

Anti-Bribery and Anti-Corruption Policy

McMillan Shakespeare Group of Companies

Finance



Reviewed and Adopted by the Board on 21 September 2020

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1. Introduction

- 1.1. This Policy sets out McMillan Shakespeare Group's (MMSG) policy in relation to bribery and corruption matters.
- 1.2. MMSG is committed to conducting its business with honesty and integrity at all times and the Board has a zero-tolerance approach to bribery and corruption.
- 1.3. While bribery and corruption expose MMSG to the risk of criminal and civil proceedings, individuals engaged in that conduct may also be subject to such proceedings. The penalties for such conduct are severe.
- 1.4. Bribery and corruption can also expose MMSG to the risk of reputational damage.
- 1.5. The Board has zero tolerance for bribery or corruption committed by staff.

2. Purpose

- 2.1. The purpose of this Policy is to:
 - (a) provide clear policies and procedures for employees and other workers in relation to bribery and corruption issues that may arise in the course of their employment;
 - (b) provide guidelines for the offering or acceptance of gifts or hospitality (also refer to MMSG's Conflict of Interest Policy);
 - (c) assist in the protection of MMSG's reputation, business and interests;
 - (d) have a reporting mechanism for allegations of bribery and corruption (as reflected in the Whistleblower Policy); and
 - (e) assist in compliance with legal obligations.

3. Scope of Policy

- 3.1. This Policy applies to all persons who perform work for MMSG in any capacity (Our People), including:
 - (a) all staff (including Senior Executives, managers and supervisors);
 - (b) contractors, subcontractors and outworkers;
 - (c) agents;
 - (d) trainees and students gaining work experience;
 - (e) volunteers; and
 - (f) directors.

- 3.2. This Policy applies to MMSG's operations in Australia and overseas. Laws in overseas jurisdictions may differ from this Policy but must also be complied with.

4. Compliance

- 4.1. MMSG expects all of Our People to comply with this Policy.
- 4.2. Any breach of this Policy will be treated as serious misconduct and investigated on this basis.
- 4.3. Action will be taken against any of Our People who breach this Policy. The nature of that action will depend upon the severity of the breach.
- 4.4. Where this Policy is breached by an employee, the consequence of any substantiated breach of this Policy may include a reprimand, demotion, termination with notice or summary dismissal.
- 4.5. Breaches of this Policy will be reported to the Board for their review and consideration.
- 4.6. Any breach of this Policy (whether substantiated or suspected) may be reported to regulatory or law enforcement agencies.

5. Bribery and corruption

- 5.1. Bribery exists where there is an intention to influence another person corruptly or improperly in the performance or exercise of their duty.
- 5.2. Bribes can take the form of money, gifts, loans, fees, hospitality, services, discounts, the award of a contract or any other advantage or benefit.
- 5.3. Bribery includes the giving of a Bribe to another party with the purpose of Improperly Influencing a Third Party.
- 5.4. If any of Our People are unsure about whether a particular act constitutes Bribery, it should be raised with the line manager or Chief Financial Officer (CFO).
- 5.5. Specific examples of Bribery and Corruption include but are not limited to:
- (a) giving, promising to give or offering a payment, gift or hospitality to a Third Party with the expectation of receiving a personal / business advantage or to reward a personal advantage already given;
 - (b) giving or accepting a gift, hospitality or other benefit during commercial negotiations or tender process which is intended to, or may be perceived to, influence the outcome;
 - (c) accepting a gift, hospitality or other benefit from a Third Party where it has been, or may be perceived to have been, offered for the purposes of Improper Influence;
 - (d) providing an additional benefit in excess of reimbursing genuine and reasonable business expenses (for example, the cost of an extended hotel stay for the recipient and his/her family);
 - (e) offering an educational opportunity to the child of a foreign government official to influence that official to award a contract;

- (f) hospitality which is unduly lavish or extravagant under the circumstances;
- (g) Facilitation Payments and Kickbacks (discussed further in section 6); and
- (h) threatening or retaliating against another individual who has refused to engage in Bribery or Corruption or who has raised concerns under this Policy

5.6. Business practices vary between countries and regions so what may be acceptable in one country or region may not be acceptable elsewhere. The test to be applied is whether in all the circumstances the benefit is intended to influence the recipient to exercise his/her duties or powers in a way that may provide a personal or business advantage to MMSG or Our People.

5.7. Any benefit which is not in accordance with the Conflicts of Interest Policy must not be accepted.

5.8. Our People must not be involved in any form of Bribery, Corruption, Extortion or Secret Commission, which are criminal offences.

