



ABN 97 006 391 948

## **ANTI-BRIBERY AND CORRUPTION POLICY**

# DEEP YELLOW LIMITED

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# DEEP YELLOW LIMITED

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## 1. Letter from the Chairman

Dear Employees and **Representatives** (collectively Joint Venture Partners, Agents, Consultants, Contractors, Suppliers and Representatives) of Deep Yellow Ltd (ACN 006 391 948) and its subsidiaries (**Deep Yellow**).

Deep Yellow's values as detailed in its Code of Conduct for Directors and Key Executives and its Ethics and Conduct Policy ('the Related Policies') are core to its relationships with employees and Representatives. Deep Yellow has zero tolerance for corruption and bribery in any form. In order to ensure that Deep Yellow's values are reflected in all of its business dealings, the Board 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 Deep Yellow employees and Representatives regardless of their position in, or relationship with, Deep Yellow. Deep Yellow has prepared this Policy 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.

Deep Yellow employees and Representatives are expected to adhere to all of the anti-corruption and bribery laws and regulations that impact the Group. A breach of the law, or unethical behaviour which may affect Deep Yellow's reputation, will be subject to immediate disciplinary action, which may include the termination of employment. Deep Yellow also reserves the right to terminate any association or business relationship with any Representative that violates the law.

This Policy only represents a part of Deep Yellow's governance programme. Deep Yellow employees and Representatives are expected to be familiar with, and adhere to, Deep Yellow's governance programme in its entirety including, specifically, this policy and the Related Policies. Deep Yellow will circulate this Policy, and will ensure that a culture of compliance exists throughout the Company.

If you have any questions or comments regarding Deep Yellow's governance programme, please contact Deep Yellow's Company Secretary, based in Perth, Western Australia on +61 8 9286 6999.

Yours sincerely



**RUDOLF BRUNOV'S**

Chairman  
Deep Yellow Ltd

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## 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 impact both individuals and businesses in the world's poorest countries.

Deep Yellow is committed to the fight against bribery and corruption and aims to achieve its goals whilst supporting and fostering development in the communities in which it operates. Deep Yellow expects all of its employees and Representatives to comply with both the letter and spirit of the laws that govern Deep Yellow's operations worldwide with Deep Yellow company policy, and particularly this Policy.

### 2.2 Types of Bribery

#### Foreign Bribery

As part of the global effort to combat foreign bribery, 39 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 has implemented the OECD Convention into its domestic legislation, making bribery of foreign public officials an offence in these countries.

#### Domestic Bribery and Fraud

In each country that Deep Yellow 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 Policy

The purpose of this Policy is to educate and inform Deep Yellow employees and Representatives about Deep Yellow'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 Policy is intended to be a commonsense manual to enable Deep Yellow employees and Representatives to understand and comply with their obligations under these laws.

Deep Yellow is committed to ensuring that its corporate culture, in all of its offices and operations worldwide, discourages fraudulent and corrupt conduct. Deep Yellow 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 Deep Yellow operates does not affect Deep Yellow's commitment to best business practice. Deep Yellow 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.

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## 2.4 Compliance with this Policy

All Deep Yellow employees and Representatives must be familiar with this Policy, follow the procedures outlined within and cooperate with any investigation initiated pursuant to this Policy. Adherence to this Policy is a condition of employment or association.

As well as termination of employment or association with Deep Yellow for non-compliance with this Policy, there could also be criminal consequences and penalties for both the individual involved and Deep Yellow.

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 \$1.1 million and / or a term of imprisonment of up to 10 years for an individual; or
- the greater of, a fine of \$11 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 includes 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; or
- making a false entry or omitting making an entry in Deep Yellow's accounting records in Australia could result in a fine of up to \$24,000 and / or a term of imprisonment of up to 7 years.

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

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## 3. Deep Yellow's Board

All Deep Yellow 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 Deep Yellow employee or Representative has any questions or comments in relation to the Deep Yellow guidelines set out in this Policy, or concerns that there may have been a violation, they may contact any of the persons listed in the Schedule of Deep Yellow's Executives or Board Representatives appended to this Policy document. These executives will endeavour to respond to the query and if necessary will seek the sanction of the Board of Directors.

Deep Yellow Ltd  
Unit 1, Spectrum Building, 100-104 Railway Road  
Subiaco WA 6008  
Tel: +61 8 9286 6999

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As well as responding to employee or Representative concerns, the Board and named executives have a role in overseeing Deep Yellow'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 Deep Yellow's relationships with Representatives;
- investigate reports of alleged violations of Deep Yellow's policies;
- maintain records relating to the regime; and
- report to the Board of Directors as appropriate.

The Board 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 Deep Yellow.

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## **4. What is Foreign Bribery?**

Deep Yellow is directly affected by Australian foreign bribery laws. 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 Policy.

