



POLICY

# ANTI-CORRUPTION COMPLIANCE



	Name	Position	Review Approval Date /	Approval Signature
Owner:	Cedric Goode	Managing Director		
Reviewed by:	Julian Tambyrajah	CFO	17/12/2010	
Reviewed by:	Jock Muir	Chairman		
Reviewed by:	Peter Wall	Non Executive Director		
Reviewed by:	Peter Richards	Non Executive Director		
Approved by:	Jock Muir	Board of Directors	22/12/2010	Circular Resolution



# POLICY

## 1. SCOPE

NSL Consolidated Limited, and its subsidiaries, expect that all employees, directors, contractors, intermediaries and company agents and representatives will observe the following Policy (the "Policy").

Complying with this 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.

## 2. PURPOSE

The purpose of this Policy is to ensure compliance by NSL Consolidated Ltd and all its subsidiaries in Australia or overseas (the "Company") with Australia's Anti-Corruption legislation (principally the *Criminal Code Act 1995 (Cth)* ("the Code")). The Code makes it illegal for companies, their officers, directors, employees and agents, and any shareholders acting on their behalf, to bribe foreign officials. Corruption offences cover a very broad range of crimes, including bribery, embezzlement, nepotism and extortion. For this reason Australia's corruption offences are not contained in any single Act of Parliament. Instead, different types of corruption are dealt with in different pieces of State/Territory and federal legislation.

Australia ratified the OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions 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. A copy of Division 70 of the Code is provided at Appendix C.

## 3. DIVISION 70 OF THE CRIMINAL CODE, 1995 (CTH.)

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.

Bribing, or attempting to bribe, a foreign public official is a serious crime. The maximum penalty for an individual is 10 years imprisonment and / or a fine of \$1,100,000. The penalty for a body corporate is a fine of \$11,000,000, 3 times the value of the benefit obtained from the bribe (if the court can ascertain the value) or 10% of the annual turnover of the company (if the court cannot ascertain the value), whichever is the greater.

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 realize 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.



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**4. THE OFFENCE OF “BRIBING A FOREIGN PUBLIC OFFICIAL”**

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 of 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 of another person, including an NSL Group company, the Company may also be liable because of your actions, but that does not affect your personal responsibility.

**5. WHAT IS “A BENEFIT”?**

A benefit is any advantage and is not limited to property. A benefit can be a non-monetary or non-tangible inducement. It does not need to be provided or offered to the foreign public official, it can be provided or offered to another person (eg a gift to a third party). For example, the benefit could be provided to a member of a foreign public official's family in the form of a college scholarship for the official's child. It could be a donation to a charity.

A benefit can include facilitative transactions providing an economic benefit to the payee. For example, paying legitimately payable fees into foreign bank accounts in order to **illegitimately** avoid taxation may be sufficient, as the avoidance of the tax is in itself a benefit.

A benefit can also be provided or offered by an agent. Agency issues are dealt with in more detail in section 10 of this Policy.

Importantly, the benefit must **not be legitimately due**. The meaning of “not legitimately due” is discussed at section 8 of this Policy.

**Except as set forth in this Policy, neither the Company nor any of its employees, agents or business partners (including joint venture partners) shall make, promise or authorise any gift, payment or offer any other benefit on behalf of the Company to any person, where that gift, payment or benefit may influence a “foreign public official”.**

Common examples of benefits include:

- introduction fees paid to a third party to introduce the Company to a foreign public official;
- inflated payments to agents;
- payments made to facilitate certain government actions (although note the “facilitation payments” defence at section 11 of this Policy);
- payments to a third party (including payments to a statutory corporation or government department) in connection with the grant, renewal or extension of any



## POLICY

licence, approval or authority to conduct or extend the scope of a business undertaking (unless those payments are made to a relevant government body and are required by law to be paid).

## 6. WHO IS A “FOREIGN PUBLIC OFFICIAL”?

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

- an employee / official of a foreign government (eg 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);
- a member of the executive, judiciary or magistracy of a foreign country;
- a person who performs official duties under a foreign law;
- a member / officer of the legislature of a foreign country; or
- an employee / official of a public international organisation (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.

## 7. INTENTION TO INFLUENCE

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

- intent to carry out particular conduct (ie **influence the foreign public official**); and
- intent to achieve a particular result (ie to **obtain or retain business** or to **obtain or retain a business advantage that is not legitimately due**).

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.

The influence must be with respect to:

- obtaining or retaining business; or
- obtaining or retaining a business advantage that is not legitimately due.

“Obtaining or retaining business” includes benefits significant enough to influence trade and its scope is such that on its own it would **not** include smaller “facilitation” benefits (for example, a manager in Australia authorises the payment of \$100 to a foreign official to expedite the connection of a single telephone in an office that already has 50 telephones).

However, payments in connection with the grant, renewal or extension of any licence, approval or authority to conduct or extend the scope of a business undertaking will be caught unless those payments are made to a relevant government body and are required by law to be paid.

‘Business advantage’ is defined in the Code to mean an advantage in the conduct of business. The ‘business advantage’ limb may apply to a wide range of minor transactions and may catch smaller “facilitation” benefits (for example, the connection of a phone line as above, or the payment of a bribe in order to receive an operating permit for a factory where the person has failed to satisfy the statutory requirements for issue of such a permit).

