



anvilmining

THE COMPLIANCE GUIDE: EXCLUDING BRIBERY FROM INTERNATIONAL BUSINESS

Adopted September 2007

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

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Letter from the CEO

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

Dear All

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

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

In 1999, both Canada and Australia implemented the *OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions* (“OECD Convention”). Canada implemented the OECD Convention by adopting the *Corruption of Foreign Public Officials Act*. Australia implemented the OECD Convention in the Commonwealth Criminal Code (the “Australian Criminal Code”). The Canadian *Corruption of Foreign Public Officials Act* and the Australian Criminal Code both form a key part of the legislative framework within which Anvil operates. Anvil will endeavour to ensure that its employees, Representatives and joint venture partners comply with these laws.

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

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

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

Yours sincerely

BILL TURNER
Chief Executive Officer
Anvil Mining Limited

INTRODUCTION

Why bribery is a global issue

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

Fact

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

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

As part of the global effort to combat bribery, 36 countries have ratified the *OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions*. Australia and Canada, together with many other countries worldwide, have implemented the OECD Convention into their domestic legislation, making bribery of foreign public officials an offence punishable, in Canada, by a term of imprisonment of up to 5 years, and in Australia, by a fine and/or a term of imprisonment of up to 10 years.

The Canadian *Corruption of Foreign Public Officials Act* and the anti-bribery provisions in the Australian Criminal Code have extra-territorial operation and regulate the conduct of Canadian and Australian citizens, residents and corporations overseas. Anvil expects all of its employees, Representatives and joint venture partners to comply with both the letter and spirit of the laws which govern Anvil's operations worldwide and with Anvil company policy, including this Guide and Anvil's Code of Business Conduct.

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

Purpose of this Guide

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

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

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

Effect of International Bribery

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

Benefits and Limitations by W Hamra, Business Economics Journal, October 2000, http://www.findarticles.com/p/articles/mi_m1094/is_4_35/ai_67978515)

What is bribery?

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

The anti-bribery laws of Australia and Canada, while not identical, are sufficiently similar to be able to provide the following summary.

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

Canadian

Corruption of Foreign Public Officials Act

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

Australian Criminal Code

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

Permissible and Prohibited Payments

The Importance of Compliance

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

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

Contacting Anvil's Compliance Officer

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

Mr Stuart McKenzie, Compliance Officer

Company Secretary

Anvil Mining Limited

Level 1, 76 Hasler Road

Perth, Western Australia 6017

By Email: stuartm@anvilmining.com

By Telephone: +61 8 9481 4700

Key Provisions

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

Who is a “foreign public official”?

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

Case Study

Foreign Public Officials

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

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

- an individual who holds or performs the duties of an office or position in a public international organisation;
- an individual who is otherwise in the service of a public international organisation;
- a member or officer of the legislature of a foreign country or of part of a foreign country;
- an individual who is, or who holds himself or herself out to be, an authorised intermediary of a foreign public official.
- Under the *Canadian Corruption of Foreign Public Officials Act*, an offence will have been committed if a loan, reward, advantage or other benefit (“benefit”) is given or offered *directly* to a foreign public official *or* if a benefit is given or offered *indirectly* to a foreign public official, or to a third party, in order:
 - to obtain an act or omission by a foreign public official in the performance of the official’s duties, or
 - to obtain influence in any acts or decisions of a foreign state or public international organization, or
 - with the intention that a foreign public official be influenced as a result of the benefit.

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

What is a “benefit”?

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

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

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

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

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

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

Question

I work for a Canadian company headquartered in Australia which has incorporated local subsidiaries to conduct its African mining operations. One of the senior managers of the local subsidiary has been asked to pay an additional "tax" by a local government official. He is concerned that the tax is illegitimate and may actually be a request for a bribe. There can be serious consequences for companies who refuse to pay bribes in this part of Africa. Therefore, he has suggested that I authorise the parent company to direct the subsidiary to make an electronic transfer. That way, neither he nor the local company will be held responsible, and neither will the parent company as it is too far removed from the transaction. Is this correct?

Answer

No, it is not. The terms “indirectly” and “cause” encompass the actions of both the parent company and those of its subsidiary. Given that the parent company is a Canadian corporation headquartered in Australia (although the subsidiary may not be) it may be found to have violated the Anti-Bribery Laws by directing its subsidiary to make the illegitimate payment.

