



**PETRONAS**

# PETRONAS ANTI - BRIBERY AND CORRUPTION MANUAL

## DEMOCRATIC REPUBLIC OF CONGO

## COUNTRY SUPPLEMENT

This Country Supplement is to be read with the PETRONAS Anti-Bribery and Corruption Manual (“**ABC Manual**”). Where the terms of this Country Supplement are not consistent with the ABC Manual or any other policy, then the terms set out in this Country Supplement shall prevail and have priority above the ABC Manual or any other policy. Reference below expressed in numerals correlate to the ABC Manual.

## **2A(i): Receiving Gifts**

In addition to the provisions of the ABC Manual one should bear in mind that under DRC law, it is difficult to draw a clear line between illegal bribery and acceptable gifts. No gift should be accepted if it is determined that the benefit is given with some intent to influence Engen DRC judgment or conduct in the future.

As a general rule, in addition to the reporting requirement, gifts should not be accepted in circumstances where the value, timing and/or type of the gift are inappropriate or may cause inappropriate external impressions.

If an employee receives a gift in line with the limited circumstances set out in the ABC Manual, then that gift must be registered in the iZone Gift Registration Portal at <http://izone.engenoi.net/Sites/SelfService/SelfService/Apply%20For/Gift%20Registration.aspx> or using any other form provided by your Human Resource Department for submission to the Regional Business Manager based in the South Africa Head Office who will then decide whether to approve the acceptance of the gift or require it to be returned.

Please refer to the below paragraph titled “*Exceptions to The “No Gift” Policy*” for the general principles relating to the giving and receiving of gifts.

## **2A(iii): Exceptions to the “No Gift” Policy**

In addition to the provisions of the ABC Manual, one should bear in mind that under DRC Law gifts, entertainment and corporate hospitality can constitute bribery and improper benefits in circumstances where the value, timing and/or type of the gift are inappropriate or may cause an inappropriate external impression.

As a general rule, the DRC Penal Code punishes all forms of bribery and provides for penalties for both the person offering the bribe and the person receiving it as well as any intermediaries who facilitate the bribe.

Any exception to the “No Gift” Policy must adhere to the principle that the receipt or provision of such gifts to external parties was done with no intention to induce the performance or omission of one’s duties as contemplated under DRC law.

## **2B: Providing and Receiving Entertainment**

In addition to the provisions of the ABC Manual, one should bear in mind that under DRC Law the granting of gifts to third parties even by the President and Group CEO and Executive Vice Presidents should be carefully considered.

Indeed, under DRC law the offence of bribery is deemed committed in the following cases

- a) the offering or granting, directly or indirectly, to a public official or any other person, of any sums of money, any item of monetary value or any other benefit such as a gift, favour, promise or gain for himself or herself or another person or entity, in exchange for any act or omission in the performance of his or her functions;
- b) the offering, giving or promising, directly or indirectly, by a public official or any other person, of an undue advantage to or by any person who directs

or works for, in any capacity, a private sector entity, for himself or herself or a third party, for him or her to act, or refrain from acting in breach of his or her duties.

### **2B(i) Providing Entertainment**

In addition to the provisions of the ABC Manual, one should bear in mind that under DRC Law providing entertainment to clients through a reasonable act of hospitality or as a measure of goodwill is permissible. However, even where HOD approval is granted, entertainment activities which involve public officials must be considered with caution.

### **2B(ii) Receiving Entertainment**

Compliance with ABC Manual which details the strict basis on which occasional acceptance of a reasonable and modest levels of entertainment provided by third parties may be permitted is key to avoid situations that may constitute bribery.

### **3A(i): Dealing with Public Officials**

In addition to the provisions of the ABC Manual, one should bear in mind that under DRC Law a person is not allowed to give any promises, gifts or presents to a public official to perform an act which she/he is legally required to perform (i.e. a part of her/his job description). This applies to any public official demanding or receiving a promise, a gift, a present or other similar advantage to do his or her job or expedite performance of an act or duties that the official is required by statute or regulation to perform.

### **3A(ii): PETRONAS Employees as Public Officials**

Under DRC law, the term “public official” is of broad import and covers the following categories of persons in addition to the definition contemplated in Part IIB paragraph 12.8 of the PETRONAS Code of Conduct and Business Ethics (COBE):

- a) civil servants and any person discharging a public service mission;
- b) any person in charge of a parastatal;
- c) any person representing the interests of the government or a parastatal in a private company, a mixed economy company or a parastatal in the capacity as (i) director, (ii) manager, (iii) auditor; or (iv) any other capacity;
- d) any representative or agent of the persons mentioned above;
- e) an arbitrator; and/or
- f) any designated expert.

### **PART 5: Political Contributions**

Political parties in DRC are prohibited from accepting any foreign donation (from a company not incorporated in DRC or companies with foreign shareholdings) whether directly from the donor or indirectly through a third person.

Engen DRC and/or any employee or Engen DRC should not make any contribution to a political party in the DRC.

## **PART 6: Facilitation Payment**

Risks of bribery may arise under local law in relation to facilitation payments for the following reasons:

- a) the offence of bribery may be committed regardless of the amount of the payment whether pre-agreed or not if the intention is to induce the official to use his or her position to influence any acts;
- b) DRC anti-bribery provisions are broad in scope and do not make exception for facilitation payments or distinguish between facilitation payments and other forms of bribery. Any benefit, regardless of its name or form, offered, obtained or accepted in exchange for the performance or non-performance of a public duty could be considered to be impermissible and undue advantage. If a facilitation payment is made and the criteria of one of the general bribery offences laid down in the Penal Code is fulfilled, a criminal prosecution may result; and
- c) culpability may arise if any promises, gifts or presents are accepted by a public official to perform an act which forms part of her/his function.

### **6B. Exception to Making Facilitation Payment**

The exceptions to making facilitation payments must be applied with prudence and with an inclination towards caution as facilitation payments are generally considered to be illegitimately due to the receiving party.

## **Part 7. Money Laundering**

Under DRC criminal law, the offence of money laundering is punishable by five to ten years' imprisonment and a fine of up to six times the amount of money being laundered. An accomplice is liable to the same penalty as the perpetrator of the offence of money laundering. It is therefore highly advisable to implement and adhere to the initiatives to strengthen anti-money laundering governance as set out in Part 7A of the ABC Manual.

## **8B(i) Dealing with Contractors and Suppliers**

DRC criminal law is applicable not only to the perpetrators of an offence but also to any person who knowingly, by aiding and abetting, facilitates the perpetration or commission of a crime. Dealing with contractors or suppliers known or reasonably suspected of corrupt practices or known or reasonably suspected to pay bribes should therefore be avoided.