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



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## 8. WHAT DOES “NOT LEGIMATELY DUE” MEAN?

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:

- the benefit may be, or be perceived to be, customary, necessary or required in the situation;
- the value of the benefit is small; or
- 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:

- the business advantage may be, or be perceived to be, customary, in the situation;
- the value of the business advantage is small; or
- 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.

## 9. WHEN DOES THE OFFENCE APPLY?

The offence applies where the conduct constituting the offence occurs wholly or partly in Australia, or wholly or partly on board an Australian aircraft or an Australian ship. The offence also applies to conduct committed wholly outside Australia in three situations. This is where, at the time of the alleged offence, the person who is alleged to have committed it is:

- an Australian Citizen;
- a resident of Australia; or
- a body corporate incorporated by or under a law of the Commonwealth or of a State or Territory.

The offence applies regardless of the outcome or result of the bribe or the alleged necessity of the payment.

The Code extends criminal responsibility to situations in which a person is guilty of:

- attempt;
- complicity / aiding and abetting;
- incitement; and
- conspiracy.

Care must be taken when entering into joint venture agreements to ensure that there is no provision in the agreement that sanctions the payment of a bribe.

Attempts to bribe a foreign public official can also trigger criminal charges for money laundering, under Division 400 of the Criminal Code.

The Company or the relevant employee or agent can also be liable under foreign laws. The penalty under foreign laws can be even more severe than under Australian law. Official corruption carries the death penalty in some countries.

## 10. AGENTS, INTERMEDIARIES AND CORPORATE CRIMINAL RESPONSIBILITY

The Company can be liable for the actions of agents, intermediaries and joint venture partners. It is therefore important to ensure that:



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- potential agents or intermediaries are reputable;
- fees paid for the services of such representatives are reasonable and comparative to what would be paid locally for similar services (and importantly are unlikely to encourage the payment of bribes);
- any agent, intermediary, joint venture partner etc executes a written agreement with the Company to act in accordance with this Policy;

**It is important to ensure that you in no way sanction unlawful conduct of an agent, intermediary or joint venture partner. It is unacceptable to “turn a blind eye” to the actions of agents, intermediaries and other Company representatives or business partners. Even if the Company does not actually or impliedly authorize the giving of a bribe, if it could be assumed that a bribe will be made, the Company could be found liable.**

**All contracts with agents or intermediaries must:**

- **be in writing;**
- **include a clause by which the agent or intermediary acknowledges that they have received a copy of this Policy and agrees that they will act in accordance with it;**
- **include a clause which requires the agent or intermediary, in carrying out the contract, to behave ethically and in accordance with all applicable laws;**
- **include a warranty from the agent or intermediary to the effect that they have not made or offered, will not make or offer and have not caused and will not cause the making or offering of any gift, payment or other benefit with respect to the matters that are the subject of the contract;**
- **be approved by the Managing Director.**

**It is important that all third parties performing work for the Company are given a copy of this Policy.**

It is essential that the Company maintains a culture of compliance. Compliance with this Policy is mandatory. Breaches are considered a serious disciplinary matter and may result in disciplinary action, including dismissal and reporting to appropriate authorities for further action. No disciplinary action will be taken against any employee for refusing to pay, or arrange for payment of, a bribe, even if it results in delays to the Company's operations or loss of business.

## **11. ARE ANY DEFENCES AVAILABLE?**

There are two defences to the offence:

### **1. 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.

**Subsection 70.3(1) of the Code** (see Appendix C) lists the laws that govern different public officials.

### **2. The payment is a facilitation payment.**



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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:

- 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 police protection or mail collection or delivery;
- scheduling inspections associated with contract performance or related to the transit of goods;
- providing telecommunications services, power or water;
- loading and unloading cargo;
- protecting perishable products, or commodities, from deterioration; or
- 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”. The FCPA in the United States contains a similar defence and, under that Act, the US Department of Justice has only expressly approved “facilitation” payments of less than USD\$1,000.

In order to satisfy the defence, a company or individual who makes a facilitation payment **must** make record of that payment. The record-keeping requirements are set out in **subsection 70.4(3) of the Code** (see Appendix C).

Because of the Code’s strict prohibitions, **the Company is generally opposed to making facilitation payments**. Company personnel 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:

- c) 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**
- d) the making or authorising of such gift, payment or offer of any other benefit may not be made **unless it is permitted by the Company’s Entertainment Policy or the MD has provided prior written approval**. To request MD Approval, employees should submit a written request to the MD using a form attached as Appendix B.

**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.**

## 12. PRACTICAL EXAMPLES AND ISSUES

### Example 1: Payments through intermediaries



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An Australian businessman acting through a wholly owned subsidiary of an Australian company engages a consultant to assist in the introduction and completion of a debt funding proposal with a state owned foreign bank. The consultant is paid a commission of 4% on success of the funding proposal. Local rates for the same service are normally 2-2.5%, it could be assumed that a bribe will be paid to the bank officials, however, this is not absolutely known, and no directions have been given to that effect.

The Australian businessman then engages a consultant on a commission of 10% to make introductions for the purpose of raising equity funds in a foreign country. The norm for paying a commission in Australia is 6% (but it could be more in the foreign country). Based on these introductions, the Australian businessman negotiates an equity placement with a foreign state owned enterprise. It could be assumed that the consultant will pay a bribe from his commission to influence the Official from the state owned entity to do the equity placement.