Question

I work for a Canadian mining company headquartered in Australia. I have been asked to make a payment to a government official by my supervisor. He told me that, if we didn't pay him, the official had threatened to make things very difficult for the company. My supervisor told me that I wouldn't get into trouble because I had been told to do it. Is this true?

Answer

No, this is not true. In those circumstances, both you and your supervisor can be said to have caused the cash payment to be given to the official. If you were to make the payment, and you are Australian or Canadian citizens or residents, both you and your supervisor, as well as the company, may be found to be in breach of the Anti-Bribery Laws.

When can Anvil be guilty of an offence?

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

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

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

What does “intention” mean?

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

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

Question

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

Answer

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

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

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

Turning a ‘Blind Eye’

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

Case Study: Important of transparency

Société Générale de Surveillance (SGS) was, in the 1990s, the world's largest cargo inspection company. Governments and companies all over the world relied on the honesty of SGS to verify size and quality of shipments received. In 1997, allegations emerged that SGS had used a third party to negotiate a Pakistani government contract, and, five years ago, the third party had paid a bribe to the prime minister at the time, Benazir Bhutto, in order to secure a deal. While SGS denied any wrongdoing, the incident cost the company its contract and tarnished its reputation. **Wood Justin, Coming Clean - Human Capital - CFO.com, <http://www.cfo.com/article.cfm/>.**

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

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

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

Question

I have been instructed by my supervisor to oversee construction at the Company's mine site. This involves obtaining permits and appointing building contractors. I am concerned that, if I don't agree to pay bribes to local officials, they won't grant me the necessary permits or put me in contact with local contractors to do the work. My supervisor said I will be fired if the building work doesn't get done on time, but I am worried about getting both me and the company in trouble with the law. What should I do?

Answer

You should not pay any bribes. If you bribe local officials, then clearly you will have breached the Anti-Bribery Laws. In addition, the fact that your supervisor has told you to get the work done "at all costs" is indicative of the company having a culture of non-compliance with the Anti-Bribery Laws. If either the company's senior management or a director of the company authorised the payment of the bribe, or if they turned a "blind eye" to the payment of bribes such that the company could be found to have a culture of non compliance, then the company may also be found to have committed the offence.

Anvil does not allow the payment of bribes. If you are faced with this situation, you should contact Anvil's Compliance Officer (see page 5 of this Guide) or an Anvil manager or director.

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

Question

We always contact a local government Minister who assists us by giving advice and explaining how we should conduct business deals in his country. He often directs us to certain agents and contractors when we require their services. Recently, he has indicated that he would appreciate some benefit for his guidance, possibly in the form of an overseas trip. What should I do?

Answer

The Minister is asking for a benefit in return for his assistance. If his assistance resulted in the company obtaining business or a business advantage, which includes obtaining permits or licences, or making business contacts that it would not otherwise have made, paying for an overseas trip may constitute bribery. You should contact the company's Compliance Officer.

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

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

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

In some circumstances, illegitimate (or illegal) payments will be disguised as government charges, levies or taxes. A business advantage which is 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 which is not in accordance with Anvil's standard business practice as set out in the Code of Business Conduct or this Guide, you must seek advice from an Anvil manager or director (who can, if necessary, refer the

matter to Anvil's legal advisors) or Anvil's Compliance Officer, before the payment is made or the gift or benefit is conferred. A key point to remember is that transparency is one of Anvil's core values and therefore any payment, gift or benefit which does not stand up to outside scrutiny cannot be considered to be legitimate and should not be made.

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

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

Question

We take a particular government minister out for expensive dinners on a regular basis. Recently, we were awarded a mining concession in an area where he has a lot of influence. He has not said that he had anything to do with it, and we did not ask him to do anything. Does our relationship with him mean that the concession is an illegitimate business advantage?

Answer

If the Minister used his position to intervene in the award of the mining concession so that it was awarded to your company when it otherwise wouldn't have been, then this may constitute a breach of the Anti-Bribery Laws, depending on the nature of the company's intention behind taking him out to dinner. You should immediately contact the company's Compliance Officer, or can seek advice from the company's lawyers.

