



# Anti-Bribery and Corruption

Code of Ethics



# Anti-Bribery and Corruption

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## *Code of Ethics*

### Overview

1. Explain Link Natural Resources':
  - a. Anti-bribery and corruption policy
  - b. Anti-bribery and corruption procedures
2. Provide overview of the UK Bribery Act of 2010, the offences under the Act, and to whom the Act applies to.
3. Definition: What is Bribery?
4. Responses, should you be subject to a bribery request.
5. Responsibilities under the Bribery Act.

# Anti-Bribery and Corruption

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## *Policy Statement*

- LNR has a zero tolerance attitude to bribery and corruption. And we are committed to performing business honestly, professionally, fairly, with integrity as well as accountability.
- This policy applies equally to any persons associated with the company by being an employee, agent, third-party, intermediary, representative, business partner or supplier.
- The Anti-Bribery and Corruption policy has been adopted by the Board and it is crucial that everyone involved with the business is aware, committed and abides by it.
- LNR's anti-bribery and corruption policy requires prohibitions on:
  - Gifts and Hospitality not considered normal
  - Certain Donations
  - Facilitation / "Kickback" Payments
  - Conflicts of Interest
  - Anti-Money Laundering
  - Bribing of foreign official

# Anti-Bribery and Corruption

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## *Procedures*

LNR's Anti-Bribery and Corruption Procedures are designed to enhance the Code of ethics and the Anti-Bribery Policy.

These procedures will be informed by the following:

1. The procedures for third party relationships and hiring;
2. Anti-corruption **due diligence** for mergers, acquisitions and joint ventures;
3. Monitoring and review compliance;
4. Training and communication;
5. Reporting violations or suspected misconduct;
6. Penalties, and Risk Assessment;
7. Implementation forms – sample forms to implement the
8. Anti-Bribery and Corruption Policy.

# Anti-Bribery and Corruption

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## *The UK Bribery Act 2010*



### Bribery Act 2010

- This anti-bribery and corruption legislation is considered the strictest in the world, and LNR measures its activities to its standard.
- This law has replaced all previous UK anti-bribery laws.
- The companies themselves are liable to prevent bribery and corruption.
- The company would be guilty if an 'associated person' conducted an act of bribery or corruption in connection with the company.
- Bribery related issues include the following penalties:
  - Criminal conviction for individuals and companies; and
  - Prosecution, fines or up to 10 years imprisonment for individuals.
- Broad territorial application which catches activities anywhere in the world and non UK nationals and companies in certain circumstances.
- Broad in scope in respect of the persons who are subject to the provisions of the Bribery Act.

# Anti-Bribery and Corruption

## *Offences under the Bribery Act 2010*

Unlike other bribery laws, the Act applies equally to bribes paid to public officials as it does to those paid in the private sector, business to business.

### **Four key offences exist under the Act:**

- Active bribery (Offering, promising or giving a bribe);
- Passive bribery (Agreeing to receive or accepting a bribe);
- Bribery of a foreign public official; and
- Corporate offence of failure to prevent bribery.



# Anti-Bribery and Corruption

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## *What is Bribery?*

Bribery is the offer, promise, giving, demanding or acceptance of an advantage as an inducement for an action which is illegal, unethical, a breach of trust or the improper performance of a contract.

Inducements can take the form of gifts, fees, rewards, jobs, internships, favours or other advantages.

Corruption is the misuse of entrusted power for personal gain

### **Offences 1 and 2**

To commit the offence of bribery there must be:

1. The offering or accepting of a “**financial or other advantage**”; and
2. “**Inappropriate behaviour**”.

# Anti-Bribery and Corruption

## *What is Bribery?*

### Offences 1 and 2 continued

- **Financial or other advantage:** This is deliberately broad and goes beyond the payment of money and the handing over of "brown envelopes". It may cover a wide range of things, including:
  - Money
  - A lunch
  - A watch
  - A holiday
  - A donation
  - Tickets to a sporting event
  - Luxury hotel accommodation
  
- **Inappropriate behaviour:** This is measured on the test of "practicality" – would a sensible person consider such giving/receiving to constitute a breach of good faith, impartiality or trust?



# Anti-Bribery and Corruption

## *Facilitation or “grease” payments*

### **Offences 1 and 2 continued**

- A facilitating payment is a financial payment made to a public or government official that acts as incentive for the official to complete some action or process, to the benefit of the party making the payment.
  - E.g. to border officials to allow equipment into a country, to process visas, to customs to expedite entry/exit at an airport.
- No legal obligation exists to pay, but an official on duty refuses to carry out an action without the facilitation payment.
- There are no exemptions in the Bribery Act for such payments.
- Aside from the Bribery Act provisions, it should be noted that facilitation payments are almost certain to be illegal under the laws of the countries in which they are commonly made.
- In the Bribery Act this type of payment falls under two categories of offence:
  - the main bribery offences (offence 1); and
  - Bribing a foreign public official (offence 3).