To avoid the businessman, the subsidiary company (and its directors) and the Australian parent company (and its directors) being found liable if either of the consultants pay a bribe in carrying out their contract, the businessman and the directors of the subsidiary company and its Australian parent company should:

- be able to justify why the commission paid to the consultants is significantly higher than local rates for the same service;
- ensure that the consultants are reputable and are not, and have not been, the subject of bribery allegations;
- ensure that the consultants are given a copy of this Policy;
- ensure that the contracts with the consultants meet the requirements set out in section 10 of this Policy;
- monitor the activities of the consultants and not “turn a blind eye” to possible bribery risks.

Care should be taken in justifying high commission rates on the basis that commission rates in the foreign country are higher than local rates. Commission rates could be higher in the foreign country because it is “the norm” in that country that bribes are paid.

The Department of the Attorney General provides the following examples of “foreign bribery”:

**Example 2: Australians overseas**

An Australian businessman in country X wants to enter into a contract with the local provincial authority. He offers the provincial planning officer a payment in a bid to have his tender proposal considered favourably.

Even though all the activity took place in country X, the businessman can be prosecuted in Australia and could be imprisoned for up to 10 years and/or receive a fine of up to \$1.1 million, regardless of whether the businessman secured the contract.

**Example 3: Payments through intermediaries**

An Australian businessman wants to enter into a contract with the local provincial authority in country X. He instructs his accountant in country X to offer the provincial planning officer a payment in a bid to have his tender proposal considered favourably.

Even though the businessman did not offer the bribe himself, and the offer of the bribe occurred in country X, the businessman can be prosecuted in Australia and could be imprisoned for up to 10



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years and/or receive a fine of up to \$1.1 million, regardless of whether the businessman secured the contract.

Note: if the accountant was an Australian citizen or resident of Australia, the accountant may also be prosecuted in Australia.

**Example 4: Payments to third parties**

An Australian businessman in country X has entered into a contract with the local provincial authority. Certain legislative obligations apply to the contract. In an attempt to have those legislative obligations waived, the Australian businessman provides expensive gifts to the wife of the provincial planning officer.

Even though all the activity took place in country X, and the bribe was not paid to the government official, this businessman can be prosecuted in Australia and could be imprisoned for up to 10 years and/or receive a fine of up to \$1.1 million, regardless of whether the legislative obligations were waived.

**Example 5: Indirect benefit**

An Australian businessman wants to win a tender in country X. The foreign official in country X arranges for the Australian businessman to purchase services at an inflated price and in return the foreign official will award the Australian businessman the government contract.

The purchase of services from the foreign official at an inflated price is a benefit not legitimately due and this businessman can be prosecuted in Australia, and could be imprisoned for up to 10 years and/or receive a fine of up to \$1.1 million, regardless of whether the businessman secured the contract.

Guidance can also be sought from cases under the FCPA, which was enacted to implement the United States' obligations under the OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions.

The offence of bribing a foreign public official is more strict under the FCPA than under the Code. Under the Code, a person must act with the **intention** of influencing a foreign public official whereas under the FCPA it is an offence for any person to make a payment etc **while knowing** that all or a portion of the money or thing of value will be offered, given or promised, directly or indirectly, to a foreign official, foreign political party or candidate for foreign political office, for corrupt purposes.

**Example 6: Liability for payments by distributors or other third parties**

Australian Company X sells a product to foreign Company Y. Company Y makes an illegal payment to a foreign public official in order to secure a supply contract with the foreign official's Government. Generally Company X will not be liable for Company Y's illegal actions unless Company X and Company Y agreed or conspired for Company Y to make the illegal payment or there is an ongoing relationship between Company X and Company Y where Company X knowingly benefits from the illegal activity.



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## Example 7: Subcontractor payments

Australian Company X hires foreign Subcontractor Y to work on a contract in Subcontractor Y's country. Australian Company X is concerned that Subcontractor Y may inflate its price to include improper payments to government officials for facilitating the contract.

To avoid the possibility of improper payments, Company X should ensure that Subcontractor Y's margins are reasonable in that jurisdiction, its activities are monitored closely and that the Subcontractor agrees to comply with the Code and all other applicable laws.

## Example 8: Payments to foreign government bodies

Australian Company X wishes to engage Foreign Government Body Y to act as a sales agent. This is permitted under the Code, provided Company X does not expressly or impliedly authorise Foreign Government Body Y to make any improper payments to influence a foreign government official (and otherwise complies with the law).

## 13. OTHER BRIBERY AND RELATED OFFENCES UNDER THE CODE

It is also an offence to bribe Commonwealth public officials.

Similarly to the offence of bribing a foreign public official, it is an offence to dishonestly provide, cause to be provided, offer or promise to provide or cause an offer or promise to provide, a benefit, to another person:

- with the **intention of influencing a Commonwealth public official** (who may be the recipient of the benefit but need not be) in the exercise of the official's duties as a Commonwealth public official; or
- if the receipt, or expectation of the receipt, of the benefit **would tend to influence a Commonwealth public official** (who may or may not be the recipient of the benefit) in the exercise of the official's duties as a Commonwealth public officer.