### **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 Policy.

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

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## 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 Deep Yellow 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 but are not limited to:

- direct and indirect payments;
- shares or options;
- gifts;

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- 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->)*

### **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.

Australian and International legislation includes an offence of 'Accessorial Liability' which provides that any person who intentionally aids, abets, counsels or procures the offence of bribery by another person is also guilty of that offence.

Therefore, if a Deep Yellow 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 Deep Yellow 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 Deep Yellow's policies and will be subject to sanction by Deep Yellow.

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

Deep Yellow 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; or
- in circumstances where Deep Yellow expressly, tacitly or impliedly authorised or permitted the commission of the offence.

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

## **5.5 Constructive Knowledge**

Deep Yellow 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 Deep Yellow, as a company, be said to have "intended" to bribe someone?**

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

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

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## 5.8 Turning a "Blind Eye"

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

- a corporate culture existed within Deep Yellow that directed, encouraged, tolerated or lead to non-compliance with the foreign bribery laws; or
- it can be shown that Deep Yellow failed to create a corporate culture that required compliance.

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

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

Deep Yellow will enforce its policies to ensure that a culture of compliance exists throughout Deep Yellow's global operations.

As well as ensuring that Deep Yellow's corporate culture requires internal compliance, it is essential Deep Yellow's culture of compliance is recognised and adhered to outside the company. Deep Yellow employees must ensure that, prior to engaging Representatives, especially agents or contractors to act on behalf of the company, they receive approval from the local Manager or Deep Yellow's Managing Director. All Representatives acting on Deep Yellow's behalf are required to comply with Deep Yellow's policies, where relevant and specifically this Policy.

### ***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.

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## 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 Deep Yellow's standard business practice, as set out in this Policy, you must seek advice from the local Manager or Deep Yellow's Managing Director (who can, if necessary, refer the matter to Deep Yellow'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.

Participating and adhering to local customs is an important aspect of Deep Yellow's ability to operate in Southern Africa. Therefore, it is important 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.

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## 6. Legitimate Conferral of Benefits

### 6.1 Gifts

Reasonable gifts will not violate the principles set out in this Policy, the Related Policies, 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 Deep Yellow's best business practice.

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Deep Yellow 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 the Deep Yellow local Manager or Deep Yellow's Managing Director must always be obtained before giving or offering a gift. Advice may always be sought by the Managing Director by referral to Deep Yellow's lawyers if necessary.

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

## **Examples of appropriate gifts**

*Flowers, chocolates, merchandise bearing Deep Yellow'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.*

The above examples are not exhaustive lists.

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, irrespective of its value - 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.

## **6.2 Meals and Entertainment**

As with gifts, reasonable entertainment expenses will not violate the principles set out in this Policy 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 Deep Yellow company policy.

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## 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, provided certain well defined criteria are met.

Although the making of facilitation payments is permitted by the Australian Criminal Code, such payments may nonetheless be prohibited by local laws in the country in which they are made. All Deep Yellow employees and Representatives must ensure that their conduct does not violate foreign bribery laws or the local laws that govern Deep Yellow'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 at 7.1 (not an exhaustive list).

### 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;

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- 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 Deep Yellow. ***Therefore, accurate records must be kept of all payments made, in accordance with Deep Yellow company policy on record keeping and internal company controls set out in this Policy.***

A Facilitation Payment Record (as appended) capturing all the required information must be completed by all staff and Representatives upon making a facilitation payment. Employees and Representatives based in Southern Africa full time must complete this form and provide the completed record to Deep Yellow's Financial Controller within 2 working days after making a facilitation payment. Employees and Representatives passing through any country in Southern Africa must also complete the form at the time a facilitation payment is made and must provide the completed record to Deep Yellow's Financial Controller 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 Deep Yellow Company Policy

Whilst actively discouraged, any facilitation payments that are proposed to be made, must be approved by the local Manager or Deep Yellow's Managing Director (as appropriate) 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 Deep Yellow 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 Deep Yellow company accounts.

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## 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, Deep Yellow is likely to suffer financial loss and reputational damage, but the offences are mainly directed at penalising the individuals involved.

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Deep Yellow has a zero tolerance policy towards fraudulent and corrupt behaviour and such behaviour is unacceptable.

## **8.1 What is Domestic Bribery?**

In Namibia, the Southern African country in which Deep Yellow operates, as well as in Australia, 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 Deep Yellow'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 Deep Yellow operates.

Corruption is a broad concept that encompasses essentially any activity for personal gain. It includes dishonest activity in which an employee or Representative of Deep Yellow acts contrary to the interests of Deep Yellow or misuses their position in order to achieve personal gain or an advantage for others.

For the purposes of this Policy it is sufficient to understand that fraud is a particular type of corrupt activity. Fraud includes any dishonest activity by employees or Representatives causing financial loss to Deep Yellow, 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 but are not limited to:

- 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 Deep Yellow, or failing to provide information where there is an obligation to do so;

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- 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 Deep Yellow's computers, motor vehicles, telephones (including mobile telephones) and other property or services.

