



UNIVERSITEIT  
STELLENBOSCH  
UNIVERSITY

## Anti-Corruption and Anti-Bribery Policy

<b>Type of Document:</b>	Policy
<b>Purpose:</b>	To set out key responsibilities of the University and of those working for and or associated with the University on how to recognise and deal with bribery and corruption.
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<b>Policy Curator<sup>2</sup>:</b>	Chief Director: Finance
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<sup>1</sup> Policy Owner: Head(s) of Responsibility Centre(s) in which the policy functions.

<sup>2</sup> Policy Curator: Administrative head of the division responsible for the implementation and maintenance of the policy

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## 1. POLICY STATEMENT

- 1.1. As part of Stellenbosch University's ("**University**") overarching values, which includes accountability, the University is committed to ensuring high ethical standards and values and compliance with applicable laws. Specifically, these standards and values are applied to research and teaching activities, as well as governance and financial management.
- 1.2. It is the University's Policy to conduct all of its affairs in a professional, honest, transparent, fair, equitable and ethical manner. The University takes a clear and unambiguous, zero-tolerance approach to bribery and corruption and is committed to acting professionally, fairly and with integrity in all the University business dealings and relationships wherever the University operates, and implementing and enforcing effective systems to counter the aforesaid.
- 1.3. The transgression of applicable bribery and corruption laws are punishable by way of imprisonment and/or a fine and if the University is found to have taken part in such activities, the damage could be significant. The University therefore takes its legal responsibilities with regard to corruption and this Policy very seriously.
- 1.4. The purpose of this Policy is accordingly to:-
  - a) set out key responsibilities of the University and of those working for and or associated with the University; and
  - b) provide information and guidance to those working for and or associated with the University on how to recognise and deal with bribery and corruption (hereafter "**Corrupt Activities**").

## 2. WHO IS COVERED BY THE POLICY?

This Policy applies to all individuals working at all levels and grades, whether temporarily, on a fixed-term basis or permanently, and which includes all members of Council and Senate, academic and administrative staff, senior managers, officers, directors, employees, consultants, independent contractors, trainees, seconded staff, casual associated staff and agency staff, volunteers, interns, agents, as well as any other person **or any other business or legal entity** associated with the University e.g. registered students (hereafter collectively "**Associated Staff**").

## 3. RELEVANT LEGISLATION

- 3.1. A detailed analysis of all applicable laws falls outside the scope of this Policy and while Associated Staff are advised to stay abreast of their duties in terms of such legislation, the following legislation is of particular reference:-
  - a) the Prevention and Combating of Corrupt Activities Act No. 12 of 2004 (hereafter "**PCCA**"), which makes provision for the offences of Corrupt Activities relating to specific persons, matters and unacceptable conduct, as well as provision for presumptions and defences against charges of Corrupt Activities, penalties relevant to Corrupt Activities and for investigations regarding the possession of property relating to Corrupt Activities;
  - b) the Prevention of Organised Crime Act No. 121 of 1998 (hereafter "**POCA**"), which is relevant to the combatting of organised crime, money laundering, criminal gang activities and racketeering;
  - c) the Protected Disclosure Act No. 26 of 2000 (hereafter "**PDA**"), which makes provision for employees (exclusive of volunteers and independent contractors) to disclose information in

the workplace of Corrupt Activities and related acts and for such disclosure to be protected against employment related reprisals; and

- d) The Witness Protection Act No. 112 of 1998 (hereafter "**WPA**"), which makes provision for the protection of individuals who 'blow the whistle' on Corrupt Activities, if such individuals are witnesses in criminal proceedings.

#### **4. WHAT IS BRIBERY AND CORRUPTION?**

- 4.1. Bribery can take on many different shapes and forms and is most often present where there is an inducement, reward or a form of gratification offered, promised or provided in order to gain any commercial, contractual, regulatory or personal advantage. Bribery involves a corrupt intention, which will be most notably present where there is an intention behind any gratification to influence Associated Staff and the University's decision making. As such, bribery is not only limited to the giving, receiving or promise of cash and could include for example, donations, sponsorship arrangements, personal gifts, special treatment, or similar advantages.
- 4.2. Corruption involves actions, as well as omissions by persons, which have an illegal, dishonest, unauthorised or unlawful intention behind it and which includes bribery.
- 4.3. Annexure A of this Policy sets out certain "red flag" circumstances and examples of what will amount to Corrupt Activities and which are prohibited by this Policy.
- 4.4. **This policy including its definitions and examples, is applicable to both external and internal transactions or related situations.**

