

INTERNAL

BUSINESS INTEGRITY



**“Our policies guide us  
to do the right thing.”**

**Mark Cutifani**  
Chief Executive

# GROUP RETENTION AND PAYMENT OF INTERMEDIARIES PREVENTION OF CORRUPTION PROCEDURE

**v.1**

Valid from: 15/05/2019

Policy owner: Head of Ethical Business Conduct



## Context

*This Procedure sets out Anglo American's approach to managing integrity risks associated with the retention and payment of intermediaries.*

*The purpose of this document is to set out the standards of conduct required at every level within Anglo American, our subsidiaries, joint ventures and associates on the part of those with which we do business and those who work on our behalf, in relation to the appointment and remuneration of intermediaries.*

The Procedure:

- *Sets out the due diligence, consultation, approval and contractual agreement processes that must be followed when appointing and retaining intermediaries on behalf of Anglo American.*
- *Outlines the record keeping and payment processes that must be followed for intermediaries that have been retained.*
- *Identifies the risks factors indicative of higher-risk intermediary relationships and provides examples of risk based due-diligence that will assist in managing such risks.*

## Does this apply to me?

The Group Business Integrity Policy and its accompanying Prevention of Corruption Procedures apply to all employees and contractors of Anglo American. Anglo American's supplier contracts will require suppliers of goods and services to the Company to adopt this Policy and its Procedures or equivalent standards and our Board representatives will seek to secure the adoption of comparable standards in joint ventures or associate companies.

*These are Group Procedures that apply to Anglo American globally, unless any aspect of their content is not permitted by local law or regulation.*

## What are Group Function and Business Unit Responsibilities?

*ABAS – Ethical Business Conduct Team (EBCT)*

- The EBCT are responsible for maintaining and communicating the Business Integrity Policy and its accompanying Prevention of Corruption Procedures around the Group through training and awareness-raising activities.
- The EBCT are responsible for developing and sharing good-practice examples of relevant prevention of corruption materials to Corporate Functions and Business Units where requested to do so.
- The EBCT are responsible for providing advice and guidance on how to resolve issues relating to the appointment, renewal and payment of intermediaries identified by Corporate Functions and Business Units in line with the Anglo American Code of Conduct and Business Integrity Policy.

- The EBCT are responsible for providing advice and guidance on the due diligence process when appointing intermediaries, as well as the monitoring of intermediaries.
- The ECBT are responsible for monitoring the implementation and effective functioning of the Business Integrity Policy and its accompanying Prevention of Corruption Procedures.

#### *Group Legal*

- Group Legal are responsible for providing a legal opinion, where requested to do so, on whether any issue arising from contracting, renewal or payment of an intermediary represents a breach of any legislation to which Anglo American Group is subject.

#### *Business Units / Corporate Functions*

- All Business Units / Corporate Functions are responsible for ensuring that due diligence is conducted prior to appointing a new intermediary or renewing an agreement with an existing one.
- All Business Units / Corporate Functions are responsible for establishing and implementing a robust and independent approval process prior to appointing a new intermediary or renewing an agreement with an existing one.
- All Business Units / Corporate Functions are responsible for communicating Anglo American's expectations of conduct, including provision of anti-corruption compliance training where appropriate.
- All Business Units / Corporate Functions are responsible for ensuring that all processes related to Intermediaries (appointment, retention, payment, due diligence, monitoring, etc.) are communicated to relevant employees.
- All Business Units / Corporate Functions are responsible for ensuring that there is clear and readily available record of which intermediaries are being used, the services they are providing, the contracts to which those services are subject to and the payments made.
- All Business Integrity Implementation Managers, in conjunction with the Business Unit Heads and, where appropriate, the EBCT are responsible for determining who requires training in their respective Business Units / Corporate Functions and to monitor completion of training.
- All Business Units / Corporate Functions must ensure compliance with local anti-corruption laws.

## **What are Intermediaries?**

For the purpose of this Procedure, an intermediary may be defined as any third party retained either in whole or in part, to assist Anglo American in:

- Obtaining business, either with governments or the private sector.
- Influencing government or community action.
- Persuading or negotiating with public officials or private sector customers or suppliers.

Examples of intermediaries covered by this procedure include:

- Sales agents.
- Third parties (either individuals or entities) retained to provide introductions, local knowledge, expertise and support in the territories in which Anglo American has operations or is considering establishing operations.
- Individuals or organisations retained to communicate and interact with communities which may be affected by Anglo American's actual or proposed operations.
- Business partners purporting to act on behalf of a joint venture or company in the management of which Anglo American has involvement.
- Lobbyists, meaning any individual or entity retained by Anglo American to interact with public officials with regard to formulating, changing or adopting laws, rules, regulations or orders or government programmes, policies or decisions.
- Financial advisers, lawyers, consultants or other third parties who interact with public officials or private sector organisations on Anglo American's behalf in connection with commercial transactions such as mergers or acquisitions or joint venture operations.
- Customs clearing agents or other third parties hired to process the transit of imported or exported goods or equipment through customs.
- Lawyers, consultants or other third parties who represent the company in court or proceedings before law enforcement authorities or regulatory bodies such as securities, health and safety, environmental, tax, immigration, utilities or transportation authorities.