LEGITIMATE CONFERRAL OF BENEFITS

Gifts, Meals and Entertainment

Gifts

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

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

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

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

- (a) the monetary value of the gift - Is the gift excessive or expensive? If so, the gift should not be given or accepted;
- (b) the timing of the gift - Are there any negotiations or contracts being settled? If the giving or receipt of a gift coincides with an important business decision making period, the gift should not be given or accepted;
- (c) the outside impression conveyed by giving or accepting the gift - If there may be an impression formed by a third party that there is an improper connection between any gift

Examples of Appropriate Gifts

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

Examples of Inappropriate Gifts

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

or hospitality and a particular business opportunity, then the gift should not be given or accepted; and

- (d) the type of gift - Certain gifts should never be given or accepted, including cash and drugs or other controlled substances.

Case Example: Importance of Transparency

An investigation published by Greenpeace International stated that the Swiss/German company 'Danzer Group' was guilty of breaching the OECD Convention by bribing public officials in Africa. Documents obtained by Greenpeace included a memo written by one of the executive directors of Danzer Group who stated that "if there is any threat of a fine... he is, however, prepared to take care of this by giving a gift."

The Swiss Attorney General's Office investigated the allegations against the Danzer Group. Although the investigations were closed in December 2004, the incident has resulted in damage to Danzer Group's reputation. (Facts on the Swiss timber giant Danzer Group, 28 January 2005, <http://www.greenpeace.org/international/news/the-latest-on-danger>.)

Meals and Entertainment

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

Question

I have been asked to organise a business trip for a foreign government Minister to come to view our mine site and operations in Africa. The Minister is flying business class and will be accompanied by his two children. The company proposes to pay for the airline tickets, accommodation and meals for the three days the Minister needs to complete site visits. Is this allowed according to Anti-Bribery Laws?

Answer

If your company pays for the trip it may be violating Anti-Bribery Laws. Whether the Anti-Bribery Laws are violated depends on whether the company has obtained or retained business or a business advantage as a result of the Minister's conduct. However, even if the Minister has not conferred a business advantage on the company, he is in a position to do so, therefore, to avoid the appearance of impropriety, the company should not pay for the trip.

What is a facilitation payment?

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

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

A facilitation payment is a payment where:

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

Each of these elements is explained below.

Routine Government Action

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

- granting a permit, licence or other official document that qualifies a person to do business in a foreign country or in a part of a foreign country;
- processing government papers such as a visa or work permit;
- providing services normally offered to the public, such as police protection, mail collection or delivery, telecommunication services and power and water supply;
- scheduling inspections associated with contract performance or related to the transit of goods;
- loading and unloading cargo;

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

Question

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

Answer

If the payment is made to a government official to secure a routine action government of a minor nature and the value of the benefit is small, then it is a facilitation payment. A key issue is whether the official is performing a routine action to which the company is ordinarily entitled. It is important that you make sure that you keep a detailed record of the payment in accordance with the Anti-Bribery Laws.

Anvil Company Policy

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

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

Record Keeping

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

- the value of the benefit concerned;
- the date on which the conduct occurred;
- the identity of the foreign public official or other person in relation to whom the conduct occurred;
- particulars of the routine government action that was sought to be expedited or secured by the conduct; and

the person's signature or some other means of verifying the person's identity. ("person" refers to the person who gave the benefit). The onus of establishing that a payment was a facilitation payment, not a bribe, lies on Anvil. Therefore, accurate records must be kept of all payments made in accordance with Anvil company policy on record keeping and internal company controls set out in this Guide.

Case Study

The Importance of Record keeping

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

REPORTING AND RECORD KEEPING

Record keeping and internal controls

Anvil is committed to ensuring that, in accordance with this Guide, effective training programs are in place so that all Anvil employees, joint venture partners and Representatives are aware of the legislation that governs Anvil's operations, including the Anti-Bribery Laws. In addition to ensuring that all Anvil employees, Representatives and, as far as practicable, joint venture partners are aware of the laws that apply to Anvil, Anvil has established internal controls, including detailed record keeping procedures, to ensure that Anvil complies with all of the laws that govern its operations.

Integrity of Record Keeping and Accounts

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

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

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

REPORTING VIOLATIONS OF THE CODE OF CONDUCT OR OTHER UNETHICAL CONDUCT

Whistleblower Policy

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

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

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

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

they should immediately report their concerns to Craig Munro, Anvil's Compliance Officer (see contact details on page 5 of this Guide).

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

Investigation of Complaints

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

Corrective Action

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

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

No Retaliation

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

Compliance with this Guide

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

Obligation to Comply with Law

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

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

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

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

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

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