

MSDP Anti-Bribery and Corruption Policy

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**MSDP Anti-Bribery and Corruption Policy
and Procedures**

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MSDP Anti-Bribery and Corruption Policy

1. POLICY STATEMENT

1.1 It is the policy of Mukuru Slums Development Projects (MSDP) herein referred to as “**MSDP**”, to conduct our work in an honest, open and ethical manner. MSDP will not tolerate bribery or corrupt acts, no matter how minor, in respect of its activities. Bribery and corruption can expose individuals and MSDP to possible criminal prosecutions as well as reputational damage and other potentially severe consequences. MSDP is committed to acting professionally, fairly and with integrity in all dealings and relationships, wherever we operate.

1.2 The purpose of this policy is to:

1.2.1 Set out our responsibilities, and the responsibilities of those working for or on behalf of us, in relation to observing and upholding our position on bribery and corruption; and

1.2.2 Provide information and guidance to those working for or on behalf of us on how to detect and report bribery and corruption issues.

2. WHO MUST COMPLY WITH THE POLICY AND PROCEDURES?

2.1 The MSDP Anti-Bribery and Corruption Policy and Procedures (“**MSDP ABC Policy and Procedures**”) apply to the MSDP Board and all MSDP employees. Failure to comply with this policy may result in disciplinary action under MSDP’s disciplinary procedures, up to and including dismissal.

2.2 MSDP will use reasonable endeavors to ensure that, where practical, Third Parties (see definition below) will also be required to have and maintain their own anti-bribery and corruption policy and procedures at least of the same standard as the MSDP ABC Policy and Procedures.

3. DEFINITIONS

3.1 Bribery and Corruption defined

Bribery and corruption have a range of definitions in law, but the following definitions provide a plain language guide:

Bribery is the direct or indirect offering, promising, giving, requesting, accepting, agreeing to receive, or soliciting of a financial or other advantage as an inducement for the improper performance of a relevant function or as a reward for improper performance.¹

Directly or indirectly offering, promising or giving a financial or other advantage to a public official (or another person at the public official’s acquiescence or assent) with the

¹ Improper performance means performance which amounts to a breach of an expectation that a person will act in good faith, impartially, or in accordance with a position of trust.

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intention of influencing the public official in their official capacity so that business/an advantage in the conduct of business is obtained/retained is also a bribe.

An “advantage” can take many forms but will include money, gifts, favors, preference or other advantages. It is not restricted to financial advantage only.

Corruption is the abuse of entrusted power for private gain.

3.2 Other definitions

3.2.1 “**MSDP**” is defined above at 1.1.

3.2.2 “**MSDP Board**” means the board of directors of MSDP.

3.2.3 “**Third Party**” is defined as any individual or entity that is not an official employee of MSDP who is performing services for or on behalf of MSDP. This includes but is not limited to local partners, sub-grantees, contractors, and consultants.

3.3 What constitutes bribery and corruption?

Bribery and corruption can take many forms. Below is a non-exhaustive list of examples, for further corruption indicators also refer to appendix I:

3.3.1 A cash gift (or cash equivalent e.g. a gift voucher). The value of the cash or the value of the bribe is irrelevant.

3.3.2 Any kickback, loan, fee, reward or other advantage.

3.3.3 Financial support or donations which would not normally be provided to legitimate organizations.

3.3.4 A facilitation payment (i.e. a small payment in order to secure or expedite a routine governmental activity, where such payments are not expressly permitted by the written law of the relevant country).

3.3.5 The giving of any benefit to a public official in order to win a contract tender (benefit can include but is not limited to an unofficial payment, payment of school fees and entertainment).

It is not relevant whether the offeror/offeree of the bribe acts in the private or public sector.

4. COMPLIANCE WITH ANTI-BRIBERY AND CORRUPTION LAWS

4.1 MSDP strictly prohibits bribery or improper payments in any of its operations anywhere in the world whether involving government officials, private persons or other entities.

4.2 MSDP is committed to operating in compliance with all applicable Kenyan laws and regulations relating to bribery and corruption including (but not limited to) The Anti-Corruption and

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Economic Crimes Act (2003), The Public Officer Ethics Act (2003), The Ethics and Anti-Corruption Commission (EACC) Act (2011), The Proceeds of Crime and Anti-Money Laundering Act (2009). Every MSDP employee has a personal responsibility to carry out their work in compliance with applicable law and ethical standards.

Commented [WM2]: @Anne Muthoni I have added these laws laws and regulations. The ones that were here were laws and regulations for UK

4.3 It is not possible to summarize all applicable laws and regulations in this policy. The following are examples of the types of offences that arise under anti-bribery laws to which MSDP and its employees and Third Parties are subject:

4.3.1 **Active bribery:** Directly or indirectly **offering, promising or giving a financial or other advantage** to a third party in order to secure improper performance of a relevant function or duty (by that third party or another person) or as a reward for such improper performance.