In determining whether a person is an intermediary for the purpose of this Procedure the most important factor is what the person/entity actually does on the Group's behalf, regardless of job title or description. A third party retained by Anglo American must be considered an intermediary if they are involved in:

- Obtaining business, influencing government or involved in community action.
- Persuading or negotiating with public officials, private sector customers or suppliers.

*Refer to the Identification of Intermediaries Guidelines for further guidance to facilitate the identification of intermediaries.*

### *Why is This an Issue?*

Corruption may occur when companies use third parties as intermediaries either to obtain business or to influence decisions on their behalf. Experience in other organisations shows that intermediaries are one of the most common channels through which corruption can occur because, for example, the relationship with the public or private sector is at 'arm's length' and because their use may provide opportunities for collusion between people within and outside the company.

Anti-corruption laws may not differentiate between acts performed by an employee of a company or by somebody else acting on the company's behalf. Delegating responsibility to agents or other intermediaries does not usually transfer liability,

leaving companies with considerable exposure to risk. For that reason we need to ensure that we only deal with intermediaries who understand and apply the same standards of business conduct as Anglo American does, whether they interact with government officials, with suppliers or with customers.

It is never appropriate for an intermediary to carry out an act on Anglo American's behalf that would be a breach of Anglo American's Business Integrity Policy and Prevention of Corruption Procedures if done by Anglo American directly. Authorising, encouraging or knowingly allowing (which includes having a reasonable suspicion of their intention) any third party to pay bribes or engage in other misconduct on Anglo American's behalf is a serious violation of Anglo American's Business Integrity Policy and can violate applicable anti-corruption laws.

This also applies in situations where a joint venture partner acts or purports to act on behalf of an entity in which Anglo American has a financial interest. Even if Anglo American has no knowledge of an intermediary's misconduct, their actions can cause serious reputational damage and may expose the Company to significant legal consequences.

A detailed illustrative example has been provided in [Appendix 1](#) below.

## What are my Responsibilities?

Our reputation can be damaged by the actions of third parties such as advisers, suppliers, agents, contractors, lobbyists and joint venture partners and Anglo American may find itself liable for their actions. It is never appropriate for a third party to carry out an act on our behalf which, if it were done by Anglo American directly, would be a breach of this Procedure and the Policy to which it is subject.

In order to protect against the risk of bribes being paid indirectly, we are committed to:

- Taking all reasonable steps to ensure that our business partners understand and comply with our Business Integrity Policy and Prevention of Corruption Performance Standards.
- Investigating the reputation and qualifications of our business partners and carrying out formal due diligence in order to satisfy ourselves as to their integrity and bona fides.
- Putting in place appropriate controls and checks to monitor the use of Anglo American's money by third parties purporting to act on our behalf.
- Ensuring that joint ventures and associate companies have equivalent processes in place.

It is mandatory that everyone attends and/or completes the relevant Business Integrity training and awareness on intermediaries.

It is everyone's responsibility to know where to go to for further guidance (e.g. guidance on the portal) and who to speak to if necessary (e.g. the EBCT). If you are in any doubt about a situation, or require a clearer interpretation of what is

appropriate, legitimate or ethical business behaviour, you must discuss this with your line manager or seek advice from the EBCT.

### *Appointment of Intermediaries and Renewal of Existing Agreements*

It is the responsibility of each Business Unit or corporate entity within Anglo American wishing to appoint a new intermediary or to renew an agreement with an existing one to investigate and document the reputation and qualifications of the intermediary prior to retaining the person or entity. The Business Unit or entity must satisfy itself that the proposed intermediary is ethical and understands and will abide by Anglo American's Code of Conduct, Business Integrity Policy and Prevention of Corruption Procedures.

### *Conduct of risk-based due-diligence*

A formal, documented risk-based due diligence process must be undertaken prior to appointing / contracting new intermediaries or renewing existing agreements.

[Refer to the Ethical Due Diligence for Intermediaries Guidelines for detailed guidance on the ethical due diligence process to follow and red flag indicators.](#)

Business Units must ensure that an appropriate framework is in place for conducting due diligence on intermediaries. Such a framework must include the following:

- Identification and training of personnel to perform due diligence procedures.
- Identification of responsible "owners" and allocation of responsibilities.
- Development of a standardised methodology based on Guidelines provided.
- Identification and weighting of key risk factors.
- Access to relevant information sources (for example, services provided by Thomson Reuters or investigative services) to enable due diligence to be performed.
- Development of a process for evaluating the results of due diligence (red light/green light).
- Formalised independent review of results of due diligence.