It is not necessary to prove that the defendant knew that the official was a Commonwealth public official or that the duties carried out by the official were duties as a Commonwealth public official.

The conduct (or result of the conduct) constituting the alleged offence does not have to occur in Australia.

## 14. STATE LEGISLATION

Chapter XIII of the WA Criminal Code deals with corruption and abuse of office.

Section 82 of the WA Criminal Code provides that any person who gives, or offers or promises to give, a bribe to a public officer is guilty of a crime and liable to imprisonment for 7 years.

Bribe is defined in the WA Criminal Code as any property or benefit of any kind, whether pecuniary or otherwise, sought, offered, promised, agreed upon, given or obtained for the person being or to be bribed or any other person, in respect of any act done or to be done, or any omission made or to be made, or any favour or disfavour shown or to be shown, in relation to the performance or discharge of the functions of any office or employment, or the affairs or business of a principal.

Chapter LV of the WA Criminal Code deals with secret commissions.

Section 529 provides that it is a crime for an agent to corruptly receive or solicit (either for himself or any other person) any valuable consideration:



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- as an inducement or reward for, or otherwise on account of, doing or forbearing to do any act in relation to his principal's affairs or business; or
- the receipt or any expectation of which would in any way tend to influence him to show or to forebear to show favour or disfavour to any person in relation to his principal's affairs or business.

Section 530 is in the same terms but applies to any person corruptly giving or offering valuable consideration to any agent for the above reasons.

Section 531 provides that if a secret commission is given to a parent, husband, wife, de facto partner or any child of any agent or to his partner, clerk or employee, or at the agent's request to any person by any person having business relations with the principal, the commission will be deemed to have been given or offered to the agent (unless it is proved it was received without the consent, knowledge or privity of the agent).

The penalty for a conviction of a Chapter LV offence is, in the case of a corporation, a fine of \$250,000 and in any other case to imprisonment for 7 years. In addition, the corporation or person is liable to be ordered to pay to such person and in such manner as the court directs, the amount or value, as estimated by the court, of any valuable consideration received or given by him or her.

It is no defence to show that any such valuable consideration is customary in any trade or calling.

There is also a bribery offence under the *Conservation and Land Management Act 1984* (WA) which carries a penalty of \$10,000 and imprisonment for 1 year.

**Under no circumstances must you corruptly pay a commission to any person in order to further the Company's business. The Company is committed to carrying out its operations within the parameters of all applicable laws and regulations.**

## 15. RECORD KEEPING

This Policy also extends to all of the Company's financial record-keeping activities and is integrated with the obligations to which the Company is already subject by virtue of all applicable laws, including the *Financial Transaction Reports Act 1988* (Cth) (**FTRA**) (which provides, amongst other things, that it is an offence for a person to transfer in or out of Australia, Australian or foreign currency in the amount of AUD\$10,000 or more, if that person does not report the transfer in accordance with the FTRA). The Company's Policy will be provided to those individuals in the Company whose job duties are likely to lead to an involvement in or exposure to any of the areas covered by the Code or the FTRA.

## 16. GENERAL CONDUCT OF BUSINESS

All Company personnel are expected to conduct Company business legally and ethically. Improper gifts, payments or offerings of any benefit to Commonwealth or foreign officials or any third party, could jeopardize the Company's growth and reputation. The use of Company funds or assets for any unlawful, improper or unethical purpose are also prohibited. Specifically, it is the Company's Policy to comply fully with the Code and all other relevant State, Commonwealth and international legislation.

All Company personnel are encouraged to familiarize themselves with this Policy on a regular basis. If you have any doubt whether a particular action is legal under Australian or foreign law, do not take the risk and contact the Managing Director.



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## 17. CHECKLIST FOR GIFTS, PAYMENTS OR OFFERINGS OF BENEFITS

A checklist is attached as Appendix B to assist Company personnel to evaluate their obligations and comply with them. All personnel are encouraged to download, retain and display and copy of this checklist.

## 18. VARIATION

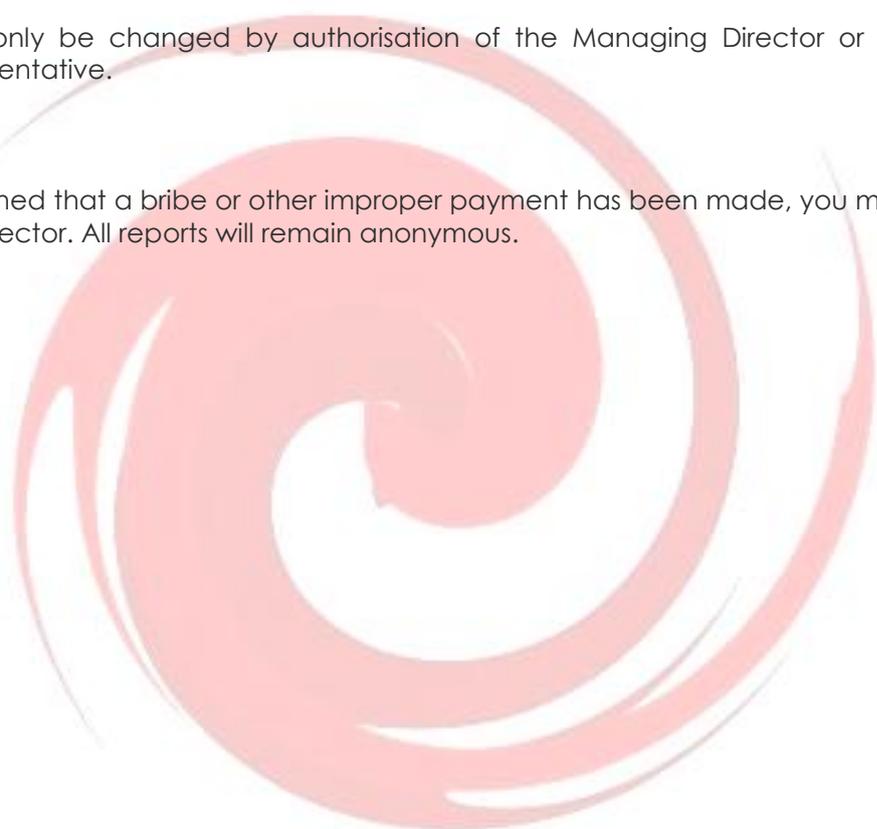
NSL Consolidated Ltd reserves the right to vary or revoke this Policy. The Company will notify you, by email or by a notice published on the Company intranet, if this Policy is varied or revoked. The Company may require you to sign a declaration acknowledging that you have read and understood this Policy.

