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## Anti-Bribery and Corruption Compliance Guide

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## 1 LETTER FROM THE CHAIRMAN

To: All Employees, Joint Venture Partners, Agents, Consultants, Contractors, Suppliers and Representatives (the latter six will be collectively referred to as **Representatives**) of Paladin Energy Ltd (ACN 061 681 098) (**Paladin**).

Dear All

Paladin is a uranium mining company with a mine in Namibia (currently on care and maintenance) and exploration projects in Australia and Canada. Paladin is listed on the Australian Securities Exchange and the Namibian Stock Exchange.

Paladin's core values of honesty and integrity are central to all of its relationships with its employees and Representatives. Paladin has zero tolerance for corruption and bribery in any of the guises in which it can arise. To ensure that Paladin's core values are reflected in all of its business dealings, it is committed to upholding both the letter and spirit of the laws, regulations and international standards that apply to its operations.

Ethics and behaviour are individual responsibilities, and high standards of behaviour are expected of all Paladin employees and Representatives regardless of their position in, or relationship with, Paladin. Paladin has prepared this Guide to ensure that all employees and Representatives are able to understand and adhere to the provisions of the Australian Criminal Code and where relevant, the laws of other jurisdictions, which it is subject to, in relation to corruption, fraud, domestic bribery and bribery of foreign public officials.

In regard to bribery of foreign public officials, the Canadian Corruption of *Foreign Public Officials Act* and Division 70 of the *Commonwealth Criminal Code Act 1995 (Australian Criminal Code)* are key pieces of the legislative framework within which Paladin operates. It is possible that in some circumstances, Paladin's operations may arguably be subject to the United Kingdom's *Bribery Act 2010* and the United States' *Foreign Corrupt Practices Act of 1977 (FCPA)*. Paladin will endeavour to ensure that its employees and Representatives comply with these laws, which will be referred to collectively as the **Foreign Bribery Laws**.

Paladin employees and Representatives are expected to adhere to all of the anti-corruption and bribery laws and regulations that govern Paladin's conduct. Violation of the law by any Paladin employee or Representative will not be tolerated. A violation of the law, or unethical behaviour which may affect Paladin's reputation, will be subject to immediate disciplinary action, which may include the termination of employment. Paladin also reserves the right to terminate any association or business relationship with any Representative that violates the law.

This Guide only represents a part of Paladin's compliance programme. Paladin employees and Representatives are expected to be familiar with, and adhere to, Paladin's compliance programme in its entirety, including Paladin's *Code of Business Conduct and Ethics* and this Guide. Paladin will provide training in accordance with this Guide and will enforce its policies to ensure that a culture of compliance exists throughout Paladin's global operations.

If you have any questions or comments regarding Paladin's compliance programme, please contact Paladin's Compliance Committee, on +61 8 9381 4366 or by email: [PDN-ComplianceCommittee@paladinenergy.com.au](mailto:PDN-ComplianceCommittee@paladinenergy.com.au).

**Cliff Lawrenson**  
Chairman  
Paladin Energy Ltd



## 2 INTRODUCTION

### 2.1 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.

#### 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.

(W Hamra, 2000 "Bribery in International Business Transactions and the OECD Convention: Benefits and Limitations", *Business Economics Journal*, October, vol. 35, issue 4, page 33)

Bribery and corruption globally have reached 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 bribery and corruption worldwide.

#### 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.

(Moss & Nicholas, 1997 "Who Bribes Wins", *The European*, December 11: 26-27)

Paladin is committed to the fight against bribery and corruption in all its guises. We aim to achieve our goals whilst supporting and fostering development in the communities in which we operate. Paladin expects all of its employees and Representatives to comply with both the letter and spirit of the laws that govern Paladin's operations worldwide and with Paladin company policy, including this Guide and Paladin's *Code of Business Conduct and Ethics* (available on Paladin's website).



## 2.2 Types of Bribery

### Foreign Bribery

As part of the global effort to combat foreign bribery, 41 countries worldwide have ratified the Organisation for Economic Cooperation and Development's *Convention on Combating Bribery of Foreign Public Officials in International Business Transactions (OECD Convention)*. Australia and Canada have implemented the OECD Convention into their domestic legislation, making bribery of foreign public officials an offence in these countries.