### *Approval process*

Business Units and other corporate entities (e.g. Exploration or Corporate offices) within the Group must establish and implement a robust and independent approval process prior to the retention of new intermediaries or the renewal of agreements with existing ones. This process must take into account, amongst other things, the results of the risk-based due diligence.

### *Management and Monitoring of Intermediaries*

### *Communication of Anglo American's expectations*

Each Business Unit or other corporate entity must discuss our expectations of conduct with the proposed intermediary or, in the case of an intermediary that is an entity, with the appropriate person or persons at the entity.

Where appropriate, substantive anti-corruption compliance training must be provided to relevant intermediary personnel prior to the intermediary commencing work for Anglo American.

### Agreements with intermediaries

*All agreements with intermediaries must be formally documented and include the following contractual protections, where practical, to communicate Anglo American's expectations and enable Anglo American to monitor and prevent violations of its Code of Conduct, Policies and Procedures:*

- **Compensation.** A provision that compensation will be based on services provided, which must be detailed in a report.
- **Anti-corruption representations.** A representation that the intermediary is familiar with and agrees to abide by the Company's Business Integrity Policy, as well as all applicable laws and regulations.
- **Termination rights.** A right on the part of Anglo American to terminate the agreement if Anglo American has reasonable cause to believe that unlawful conduct has occurred or is about to occur.
- **Assignment rights.** A provision prohibiting the intermediary from assigning their rights, duties or obligations under the contract to a third party, without Anglo American's prior written approval.
- **Books and records.** An agreement that the intermediary will maintain books and records that accurately describe in detail all services and expenditures for which the intermediary seeks reimbursement from Anglo American.
- **Audit rights.** A right on the part of Anglo American to audit the books and records of the intermediary with respect to the intermediary's work on behalf of Anglo American.

### Record Keeping

Each Business Unit must establish and implement appropriate procedures (such as a central register of intermediary agreements) to ensure that:

- At any time, Business Unit management has a clear understanding and record of intermediaries being used by the Business Unit and what services they are providing.
- Agreements with intermediaries are capable of being readily identified and accessed.

### Payments to Intermediaries

Payments to intermediaries must only be made on submission of an invoice supported by evidence of the services provided and a written declaration of compliance with the law.

Where feasible, payments to intermediaries must be made by wire transfer to the bank account specified in the intermediary's contract. Payments must not be made in cash or bearer instruments or made payable to any party other than the intermediary at the intermediary's normal place of business. Payments must not be made to an

account in a country other than the country of the intermediary's normal place of business.

### Books and records

All payments to intermediaries must be recorded accurately and in reasonable detail in the Company's books and records, to reflect all transactions and dispositions of assets.

### Consultation and Approval

Business Units must ensure that appropriate consultation procedures are implemented and clearly publicised so that employees know where to go to get help when seeking to appoint intermediaries and have to interpret the results of due diligence performed.

*Refer to the Monitoring and Reporting of Intermediaries Guidelines for additional guidance on the monitoring processes and activities that must be in place to effectively mitigate the risks associated with using the services of intermediaries.*

## Spreading the Word

### Training and Communication

All relevant employees and contractors must be made aware of the Group Business Integrity Policy and its accompanying Procedures in their induction.

Workshop and online training are provided to those employees, contractors and third parties whose roles expose them to the risks of bribery and corruption, including facilitation payments. These 'relevant' employees will be defined by Business Integrity Implementation Managers in conjunction with their Heads of Department, and, where appropriate, the EBCT.

Communication and awareness materials are available to ensure that the Policy, the requirements of the Business Integrity Prevention of Corruption Procedures and supporting tools are regularly communicated throughout the organisation through communications, management engagement, EBCT briefings and training.

All Business Units / Corporate Functions are responsible for ensuring that their consultation and escalation processes in place in relation to facilitation payments are clearly communicated to employees.

## Keeping on Track

### Monitoring, Reporting and Assurance

Adherence to the Business Integrity Policy and implementation and evolution of its associated programme is subject to regular reporting and monitoring, and annual assurance to enable the determination any development or adaptation of Policy, Procedures, controls and training that may be required.

### *Consequence of Breach*

Employees, contractors and suppliers must report any breaches, or potential breaches of the Business Integrity Policy and this Procedure. Violations of this Procedure will lead to disciplinary action in accordance with the Group disciplinary procedures. Disciplinary actions may involve sanctions up to and including summary dismissal.

