

Incitec Pivot Limited

Group Anti-Bribery and Improper Payments Policy

Adopted by the Board on 12 November 2009
(Amended May 2016)

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Group Anti-Bribery and Improper Payments Policy

- 1 Introduction and Purpose**

Incitec Pivot is committed to operating at the highest standards of ethical behaviour at all times. As outlined in Incitec Pivot's Code of Conduct, Incitec Pivot is committed to upholding ethical business practices and meeting applicable legal requirements.

As part of this commitment, Incitec Pivot strictly prohibits the making of unlawful or improper payments, or the giving of anything of value or improper advantage, to any individual or entity, including Public Officials (as defined) with the intent of securing business advantage for Incitec Pivot that is not legitimately due to it.

This document summarises the relevant laws and sets out Incitec Pivot's policy on bribery and improper payments.
- 2 Who does this policy apply to?**

This policy applies to all directors, officers and employees of Incitec Pivot and each subsidiary, partnership, venture and business association, including distributors and agents and other contractors that are effectively controlled by Incitec Pivot or act on its behalf (either directly or indirectly).

All of these persons and entities are expected to comply with this policy and conduct their activities on behalf of Incitec Pivot accordingly. Incitec Pivot's management must positively promote the policy by personal example, by giving clear and unambiguous guidance and assistance on its operation, and by ensuring that it is communicated and understood by all Incitec Pivot employees, directors, officers, and by all third parties who act on behalf of Incitec Pivot.
- 3 Summary of the policy**

Incitec Pivot strictly prohibits the making of unlawful or improper payments to any individual or entity with the intent of securing business advantage for Incitec Pivot that is not legitimately due to it.

This policy **prohibits improper payments to the following persons or entities:**

 -) Public Officials (as defined below);
 -) any customer of Incitec Pivot; or
 -) any other individual or entity with whom Incitec Pivot does business.

This policy **prohibits the following types of improper payments:**

-) bribery of any Public Official regardless of location;
-) improper payments, or the provision of other improper benefits or advantage, whether tangible or intangible, made in the course of business activity, including illegal facilitation payments and secret commissions;
-) the giving or receiving of gifts and/or entertainment not in accordance with this policy;
-) money laundering; and
-) false, misleading, incomplete or inadequate accounting or books or record keeping.

The above types of improper payments and/or conduct are explained at sections 4 to 13 below.

4 **How the relevant laws work**

Laws prohibiting the types of improper payments covered by this policy apply in all of the countries in which Incitec Pivot has operations and/or engages in trading activities.

Laws prohibiting bribery apply to all countries where Incitec Pivot operates or trades. Examples include the *Foreign Corrupt Practices Act (FCPA)* in the United States and the *Criminal Code* in Australia.

These laws have extraterritorial reach. This means that, for instance, under the US *FCPA*, any US citizen or US company may be found liable in the US for any activity that occurs in any country outside the US. A non-US citizen or non-US company may also be liable for *FCPA*-prohibited activity (even emails, phone calls or bank transfers) that occurs in the US.

Similarly, under Australian law, an Australian citizen or company may be liable in Australia even where the relevant activity occurred entirely overseas. In addition, where the activity occurs in Australia, a foreign national or foreign company may be liable under Australian law.

The same or substantially similar principles apply in relation to laws in other countries where Incitec Pivot operates.

Additionally, laws prohibiting all other types of improper payments covered by this policy, including secret commissions and money laundering, as well as the improper conduct of joint venture partners or agents, distributors and other third parties, are in place in all of the countries in which Incitec Pivot has operations, and/or engages in trading activities.

This means that Incitec Pivot and/or any of its directors, officers or employees or any third parties acting on behalf of Incitec Pivot may be found liable in the country where the offending conduct occurs or in their home jurisdiction.

5 Prohibition on bribery of Public Officials

Incitec Pivot prohibits the corrupt offering, promising, authorising or paying of anything of value to any Public Official in order to influence the official for the purpose of obtaining or retaining business or securing some other improper advantage.

This includes the offer of any benefit in order to influence a Public Official, notwithstanding that the benefit is given or offered to a person other than the Public Official, for example, to a relative, business partner of a Public Official, a political party, or charitable organisation.

