

SALTERNAS LTD

Governance in Foreign Countries (Corporate Criminal Responsibility)

On behalf of, and for the protection of Salternas Ltd's shareholders; in accordance with a request from the Board of Directors of Salternas Ltd; as a compliance consultant for Salternas Ltd (SL¹) and as an institutional member of numerous international legal bodies, I, Colin Roberts, formally present the following questions to the current and past Board of Directors and the Executive Management Teams of Salternas Ltd and any associated entities:

As part of a due diligence, these questions are to establish categorically whether or not officers past or present of SL and associated entities have been engaged in any act that could be established as contravening Chapter 4, Division 70 – "Bribery of foreign public officials" of the Commonwealth Criminal Code Act 1995 Australia, as amended 1999 (The Act) as amended; either during the life of SL's incorporation or prior to the formation of SL which would benefit SL.

Definition of Bribery

Providing or promising to provide a benefit (including non-monetary and non-tangible inducements) to another person where that benefit is not legitimately due. The benefit must be provided or promised with the intention of influencing a foreign public official in the exercise of the official's duties in order to obtain or retain business or a business advantage.

Who are foreign public officials?

The definition of 'foreign public official' includes:

- an employee, official or contractor of a foreign government body
- a person performing the duties of an appointment, office or position under a law of a foreign country
- a person holding or performing the duties of an appointment, office or position created by custom or convention of a foreign country
- a person 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
- an employee or contractor of a public international organisation (such as the United Nations)
- a member or officer of the legislature of a foreign country, or
- an individual who is or who holds himself or herself out to be an authorised intermediary of a foreign public official.

Liabilities of individuals and companies

The law applies to both individuals and companies.

Companies will be liable for foreign bribery offences where:

¹ "SL" or "Salternas Ltd" shall include any related or subsidiary entity for the purposes of this document.

- the company's board of directors or a high managerial agent of the company intentionally, knowingly or recklessly committed the foreign bribery offence
- the company's board of directors or a high managerial agent of the company expressly, tacitly or impliedly authorised or permitted the commission of the foreign bribery offence
- a corporate culture existed within the company that directed, encouraged, tolerated or led to non-compliance with the law on foreign bribery offences, or
- the company failed to create and maintain a corporate culture that required compliance with the law on foreign bribery offences.

A high managerial agent of a company is an employee, agent or officer of the company with such responsibility that his or her conduct may fairly be assumed to represent the company's policy.

A company can be criminally liable if the corporate culture:

- directs;
- encourages;
- tolerates; or
- leads to

non-compliance with the criminal provisions proscribing the bribery of foreign public officials.

In addition, under the Australian law, a company can be criminally liable if the company fails to create and maintain a corporate culture that requires compliance with the law.

Defences to bribery offences

It is irrelevant that the conduct is customary or officially tolerated.

Defence applies to "facilitation payments", that is where the benefit provided is minor and was paid to expedite or secure the performance of a routine, minor government action (such as the issuing of a visa or licence).

Persons intending to rely on this defence must show a record of the transaction, including their own identity, the date, benefit provided, the identity of the foreign public official and the action that the benefit was provided to achieve.

Defences of general application such as duress and intervening conduct or event apply for corporations. A specific defence of due diligence is available to a corporation for conduct engaged in by a 'high managerial agent'.

The legislation anticipates that a benefit may be provided, offered or promised either directly or through an intermediary. Those arrangements are also prohibited. The foreign public official need not be the recipient of the benefit although the actions must be committed with the intention of influencing the foreign public official in the exercise of his or her duties as a foreign public official.

Penalties

The maximum penalties for committing the offence of bribery of a foreign public official are imprisonment for ten years or a fine of up to \$66,000 or both. Corporations can also be liable where their employees, agents or officers commit offences while acting within the scope of their employment. The penalty for a corporation, which commits an offence can be as high as \$330,000.

In addition, if an offence has been committed, there will be circumstances in which a court may confiscate property, which has been illegally obtained by a company.