The Canadian *Corruption of Foreign Public Officials Act and Commonwealth Criminal Code Act 1995 (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 circumstances, Paladin's operations may be subject to the United Kingdom's *Bribery Act 2010* and the United States' *Foreign Corrupt Practices Act of 1977 (FCPA)*. Although not identical, there are substantial similarities in these foreign bribery laws, therefore in this Guide, the phrase **Foreign Bribery Laws** will be used when referring to the general obligations pursuant to these various pieces of legislation.

### Domestic Bribery and Fraud

In each country that Paladin is based and operates there are a range of domestic laws prohibiting bribery and fraudulent conduct (**Anti-fraud and Bribery Laws**). For example, in these countries it is not only an offence to bribe a local public official, but also to bribe anyone. There are also a number of offences relating to fraudulent conduct in these countries ranging from obtaining property or a financial advantage by deception to false accounting by not keeping accurate books and records.

## 2.3 Purpose of this Guide

The purpose of this Guide is to educate and inform Paladin employees and Representatives about Paladin's commitment to anti-corruption and bribery requirements arising from the Foreign Bribery Laws and the various laws prohibiting fraudulent and corrupt behaviour generally. This Guide is intended to be a common sense manual to enable Paladin employees and Representatives to understand and comply with their obligations under these laws.

Paladin is committed to ensuring that its corporate culture, in all of its offices and operations worldwide, discourages fraudulent and corrupt conduct. Paladin retains the right to immediately terminate the employment of any employee, or its association with any Representative, who seeks to illegitimately influence any foreign public official in the exercise of his or her official duties or is involved in any fraudulent or corrupt behaviour.

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

## 2.4 Compliance with this Guide

All Paladin employees and Representatives must be familiar with this Guide, follow the procedures outlined within and cooperate with any investigation initiated pursuant to this Guide. Adherence to this Guide and the *Code of Business Conduct and Ethics* is a condition of employment or association.

As well as termination of employment or association with Paladin for noncompliance with this Guide, there could also be criminal consequences and penalties for both the individual involved and Paladin.



The consequences for any breach of Foreign Bribery Laws, in particular, may be severe. For example, committing a foreign bribery offence under the Australian Criminal Code could result in:

- a fine of up to \$1.8 million and / or a term of imprisonment of up to 10 years for an individual; or
- the greater of, a fine of \$18 million; three times the value of benefit obtained through foreign bribery; or 10% of the annual turnover of the company and its subsidiaries for a company.

There are a wide range of Anti-fraud and Bribery Laws and many potential consequences for breaching them, primarily for individuals involved, that can include substantial prison sentences and financial penalties. For example:

- bribing anyone in Namibia, whether a local official or not could result in a fine of up to NAD\$500,000 and / or a term of imprisonment of up to 25 years; and
- making a false entry or omitting making an entry in Paladin's accounting records in Australia could result in a fine of up to \$1,800,000 and / or a term of imprisonment of up to 10 years.

The consequences for non-compliance with this Guide can extend beyond these criminal penalties and termination of your employment or association with Paladin. Other potential consequences for individuals include restitution of any benefits (for example by forfeiting your own property to repay Paladin for any losses suffered), difficulty finding employment in a similar industry, disqualification from holding management positions and international travel restrictions.

### **3 PALADIN'S COMPLIANCE COMMITTEE**

All Paladin employees and Representatives must ensure that they understand permissible actions in any dealings with foreign public officials and acceptable behaviour in light of general fraud and domestic bribery obligations.

If any Paladin employee or Representative has any questions or comments in relation to the Paladin policies set out in this Guide, or concerns that there may have been a violation, they should contact Paladin's Compliance Committee:

**Compliance Committee  
Paladin Energy Ltd  
Level 4, 502 Hay Street  
SUBIACO WA 6008**

**By Email:** PDN-ComplianceCommittee@paladinenergy.com.au

**Chair of Compliance Committee  
By Telephone: +61 8 9381 4366  
By Mobile (call or text): +61 459 230 023**

As well as responding to employee or Representative concerns, the purpose of Paladin's Compliance Committee is to oversee Paladin's anti-bribery and corruption compliance regime including to:

- implement the regime (including training employees and Representatives, where appropriate);
- monitor the effectiveness of the regime;
- promote and maintain a culture of compliance;
- help manage Paladin's relationships with Representatives;
- investigate reports of alleged violations of Paladin's policies, in accordance with Paladin's *Whistleblower Policy*;



- maintain records relating to the regime; and
- report to the Board of Directors and the Audit Committee as appropriate.