The General Manager/President of each Business Unit is required to ensure awareness throughout the Business Unit of the requirements of this policy, including in relation to engaging with Public Officials.

For the purposes of this policy, Public Officials include:

- J an employee, official or contractor of a government body or a wholly or partially state-owned enterprise;
- J a person performing the duties of an office or position created under a law of a foreign country or by the custom or convention of a country;
- J a person in the service of a governmental body including a member of the military or the police force;
- J a politician, judge, or member of the legislature of a state, province, or country;
- J an employee, contractor or person otherwise in the service of a public international organisation (such as the United Nations);
- J an individual who is or who holds himself or herself out to be an authorised intermediary of a public official;
- J a political party, party official or candidate for public office;
- J a member of a royal family; or
- J a commercial entity, or the directors, officers or employees of a commercial entity, in which a government body has a significant ownership interest or over which it otherwise exerts control.

6 Facilitation payments

Facilitation payments are payments to public officials either directly or indirectly that are made in some countries to expedite or secure the performance of routine governmental action (for example, to facilitate the expedition of applications for visas, minor licences etc).

Facilitation payments are not permitted unless the strict conditions provided for in this policy are met.

If a payment for a routine government action is:

- J expressly required or permitted by the written law of the country in which it is made, and
- J the payment is not made for the purpose of obtaining or retaining business or securing some other improper advantage,

then that payment is not prohibited by this policy. Any such payment must be authorised by the Legal Team before it is made, and must be accurately and fully recorded in Incitec Pivot's books and records.

However, if a payment to expedite or secure the performance of routine governmental action:

- J is prohibited under law; or

) the law is silent as to whether the payment is allowed, then this is a facilitation payment and is not permitted.

7 Prohibition on secret commissions

Incitec Pivot prohibits the paying of 'secret commissions' to any person or entity, including any private party or any public official, to obtain or retain a benefit that is not legitimately due.

It is a crime under the laws of many countries in which Incitec Pivot operates to give to a person, or an agent of a person, a secret commission as an inducement to influence the conduct of the principal's business.

Secret commissions arise where a person who is the agent or representative of another person takes or solicits a commission from a third party without disclosing that commission to their principal. This would include, for instance, the making of a payment to an agent of a customer of Incitec Pivot, where that agent does not disclose the payment to the customer, in return for facilitating favourable commercial terms for Incitec Pivot with that customer.

8 Prohibition on improper gifts and entertainment

Incitec Pivot prohibits the giving or receiving of gifts or entertainment to obtain or retain a benefit that is not legitimately due to it.

Gifts and entertainment must only be provided or accepted in accordance with this policy, Incitec Pivot's Gifts and Entertainment Policy, and any procedures implemented pursuant to these policies.

This policy does not prohibit the giving or receiving of minor gifts, meals and entertainment (including in-house seminars) to or from public officials or any private entity, provided those expenditures:

-) are given in the name of Incitec Pivot and not any individual employee;
-) are solely aimed at building a general relationship and understanding;
-) are not intended, and could not be construed as, an attempt to gain influence in order to obtain or retain any benefit not legitimately due to Incitec Pivot, particularly in light of the timing or nature of the expenditure;
-) comply with any relevant governmental law, regulation, rule, or code;
-) are otherwise lawful in the country in which they are made;
-) do not include cash or cash equivalent;
-) have been approved by the relevant Executive Team member where the value of those gifts or entertainment exceeds the applicable Reportable Limit (as defined in the Gifts and Entertainment Policy);
-) have been approved in advance, in writing, by the Group Chief Financial Officer where the value of those gifts or entertainment exceeds the applicable Financial Limit; and
-) regardless of amount, are accurately recorded in Incitec Pivot's books and records, which includes appropriate notification to the relevant Executive Team member where the value of such gift or entertainment exceeds the applicable Reportable Limit.

If you are in any doubt as to the appropriateness of any gift or entertainment, you should consult the General Manager/President of the relevant Business Unit and/or the Legal Team beforehand or otherwise as soon as possible.

9 Prohibition on money laundering

Incitec Pivot prohibits any forms of money laundering in connection with its business activities.

Money laundering is the process by which a person or entity conceals the existence of an illegal source of income and then disguises that income to make it appear legitimate.