## 19. AUTHORITY LIMITS

This Policy may only be changed by authorisation of the Managing Director or an approved delegated representative.

## 20. REPORTING

If you are concerned that a bribe or other improper payment has been made, you must report it to the Managing Director. All reports will remain anonymous.





# POLICY

## Appendix A: Forms

### Form 1

Request for Approval of Payment of Facilitation or Entertainment Expenses for the purpose of the Company's Anti-Corruption Policy – NSL Consolidated Limited

### Form 2

Request for Approval of Payment of Facilitation or Entertainment Expenses for the purpose of the Company's Anti-Corruption Policy - I-S Iron Ore Pte Ltd

### Form 3

Request for Approval of Payment of Facilitation or Entertainment Expenses for the purpose of the Company's Anti-Corruption Policy - Mining Resources India Pvt Ltd





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NSL Consolidated Limited

REQUEST FOR APPROVAL OF PAYMENT OF FACILITATION OR ENTERTAINMENT EXPENSES FOR  
THE PURPOSE OF THE COMPANY'S ANTI-CORRUPTION POLICY

Request Number: \_\_\_\_\_

Date: \_\_\_\_\_

<b>Nature of Proposed Facilitation or Entertainment Expenditure</b>
<b>Routine Government or Official Work Involved (if any) and Details of Government Requirement (attach copy Government of Official Order, Requisition, Letter or other requirement)</b>
<b>Company Purpose associated with Proposed Expenditure and Costs</b>
<b>Proposed Date of Expenditure</b>

I confirm that I will comply with the recording requirements set out in section 70.4(3) of the Criminal Code (Cth) and any further record keeping requirements of the Company.

\_\_\_\_\_  
(Print Name)

\_\_\_\_\_  
(Signature)

**Approvals** \* Managing Director must approve

\_\_\_\_\_  
Cedric Goode  
**Managing Director / CEO**  
**NSL Consolidated Limited**



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I-S Iron Ore Pte Ltd

REQUEST FOR APPROVAL OF PAYMENT OF FACILITATION OR ENTERTAINMENT EXPENSES FOR  
THE PURPOSE OF THE COMPANY'S ANTI-CORRUPTION POLICY

Request Number: \_\_\_\_\_

Date: \_\_\_\_\_

<b>Nature of Proposed Facilitation or Entertainment Expenditure</b>
<b>Routine Government or Official Work Involved (if any) and Details of Government Requirement (attach copy Government of Official Order, Requisition, Letter or other requirement)</b>
<b>Company Purpose associated with Proposed Expenditure and Costs</b>
<b>Proposed Date of Expenditure</b>

I confirm that I will comply with the recording requirements set out in section 70.4(3) of the Criminal Code (Cth) and any further record keeping requirements of the Company.

\_\_\_\_\_  
(Print Name)

\_\_\_\_\_  
(Signature)

**Approvals** \* Managing Director must approve

\_\_\_\_\_  
Cedric Goode  
**Managing Director / CEO**  
**NSL Consolidated Limited**



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Mining Resources India Pvt Ltd

REQUEST FOR APPROVAL OF PAYMENT OF FACILITATION OR ENTERTAINMENT EXPENSES FOR  
THE PURPOSE OF THE COMPANY'S ANTI-CORRUPTION POLICY

Request Number: \_\_\_\_\_

Date: \_\_\_\_\_

<b>Nature of Proposed Facilitation or Entertainment Expenditure</b>
<b>Routine Government or Official Work Involved (if any) and Details of Government Requirement (attach copy Government of Official Order, Requisition, Letter or other requirement)</b>
<b>Company Purpose associated with Proposed Expenditure and Costs</b>
<b>Proposed Date of Expenditure</b>

I confirm that I will comply with the recording requirements set out in section 70.4(3) of the Criminal Code (Cth) and any further record keeping requirements of the Company.