# Anti-Bribery and Corruption

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## *Bribing of a foreign official*

### **Offence 3**

- The offence of bribing a foreign government official has been committed as soon as the offer is made.
- In order to establish an offence it must be shown that a person:
  - Intends to influence an official in his capacity to speed up a process
  - Intends to gain a business advantage in the conduct of business; and
  - Directly, or through a third party, offers, promises or gives a financial or other advantage that is not legitimately due.
- To establish whether no offence took place, it is necessary to show that such a practice is recognised by the written local law or a published judicial decision.

# Anti-Bribery and Corruption

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## *What is bribery?*

### Scenarios

#### **Scenario 1**

- You offer a potential client tickets to a major sporting event, but only if they agree to do business with us; or
  - You offer the tickets thinking that it is more likely than not that you will not get the business unless you offer the tickets.
- ✓ Making the offer to gain a commercial and contractual advantage. Yes
  - ✓ The potential client accepting your offer. Yes

*Remember: It will still be a bribe even if the potential client refuses your tickets. A bribe does not have to be accepted to be an offence*

# Anti-Bribery and Corruption

## *What is bribery?*

### Scenarios

#### **Scenario 2**

- You are the regional business development manager of a company.
  - You are trying to win a licence in a foreign country.
  - You offer the Minister of Petroleum money if they give you/the company the license.
- 
- ✓ Offering a financial or other advantage? Yes
  - ✓ Intending to persuade the Minister to perform their job incorrectly?  
Yes

**Yes, it's a bribe**

# Anti-Bribery and Corruption

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## *What is bribery?*

### Scenarios

#### **Scenario 3**

- You are the CEO of a UK mining company.
  - You are trying to win a mining licence in a foreign country.
  - You meet the Minister of Mines a month before the license is to be awarded and offer to buy him license.
- 
- ✓ Offering a financial or other advantage? Yes
  - ✓ Intending to persuade the Minister to perform their job incorrectly?  
Yes
  - ✓ Do you know if the Minister can accept free lunches?

**Probably not a bribe, but could be if that was your intention to encourage him to perform his job improperly**

# Anti-Bribery and Corruption

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## *What is bribery?*

### Scenarios

#### **Scenario 4**

What if, at lunch, you invite the Minister (a keen golfer) to go with you to the see the Ryder Cup?

- Offering a financial or other advantage Yes
- Are you intending to induce the Minister to perform his job improperly?
- What is the value of the trip to the Ryder cup? Is this reasonable and proportionate hospitality?
- The more lavish the hospitality the greater inference is that it is intended to induce or influence.

What if you then present him with a Rolex watch?

- Offering a financial or other advantage Yes
- Are you intending to induce the Minister to perform his job improperly Maybe
- What is the value of the Rolex? Is this reasonable and proportionate hospitality? Unlikely
- Yes it's a bribe.

What if you invite him and his wife to stay in London at the

- Dorchester in the summer for 2 weeks all expenses paid?
- Offering a financial or other advantage Yes
- Are you intending to induce the Minister to perform his job improperly Very possibly.
- Yes it's a bribe

# Anti-Bribery and Corruption

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## *What is bribery?*

### Scenarios

#### **Scenario 5**

- Your Company has a cargo of goods arriving in port in Africa.
  - A port official asks for US \$100 before he will unload the goods.
  - You know no fee is due and this is going into the official's pocket.
  - You pay it.
- 
- ✓ Offering a financial or other advantage Yes
  - ✓ Intending to induce the port official to perform their job improperly  
No
  - ✓ You know he should not take the money Yes

**Yes, it's a bribe**

# Anti-Bribery and Corruption

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## *Lack of adequate procedures*

### **Offence 4**

- The Bribery Act introduces a corporate offence of failure to prevent bribery.
- The act of bribery does not have to be carried out by a British citizen to be an offence. A company with a jurisdictional link to the UK could be prosecuted for something that a non-British person did outside the UK.
- A company has a defence against an act of bribery if it has "adequate procedures" in place.
- To meet this requirement, LNR FZC shall continue to ensure that:
  - ✓ Risks of bribery and corruption are assessed;
  - ✓ procedures are in place to prevent bribery are proportionate to the risks faced;
  - ✓ LNR FZC's policy on anti-bribery and corruption is communicated;
  - ✓ necessary training is undertaken by relevant individuals;
  - ✓ Compliance with the policies and procedures is monitored.

# Anti-Bribery and Corruption

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## *Third Party relationships*

The application of the Bribery Act extends further than direct employees of the company.