#### **5. GIFTS AND HOSPITALITY**

- 5.1. This Policy does not prohibit normal and appropriate hospitality and the giving of gifts (given and received) to or from third parties.
- 5.2. Appropriate hospitality and the giving or receipt of gifts is not prohibited, provided the following requirements are met:-
  - a) it is not made with a corrupt intention (for example, in order to influence a third party to obtain or retain funding or a business advantage, or to reward the provision or retention of funding or a business advantage, or in explicit or implicit exchange for favours, benefits or funding);
  - b) it complies with local law; and
  - c) it complies with the University's Gifts Policy (which may be accessed through <http://www.sun.ac.za/english/Finance/Documents/Policies/GIFTS.pdf>).
- 5.3. The University appreciates that the practice of giving business gifts varies between countries and regions and what may be normal and acceptable in one region may not be in another. The test to be applied is whether, considering all relevant circumstances, the gift or hospitality is reasonable and justifiable. The intention behind the gift should always be considered.

#### **6. FACILITATION PAYMENTS AND KICKBACKS**

- 6.1. The University does not make, and will not accept, facilitation payments or "kickbacks" of any kind. Whereas facilitation payments are typically small, unofficial payments made to secure or expedite a routine government action by a government official and kickbacks are typically payments made in return for a commercial favour or advantage. All Associated Staff must avoid

any activity that might lead to, or suggest, that a facilitation payment or kickback will be made or accepted by the University **or an Associated Staff in their personal capacity.**

- 6.2. If any Associated Staff are asked to make a payment on behalf of the University, he or she must always be mindful of what the payment is for and whether the amount requested is proportionate to the goods or services provided. Furthermore, Associated Staff must always ask for a receipt which details the reason for the payment. Any suspicions, concerns or queries regarding a payment, should be raised with the relevant Associated Staff's line manager or the Chief Director of Finance.

## **7. DONATIONS**

The University may make charitable donations, provided that such charitable donation is legal and ethical under national laws and practices and are compliant with the University's policy on Donations and Receipts for Donations, which can be accessed at <http://www.sun.ac.za/english/Finance/Documents/Policies/DONATIONS%20AND%20RECEIPTS%20FOR%20DONATIONS.pdf>.

## **8. RESPONSIBILITIES AND DUTIES OF ASSOCIATED STAFF**

- 8.1. The prevention, detection and reporting of Corrupt Activities are the responsibility of all Associated Staff.
- 8.2. Associated Staff are obligated to read, understand and comply with this Policy.
- 8.3. Associated Staff are responsible for exercising due diligence when dealing with other parties and conducting business on behalf of the University and are required to avoid any activity that might lead to, or suggest, a breach of this Policy.
- 8.4. Associated Staff must inform their line manager or the Chief Director of Finance as soon as possible:-
  - 8.4.1. if he or she becomes involved with or suspects becoming involved in any Corrupt Activities;
  - 8.4.2. if offered a bribe or is asked to make one, or suspects having been offered or asked to make a bribe; or
  - 8.4.3. believes or suspects that any Corrupt Activity or any breach of this Policy has occurred, or may occur in the future.

## **9. BREACH OF THIS POLICY**

- 9.1. Allegations of a breach or any non-compliance with this Policy will be dealt with by the University's Disciplinary Policy, which can be accessed at <http://www.sun.ac.za/english/human-resources/Documents/HR%20WEB%20-%20MHB%20WEB/Documents-Dokumente/Policies-Beleide/Employee%20Relations-Arbeidsbetrekinge/Eng/IR0152-%20Disciplinary%20Code-%20March%202015.pdf>.
- 9.2. A breach of this Policy by Associated Staff will lead to disciplinary action, which could result in the dismissal of such Associated Staff for gross misconduct and in terms hereof, the University reserves the right to terminate the University's contractual relationship with any Associated Staff if this Policy is breached.
- 9.3. The University is under a legal obligation to report Corrupt Activities and non-compliance with the PCCA and as such, Associated Staff could, in addition to termination of their contractual

relationship with the University, be found guilty of an offence in terms of the PCCA and be subject to a fine or imprisonment.