\_\_\_\_\_  
(Print Name)

\_\_\_\_\_  
(Signature)

**Approvals** \* Managing Director must approve

\_\_\_\_\_  
Cedric Goode  
**Managing Director / CEO**  
**NSL Consolidated Limited**



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## Appendix B

**ANTI-CORRUPTION COMPLIANCE POLICY CHECK LIST**

1. Are you considering making or authorising or being associated with causing a benefit to be offered or provided to a Government Official?
2. Are you considering making or authorising or being associated with causing a benefit to be offered to a person or company who or which in turn is likely to make a gift, payment or offer of anything of value to a Government Official or a relation of a Government Official?

IF SO, PRIOR TO MAKING OR AUTHORISING SUCH ACTION, YOU WILL NEED TO FULLY COMPLETE AND SIGN ONE OF THE FORMS COMPRISING APPENDIX D AND SUBMIT IT TO THE MANAGING DIRECTOR

3. When completing the form consider whether the following apply and, if so, explain why they apply in reference to your request for approval:
- a) Is the payment permitted by a written law of the relevant jurisdiction?
- b) If so, specify the written law in the approval and if possible annex a copy of the relevant law and a translation into English to the form.
- c) Is the payment a "facilitation payment" in that:
- (i) it is minor in value; and
- (ii) the sole or dominant purpose of the payment is to expedite or secure the performance of a routine Government Action of a minor nature.
4. If possible, have you obtained a written request on Government letterhead for the payment and attached it to the form?
5. Have you translated the written request referred to in paragraph 4 into English and attached the translation to the form?

**Note: In the event that the proposed benefit is approved and made, it is your responsibility to make a record of the payment in accordance with section 70.4(3) of the Code (see Appendix C) and provide it to the Perth Office Manager for record keeping purposes.**



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## Appendix C (Division 70 of the Code – Bribery of foreign public officials)

## Division 70—Bribery of foreign public officials

## 70.1 Definitions

In this Division:

**benefit** includes any advantage and is not limited to property.

**business advantage** means an advantage in the conduct of business.

**control**, in relation to a company, body or association, includes control as a result of, or by means of, trusts, agreements, arrangements, understandings and practices, whether or not having legal or equitable force and whether or not based on legal or equitable rights.

**duty**, in relation to a foreign public official, means any authority, duty, function or power that:

- (a) is conferred on the official; or
- (b) that the official holds himself or herself out as having.

**foreign government body** means:

- (a) the government of a foreign country or of part of a foreign country; or
- (b) an authority of the government of a foreign country; or
- (c) an authority of the government of part of a foreign country; or
- (d) a foreign local government body or foreign regional government body; or
- (e) a foreign public enterprise.

**foreign public enterprise** means a company or any other body or association where:

- (a) in the case of a company—one of the following applies:
  - (i) the government of a foreign country or of part of a foreign country holds more than 50% of the issued share capital of the company;
  - (ii) the government of a foreign country or of part of a foreign country holds more than 50% of the voting power in the company;
  - (iii) the government of a foreign country or of part of a foreign country is in a position to appoint more than 50% of the company's board of directors;
  - (iv) the directors (however described) of the company are accustomed or under an obligation (whether formal or informal) to act in accordance with the directions, instructions or wishes of the government of a foreign country or of part of a foreign country;
  - (v) the government of a foreign country or of part of a foreign country is in a position to exercise control over the company; and
- (b) in the case of any other body or association—either of the following applies:
  - (i) the members of the executive committee (however described) of the body or association are accustomed or under an obligation (whether formal or informal) to act in accordance with the directions, instructions or wishes of the government of a foreign country or of part of a foreign country;
  - (ii) the government of a foreign country or of part of a foreign country is in a position to exercise control over the body or association; and
- (c) the company, body or association:



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- (i) enjoys special legal rights or a special legal status under a law of a foreign country or of part of a foreign country; or
  - (ii) enjoys special benefits or privileges under a law of a foreign country or of part of a foreign country;
- because of the relationship of the company, body or association with the government of the foreign country or of the part of the foreign country, as the case may be.

**foreign public official** means:

- (a) an employee or official of a foreign government body; or
- (b) an individual who performs work for a foreign government body under a contract; or
- (c) 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; or
- (d) 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; or
- (e) 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); or
- (f) a member of the executive, judiciary or magistracy of a foreign country or of part of a foreign country; or
- (g) an employee of a public international organisation; or
- (h) an individual who performs work for a public international organisation under a contract; or
- (i) an individual who holds or performs the duties of an office or position in a public international organisation; or
- (j) an individual who is otherwise in the service of a public international organisation; or
- (k) a member or officer of the legislature of a foreign country or of part of a foreign country; or
- (l) an individual who:
  - (i) is an authorised intermediary of a foreign public official covered by any of the above paragraphs; or
  - (ii) holds himself or herself out to be the authorised intermediary of a foreign public official covered by any of the above paragraphs.

**public international organisation** means:

- (a) an organisation:
  - (i) of which 2 or more countries, or the governments of 2 or more countries, are members; or
  - (ii) that is constituted by persons representing 2 or more countries, or representing the governments of 2 or more countries; or
- (b) an organisation established by, or a group of organisations constituted by:
  - (i) organisations of which 2 or more countries, or the governments of 2 or more countries, are members; or
  - (ii) organisations that are constituted by the representatives of 2 or more countries, or the governments of 2 or more countries; or
- (c) an organisation that is:
  - (i) an organ of, or office within, an organisation described in paragraph (a) or (b); or



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- (ii) a commission, council or other body established by an organisation so described or such an organ; or
- (iii) a committee, or subcommittee of a committee, of an organisation described in paragraph (a) or (b), or of such an organ, council or body.

