA") and is intended to make you aware of legal prohibitions so that you can recognize potential problems and address them appropriately. The FCPA has effect beyond the United States and prohibits the bribery of foreign (non-U.S.) officials. A violation of anti-bribery laws can lead to severe civil and criminal penalties, including incarceration, as well as harm to the Company's reputation and goodwill. A violation of this Policy could result in disciplinary actions, including but not limited to termination of employment. It is therefore vital that you not only understand and appreciate the importance of this Policy, but also comply with it in on a daily basis. If you have any questions about this Policy or applicable anti-bribery laws generally, contact our anti-bribery and corruption officer.

Part of our commitment to prevent bribery and corruption is to ensure that persons or companies acting on our behalf have also adopted an effective anti-bribery and corruption policy. When we engage third parties to act for us we must determine if they have such policies in force and are committed to their enforcement.

## **2. Defining Bribery.**

As noted above, bribery generally involves offering or providing anything of value to a person, government official, business partner or prospective commercial counterparty for the purpose of obtaining or retaining business or influencing official action. Usually common sense will dictate whether something of value may amount to a bribe, but generally it can include:

- money or cash equivalent;
- lavish, excessive or unreasonable gifts, entertainment or hospitality;
- kickbacks (i.e., the return of part of a sum received, usually pursuant to a confidential agreement or coercion);
- unwarranted rebates or excessive commissions;
- facilitation payments (i.e., value given to a government official or other person to induce them to perform their routine job more quickly or to give priority);
- political or charitable contributions;
- uncompensated use of Company facilities or services.

## **3. Dealing with Public Officials.**

While this Policy deals with public (government) and private entities, interactions with public officials are of heightened concern because of the risk of a violation of anti-bribery laws. For this reason, anything of value given to a U.S. public official for the purpose of influencing them in their official capacity is strictly prohibited.

Company employees will not make or accept facilitation payments or kickbacks of any kind. Facilitation payments are typically small, unofficial payments made to secure or expedite a routine government action by a government official. They typically involve small payments to government officials to expedite non-discretionary actions such as obtaining a license or business permit, processing official documentation such as visas or customs clearances or expediting cargo operations. However, a legally-mandated administrative fee for expediting government services is not prohibited and in such case a receipt must be obtained. In very limited circumstances and with the approval of the Company's anti-bribery and corruption officer, a facilitation payment may be made to secure the personal health or safety of a Company employee. An imminent threat of physical harm must be involved and economic coercion will not justify such a payment.

## **4. Dealing with Non-Public Officials.**

This Policy does not prohibit giving and receiving promotional gifts of low value and normal and appropriate hospitality. Indeed, such gestures can play an important role in strengthening relationships and promoting the Company's products and services. However, the provision or receipt of excessive or lavish gifts, hospitality or favors may create the appearance of impropriety and amount to bribery. The principal guideline in furnishing or receiving gifts is a rule of reasonableness, and determining this should take into account whether one would be comfortable seeing the gift or favor reported publicly.

A gift or favor that is not directly or indirectly given or received from a public official and that meets all of the following criteria is generally permissible if:

- it does not include cash or cash equivalent (e.g., gift certificates, vouchers or similar items that can be exchanged for cash);
- it is not intended to improperly influence or reward a person for doing something or refraining from doing something that involves the Company or another party and especially to cause a person to do something improper, unethical or illegal;

- it is unsolicited, given infrequently, openly and not in secret;
- it is not lavish, unreasonable or excessive and is appropriate in type and value (a gift or favor of equivalent value of \$100 or less is presumed to be reasonable; gifts or favors exceeding such value should be approved by or reported to the employee's supervisor and/or the Company anti-bribery and corruption officer).

#### **5. Donations.**

We do not make contributions of any kind to political parties. Donations to recognized charities in the name of the Company are subject to Company approval but are not to be made for the purpose of gaining a commercial advantage.

#### **6. Compliance.**

All of us are obligated to act with integrity and to ensure that we understand and comply with this Policy. Training will be provided to those employees who are likely to require particular guidance given their role in interacting with public officials or other third parties. This Policy will be regularly audited for effectiveness and compliance.

#### **7. Record Keeping.**

We will keep financial records and have appropriate internal controls in place which will evidence the business reason for making any payments to third parties. All expense claims relating to hospitality, gifts or expenses incurred to third parties must be submitted in accordance with our expense policy and specifically set forth the business purpose for the expenditure. All accounts, invoices, memoranda and other documents and records relating to dealings with third parties, such as clients, suppliers and business contacts, must be prepared and maintained with strict accuracy and completeness. No accounts may be kept off-the-book to facilitate or conceal improper payments.

#### **8. Raising Concerns.**

Employees are encouraged to contact their supervisor or the Company anti-bribery and corruption officer about any issue relating to questionable gifts, payments or favors. Employees should immediately report any conduct that might be in contravention of this Policy or anti-bribery laws. The Company will not tolerate retaliation in any form against anyone who raises genuine concerns or reports what they genuinely believe to be improper, unethical or inappropriate behavior.