## **10. RECORD-KEEPING**

- 10.1. The University is required to keep financial records and have appropriate internal controls in place which will evidence the business reason for making payments to and or receiving payments from third parties.
- 10.2. Associated Staff must keep a written record of all hospitality or gifts accepted or offered, which will be subject to managerial review. Hospitality or gifts should be declared as required by the University's Gifts Policy.
- 10.3. Furthermore, Associated Staff must ensure all expenses claims relating to hospitality, gifts or expenses incurred to third parties are submitted in accordance with the University's Financial Policies and specifically record the reason for such expenditures.
- 10.4. All accounts, invoices, memoranda and other documents and records relating to dealings with third parties, such as clients, suppliers and business contacts, should be prepared and maintained with strict accuracy and completeness. No account may be kept "off-book" to facilitate or conceal improper payments.

## **11. HOW TO RAISE A CONCERN**

- 11.1. The University places a high premium on good governance and financial management. In this regard, Associated Staff play a very important role especially with regard to reporting incidents, conduct and trends that are not in line with the values of good corporate and financial management. If any Associated Staff become aware or develop any suspicion of a circumstance or action which violates, or appears to violate this Policy or any other related policy or amounts to a Corrupt Activity, he or she is required to raise such concern as soon as reasonably possible with their line manager or the Chief Director of Finance or the Director of Procurement or via the University's ethics hotline.
- 11.2. Associated Staff are required, furthermore, to raise any uncertainty or any other queries regarding this Policy and its application with his or her line manager or the Chief Director of Finance as soon as possible.
- 11.3. Concerns reported via the University's ethics hotline' should be reported by following the procedure as set out at <https://www.sun.ac.za/english/contact-us/ethics-hotline>.

## **12. PROTECTION**

- 12.1. The University aims to encourage openness and will support any Associated Staff that raises genuine concerns in good faith under this Policy, even if they turn out to be mistaken.
- 12.2. The University is committed to ensuring that no one suffers any detrimental treatment or repercussions as a result of refusing to take part in Corrupt Activities, or because of reporting a concern in good faith and whereas detrimental treatment could include amongst other forms of treatment, being subjected to, or being threatened with disciplinary action, dismissal, suspension, demotion, harassment or intimidation, being denied an appointment to any employment or office or being otherwise adversely affected in respect of their employment with the University and is connected with raising a concern (hereafter "**Detrimental Treatment**").
- 12.3. Associated Staff who believe that they have suffered any such Detrimental Treatment should inform their line manager or the Chief Director of Finance immediately thereof. If the

matter is not remedied after a reasonable period of such notice, Associated Staff, who are employees of the University, must raise such concern formally using the University's Grievance Procedure (which can be accessed at <https://www.sun.ac.za/english/human-resources/hr-documents/policies-procedures>) and Associated Staff who are not employees of the University must report to the Director of Procurement or the Chief Director of Finance or via the University's ethics hotline.

### 13. COMMUNICATION AND TRAINING

- 13.1. Associated Staff are obligated to communicate the University's zero-tolerance approach to Corrupt Activities to all suppliers, contractors and business partners at the outset of all business relationship with them and as appropriate thereafter. **This policy will, in future, constitute a non-negotiable part of (or annexure to) all contracts with such counterparties.**
- 13.2. Training on this Policy forms part of the induction process for all new Associated Staff. Existing Associated Staff will receive a level of training to be determined (on a risk basis) by their line manager through the existing performance and development review process.

### 14. WHO IS RESPONSIBLE FOR THE POLICY?

- 14.1. The University's Council has ultimate responsibility for ensuring that this Policy complies with the University's legal and ethical obligations and that all Associated Staff comply with it. The University's Audit and Risk Committee will provide a channel for formal reporting and evaluation of the system of dealing with Corrupt Activities.
- 14.2. The Chief Director of Finance, reporting to the Chief Operating Officer has primary and day-to-day responsibility for implementing this Policy and for monitoring its use and effectiveness and dealing with any queries on its interpretation and furthermore, the management at all levels of Associated Staff are responsible for ensuring that Associated Staff reporting to them are made aware of, understand and comply with their responsibilities under this Policy.