The Compliance Committee will periodically review and record the scope of its activities, its role and its reporting obligations to ensure it meets best practice standards and the requirements of Paladin and the Board.

## **4 WHAT IS FOREIGN BRIBERY?**

Paladin and its subsidiaries are directly affected by Australian and Canadian foreign bribery laws. There are substantial similarities between these Foreign Bribery Laws. Therefore, the elements of the offence of bribery of a foreign public official as set out in the Australian Criminal Code are explained in detail throughout this Guide.

### **4.1 Foreign Bribery Offence**

Under the Australian Criminal Code, it is an offence for a person (which includes a corporation), to offer or provide someone (directly or indirectly), a benefit which is not legitimately due to that person, with the intention of influencing a foreign public official in the exercise of the official's duty in order to obtain or retain business or a business advantage, which is not legitimately due.

### **4.2 Permissible and Prohibited Payments**

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 country and other customary payments or courtesies in the ordinary course of business should only be made in accordance with this Guide.

The use of Paladin's funds or assets, either directly or indirectly, for any bribe, kickback or payoff is strictly prohibited.

## **5 KEY PROVISIONS OF FOREIGN BRIBERY**

Each of the key elements of the foreign bribery offence are explained in the following sections.

### **5.1 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 Foreign Bribery Laws including:

- an employee, contractor, official or someone in the service of a:
  - foreign government or agency;
  - foreign government-controlled company; or
  - public international organisation,
- an individual who holds, or performs the duties of, a position under a foreign law or custom;
- a member of a foreign military or police force;
- a member of the executive, legislature, judiciary or magistracy of a foreign country, including a politician or judge; and
- an individual who is, or holds themselves 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 Paladin company policy in relation to payments, gifts and other benefits applies regardless of someone's position or status.

### **Case Study: Foreign Public Officials**

In 2002, Glaxo Smith Kline, an American pharmaceutical company, was found, through the actions of its subsidiaries operating in a number of foreign countries, to have violated the FCPA. 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 were accepted as foreign public officials within the meaning of the FCPA because they were employed by hospitals owned by foreign governments.

## **5.2 What is a "benefit"?**

A benefit can be any advantage or reward and is not limited to money or property. Examples of benefits include:

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

### **Case Study: Non-monetary Benefit**

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. The police officers returned the moon cakes the following day. This occurred 11 days before the Mid-Autumn Moon Festival, a time when the cakes are traditionally offered as gifts.

This case is an example of a non-monetary benefit and highlights that irrespective of the value or the customary nature of the benefit, if 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>)



### **5.3 What does it mean to give or offer a benefit?**

The definition of Foreign Bribery in Australia includes terms that encompass to "provide, cause to be provided, offer to provide, or cause an offer to provide" a benefit.

The terms "offer" and "cause" as used in the Foreign 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 "offered" a benefit, or "caused" a benefit to be offered to a foreign public official even where they have not actually made the offer or given the benefit themselves, but have helped or told someone else to do so.

Therefore if a Paladin employee or Representative 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 or Representative) by their conduct, as well as Paladin 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 foreign bribery. This would also be a breach of Paladin's *Code of Business Conduct and Ethics* and will be subject to sanction by Paladin.

### **5.4 When can Paladin be guilty of the foreign bribery offence?**

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

- commits the foreign bribery offence,
- whilst acting within the scope of their actual or apparent authority,
- in circumstances where Paladin expressly, tacitly or impliedly authorised or permitted the commission of the offence.

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

### **5.5 Constructive Knowledge**

Paladin and its directors may be guilty of the foreign bribery offence even if they do not have actual knowledge of the offence.

United States and United Kingdom court decisions have held companies and their directors responsible for the actions of employees and Representatives, 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 of a foreign bribery law may occur.

If a company or its directors takes active steps to avoid acquiring knowledge of any breaches, this may amount to "willful 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 to a foreign bribery offence.

### **5.6 What does "intention" mean?**

A critical element of foreign bribery is the "intention to influence" a foreign public official in the exercise of his or her duties. Whether a person or a corporation "intends" to influence someone is a matter of fact, which can be inferred from the circumstances. Intention to influence or obtain a certain result can exist whether or not the desired result is actually achieved.