As it deems necessary, Deep Yellow 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 Deep Yellow's high risk areas.

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## 9. Reporting and Record Keeping

### 9.1 Integrity of Record Keeping and Accounts

Deep Yellow 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 Deep Yellow, including the Australian Corporations Act 2001 (Cth) and the foreign bribery laws.

It is Deep Yellow's policy that all books and records be kept so that they fully and fairly reflect all receipts and expenditures by Deep Yellow such that:

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

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## 10. Reporting Violations

Deep Yellow encourages employees and Representatives to anonymously notify the local Manager or Deep Yellow's Managing Director, 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

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and Bribery Laws);

- company policy as set out in the Ethics and Conduct Policy or this Policy;
- internal policy relating to accounting standards and disclosures;
- internal accounting controls; or
- matters related to the internal or external audit of Deep Yellow's financial statements.

All Deep Yellow employees and Representatives who report potential or suspected violations of this Policy, Related Policies or any laws that apply to Deep Yellow can be confident that all reports will be dealt with and treated with absolute confidentiality, and that there will be no retaliation against Deep Yellow employees for the mere fact of having reported a suspected issue.

These undertakings by Deep Yellow:

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

Upon receipt of a complaint alleging a violation, the local Manager or Deep Yellow's Managing Director must consider, and will investigate where deemed appropriate, the conduct alleged in the complaint. The Company Secretary or Financial Controller may assist with the investigation. Any findings of non-compliance with Deep Yellow company policy or regulatory non-compliance will be reported to Deep Yellow's Board of Directors via the Chair. The Board of Directors are responsible for ensuring that the appropriate corrective action is taken which can include: dismissal of employees, cancelling of contracts with Deep Yellow Representatives, and reporting the alleged violation to the appropriate governmental and law enforcement agencies.

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## 11. Obligation to Comply with Law

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

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

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

Deep Yellow managers are responsible for their own individual behaviour. To an extent, they

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are also accountable for the actions of the Deep Yellow employees that report to them. Each manager is responsible for ensuring that the employees who report to them are aware of Deep Yellow company policy as set out in this Policy document and the Ethics and Conduct Policy. Managers should ensure that new employees attend relevant training sessions to ensure that they understand Deep Yellow company policy. Managers should report any violations of the principles set out in this Policy or the Related Governance Policies generally to the local Manager or Deep Yellow's Managing Director or to Deep Yellow's directors.

Deep Yellow 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. Deep Yellow will ensure that any allegations of violation of any laws that apply to Deep Yellow will be treated confidentially, investigated thoroughly and dealt with appropriately in accordance with the procedures set out in this Policy.

Every Deep Yellow employee and Representative is required to understand and comply with the laws that apply to Deep Yellow, including the foreign bribery laws and Anti-fraud and Bribery Laws.

Date adopted:	17 June 2015
Last amendment:	10 May 2022
Last review:	17 February 2017

# DEEP YELLOW LIMITED

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

Are there any additional supporting documents attached? YES / NO

Please sign and date this Facilitation Payment Record. Please also provide a signed copy to Deep Yellow's Financial Controller.

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.

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<b>Schedule of Persons for Deep Yellow Employees and Representatives to Contact Including representatives of Executive Management and of the Board</b>	
<b>Chris Salisbury</b> <b>Chairman</b> C/- Unit 17, Spectrum Building 100-104 Railway Road Subiaco WA 6008	Telephone: +61 8 9286 6999 Email: <a href="mailto:chris.salisbury@deepyellow.com.au">chris.salisbury@deepyellow.com.au</a>
<b>John Borshoff</b> <b>Managing Director</b> C/- Unit 17, Spectrum Building 100-104 Railway Road Subiaco WA 6008	Telephone: +61 8 9286 69999 Email: <a href="mailto:john.borshoff@deepyellow.com.au">john.borshoff@deepyellow.com.au</a>
<b>Gillian Swaby</b> <b>Executive Director</b> C/- Unit 17, Spectrum Building 100-104 Railway Road Subiaco WA 6008	Telephone: +61 8 9286 6999 Email: <a href="mailto:gillian.swaby@deepyellow.com.au">gillian.swaby@deepyellow.com.au</a>
<b>Ursula Pretorius</b> <b>Financial Controller</b> C/- Unit 17, Spectrum Building 100-104 Railway Road Subiaco WA 6008	Telephone: +61 8 9286 6999 Email: <a href="mailto:ursula.pretorius@deepyellow.com.au">ursula.pretorius@deepyellow.com.au</a>

This list of senior management and Board representatives is not exhaustive but is intended to provide a starting point for employees and Representatives who wish to report a concern they have or have a query in respect of the Policy.