

Corruption of Foreign Public Officials Act Guidelines  
(Initially adopted by the Board of Directors on May 21, 2009)

**PACIFIC EXPLORATION & PRODUCTION CORPORATION**  
(the “Corporation”)

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The Corporation is subject to legislation in Canada that prohibits corrupt practices in dealing with foreign governments. The Canadian *Corruption of Foreign Public Officials Act* (“CFPOA”) makes it an offence to either directly or indirectly give any kind of benefit to a Foreign Public Official (as defined below) in order to obtain an advantage in the course of business. Violation of this legislation may result in substantial penalties to the Corporation and to individuals. It is the policy of the Corporation to comply with all applicable laws. These Guidelines are intended to assist the Corporation’s employees (the “Regulated Parties”) in their understanding of the CFPOA and its implications with respect to company operations.

**I. WHAT IS THE CFPOA?**

The CFPOA is a Canadian statute that implements the Organisation for Economic Co-operation and Development's Convention on Combating Bribery of Foreign Public Officials in International Business Transactions. The statute is aimed at preventing improper efforts to induce Foreign Public Officials to act in connection with a party’s business activities through bribery.

**II. WHO DOES THE CFPOA APPLY TO?**

The CFPOA applies to both:

- a. corporations; and
- b. individuals.

**III. WHAT DO THE CFPOA ANTI-BRIBERY PROVISIONS PROHIBIT?**

The CFPOA anti-bribery provisions prohibit Regulated Parties from:

- a. directly or indirectly giving, offering or agreeing to give
- b. a loan, reward, advantage or benefit of any kind,
- c. to any Foreign Public Official or to any person for the benefit of a Foreign Public Official

- d. as consideration for an act or omission by the official in connection with the performance of their duties or functions; or
- e. to induce the official to use his or her position to influence any acts or decisions of the foreign state or public international organization for which the official performs duties or functions
- f. to obtain or retain an advantage in the course of business.

**A. Offering, Promising, Giving, Paying, or Authorizing the Payment**

Payments and offers or agreements to make a payment are sufficient to constitute a violation under the CFPOA. The CFPOA bars payments even if the Foreign Public Official suggested the payment. In addition a violation can arise even if the bribe is not accepted, it is never actually received, or the object of the bribe is not obtained. As this is a criminal offence, conspiring, attempting, or having an intention in common to bribe a Foreign Public Official is an offence, as are aiding and abetting in, and counseling of bribery of a Foreign Public Official.

**B. Benefits**

Currency or other forms of immediately available funds are the most obvious forms of benefit, but gifts that go beyond this are prohibited as well. Any form of payment, either directly or indirectly, is expressly prohibited. Examples would include gifts, entertainment, paying or reimbursing expenses, excessive promotional activities, investment opportunities, subcontracts, stock options, in-kind contributions, and other things of value that could be considered economic benefits that are being used to improperly influence a Foreign Public Official. Trips or jobs offered to family members, charitable contributions, and other less obvious benefits may constitute violations. There is no minimum or threshold value under the CFPOA, and even things of modest value can trigger a violation; however there are limited exceptions which are set out in section VI below.

**C. Foreign Public Official**

A “Foreign Public Official” under the CFPOA is broadly defined as:

- a. a person who holds a legislative, administrative or judicial position of a foreign state;
- b. a person who performs public duties or functions for a foreign state, including a person employed by a board, commission, corporation or other body or

authority that is established to perform a duty or function on behalf of the foreign state, or is performing such a duty or function; and

- c. an official or agent of a public international organization that is formed by two or more states or governments, or by two or more such public international organizations.

**D. Required Intent**

No particular mental element is expressly set out in the CFPOA; however this offence will be interpreted in accordance with common law principles of Canadian criminal law. The criminal intent or *mens rea* is subjective knowledge. The act must have been committed intentionally or recklessly with either knowledge of the facts or willful blindness to them.

**E. Influencing an Official Act**

The types of behavior that are prohibited may include (1) influencing the Foreign Public Official to act in his or her official capacity; (2) inducing the Foreign Public Official not to act, which inaction constitutes a violation of his or her official duties; (3) inducing the Foreign Public Official to use his or her position to influence an act or decision of the government or public international organization for which the Foreign Public Official performs duties or functions; or (4) securing any improper advantage.

**F. Obtaining or Retaining Business Advantage in the Course of Business**

By using the words "in order to obtain or retain an advantage in the course of business," the CFPOA seeks to prohibit payments made to either obtain or retain an improper advantage in business. The word "business" is defined broadly in the CFPOA as "any business, profession, trade, calling, manufacture or undertaking of any kind carried on in Canada or elsewhere for profit." The CFPOA thus targets bribery in situations where a transaction is being carried out for profit. It is also important to note that the CFPOA prohibits the bribery of Foreign Public Officials in the course of business, and that the offence does not require the crossing of actual borders for conduct to be prohibited; for example, it is an offence under the CFPOA to bribe a Foreign Public Official in Canada to obtain a business advantage in Canada.

**G. Jurisdiction**

Canada has jurisdiction over the bribery of Foreign Public Officials when the offence is committed in whole or in part in its territory. There will be a sufficient basis for jurisdiction when there is a real and substantial link between the offence and Canada, for

example, when a significant portion of the activities constituting the offence have taken place in Canada.

#### **IV. CAN A CANADIAN COMPANY BE LIABLE FOR PAYMENTS MADE THROUGH THIRD PARTIES?**

The CFPOA establishes liability for payments made indirectly to a Foreign Public Official. The Corporation and the Regulated Parties may be liable for payments made through a third party, such as an agent, consultant, contractor, distributor, or sales representative (each, a “Third Party”).