## 5.7 How can Paladin, as a company, be said to have “intended” to bribe someone?

Paladin will have committed the offence of foreign bribery if a Paladin employee or Representative, acting within the scope of their actual or apparent authority, acts in contravention of the Foreign Bribery Laws in circumstances where Paladin either expressly, tacitly or impliedly authorised or permitted the commission of the offence.

One way in which it can be established that Paladin authorised the commission of an offence is by showing that Paladin's 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.

## 5.8 Turning a “Blind Eye”

Paladin may also be found to have committed the offence of foreign bribery if:

- a corporate culture existed within Paladin that directed, encouraged, tolerated or lead to non-compliance with the Foreign Bribery Laws; or
- it can be shown that Paladin failed to create a corporate culture that required compliance.

This means that where a culture of non-compliance is found to exist, Paladin could be held responsible for a bribe paid by an employee even if the bribe was not directly authorised by Paladin's directors or management.

To ensure that Paladin has a culture of compliance, Paladin requires that every director, manager, employee, and Representative, as far as possible, is aware of the laws and regulations prohibiting foreign bribery.

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

As well as ensuring that Paladin's corporate culture requires internal compliance, it is essential Paladin's culture of compliance is recognised and adhered to outside the company. Paladin employees must ensure that, prior to engaging Representatives, especially agents or contractors to act on behalf of the company, they receive approval from a manager (who must act in accordance with the appropriate authority matrix) or a director. All Representatives acting on Paladin's behalf are contractually required to comply with Paladin's *Code of Business Conduct and Ethics* and this Guide.

### Case Study: Turning a blind eye

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.



## 5.9 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 not publicly available concerning upcoming tenders that provided an advantage over other prospective tenderers.

### Case Study: Business Advantage

In 2009, Latin Node, an American telecommunications company, pleaded guilty to violating the FCPA and agreed to pay a fine of \$2 million. It was alleged that between 2004-2007 Latin Node paid over \$1 million in bribes to officials at Hondutel, a wholly state-owned telecommunications authority in Honduras. In exchange, Latin Node received a business advantage in the form of a reduction of operating costs because it received preferred telecommunications rates and continued operations in Honduras.

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

Foreign Bribery Laws prohibit the giving or offering of a benefit that is “not legitimately due” in order to obtain or retain business, or a business advantage that is “not legitimately due”.

A benefit or a business advantage is legitimate when, for instance, it is given or offered in accordance with the law of the foreign country, it is a facilitation payment (see below at paragraph 7), or it is given or offered to pay legitimate, reasonable expenses related to sales promotion activities or performance of a contract with the foreign country.

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 Paladin's standard business practice, as set out in the *Code of Business Conduct and Ethics* or this Guide, you must seek advice from a manager, director or Paladin's Compliance Committee (who can, if necessary, refer the matter to Paladin's legal advisors), before the payment is made or the gift or benefit is conferred. A key point to remember is that any 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.



Although it will typically be appropriate to accept or give customary gifts, you must not ignore possible foreign bribery consequences just because a gift or benefit is customary, even if it is of little value or officially tolerated. At law, when assessing whether a benefit is "not legitimately due" the customary nature of any gift is irrelevant.

anticipating and adhering to local customs is an important aspect of Paladin's licence to operate in Africa. Therefore, you need to sensitively manage this issue and be especially wary of any customary gift that is unusual or potentially inappropriate and that could raise a foreign bribery risk. It is also important to remember that, as illustrated by the Moon Cake Case referred to previously, it is the intention behind the gift/benefit that will be investigated.

## **6 LEGITIMATE CONFERRAL OF BENEFITS**

### **6.1 Gifts**

Reasonable gifts will not violate the principles set out in this Guide, the *Code of Business Conduct and Ethics*, the Foreign Bribery Laws or domestic bribery laws unless they are made with the intention of obtaining or retaining future business or a business advantage that is not legitimately due.

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. It is anything of real value to the public official. Accepting or offering gifts of moderate value is acceptable in situations where it is legal and in accordance with Paladin's best business practice.

Paladin 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 a Paladin manager, director or Paladin's Compliance Committee 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 a Paladin manager or director who must then seek advice from the Compliance Committee (who can refer the matter to Paladin's lawyers if necessary).

