



## THE US FOREIGN CORRUPT PRACTICES ACT (“FCPA”) COMPLIANCE POLICY AND GUIDELINES

### 1. INTRODUCTION

- 1.1 The purpose of this policy is to provide all employees, directors and officers of DRDGOLD Limited , its subsidiaries, associates and related parties with information which will serve as a tool to assist them to comply with the FCPA when dealing with government and state officials in areas where the Company conducts business or intends to conduct business;
- 1.2 This policy will also apply to all contractors consultants, joint venture associates, including agents and representatives appointed to act on behalf of DRDGOLD and/or its subsidiaries;
- 1.3 The United States legislature passed the FCPA in order to prevent corrupt practices between corporations (which have a connection with the United States) and government or state officials who are operating outside the borders of the United States of America;
- 1.4 This policy is meant to complement DRDGOLD’s Code of Ethics and other policy documents which enhance and maintain high standards of ethical behaviour from all employees of the Company and those of its associates and partners;
- 1.5 It must be emphasized that failure to comply with the FCPA is likely to be severely harmful to the business and reputation of DRDGOLD and individuals who committed any breach run the risk of being subjected to civil and/or criminal prosecution. This is illustrated by a fine of U\$ 800 million which the German company *Siemens Corporation* had to pay. Individuals who contravene the provisions of the FCPA will not enjoy any assistance in terms of the Company's directors & officers’ insurance cover.
- 1.6 In the event that employees of DRDGOLD, or its subsidiary companies are uncertain as to whether or not a certain act falls under the FCPA, a broader interpretation must be attached and such an act will be deemed to attract FCPA compliance.

- 1.7 This piece of legislation is made applicable to DRDGOLD, its subsidiaries and partners because the Company is listed on the New York Stock Exchange. The FCPA is regulated by the US Securities Exchange Commission ("SEC") and the US Department of Justice ("DOJ").

## **2. POLICY STATEMENT**

- 2.1 DRDGOLD firmly declares that compliance with this policy is mandatory, not optional and it will not tolerate any form of corruption or bribery to take place;
- 2.1 Subject to the provisions of this policy outlined below, no one may authorize another person to authorize, direct or condone contravention of the policy or the FCPA;
- 2.3 Any employee who becomes aware of any violations or has reason to believe that this policy or the FCPA have been violated must immediately notify the Executive Officer: Legal, Compliance & Cosec for a determination;

## **3. CONDUCT WHICH VIOLATES THE FCPA**

- 3.1 The United States Foreign Corrupt Practices Act makes it unlawful for any person or company, including DRDGOLD, its subsidiaries, associates, related parties:
- 3.1.1 to corruptly offer, pay, promise to pay, or authorize the payment of anything of value to an officer or employee of a government department, agency or instrumentality, officer of government or state-owned corporations, members of political parties and officials of public international organisations. Spouses and immediate family members of these officials are included under this definition. This means that just an offer or authorizing of a bribe attracts liability under the FCPA i.e. even if no actual payment was effected. The concept of "*anything of value*" is not defined in the FCPA, however the SEC and DOJ have pursued companies e.g. for providing travel and entertainment to the value of US\$ 100. Emphasis is not on the amount but on whether there was a corrupt intent.
- 3.1.2 to effect any direct or indirect payment or offer to pay. Companies must not overlook conduct which is suspicious and then raise the defence of ignorance.
- 3.2 The payment or offer to pay for the purpose of inducing any official stated under 3.1 to do any act or make a decision or use his influence in order to assist the company to obtain or retain business or to secure an improper advantage is prohibited.

#### 4. PUNISHMENT FOR VIOLATION OF FCPA

- 4.1 Punishment imposed under the FCPA for its violation is so severe to the point where the survival of DRDGOLD can be placed under threat.
- 4.2 Companies may be fined a maximum of U\$2, 000,000 per count under the criminal justice system and U\$ 10, 000 for each violation under the civil law proceedings.
- 4.3 Individuals may be fined a maximum of U\$ 100, 000 or a jail sentence of 5 years, or both. A civil fine of U\$ 10,000 can be imposed on individuals for every violation.
- 4.4 Companies are prohibited from re-imbursing individuals who were fined for violating the FCPA. They are also not covered under the Directors & Officers insurance.
- 4.5 An individual transgressor may be prosecuted alone, the company may be excused from prosecution.
- 4.6 In view of the severe impact of contravening the FCPA, DRDGOLD views contravention of the FCPA in a serious light. Directors, Officers and employees in the group who fail to observe this policy will be subject to strong disciplinary action which may include any one or more of the following:
- dismissal;
  - pursuing criminal charge (s) under the South African Law or any other jurisdiction, including co-operation with the United States authorities;
  - instituting civil proceedings against the offender to recover any amounts lost by DRDGOLD as a result of his or her transgression.

#### 5. DEFENCES UNDER THE FCPA

The FCPA is not contravened if there was no corrupt intent on the part of Company employees. The following examples illustrate instances when the company and its employees will have a defence under the FCPA.