#### **V. WHAT IS THE CORPORATION’S PROCEDURE FOR MAKING AGREEMENTS WITH THIRD PARTIES?**

The Corporation has an established procedure for engaging a Third Party, which includes, but is not limited to, reference checks, review of the business practices of a Third Party, and explanation of these Guidelines to the prospective All new Third Parties are subject to this procedure and must be approved by the relevant business managers.

There are “red flags” that should alert you to potential problems with a Third Party and which must be investigated before entering into an agreement with such Third Party. “Red flags” may include: (i) requests for payments in cash instead of by cheque; (ii) payments made to some party other than the Third Party; (iii) lack of standard invoices; (iv) unusual credits granted to customers; (v) unusual bonuses paid to managers of foreign operations; (vi) comments or suggestions that bribery has occurred; (vii) the reputation of the country in which the Third Party operates; (viii) requests for political or charitable contributions; (ix) objections to CFPOA compliance; (x) the desire by the Third Party to keep his representation of the Corporation secret; (xi) and any relationship between the Third Party and a Foreign Public Official.

After signing an agreement with a Third Party, the Corporation should monitor the Third Party’s activities and expenses for continued compliance with the CFPOA. If the Third Party makes an improper payment or gift to a Foreign Public Official, the Corporation may be held liable under the CFPOA even if it did not expressly authorize the payment. To guard against liability, the Corporation requires documentation before paying or authorizing unusual or excessive invoices or expenses.

The Corporation may also be held accountable for bribes paid by foreign subsidiaries or joint ventures in which it participates. The Corporation may be held accountable if the subsidiary or joint venture engages in illegal conduct of which it should have been aware as may be evidenced by a seat on the board of directors. As a publicly-traded Canadian company, the Corporation faces an additional risk of prosecution by the Canadian

Securities Administrators ("CSA") for violating accounting rules if a payment is made by a foreign subsidiary, but it is improperly labeled in the Corporation's financial statements.

With respect to joint ventures, the Corporation must monitor the joint venture's activities, as well as those of the joint venture partners. When the Corporation has a majority interest in the venture, it is required to comply with the CFPOA. When the Corporation has a minority interest, it is required to make a good-faith effort to cause the venture to comply with the CFPOA. To protect itself, the Corporation should ensure that the joint venture agreement contains representations and warranties that the venture partners will comply with the CFPOA and that no improper payments will be made to Foreign Public Officials to obtain business. The Corporation should also insert an escape clause in the joint venture agreement that would allow it to exercise its right to withdraw from a joint venture with non-Canadian participants upon the occurrence of any prohibited conduct. The escape clause should also provide for an indemnity for any losses or damages incurred by the Corporation that are caused by the improper actions of the other joint venture partner(s).

## **VI. ARE THERE ANY EXCEPTIONS TO THE CFPOA?**

### **A. Facilitation Payments**

It is generally not unlawful under the CFPOA to make payments to expedite or secure the performance by a Foreign Public Official of any "act of a routine nature" that is part of the Foreign Public Official's duties or functions. In many foreign companies, there is a widely accepted practice of "expediting" payments, which are "tips" in the form of gratuities or gifts in small amounts to bureaucratic employees to expedite permits, licenses or official documents like visas, functions like police protection or inspections, and services like telephone installation and repair, power and water supply, or loading and unloading cargo. It may not be clear whether certain government actions are routine non-discretionary government actions. If there is a question as to whether a payment should be made, the Regulated Party should consult with the Corporation's lawyer having responsibility for the country in which the proposed facilitation payment would be made. It is important to note that an "act of a routine nature" does not include a decision to award new business or to continue business with a particular party, including a decision on the terms of such business or encouraging another person to make any such decisions.

### **B. Promotional and Marketing Expenses**

A payment to a Foreign Public Official to pay for reasonable bona fide expenses incurred in good faith by or on behalf of the Foreign Public Official (i) in the promotion, demonstration or explanation of the Corporation's products or services; or (ii) in the execution or performance of a contract between the Corporation and the foreign state for which the Foreign Public Official is acting, are exceptions to the CFPOA. Such expense

may include meals, travel and lodging expenses for a Foreign Public Official directly related to promoting the Corporation's products and services. Such expenses should only be made if permitted by the laws of the foreign country.

**C. Payments that are Legal Under Local Laws**

Payments that are permitted or required under the laws and regulations of the foreign country or foreign public organization for which the Foreign Public Official performs duties or functions do not constitute violations under the CFPOA. However, recognized customs or practices are not sufficient, nor is it a defense that "everyone does it".

**D. Emergencies**

If a payment is made under threat of serious harm, the payment would not be covered by the CFPOA. True extortion situations, where payment is made to keep someone out of jail, would not be held to be a "bribe" because of a lack of intent.

Please note that even though the CFPOA allows these exceptions, Regulated Parties are also subject to the Corporation's Code of Business Conduct and Ethics which states that: "It has always been the policy of the Corporation that all of our activities should be conducted with the highest standards of honesty and integrity and in compliance with all legal and regulatory requirements." Additionally, some customers to whom the Corporation provides products and services may have higher standards than the law requires.

**VII. WHAT ARE THE CONSEQUENCES OF CFPOA VIOLATIONS?**

Under the CFPOA, in connection with bribery of Foreign Public Officials:

- the Corporation may be fined. The amount of any fine is at the discretion of the judge, and there is no maximum;
- an individual may be imprisoned for a term of up to five years; and
- as bribery of a Foreign Public Official is an extraditable offence there is no limitation period.

**CURRENCY OF THIS POLICY**

This code was last revised and approved by the Board on September 15, 2009.