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

#### **Examples of appropriate Gifts**

Flowers, chocolates, merchandise bearing Paladin's logo (hats/t-shirts/umbrellas) or small amounts of inexpensive wine.

#### **Examples of inappropriate Gifts**

Cash, expensive jewellery, first class airline tickets, holidays, electronic goods, expensive wine or extravagant purchases of any description.

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

- the monetary value of the gift - Is the gift excessive or expensive? If so, the gift should not be given or accepted;



- 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;
- 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
- the type of gift - Certain gifts should never be given or accepted, including cash, 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 programme 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 a compliance programme to ensure it complied with the FCPA.

The DOJ entered into a non-prosecution agreement with Lucent where it agreed to pay a fine of \$1 million. In regards civil proceedings, Lucent agreed, without admitting or denying the SEC's allegations, to pay a \$1.5 million fine.

## **6.2 Meals and Entertainment**

As with gifts, reasonable entertainment expenses will not violate the principles set out in this Guide, the *Code of Business Conduct and Ethics* or the Foreign 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 Paladin company policy.

As described below, meals and entertainment expenses typically fall within an exception to liability under Australian, US and Canadian foreign bribery laws known as the facilitation payments defence.



## 7 WHAT IS A FACILITATION PAYMENT?

There are some payments, called “facilitation payments”, which can be made to foreign public officials and for which there is a specific defence under the Australian Criminal Code and the Canadian *Corruption of Foreign Public Officials Act*, provided certain well-defined criteria are met. However, facilitation payments are prohibited by the *UK Bribery Act 2010* and in a number of other jurisdictions, so it is critical to have regard to all jurisdictions that may apply to Paladin.

Also, although the making of facilitation payments is permitted by the Australian Criminal Code and the *Canadian Corruption of Foreign Public Officials Act*, such payments may nonetheless be prohibited by local laws in the country in which they are made. All Paladin employees and Representatives must ensure that their conduct does not violate Foreign Bribery Laws or the local laws that govern Paladin'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 of a routine government action of a minor nature that is part of the foreign public official's duties or functions; and
- a detailed record of the benefit has been made and kept.

The key criteria that characterise facilitation payments are explained below.

### 7.1 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;
- 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; and
- protecting perishable products, or commodities, from deterioration.

### 7.2 Record Keeping for Facilitation Payments

A signed 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 with Paladin. Therefore, accurate records must be kept of all payments made, in accordance with Paladin company policy on record keeping and internal company controls set out in this Guide.

### **Case Example: The Importance of Record keeping**

The 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 'facilitation payments' totalling approximately \$500,000 to Haitian customs officials to reduce import taxes by over a million dollars. American Rice, together with 3 of its officers and employees, were found to be in violation of the FCPA 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. If proper records had been kept, the facilitation payment defence may have been available.

Paladin has created a pro forma record capturing the required information that will be made available to be filled out by all staff upon making a facilitation payment. Employees and representatives based in Africa full time must complete this form and provide the completed record to the Compliance Committee within 2 working days after making a facilitation payment (see pro-forma record attached). Employees and Representatives passing through any country in Africa must also complete the form at the time a facilitation payment is made and must provide the completed record to the Compliance Committee within 2 working days of their return to the Perth office or at the cessation of their trip.

Keeping records of facilitation payments 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 public official. Any records of facilitation payments that do not fully comply with the record keeping requirements of the Australian Criminal Code will not be tax deductible.

### **7.3 Paladin Company Policy**

In accordance with Paladin company policy, all facilitation payments must be approved by a manager (who must act in accordance with the appropriate authority matrix), director or Paladin's Compliance Committee and may only be made if:

- the purpose of the payment is to secure or expedite the completion of a routine service or administrative action to which Paladin is entitled under local law and in the ordinary course of business;
- there is no reasonable alternative to making the payment;
- the payment is of a minor nature; and
- the payment is accounted for clearly and accurately and disclosed in Paladin company accounts.



## 8 GENERAL FRAUD AND CORRUPTION

As outlined above, the individual and company penalties for foreign bribery are severe. For all other forms of fraud and corruption, Paladin is likely to suffer financial loss and reputational damage, but the offences are mainly directed at penalising the individuals involved.

Paladin has a zero-tolerance policy towards fraudulent and corrupt behaviour and such behaviour is unacceptable. This type of behaviour undermines Paladin's legitimacy and negates the social development work that Paladin does in the communities in which it operates.