We are committed to reporting all instances of corruption and other forms of dishonesty to the relevant authorities and to facilitating criminal action against the individual(s) concerned and we will seek redress for any losses arising from such actions.

### *YourVoice*

The YourVoice facility provides a confidential and secure means for our employees, contractors, suppliers, business partners and other external stakeholders to report and raise concerns about conduct which is contrary to our values and standards, as described in our Code of Conduct, the Business Integrity Policy and the accompanying Business Integrity Prevention of Corruption Procedures.

YourVoice provides telephone and website intake channels operated by independent companies in the regions that Anglo American operates. The facility is available 24 hours a day, seven days a week and includes translation services. A link to the YourVoice facility is provided on Eureka!. YourVoice can also be contacted via [www.yourvoice.angloamerican.com](http://www.yourvoice.angloamerican.com).

At Anglo American we do not tolerate any form of retaliation against employees raising concerns in good faith. Allegations of retaliation against or harassment or intimidation of an employee by others as a result of a call to YourVoice will be investigated and appropriate action taken, including disciplinary action up to and including dismissal of the employee(s) responsible for reprisals.

## **Further Information**

### *Internal References*

This Procedure must be read in conjunction with the following other resources:

- Group Business Integrity Policy
- All relevant Business Integrity Prevention of Corruption Procedures
- All relevant Guidelines on Intermediaries
- Group Whistleblowing Policy

### *Appendix*

1. Illustrative example of intermediaries

If you need any further information, contact the Ethical Business Conduct Team via [EBCT@angloamerican.com](mailto:EBCT@angloamerican.com).

## Appendix 1: Illustrative example of retention and payment of intermediaries

### *Illustrative example 1*

Anglo American is considering establishing operations in a remote part of a new territory. At a mining conference in the capital, you are introduced to an individual who is interested in your Company and appears knowledgeable. This individual explains that they have excellent connections to the Ministry of Resources and they are confident that, subject to the negotiation of an appropriate agreement with Anglo American for the use of their services, they must be able to procure a preliminary exploration licence in a matter of weeks. This is particularly welcome news as you had understood that the process was likely to take many months and would certainly be competitive.

At the conference dinner, you meet the Minister of Natural Resources who confirms that they know the individual well, says they are well-regarded and suggests that you deal with the individual as an intermediary, rather than seek to contact the Minister directly.

#### **The following issues must be considered:**

- The proposed intermediary would be interacting directly with government officials. This is a heightened risk area in terms of national and international anti-bribery legislation.
- The potential intermediary has approached you directly and is previously unknown to Anglo American.
- The potential intermediary is claiming that they can deliver a licence which would provide Anglo American with a significant competitive advantage within a timeframe you know to be abnormal. It is not clear how this would be achieved.
- The use of the potential intermediary has been recommended by a senior government official, heightening the risk of potential collusion.

#### **After a significant delay, the individual finally responds to your due-diligence enquiries. You discover the following:**

- The potential intermediary's experience in the mining industry is limited. They are able however to produce evidence of working with other reputable international companies and government.
- The principal mining-related referee produced by the potential intermediary is the minister.

- The potential intermediary is unable to provide clear details of the process they would follow or the work they would perform in order to assist Anglo American obtain an exploration permit.

*All the afore mentioned, serve to confirm the risk factors identified following the initial approach. The reluctance to co-operate with the due-diligence process, evidenced the delay in providing responses to queries, is in itself a significant warning sign.*

## Document Control

Procedure approval:

<b>Name/job title of Policy owner:</b>	Group Director - Finance
<b>Approval date by Policy owner:</b>	19/11/2018

### Document Control

<b>Frequency of procedure review after date of issue:</b>	Every 2 years
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*If this procedure has one or more approved waivers in place:*

<b>No.</b>	N/A
<b>Waiver applies to</b>	N/A
<b>Waiver in place from</b>	N/A
<b>Expiration of waiver</b>	N/A
<b>Date waiver approved</b>	N/A

The following changes have been made since this document was previously issued:

<b>Old procedure name, date, and version number:</b>	<b>Group Retention and Payment of Intermediaries Prevention of Corruption Procedures (Nov 2018)</b>
<b>Main changes made:</b>	<ul style="list-style-type: none"> <li>• Replaced Speak Up with YourVoice as the name of the Whistleblowing service and update associated content.</li> </ul>

### Suggested changes to the Procedure:

Any suggested changes or amendments to this Procedure document should be submitted to the Policy owner along with the reasons for suggesting them. Updates to this Procedure will, from time to time, be tabled for approval at the Policy Governance Committee.

All suggestions will be acknowledged and if rejected, the reasons given for their rejection.

Accepted changes will be administered through the policy governance system.