Questions:

Question 1

(a)

In the period of your employment or engagement with SL and/or associated entities, have you or to your knowledge, any other person acting for SL or any of its subsidiary entities, intentionally, knowingly or recklessly:

- (i) provided a benefit to another person; or
- (ii) caused a benefit to be provided to another person; or
- (iii) offered to provide, or promised to provide, a benefit to another person; or
- (iv) caused an offer of the provision of a benefit, or a promise of the provision of a benefit, to be made to another person; and

(b)

Provided or promised to provide a benefit that is not legitimately due² to the other person; and

(c)

Have you or a person known to you, done so with the intention of influencing a foreign public official (who may be the other person) in the exercise of the official's duties as a foreign public official in order to:

- (i) obtain or retain business; or
- (ii) obtain or retain a business advantage that is not legitimately due³ to the recipient, or intended recipient, of the business advantage (who may be the first-mentioned person).

Question 2

In the period of your employment or engagement with SL, have you or to your knowledge, any other person acting for SL or any of its subsidiary entities, entered into negotiations or discussions with any foreign public official or any party acting for a foreign public official where a benefit of the nature described in Question 1 was promised or requested.

² **Benefit that is not legitimately due**

For the purposes of this section, in working out if a benefit is **not legitimately due** to a person in a particular situation, disregard the following:

- (a) the fact that the benefit may be customary, or perceived to be customary, in the situation;
- (b) the value of the benefit;
- (c) any official tolerance of the benefit.

³ **Business advantage that is not legitimately due**

For the purposes of this section, in working out if a business advantage is **not legitimately due** to a person in a particular situation, disregard the following:

- (a) the fact that the business advantage may be customary, or perceived to be customary, in the situation;
- (b) the value of the business advantage;
- (c) any official tolerance of the business advantage.

Note: A benefit includes any advantage and is not limited to property

Question 3

In the period of your employment or engagement with SL, have you or to your knowledge, any other person acting for SL or any of its subsidiary entities, knowingly or recklessly been engaged or been involved in:

- (a) contracts with consultants or agents who have been engaged to engender support of local officials, regulators or politicians:
 - (i) If YES, were extra fees provided which may contravene the Act
- (b) arrangements with consultants or agents who assist in the securing of business according to "the local way" or who arrange introductions to key government decision makers;
 - (i) If YES, were extra fees provided which may contravene the Act
- (c) projects in which a foreign public official may have a direct or indirect interest;
- (d) ventures involving participation by a local entity and with periodic payments flowing directly or indirectly to a foreign public official; and
- (e) benefits being given to relatives of foreign public officials, for example, educational assistance

Penalty: Imprisonment for 10 years.

Note: Section 4B of the Crimes Act 1914 allows a court to impose a fine instead of imprisonment or in addition to imprisonment.

Declaration

I /
[name] [position]

having read this document confirm I am aware and understand the Company's policy in respect to the Bribery of foreign public officials and also confirm my answer to:

Question 1 is.....and to

Question 2 is.....and

Question 3 is.....

Signature: _____ Date: _____

Alert.⁴

Should an individual not be involved directly, but know of any involvement of any other person acting for SL or any of its subsidiary entities in the actions above, the Australian laws criminalising the bribery of foreign public officials extend to ancillary offences of conspiracy and complicity and could potentially apply to those with a knowledge of alleged offences who fail to disclose such knowledge.



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**Natural Resource Geo-Strategist;
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Accredited Civil & Commercial Mediator, Adjudicator, Expert Determiner & Dispute Board Member;
Resources & Energy Lawyer;
Chartered Mining & Petroleum Engineer;
Resources Policy Adviser**

⁴ Due Diligence Code of Conduct

Lawyers, as officers of the court, have professional and ethical duties to uphold the law. Under no circumstances should a lawyer assist or advise a client or anyone else to commit a criminal offence. A legal adviser must exercise particular caution not only to ensure that he/she does not become complicit in the commission of an offence, for example by aiding and abetting prohibited conduct, but also to ensure that the legal adviser's professional responsibilities are discharged at all times.

Schemes that are predicated upon "turning a blind eye" or adopting a position of "willful blindness" by engaging a third party to ensure that business is done "the local way" are illegal. The Australian laws criminalising the bribery of foreign public officials extend to ancillary offences of conspiracy and complicity and could potentially apply to professional advisers involved.

Answers to each of these questions must be answered and minuted at the meeting of the Board of Directors. Non-answer, answer-avoidance or apocryphal statements will be construed as an answer incriminating the individual. It will then be at the discretion of the person undertaking the due diligence whether or not to request assistance to investigate from the Australian Federal Police (AFP) or report an alleged offence to the AFP.