Use by Incitec Pivot of proceeds tainted by illegality can give rise to liability in a number of countries in which Incitec Pivot operates.

If you become aware of any transaction that you think might involve the payment or receipt of proceeds of any unlawful activity you should contact the Legal Team immediately.

10 Application of this policy to agents, distributors, intermediaries and suppliers

Incitec Pivot engages with third parties in a range of circumstances, particularly in its trading activities and across the activities of its supply chain, including the procurement and sale of goods.

These third parties may include agents, distributors, intermediaries, suppliers and/or purchasers or other contractors. These parties may also be part of fully state owned entities.

In certain circumstances, Incitec Pivot may be liable under anti-bribery or other laws for the improper actions of these third parties.

Incitec Pivot prohibits the provision of a benefit to a third party where it is expected or likely that some or all of that benefit will be provided or offered to another person, in order to obtain any business advantage that is not legitimately due. Particular care must be taken with, for example, arrangements with consultants, agents, or distributors, which assist in securing business, or which arrange introductions to potential business clients or key government decision-makers in a foreign country.

Where an agent, distributor or intermediary is to be retained, the Legal Team must be informed, so that it can determine if basic **due diligence** on this person or entity is required. If a due diligence is required, a due diligence report must be completed and entered onto the third party database. If any issues of concern or 'red flags' are identified by this due diligence, the Legal Team must be immediately informed. The Legal Team will then determine if it is appropriate for the third party to be retained, or if a more detailed investigation is required prior to engaging in any such relationship.

Standard terms that incorporate the issues addressed by this policy must be included in **all contracts that are negotiated with agents, distributors, intermediaries, and suppliers**. Where a contract is to be entered into with any such third party, the Legal Team must be notified. The Legal Team will then determine the appropriate standard terms to be used. Any such contract must be authorised by the Legal Team before execution. The Legal Team will also determine if an **annual Certificate of Compliance with this policy** will be required of any agent, distributor, intermediary or supplier with whom Incitec Pivot contracts.

Incitec Pivot employees that engage third parties also must **maintain oversight of the work of those third parties** (including, where appropriate, receiving progress reports, reviewing invoices and other documentation etc.) in order to confirm that legitimate work has been done and improper payments have not been made. This includes, where applicable, ensuring that an annual Certificate of Compliance with this policy has been executed. All “red flags” must be fully documented, investigated, and reported to the Legal Team.

11 **Application of this policy to joint ventures**

Incitec Pivot is involved in joint ventures and partnerships in many countries.

Incitec Pivot is committed to the prevention of improper financial or other conduct in any **joint venture that it controls** through its ownership, management or board involvement. Any joint venture that is controlled by Incitec Pivot must comply with this policy.

Incitec Pivot is also committed to working to minimise the possibility of improper conduct in connection with those **joint ventures where it is involved but does not exercise control**. This includes any joint venture or partnership with a partly or fully state-owned enterprise. Incitec Pivot will take such steps as are open to it to require that any such joint venture complies with the standards set out in this policy.

Additionally, in respect of all of its joint venture arrangements, regardless of whether Incitec Pivot exercises control over the entities concerned, Incitec Pivot has procedures in place that aim to address the potential for bribery or any other improper payment made in the course of its joint venture operations. These procedures include but are not limited to the following:

-) Incitec Pivot must conduct, and keep detailed records of, **due diligence investigations** on any proposed joint venture partner prior to entering into contractual arrangements. A due diligence investigation should include a review of reputation, expertise, experience, past performance, affiliations to government officials and should consider the business purpose for entering into the transaction;
-) **contracts with proposed joint venture partners** must contain terms that incorporate the issues addressed by this policy. Incitec Pivot has developed standard contract terms for this purpose, which are available from the Legal Team. Any such contract must be authorised by the Legal Team before execution;
-) Incitec Pivot directors, officers or employees that are **board members** or are otherwise involved in the operations of joint venture partners should pay particular attention to signs of improper payments and should voice objections where appropriate; and
-) if an Incitec Pivot director, officer or employee becomes aware of evidence that a joint venture partner has engaged or may engage in improper payments, that evidence must be reported to the Legal Team.