### 15. MONITORING AND REVIEW

- 15.1. The Chief Director of Finance will monitor the effectiveness and review the implementation of this Policy, regularly considering its suitability, adequacy and effectiveness. Any improvements identified will be made as soon as possible.
- 15.2. Internal control systems and procedures will be subject to regular audits to provide assurance that they are effective in countering Corrupt Activities.
- 15.3. All Associated Staff are responsible for the success of this Policy and should ensure that it is used to disclose any suspected danger or wrongdoing.
- 15.4. Associated Staff are invited to comment on this Policy and suggest ways in which it might be improved. Comments, suggestions and queries should be addressed to the Chief Director of Finance.
- 15.5. This Policy may be amended at any time.

## **ANNEXURE A: POTENTIAL RED FLAG CIRCUMSTANCES AND EXAMPLES**

1. Below is a non-exhaustive list of possible Corrupt Activity "red flag" scenarios, which will raise concerns under the PCCA, other relevant legislation and this Policy:-
  - 1.1. Associated Staff gives, offers, or promises to give or offer, a payment, gift or hospitality with the expectation or hope that a commercial advantage will be received, or to reward a commercial advantage already given;
  - 1.2. Associated Staff gives, offers, or promises to give or offer, a payment, gift or hospitality to a government official, agent or representative to "facilitate" or expedite a routine procedure;
  - 1.3. Associated Staff accepts payment, a gift or hospitality from a third party that he or she knows, or suspects is offered with the expectation that it will obtain a commercial advantage for such third party;
  - 1.4. Associated Staff threatens or harasses another employee who has refused to commit a Corrupt Activity or who has raised concerns under this Policy;
  - 1.5. Associated Staff engages with a third party who has a reputation in engaging in, or has been accused of engaging in improper business practices, Corrupt Activities, or has a reputation for having a special relationship with local or foreign government officials;
  - 1.6. Associated Staff are offered lavish hospitality or generous gifts for no reason;
  - 1.7. Associated Staff notice that the University has been invoiced for a commission or fee payment that is disproportionately large given the particular goods and/or services requested;
  - 1.8. a third party insists on, or requests the payment of a commission, fee payment, a payment in cash, lavish entertainment, or an unexpected additional fee or commission before committing to sign up to a contract with the University, before facilitating or entering a service with the University, before commencing with contractual negotiations with the University or before carrying out a government or official function, process or action;
  - 1.9. a third party refuses to sign a formal commission or fee agreement or to provide an invoice for receipt for a payment made;
  - 1.10. a third-party requests that payment is made to a country or geographic location different from where the third party resides or conducts business;
  - 1.11. a third part requests that a payment is made to overlook legal violations;
  - 1.12. a third-party requests Associated Staff to provide employment or some other advantage to a family member or a friend of the third party; or
  - 1.13. Associated Staff engages in any activity that might lead to a breach of this Policy;
2. Below is a non-exhaustive list of possible examples for the offering and receiving of bribes:-
  - 2.1. Offering a bribe:-
    - a) Associated Staff offers a potential benefactor tickets to a major University event, but only if the potential benefactor agrees to make a financial donation to the University.
    - b) This would amount to a Corrupt Activity because an offer to gain a commercial and contractual advantage is made. The University may also be found to have committed an



offence because the offer has been made to obtain business for the University. It may also be an offence for the potential benefactor to accept such an offer.

2.2. Receiving a bribe:-

- a) A supplier of the University gives the nephew of an Associated Staff member a job, but makes it clear that in return, the supplier expects the Associated Staff member to use their influence to ensure that the University continues to do business with the supplier.
- b) It is an offence for a supplier to make such an offer. It would be an offence for Associated Staff to accept the offer because it is done to gain a personal advantage.

2.3. Bribing a foreign official:-

- a) Associated Staff arrange for the University to pay an additional payment to a foreign official to speed up an administrative process in order that a necessary licence can be obtained to start up a University abroad.
- b) The offence of bribing a foreign public official has been committed as soon as the offer is made. This is because it is made to gain a commercial advantage for the University. Furthermore, the University may also be found to have committed an offence.