4.3.2 **Passive bribery:** Directly or indirectly **requesting, agreeing to receive or accepting a financial or other advantage** in return for improper performance of a relevant function or duty (by the receiver or another person), as a reward for such improper performance, or where receipt of the advantage is itself constitutes improper performance.

Some laws include a specific offence of **bribing a foreign public official**²: directly or through a third party offering, promising, or giving any financial or other advantage to the foreign public official, (or another person with the foreign public officials acquiescence) intending to influence them in their capacity as a foreign public official (where the official is not permitted to be influenced under local written law) in order to obtain or retain business or an advantage in the conduct of business. The difference between this offence and active bribery as defined above is that there is no requirement to show “improper performance” by the public official.

MSDP may also be found guilty of the **corporate offence of failing to prevent bribery** where a person associated with MSDP bribes another person in order to obtain or retain business for MSDP or an advantage in the conduct of business for MSDP. In other words, MSDP can be held legally responsible for the actions of those who perform services on their behalf, whatever the nationality of the individual concerned and wherever in the world the action occurs. In relation to MSDP this will cover acts of MSDP workers and representatives acting for MSDP in projects overseas.

Individuals and organizations found guilty of bribery/corruption related offences can be subject to severe penalties including substantial fines and, in the case of individuals, sentences of imprisonment.

4.4 Public officials

The definition of a foreign public official is wide and could include:

² Foreign Public Official definition refers to officials outside the jurisdictions of all applicable laws and regulations complaint to MSDP.

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- 4.4.1 a national government official (e.g. the head of state; member of parliament; senator);
- 4.4.2 a local government official (e.g. a counsel officer or a planning officer);
- 4.4.3 a political candidate or party official;
- 4.4.4 a civil servant (e.g. a police officer, a public health service worker; a teacher; a customs or boarder control officer);
- 4.4.5 a representative of a government owned/majority-controlled organization;
- 4.4.6 a person holding a judicial or administrative position; and/or
- 4.5.7 an employee of a public international organization (e.g. World Bank).

The above conduct is also prohibited when dealing with officials inside Kenya.

A particular corruption risk relates to interaction with public officials. This is particularly relevant to MSDP employees acting in foreign jurisdictions.

As corrupt intent is not necessarily required to commit an offence, MSDP employees must carefully monitor all interaction with public officials and ensure this policy is adhered to.

5. FACILITATION PAYMENTS

- 5.1 MSDP prohibits the making of facilitation payments of any kind.
- 5.2 Facilitation payments, also known as “grease payments”, are typically small, unofficial payments made to secure or expedite a routine governmental activity, where such payments are not expressly permitted by the written law of the relevant country. These payments are common in some jurisdictions in which MSDP operates. For example, this would include a customs officer demanding a small unofficial payment to process cargo.
- 5.3 You must avoid any activity that might lead to a facilitation payment being made by or on behalf of MSDP.
- 5.4 If you suspect a payment to be a facilitation payment, before making the payment, you should always ask whether a receipt that details the reason for the payment is going to be provided. If there is no legitimate reason for the payment and you suspect that it is a facilitation payment, you should explain that MSDP does not make such payments and if you feel that it is safe and appropriate to do so, request to speak to the supervisor of the person requesting such payment.
- 5.5 For reporting incidents involving requests for facilitation payments refer to MSDP Anti-Fraud Policy, appendix IV.

CHARITABLE CONTRIBUTIONS

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6.1 Charitable contributions are not permitted to be made for or on behalf of MSDP.

6. POLITICAL DONATIONS

7.1 Political donations are not permitted to be made for or on behalf of MSDP. Individuals are not permitted to use their own funds on behalf of or in the name of MSDP to achieve something that is prohibited by this policy.

7. GIFTS

8.1 With the exception of receipt of gifts of nominal or low value (e.g. pens, stationary, chocolates), which should be shared with colleagues in the relevant MSDP office, the giving or receiving of gifts is not permitted under any circumstances by or on behalf of MSDP. Refer to corruption indicators, appendix I.

8. HOSPITALITY AND ENTERTAINMENT

9.1 You must exercise great caution when offering or accepting hospitality and entertainment to ensure that it is not an attempt to obtain an improper benefit or does not otherwise amount to bribery or corruption.

9.2 The providing or accepting hospitality or entertainment is allowed provided:

9.2.1 it is not provided with the intention of influencing the behavior of the recipient;

9.2.2 it is given openly, not secretly; and

9.2.3 it complies with any applicable local law.

9.3 If you are offered entertainment or hospitality, it must not be accepted without prior authorization from a line manager.

9.4 If you wish to offer entertainment or hospitality, it must not be offered without prior authorization from a line manager.

9. TRAVEL

10.1 It may be necessary to pay or reimburse the cost of a third party's travel expenses. Such costs will only be covered if the following apply:

10.1.1 where possible the travel must be arranged by MSDP employees and paid for directly to the travel provider;

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10.1.2 travel arrangements have received pre-authorization as per the applicable procurement and authorization chart and

10.1.3 all aspects of the travel shall have a legitimate purpose to further MSDP's aims,

10. USE OF OWN FUNDS

11.1 Individuals are not permitted to use their own funds on behalf of or in the name of MSDP to achieve something that is prohibited by this policy.