6. Facilitation Payment and Kickbacks

6.1. MMSG does not make, and will not accept, Facilitation Payments or Kickbacks of any kind, regardless of whether they are legal in a country.

6.2. In Australia Facilitation Payments may be a defence to the prohibition on payment of bribes to foreign public officials, but Facilitation Payments are prohibited under the UK Bribery Act 2010. This Act can apply to conduct outside the UK so Facilitation Payments, regardless of where they are given or received, are prohibited under this policy.

6.3. If any of Our People are asked to make a payment on behalf of MMSG they should be mindful of what the payment is for.

6.4. Any of Our People who are not sure whether a payment is acceptable should speak to their line manager or the CFO.

7. Gifts and hospitality`

7.1. The reasonable and appropriate use of gifts, hospitality or entertainment may be in the interests of MMSG if they are offered or received for the purposes of:

- (a) establishing or maintaining good business relationships;
- (b) improving or maintaining MMSG's image or reputation; or
- (c) marketing or presenting MMSG's products and/or services effectively.

7.2. Offering or receiving gifts or hospitality is acceptable if:

- (a) it is consistent with this Policy;
- (b) it is consistent with the Conflicts of Interest Policy;
- (c) it is not made with the intent of improper influence or in implicit or explicit exchange for favours or benefits;

- (d) it does not, nor is seen to, compromise independent business judgment, particularly in relation to a pending or anticipated business transaction or regulatory approval;
- (e) it is done in MMSG's name;
- (f) it does not include cash or a cash equivalent (such as gift certificates or vouchers);
- (g) it is token, seasonal or due to a special occasion or local custom;
- (h) it is given openly and not secretly;
- (i) it complies with any applicable law; and
- (j) it does not involve a public or government official or representative, politician or political party, unless approved in writing by the relevant Senior Executive or CFO.

7.3. Any gift or hospitality given or received must be declared, approved and recorded in the Benefits Register in accordance with the Conflicts of Interest Policy.

7.4. Promotional gifts of low value such as branded stationery, key chains, cups etc. to or from existing or potential customers, suppliers and business partners will usually be acceptable.

7.5. Gifts or hospitality must not be given to or received from any person or entity involved in any tender in which MMSG is also involved until that tender process is completed.

8. Foreign public officials

8.1. The definition of 'public official' is relatively broad and extends beyond what may commonly be understood by that term.

8.2. For the purposes of Australian law and this Policy, a 'foreign public official' is:

- (a) a member of the executive or any legislature of a foreign country or part of a foreign country (for example, a member of the country's parliament, or a member of a regional council);
- (b) any candidate for political office;
- (c) an employee or official of a foreign government body;
- (d) an individual who performs work for a foreign government body under a contract;
- (e) an individual who holds or performs the duties of appointment, office or position under a law of a foreign country or a part of a foreign country;
- (f) an individual who is otherwise in the service of a foreign government body (including service as a member of a military or police force);
- (g) a judge or magistrate of a foreign country or part of a foreign country;
- (h) an employee, office holder or otherwise in the service of a public international organisation (for example, the United Nations, World Bank);
- (i) an authorised intermediary of a foreign public official; or

- (j) someone who holds himself or herself out to be the authorised intermediary of a foreign public official.

8.3. Bribery of a foreign public official is an offence under Australian law. The punishment for an individual convicted of this offence may be up to 10 years' imprisonment or a fine of up to \$2.1 million, or both. The financial penalties are significantly higher for corporations.

8.4. Bribery of a foreign public official may also be an offence in the country where the conduct occurs. MMSG and the Department of Foreign Affairs may be very limited in the assistance either can offer to Our People accused of Bribery in a foreign jurisdiction.

9. Intermediaries, agents and business partners

9.1. MMSG may engage another party to:

- (a) represent its interests to current and potential private or government business partners (such as a sales agent or lobbyist) (Intermediary);
- (b) conduct work on its behalf as an agent; or
- (c) work with it on a particular project or matter as a joint venture or business partner.

9.2. The employee or official of MMSG responsible for this engagement must:

- (a) ensure that an appropriate and documented due diligence is undertaken to ensure the integrity, reputation, credentials and qualifications of the person or entity engaged;
- (b) ensure that fees payable to the person or entity engaged are reasonable for the services being rendered. Ad valorem or percentage-based fees require written approval from the CFO before such an arrangement can be entered into;
- (c) ensure that the person or entity engaged is informed about and agrees in writing to comply with this Policy.
- (d) ensure that the agreement with the person or entity engaged incorporates MMSG's standard terms in relation to anti-bribery and corruption, as appropriate following a proper assessment of risk (including clauses relating to warranty, guarantee, reporting, audit, termination and indemnification); and
- (e) undertake regular reviews of the person or entity engaged to monitor performance and prevent a breach of this Policy.