- 12 **Mergers and acquisitions** Incitec Pivot must conduct, and keep detailed records of, **due diligence investigations** on any proposed merger or acquisition target prior to entering into contractual arrangements with the entity concerned. A due diligence investigation should include a review of reputation, expertise, experience, past performance, affiliations to government officials and should consider the business purpose for entering into the transaction.
- This due diligence must be undertaken in relation to past and current conduct of the entity concerned.
- 13 **Accounting, books and records** Incitec Pivot is required to maintain a system of internal accounting controls and make and keep books and records which accurately and fairly reflect, in reasonable detail, the parties, the payment arrangements and the purpose of all transactions and disposition of assets.
- Incitec Pivot shall maintain a system of accounting controls that provides reasonable assurances that:
-) transactions are executed in accordance with delegations of authority;
 -) transactions are recorded so as to permit preparation of accurate financial statements and to maintain accountability for assets;
 -) access to assets is permitted only in accordance with management authorisation; and
 -) appropriate auditing functions are conducted.
- No undisclosed or unrecorded fund or account may be established for any purpose. Activities must never be disguised.
- Incitec Pivot prohibits false, misleading or incomplete record keeping. False, misleading or incomplete record keeping is a criminal and civil offence in many countries in which Incitec Pivot operates. In Australia and the U.S., for example, it is an offence to make false records in order to facilitate or conceal an illegitimate benefit or loss. A breach of this by an employee may result in immediate disciplinary action by Incitec Pivot.
- 14 **What are the consequences if you breach the laws relating to bribery or other improper payments** Penalties for breaches of the laws that this policy aims to uphold can include imprisonment and the payment of significant fines (by the company, its directors, officers and employees), depending on the jurisdiction. For example, fines imposed by the Department of Justice and Securities and Exchange Commission in the US have amounted to over \$800 million for a single company. Numerous directors, managers and employees of companies have faced large personal fines and significant prison terms.
- Consequences for individuals***
In Australia, the penalty for bribery of a foreign public official is ten years imprisonment and/or a fine of \$1.8 million, or both for an individual. In the US, the criminal penalty for each violation is up to 5 years in prison and a fine of either US\$250,000 or a sum that is twice the gain the individual sought, whichever is greater. Civil penalties, including a fine for each violation, can also be imposed, as well as substantial criminal penalties for books and records offences. .

Consequences for corporate entities

In Australia the maximum penalty for a body corporate will be the greater of \$18 million, three times the benefit of any benefit obtained as a result of the conduct, or 10% of the annual turnover of the body corporate for the 12 months prior to the offence (where the court cannot determine the benefit obtained).

In the US, the criminal penalty for each violation is a fine of up to US\$2 million or a sum that is twice the gain the company sought, whichever is greater. Civil penalties for each violation can also be imposed, as well as substantial criminal penalties for books and records offences.

The risks also include:

-) being barred from government work;
-) losing private supply contracts;
-) facing additional compliance obligations;
-) civil litigation (eg law suits by competitors and shareholder class actions); and
-) reputational damage.

Other nations have imposed similarly severe penalties. Conscious disregard, deliberate ignorance, and wilful blindness will not avoid liability in relation to any of the matters set out in this policy.

Failure to observe this policy will also lead to disciplinary action by Incitec Pivot, which may include termination of employment.

15 Reporting bribery or other improper payments

Incitec Pivot recognises the value and importance of its directors, officers or employees reporting identified or suspected instances of improper payments or related conduct and strongly supports such disclosures and reports.

All persons should remain alert to any instances of directors, officers, employees, subsidiaries or joint venture partners, agents, suppliers, distributors or other contractors attempting to engage, or engaging in bribery or other improper conduct or otherwise not meeting the standards of behaviour required under this policy. Reports concerning possible instances of improper practices should be made to your Manager or the Legal Team.

In line with its Group Whistleblower Protection Policy ([hyperlink](#)), Incitec Pivot will take all available steps to provide protection to persons who make such reports from any victimisation or detrimental action in reprisal for the making of a report.

16 Further advice

A copy of the policy is available on Incitec Pivot's intranet site.

If you do not understand this policy, or if you are uncertain as to whether any aspect of this policy applies to you, please contact the General Manager/President of your Business Unit or the Legal Team.