11. ENGAGEMENT OF THIRD PARTIES

12.1 MSDP could be held criminally liable for the actions anywhere in the world of a Third Party acting on behalf of MSDP. Engagement of Third Parties should be assessed in accordance with the following criteria:

12.1.1 Third Parties may not be retained to do things that are prohibited by the MSDP Policy and Procedures.

12.1.2 Risk based due diligence (which includes, for example, pre-award assessments, site visits etc.) must be conducted on Third Parties prior to retention or as required in accordance with MSDP's Partnership Manual or Logistics Manual or other relevant policies or procedures.

12.1.3 In accordance with MSDP's Partnership Manual or Logistics Manual or other relevant policies or procedures, arrangements with Third Parties must be in writing and include an appropriate anti-bribery clause.

12.1.4 MSDP will use reasonable endeavors to ensure that, where practical, Third Parties must have and maintain their own anti-bribery and corruption policy and procedures at least of the same standard as the MSDP ABC Policy and Procedures.

12.1.5 Fees or commissions paid to MSDP Third Parties must be in a local currency (or a currency which is routinely used in the relevant jurisdiction), in amounts that are customary and reasonable in relation to the services provided and are paid directly to the Third Party's bank account (or if in cash advance authorization must be received in accordance with MSDP's accounting policies.

12.1.6 All fees, commissions, expenses and other payments related to the representative must be properly reflected in MSDP's accounting books and records and financial statements and shall not be split or disguised in any way as per MSDP accounting policy.

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12. RECORD KEEPING

- 13.1 MSDP must keep financial records and have appropriate internal controls in place which will evidence the reason for making payments to others.
- 13.2 Any expense claims relating to hospitality, entertainment or gifts must be submitted according to MSDP's expenses policy and the reason for expenditure must be recorded.
- 13.3 All accounts, invoices and other records relating to dealings with others (including suppliers and customers) should be prepared with strict accuracy and completeness. Accounts must not be kept "off-book" to facilitate or conceal improper payments.

13. HOW TO RAISE A CONCERN

- 14.1 If you are asked to pay a bribe in relation to MSDP business you must refuse and explain that it is MSDP's policy not to accept or pay bribes.
- 14.2 If you are offered a bribe, or asked to make one, or you believe or suspect that any bribery, corruption or other breach of this policy has occurred or may occur, **you must report the matter in line with the MSDPs Anti-Fraud Policy.**
- 14.3 Any failure to report such suspicions may lead to disciplinary procedures being instigated, including dismissal and/or legal proceedings.
- 14.4 You are encouraged to raise concerns about any issue or suspicion of bribery or corruption at the earliest possible stage.
- 14.5 The interests of a member of staff making a report will be fully protected by MSDPs Anti-fraud and Whistleblowing Policies. However, if it is found that an employee has knowingly lodged a false report against a colleague this will be regarded and treated as a serious disciplinary offence, to be dealt with in accordance with MSDP's disciplinary procedures.

14. TRAINING AND COMMUNICATION

- 15.1 MSDP shall effectively communicate the MSDP Policy and Procedures to all employees and Third Parties acting in relation to MSDP.
- 15.2 MSDP will provide training on anti-bribery and corruption for all employees.

15. MONITORING

- 16.1 MSDPs systems of internal control monitor the applications of all policies and procedures on an on-going basis.

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16.2 The MSDP Policy and Procedures shall be periodically reviewed and, particularly when MSDP enters a new jurisdiction, any updated policies will be communicated through the appropriate channels.

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Appendix I

16. CORRUPTION INDICATORS

This list is not exhaustive and the ingenuity of those involved in corruption have no boundaries:

- abnormal cash payments
- pressure exerted for payments to be made urgently or ahead of schedule
- payments being made through a third-party country - for example, goods or services supplied to country 'A' but payment is being made, usually to a shell company in country 'B'
- an abnormally high commission percentage being paid to a particular agency. This may be split into two accounts for the same agent, often in different jurisdictions
- private meetings with public contractors or companies hoping to tender for contracts
- lavish gifts being received
- an individual who never takes time off even if ill, or holidays, or insists on dealing with specific contractors himself or herself
- making unexpected or illogical decisions accepting projects or contracts
- the unusually smooth process of cases where an individual does not have the expected level of knowledge or expertise
- abuse of the decision process or delegated powers in specific cases
- agreeing contracts not favorable to the organization either because of the terms or the time period
- unexplained preference for certain contractors during tendering period
- avoidance of independent checks on the tendering or contracting processes
- raising barriers around specific roles or departments which are key in the tendering or contracting processes
- bypassing normal tendering or contracting procedures
- invoices being agreed in excess of the contract without reasonable cause
- missing documents or records regarding meetings or decisions
- company procedures or guidelines not being followed
- the payment of, or making funds available for, high value expenses or school fees (or similar) on behalf of others.