- LNR FZC could be prosecuted for acts of bribery committed by any person who performs services for or on behalf of the company.
- Caution should be exercised whenever dealing with third parties, in particular agents and intermediaries.
- LNR FZC requires employees to conduct appropriate anti- bribery and reputational due diligence for all agents, brokers, distributors, consultants and joint venture partners or other third parties.
- Such due diligence will prevent policy breaches as activities that may be noncompliant with applicable laws may be highlighted.
- LNR FZC has provided guidance on the key steps that should be followed before entering into a business relationship with any third party.

## Anti-Bribery and Corruption

### *What to do if you are subject to a bribery request?*

- Firstly, if you are offered a bribe, alert your Manager as soon as possible.
- If you are unsure whether a particular offer constitutes a bribe, consult with your Manager for further guidance.
- Concerns can be reported using the procedure set out in LNR FZC's Whistleblowing Policy.
- LNR FZC prohibits retaliation against an employee who makes a report of a suspected violation of the anti-bribery and corruption policies and/or laws in good faith.

# Anti-Bribery and Corruption

## *Bribes that you may be subject to*

### Examples

#### **Facilitation Payments**

- All employees and Business Partners must avoid any activity that might lead to, or suggest, that a facilitation payment will be made or accepted by us.
- Facilitation payments are typically small, unofficial payments made to secure or rush a routine action by a government official to which we or you may be perfectly entitled.
- You should always ask for a receipt which details the reason for the payment so you can demonstrate that the payment was an official fee for the service or goods.
- If you are asked to make a payment on our behalf, you should always be mindful of what the payment is for and whether the amount requested is equal to the goods/services provided.
- After consultation with your Manager, suggested responses to such requests include:
  - ✓ Explain LNR FZC's policy and that such payments are illegal under the Bribery Act.
  - ✓ Avoid the embarrassment of including superiors in rejection unless it is clear that it is necessary or that they are a part of the problem. If the junior official has been required to funnel a portion of the bribes he collects to a superior, the superior will have to be included in the explanation of the rejection.
  - ✓ Politely reject suggestions on how things might be structured to reach the same end by different means such as re-characterizing the payment or channeling payments through third parties.
  - ✓ Maintain records of additional expense resulting from a refusal to make payments and liaise with your Manager for further advice.

# Anti-Bribery and Corruption

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## *Bribes that you may be subject to*

### Examples

#### **Additional Services**

These payments are generally made for a legitimate service that is being purchased through unofficial channels. Services may include overtime work, work during local holidays, or duties outside the scope of the official’s job description. It is important that real value be provided and that these payments do not simply become a way to legitimize bribery.

After consultation with your Manager, suggested responses to such requests include:

- ✓ Assess the value of the service that has been provided. Seek advice from your Manager who will consider if it is appropriate and legitimate to formalize the relationship.
- ✓ In a very small number of countries, certain government officials receive no pay at all from their government. Instead, they are expected to create their own income through corruption. In these rare cases, through formalizing and documenting the arrangement, the official is paid for his service, but the haggling and secrecy are brought to an end.
- ✓ If considered appropriate after consultation with your Manager seek the approval of the official’s superior, where feasible, to hire him under a separate agreement. In some countries, government officials are permitted to hold second jobs. Remember to conduct the appropriate due diligence checks.

# Anti-Bribery and Corruption

## *Bribes that you may be subject to*

### Examples

#### **Extortion**

- A criminal offence of obtaining something through force or threat.
- These payments amount to clear, criminal extortion.
  - For example, you are held at a security check and released only upon payment.
- Things to consider when an extortionate demand is made: If a demand is clearly extortionate and criminal, your safety is the paramount consideration. Do not do anything that would compromise your safety.
- Once an emergency has passed, you should immediately advise a Manager of the incident.

# Anti-Bribery and Corruption

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## *Your Responsibilities*

- You must ensure that you have read and understand all of LNR FZC's policies on anti-bribery and corruption.
- You must not promise, offer, give, request, and agree to receive or accept a financial or other advantage in return for favorable treatment, to influence a business outcome or to gain any business advantage.
- The prevention, detection and reporting of bribery and other forms of corruption are the responsibility of all those working for us or under our control.
- You must notify your Manager if you believe or suspect that a conflict with any LNR FZC policy has occurred or may occur in the future,
- All employees and Business Partners are required to avoid any activity that might lead to, or suggest, a breach of this policy and follow the anti-bribery and corruption laws.
- You are liable to disciplinary action, dismissal, legal proceedings and possibly imprisonment if you are involved in bribery and corruption.
- Appropriate disciplinary action will be taken against employees and Business Partners who fail to comply with this policy.