- 5.1 If an employee was under an imminent threat of physical violence in which case he or she will at the earliest opportunity submit to the Executive Officer: Legal, Compliance & Cosec a statement under oath setting out a full disclosure of the circumstances.
- 5.2 If payments are in respect of reasonable and *bona fide* expenses which are related to the promotion, demonstration or explanation of products or services or the execution or performance of a contract with a government official or its agency. An example is expenditure incurred for a trip undertaken with the Department of Mineral Resources

officials to show them the company’s progress on the rehabilitation programme over its dumps. However such payments must be properly recorded in terms of the company’s accounting policies and procedures.

## **6. SOME WARNING SIGNS TO OBSERVE- GENERAL**

There are certain incidences and activities which employees in the DRDGOLD group must take note of, and watch out for signs of possible FCPA violations. The following examples illustrate that position:

- 6.1 There might be payments which are suddenly exorbitant and not in line with what is normally charged for such goods or services.
- 6.2 Payments made to accounts or persons in countries which have no connection with the supply of goods or provision of services which are paid for.
- 6.3 Invoices which are not standard might point to unauthorized or illicit payment in an attempt to conceal the fraud and irregularity.
- 6.4 All payments must be clearly and accurately documented.
- 6.5 Separate payments to third parties in ways which obscured the purpose for and the recipients of the money.
- 6.6 Off-books account are a cause for vigilance.
- 6.7 Maintaining accounts in the names of unconsolidated entities which may serve to avoid detection.
- 6.8 Inter-company account payments which are done manually to bypass the company’s automated payment system.
- 6.9 Payments must be made directly to service providers or suppliers of goods unless if approved by a senior finance manager.

## **7. SELECTION OF ASSOCIATES**

DRDGOLD must conduct a due diligence on all customers, agents, business partners, contractors, associates etc before entering into any business relationship with them. The due diligence may include taking the following steps:

- 7.1 Investigating the local party’s reputation within the community.
- 7.2 Conducting a background check and reduce all findings to writing.
- 7.3 If the subject of investigation is outside South Africa, the South African Embassy may be contacted to assist with the verification of the party.
- 7.4 Business relationship must be based on written agreements in which the other party undertakes that he or she will abide by the provisions of the FCPA.
- 7.5 All contracts must include a clause in terms of which the other party agrees to honour this policy and comply with FCPA.

## **8. SOME WARNING SIGNS TO OBSERVE- LOCAL PARTIES**

The employees of DRDGOLD, its business partners and its subsidiaries must be on the lookout for certain indicators which may assist to detect activities which may have the effect of contravening the FCPA provisions.

- 8.1 The country in which DRDGOLD or its subsidiaries are conducting business or intend to conduct business has the reputation of corruption. To establish this, information may be obtained from international organisations like *Transparency International* which conduct studies on corruption and bribery around the world.
- 8.2 Local parties who charge excessive fees or commission must be approached with caution and all necessary precaution be taken to verify if they are not involved in bribery or corrupt activities.
- 8.3 Employees of DRDGOLD and its associates must be cautious when local parties with whom they interact demand or request that payment must be in cash. The reasons for such a demand must be reasonable and acceptable.
- 8.4 It is suspicious when a local party requests that payment be made to third parties or into bank accounts which are held in other countries.
- 8.5 DRDGOLD and its partners must be wary of local parties who refuse to take steps which will avoid the contravention of the FCPA.
- 8.6 Representatives of the DRDGOLD group and its partners must not enter into any business relationship with local parties who request that their involvement be kept secret.

## **9. RECORD KEEPING AND INTERNAL CONTROLS**

- 9.1 All transactions and dispositions of assets occur only if authorized by management.
- 9.2 Transactions must be recorded accurately and in reasonable detail in the company's books.
- 9.3 Detailed, accurate description of all payments and expenses must be kept by DRDGOLD, its subsidiaries and all its associates, contractors and partners.
- 9.4 Payments to government officials or departments must provide sufficient details and be recorded as such.
- 9.5 There must be regular comparison of the recorded accountability for corporate assets with the existing assets. If differences are found, appropriate action needs to be taken.

## **10. ADMINISTRATION**

- 10.1 The Executive Officer: Legal, Compliance & Cosec in collaboration with the Manager: Risk & Internal Audit will ensure that the training on this policy and the FCPA is conducted at all operations.
- 10.2 Employees who have queries on the applicability of the FCPA may contact the Executive Officer: Legal, Compliance & Cosec for guidance at P O Box 390, Maraisburg, 1700 Fax: 011 470-2626 email: [themba.gwebu@za.drdgold.com](mailto:themba.gwebu@za.drdgold.com)
- 10.3 The departments of the company which have been found to be more FCPA relevant will be required to complete questionnaires and sign a confirmation certificate that they have followed all necessary steps to comply with the FCPA.