**share** includes stock.

## 70.2 Bribing a foreign public official

- (1) A person is guilty of an offence if:
- (a) the person:
    - (i) provides a benefit to another person; or
    - (ii) causes a benefit to be provided to another person; or
    - (iii) offers to provide, or promises to provide, a benefit to another person; or
    - (iv) causes an offer of 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
  - (c) the first-mentioned person does so with the intention of influencing a foreign public official (who may be the other person) in the exercise of the official's duties as a foreign public official in order to:
    - (i) obtain or retain business; or
    - (ii) obtain or retain a business advantage that is not legitimately due to the recipient, or intended recipient, of the business advantage (who may be the first-mentioned person).

Note: For defences see sections 70.3 and 70.4.

- (1A) In a prosecution for an offence under subsection (1), it is not necessary to prove that business, or a business advantage, was actually obtained or retained.

*Benefit that is not legitimately due*

- (2) For the purposes of this section, in working out if a benefit is **not legitimately due** to a person in a particular situation, disregard the following:
- (a) the fact that the benefit may be, or be perceived to be, customary, necessary or required in the situation;
  - (b) the value of the benefit;
  - (c) any official tolerance of the benefit.

*Business advantage that is not legitimately due*

- (3) For the purposes of this section, in working out if a business advantage is **not legitimately due** to a person in a particular situation, disregard the following:
- (a) the fact that the business advantage may be customary, or perceived to be customary, in the situation;
  - (b) the value of the business advantage;
  - (c) any official tolerance of the business advantage.

*Penalty for individual*

- (4) An offence against subsection (1) committed by an individual is punishable on conviction by imprisonment for not more than 10 years, a fine not more than 10,000 penalty units, or both.



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Penalty for body corporate

- (5) An offence against subsection (1) committed by a body corporate is punishable on conviction by a fine not more than the greatest of the following:
  - (a) 100,000 penalty units;
  - (b) if the court can determine the value of the benefit that the body corporate, and any body corporate related to the body corporate, have obtained directly or indirectly and that is reasonably attributable to the conduct constituting the offence—3 times the value of that benefit;
  - (c) if the court cannot determine the value of that benefit—10% of the annual turnover of the body corporate during the period (the **turnover period**) of 12 months ending at the end of the month in which the conduct constituting the offence occurred.
- (6) For the purposes of this section, the **annual turnover** of a body corporate, during the turnover period, is the sum of the values of all the supplies that the body corporate, and any body corporate related to the body corporate, have made, or are likely to make, during that period, other than the following supplies:
  - (a) supplies made from any of those bodies corporate to any other of those bodies corporate;
  - (b) supplies that are input taxed;
  - (c) supplies that are not for consideration (and are not taxable supplies under section 72-5 of the *A New Tax System (Goods and Services Tax) Act 1999*);
  - (d) supplies that are not made in connection with an enterprise that the body corporate carries on.
- (7) Expressions used in subsection (6) that are also used in the *A New Tax System (Goods and Services Tax) Act 1999* have the same meaning in that subsection as they have in that Act.
- (8) The question whether 2 bodies corporate are related to each other is to be determined for the purposes of this section in the same way as for the purposes of the *Corporations Act 2001*.

**70.3 Defence—conduct lawful in foreign public official's country**

- (1) A person is not guilty of an offence against section 70.2 in the cases set out in the following table:

Defence of lawful conduct			
Item	In a case where the person's conduct occurred in relation to this kind of foreign public official...	and if it were assumed that the person's conduct had wholly... and if it were assumed that the person's conduct had wholly... and if it were assumed that the person's conduct had wholly...	this written law requires or permits the provision of the benefit ...
1	an employee or official of a foreign government body	in the place where the central administration of the body is located	a written law in force in that place
2	an individual who performs work for a foreign government body under a contract	in the place where the central administration of the body is located	a written law in force in that place



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**Defence of lawful conduct**

<b>Item</b>	<b>In a case where the person's conduct occurred in relation to this kind of foreign public official...</b>	<b>and if it were assumed that the person's conduct had wholly...</b>	<b>this written law requires or permits the provision of the benefit ...</b>
3	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	in the foreign country or in the part of the foreign country, as the case may be	a written law in force in the foreign country or in the part of the foreign country, as the case may be
4	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	in the foreign country or in the part of the foreign country, as the case may be	a written law in force in the foreign country or in the part of the foreign country, as the case may be
5	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)	in the place where the central administration of the body is located	a written law in force in that place
6	a member of the executive, judiciary or magistracy of a foreign country or of part of a foreign country	in the foreign country or in the part of the foreign country, as the case may be	a written law in force in the foreign country or in the part of the foreign country, as the case may be
7	an employee of a public international organisation	in the place where the headquarters of the organisation is located	a written law in force in that place
8	an individual who performs work for a public international organisation under a contract	in the place where the headquarters of the organisation is located	a written law in force in that place
9	an individual who holds or performs the duties of a public office or position in a public international organisation	in the place where the headquarters of the organisation is located	a written law in force in that place



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## Defence of lawful conduct

Item	In a case where the person's conduct occurred in relation to this kind of foreign public official...	and if it were assumed that the person's conduct had wholly...	this written law requires or permits the provision of the benefit ...
10	an individual who is otherwise in the service of a public international organisation	in the place where the headquarters of the organisation is located	a written law in force in that place
11	a member or officer of the legislature of a foreign country or of part of a foreign country	in the foreign country or in the part of the foreign country, as the case may be	a written law in force in the foreign country or in the part of the foreign country, as the case may be

Note: A defendant bears an evidential burden in relation to the matter in subsection (1). See subsection 13.3(3).