10. Reporting

- 10.1. MMSG encourages Our People to raise concerns about any actual or suspected Bribery or Corruption at the earliest opportunity to their line manager or if they wish to remain anonymous through the [Whistleblower Policy](#).
- 10.2. All bribery or corruption matters (including attempts) will be reported to the Board;
- 10.3. If one of Our People is offered a Bribe, or is asked to make one, the issue should be immediately raised with the line manager or the CFO.
- 10.4. MMSG will treat all reports of actual or suspected Bribery or Corruption in a timely manner.
- 10.5. Unless a report of Bribery or Corruption is found to have been made vexatiously, MMSG will not take any action against the person who made the report, even if the Bribery or Corruption is not substantiated.
- 10.6. A report of actual or suspected Bribery or Corruption will not affect any performance management process or investigation into misconduct involving the person who made the report.

11. Whistleblower provision

- 11.1. In circumstance where a report of actual or suspected Bribery or Corruption cannot be made to the line manager or to the CFO, it can be reported to the whistleblower hotline.
- 11.2. MMSG has a separate Whistleblower Policy that can be accessed at [Whistleblower Policy](#).

12. Charitable donations

- 12.1. MMSG supports a number of charitable causes in Australia.
- 12.2. Donations are made to these charitable causes without expectation of favourable action or the exercise of any influence.
- 12.3. In some circumstances, donations may be corrupt, for example if they are made to an artificial charitable organisation or ultimately benefit a Third Party.
- 12.4. Donations can only be made on behalf of MMSG if the donations are:
 - (a) approved by the Chief Executive Officer, CFO or in accordance with the Board approved delegations;
 - (b) made only to an approved not-for-profit organisations whose goals reflect the values of MMSG;
 - (c) are accurately recorded in the business records of MMSG;
 - (d) not made in physical cash or to private accounts; and
 - (e) are consistent with this Policy.

12.5. Any employee who seeks a charitable donation from MMSG must disclose any benefit the employee will derive from the donation.

13. Sources of legal obligations

13.1. The sources of legal obligations behind this Policy are the anti-corruption laws of countries in which MMSG operates. The anti-corruption legislation of some countries has extra-territorial operation so may apply to MMSG even if the alleged corruption does not take place in that country.

13.2. This legislation includes:

- (a) *Criminal Code Act 1995* (Cth);
- (b) *Corporations Act 2001* (Cth);
- (c) *Bribery Act 2010* (UK);
- (d) *Crimes Act 1961* (NZ);
- (e) *Secret Commissions Act 1910* (NZ);
- (f) any anti-corruption law of a country which applies to MMSG, its business partners or third parties operating on its behalf.

14. Definitions

In this Policy, the following words and phrases have the following meanings:

MMSG	means McMillan Shakespeare Limited and any subsidiary or business which is directly or indirectly wholly or majority owned, managed or otherwise controlled by McMillan Shakespeare Limited.
Bribe/Bribery	means the giving, offering, promising, requesting, soliciting agreeing to receive or receipt or acceptance of any advantage, which need not be financial, including any payment, gift, loan, fee or reward to or from any person for the intended purpose of Corruption or Improper Influence.
Corrupt / Corruption	means the misuse or abuse of public or private office or power for personal gain.
Extortion	means an improper demand for payment from a Third Party.
Facilitation payment	means a small payment or other inducement provided to a government official in order to secure or expedite a routine function that the official is ordinarily obliged to perform already.
Improper Influence	means the intent to influence a person in their exercise of their duties in order to gain a personal or business advantage.

Kickback	means a payment made in return for a business favour or advantage.
Secret Commission	means an undisclosed sum (or something of value) that is offered or provided to a representative of a Third Party for the purpose of improperly influencing that Third Party.
Senior Executives	means members of the key management personnel of MMS and the direct reports of the Chief Executive Officer and Chief Operating Officer.
Third Party	means any individual or organisation who is engaged by or paid to represent MMSG including licensees, business partners, actual and potential customers, suppliers, distributors, business contacts, consultants, contractors, agents, representatives, sponsors, advisors, government and non-government bodies and their representatives and officials, politicians and political parties.