### Fact

It is estimated that the typical organisation loses 5% of its annual revenue to fraud. Applied to the estimated 2009 Gross World Product, the figure translates to a potential total fraud loss of more than \$2.9 trillion. The median loss caused by occupational fraud cases in our study was \$160,000. Nearly one quarter of the frauds involved losses of at least \$1 million.

(Association of Certified Fraud Examiners, "Report to the Nations on Occupational Fraud and Abuse", 2010 Global Fraud Survey)

### 8.1 What is Domestic Bribery?

In the African countries in which Paladin operates, as well as in Australia and Canada, there are domestic bribery laws that make it an offence to bribe a local public official. There are also laws which make it an offence to bribe anyone, regardless of their position or status.

These domestic bribery laws involve similar concepts as those described above for the Foreign Bribery Laws and therefore Paladin's company policy in relation to payments, gifts and other benefits applies regardless of someone's position or status. Unlike Foreign Bribery Laws, there is no specific facilitation payments defence.

### 8.2 What is Fraud and Corruption?

A range of specific criminal offences for fraudulent and corrupt conduct generally also arise in the countries in which Paladin operates.

Corruption is a broad concept that encompasses essentially any activity for personal gain. It relevantly includes dishonest activity in which a director, executive, manager, employee or contractor of Paladin acts contrary to the interests of Paladin or misuses their position in order to achieve personal gain or an advantage for others.

For the purposes of this Guide it is sufficient to understand that fraud is a particular type of corrupt activity. Relevantly fraud includes any dishonest activity by employees or Representatives causing financial loss to Paladin, including theft of money or other property by deception, deliberate falsification of documentation or improper use of information or position for personal financial benefit.

As for foreign bribery, any benefit or personal gain is not restricted to obtaining money. A benefit could include preference for job selection, avoidance of disciplinary action or personal favours.

Common examples of fraud include:

- theft of cash, plant, equipment, inventory, intellectual property or other confidential information;
- false invoicing;
- financial reporting fraud;



- obtaining property, a financial advantage, or any other benefit by deception (e.g. falsifying expense claims);
- causing a loss, or avoiding or creating a liability by deception (e.g. false accounting);
- release or use of misleading or inaccurate information for the purposes of deceiving, misleading or to hide wrongdoing;
- insider trading;
- providing false or misleading information to Paladin, or failing to provide information where there is an obligation to do so;
- making, using or possessing forged or falsified documents;
- bribery, or corruption (e.g. payment or receipt of kickbacks);
- causing unauthorised benefits to be given to a second party (e.g. manipulation of a tender process);
- bid or tender rigging;
- falsification of supplier quotes resulting in inflated procurement costs;
- fraudulent payment to fictitious suppliers or service providers;
- falsification of financial statements; and
- unlawful use of the Paladin's computers, motor vehicles, telephones (including mobile telephones) and other property or services.

As it deems necessary, Paladin will routinely review compliance with fraud and corruption issues, including to formally audit appropriate policies, practices and procedures to monitor activities and safeguard assets, particularly in Paladin's high-risk areas.

## **9 REPORTING AND RECORD KEEPING**

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

Paladin 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 Paladin, including the Australian Corporations Act 2001 (Cth) and the Foreign Bribery Laws.

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

- no numbered or secret account or undisclosed or unrecorded funds or asset of Paladin shall be maintained or established for any purpose;
- no false or artificial entries shall be made in the books and records of Paladin 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 Paladin 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.



## 10 WHISTLEBLOWER POLICY: REPORTING VIOLATIONS

Paladin's *Whistleblower Policy* governs the process by which Paladin employees and Representatives can anonymously notify the Compliance Committee (see contact details on page 6 of this Guide), or any supervisor or manager whom he or she is comfortable approaching, of potential or suspected violations of:

- legal or regulatory requirements (including the Foreign Bribery Laws and Anti-fraud and Bribery Laws);
- company policy as set out in the *Code of Business Conduct and Ethics* or this Guide;
- internal policy relating to accounting standards and disclosures;
- internal accounting controls; or
- matters related to the internal or external audit of Paladin's financial statements

All Paladin employees and Representatives who report potential or suspected violations of the *Code of Business Conduct and Ethics*, this Guide or any laws that apply to Paladin can be confident that all reports will be dealt with and treated with absolute confidentiality, in accordance with Paladin's *Whistleblower Policy*, and that there will be no retaliation against Paladin employees for the mere fact of having reported a suspected issue.