- (2) A person is not guilty of an offence against section 70.2 if:
- (a) the person's conduct occurred in relation to a foreign public official covered by paragraph (l) of the definition of **foreign public official** in section 70.1 (which deals with intermediaries of foreign public officials covered by other paragraphs of that definition); and
  - (b) assuming that the first-mentioned person's conduct had occurred instead in relation to:
    - (i) the other foreign public official of whom the first-mentioned foreign public official was an authorised intermediary; or
    - (ii) the other foreign public official in relation to whom the first-mentioned foreign public official held himself or herself out to be an authorised intermediary;
 subsection (1) would have applied in relation to the first-mentioned person.

Note: A defendant bears an evidential burden in relation to the matter in subsection (2). See subsection 13.3(3).

- (3) To avoid doubt, if:
- (a) a person's conduct occurred in relation to a foreign public official covered by 2 or more paragraphs of the definition of **foreign public official** in section 70.1; and
  - (b) at least one of the corresponding items in subsection (1) is applicable to the conduct of the first-mentioned person;
- subsection (1) applies to the conduct of the first-mentioned person.

### 70.4 Defence—facilitation payments

- (1) A person is not guilty of an offence against section 70.2 if:
- (a) the value of the benefit was of a minor nature; and
  - (b) the person's conduct was engaged in for the sole or dominant purpose of expediting or securing the performance of a routine government action of a minor nature; and
  - (c) as soon as practicable after the conduct occurred, the person made a record of the conduct that complies with subsection (3); and



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- (d) any of the following subparagraphs applies:
- (i) the person has retained that record at all relevant times;
  - (ii) that record has been lost or destroyed because of the actions of another person over whom the first-mentioned person had no control, or because of a non-human act or event over which the first-mentioned person had no control, and the first-mentioned person could not reasonably be expected to have guarded against the bringing about of that loss or that destruction;
  - (iii) a prosecution for the offence is instituted more than 7 years after the conduct occurred.

Note: A defendant bears an evidential burden in relation to the matter in subsection (1). See subsection 13.3(3).

*Routine government action*

- (2) For the purposes of this section, a **routine government action** is an action of a foreign public official that:
- (a) is ordinarily and commonly performed by the official; and
  - (b) is covered by any of the following subparagraphs:
    - (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;
    - (viii) any other action of a similar nature; and
  - (c) does not involve a decision about:
    - (i) whether to award new business; or
    - (ii) whether to continue existing business with a particular person; or
    - (iii) the terms of new business or existing business; and
  - (d) does not involve encouraging a decision about:
    - (i) whether to award new business; or
    - (ii) whether to continue existing business with a particular person; or
    - (iii) the terms of new business or existing business.

*Content of records*

- (3) A record of particular conduct engaged in by a person complies with this subsection if the record sets out:
- (a) the value of the benefit concerned; and
  - (b) the date on which the conduct occurred; and
  - (c) the identity of the foreign public official in relation to whom the conduct occurred; and
  - (d) if that foreign public official is not the other person mentioned in paragraph 70.2(1)(a)—the identity of that other person; and
  - (e) particulars of the routine government action that was sought to be expedited or secured by the conduct; and
  - (f) the person's signature or some other means of verifying the person's identity.



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**70.5 Territorial and nationality requirements**

- (1) A person does not commit an offence against section 70.2 unless:
- (a) the conduct constituting the alleged offence occurs:
    - (i) wholly or partly in Australia; or
    - (ii) wholly or partly on board an Australian aircraft or an Australian ship; or
  - (b) the conduct constituting the alleged offence occurs wholly outside Australia and:
    - (i) at the time of the alleged offence, the person is an Australian citizen; or
    - (ii) at the time of the alleged offence, the person is a resident of Australia; or
    - (iii) at the time of the alleged offence, the person is a body corporate incorporated by or under a law of the Commonwealth or of a State or Territory.

Note: The expression **offence against section 70.2** is given an extended meaning by subsections 11.2(1), 11.2A(1) and 11.6(2).

- (2) Proceedings for an offence against section 70.2 must not be commenced without the Attorney-General's written consent if:
- (a) the conduct constituting the alleged offence occurs wholly outside Australia; and
  - (b) at the time of the alleged offence, the person alleged to have committed the offence is:
    - (i) a resident of Australia; and
    - (ii) not an Australian citizen.
- (3) However, a person may be arrested for, charged with, or remanded in custody or released on bail in connection with an offence against section 70.2 before the necessary consent has been given.

**70.6 Saving of other laws**

This Division is not intended to exclude or limit the operation of any other law of the Commonwealth or any law of a State or Territory.