Paladin's *Whistleblower Policy*:

- is a strong indicator that Paladin is committed to and complies with its legal and ethical obligations;
- enables individuals to feel that Paladin is properly addressing their concerns; and
- does not penalise employees for fulfilling their obligation to ensure that Paladin's conduct meets its policies on compliance and ethics.

As described in the *Whistleblower Policy*, upon receipt of a complaint alleging a violation, the Compliance Committee must consider, and will investigate where deemed appropriate, the conduct alleged in the complaint. The Compliance Committee shall report any findings of non-compliance with Paladin company policy or regulatory non-compliance to Paladin's Audit Committee. The directors are responsible for ensuring that the appropriate corrective action is taken which can include dismissal of employees, cancelling of contracts with Paladin Representatives, and reporting the alleged violation to the appropriate governmental and law enforcement agencies.

For more information please refer to Paladin's *Whistleblower Policy* available on its website.

## 11 OBLIGATION TO COMPLY WITH LAW

Paladin is committed to building and maintaining a reputation for integrity and honesty. This reputation depends on its employees and Representatives complying with the law.

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

Paladin employees are responsible for ensuring that their actions do not violate the law. If a Paladin employee is directed to do something which they believe to be unlawful, they are expected to report the incident to a member of Paladin management, the directors or to Paladin's Compliance



Committee in accordance with this Guide. All complaints and reports will be treated confidentially in accordance with Paladin's *Whistleblower Policy* and no retaliation against a person making a report will be tolerated.

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

Paladin will, through its directors and senior management, endeavour to maintain a work environment where frank and open discussion is encouraged and expected, without fear of retribution. Paladin will ensure that any allegations of violation of any laws that apply to Paladin will be treated confidentially, investigated thoroughly and dealt with appropriately in accordance with the procedures set out in this Guide.

Every Paladin employee and Representative is required to understand and comply with the laws that apply to Paladin, including the Foreign Bribery Laws and Anti-fraud and Bribery Laws. Paladin's employees and Representatives must read and consent to be bound by Paladin's *Compliance Agreement*.

## 12 FACILITATION PAYMENT RECORD

Name of the Company / Employee / Agent / Representative	
Date of Facilitation Payment	
Value of Facilitation Payment	
Identity of Foreign Public Official and/or to whom the Facilitation Payment was provided	
Details of the Facilitation Payment (including purpose of Facilitation Payment and location)	

Are there any additional supporting documents attached?      YES / NO

**Please sign and date this Facilitation Payment Record. Please also provide a signed copy to Paladin’s Compliance Committee.**

**Signature:** .....

**Signed by:** .....

**Date:** .....

**NB:** A payment is a facilitation payment only if the value of benefit is minor in nature; it is for the sole or dominant purpose of expediting or securing performance of a routine government action of a minor nature; and a signed record is made of the details.



**Pro-forma Discovery of Bribery or Fraud  
Privileged and confidential**

*Please complete as much of the following information as is known based on initial internal inquiries.*

**To** Paladin Compliance Committee

**From:**

**Date:**

**Detailed description of suspected Bribery or Fraud**

(include location, persons suspected of involvement, amount if known, how detected, date/period of suspected incident/s)

**Action taken to date**

Outline of any management actions taken to date

**Other**

Any other information that may be relevant to the investigation



## Revision History

Version No	Date/Change	Description	Approved
00	4 July 2012	Initial Compliance Guide	Yes
01	18 October 2012	Amended to incorporate general corruption, bribery and fraud issues	Yes
02	27 August 2013	Amended to incorporate changes to Canadian legislation	Yes
03	5 November 2013	Amended to include pro-forma Discovery of Bribery or Fraud	Yes
04	18 May 2015	Review	Yes
05	4 May 2017	Review and amended to incorporate changes to the ratification of the OECD Convention and the changes in bribery penalties under the Australian Criminal Code.	Yes
06	8 June 2018	Review.	Yes
07	2 April 2019	Amendment to Chairman's Letter	Yes
08	5 June 2020	Amendment to Chairman's Letter	Yes

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**Date adopted:** 4 July 2012

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