

## **Anti-corruption policy and manual**

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# Anti-corruption policy and manual

## 1 Elkem's Anti-corruption policy

Corruption prevents economic development, distorts competition and undermines both the rule of law and democratic processes. National and international law applicable to Elkem's global business activities prohibits Elkem and its employees from engaging in corruption, such as the bribery of public and/or private sector officials. Extraterritorial application of several anti-corruption regimes implies that it may not be sufficient to only observe local law when dealing abroad.

In accordance with well established principles as described in Elkem's Code of Conduct and Corporate Responsibility, Elkem has a strong commitment to operate in accordance with responsible, ethical and sound business principles and comply with all applicable laws and regulations. Elkem specifically does not permit or tolerate engagement in any form of corruption. This manual explains and elaborates the content and implications of Elkem's policy in relation to anti-corruption.

Each Elkem business unit is responsible for understanding the specific anti-corruption laws applicable to its operations, and for adopting additional anti-corruption policies and guidance as necessary to comply with those laws.

No employee should assume that it is in Elkem's interest to engage in any form of corrupt activity. Absolute compliance with Elkem's anti-corruption policy is required by all Elkem employees at all times, and no Elkem employee may authorize another Elkem employee or business partner to deviate from this policy. Any failure to comply with applicable anti-corruption law will be considered a serious breach of the employee's obligations towards Elkem and will most likely result in termination of the employment or other applicable sanctions.

## 2 About this manual

Whenever this Anti-Corruption Manual is referring to Elkem, it includes all Elkem entities and business units. This manual provides an overview of Elkem's anti-corruption policies, and explains the basic legal and ethical requirements that Elkem employees shall follow to avoid corrupt practices throughout their business activities for Elkem. It is the responsibility of each Elkem business unit to implement and enforce the policies identified in this manual. Line managers are responsible for making the policies in this manual known in their organization and promoting a culture of awareness and compliance and for monitoring compliance. Any stricter policies or instructions implemented by the respective business units applies in addition to this manual.

The policies set out in this manual are mandatory for all Elkem employees. It is also a requirement that Elkem's business units take reasonable steps under the circumstances to ensure that Elkem's independent business partners, including suppliers, customers and joint venture partners, do not engage in corruption or other illegal or unethical activities in relation to their business with Elkem.

## 3 Anti-corruption guidance and reporting

On a day-to-day basis, you should seek guidance from and direct anti-corruption inquiries to your immediate superior. You may also contact Elkem's Legal Department if you have any questions about this manual or anti-corruption law at + 47 911 98 400.

Non-compliance with anti-corruption laws and Elkem's anti-corruption policies is a serious breach of Elkem's business principles and may cause great damage to Elkem. If you have reason to believe that employees or agents representing any Elkem company have engaged in, or intend to engage in, corrupt activities this should be duly reported. Reference is made to Elkem's policy for whistle blowing:

### Whistle blowing

Should you feel that there are possible unethical issues at Elkem we would like you to report this to your superior in a responsible way. Your message of concern cannot and will not be used against you in any way. This is a consequence of Norwegian Labor Law as well as of Elkem's policy. If you find it difficult to raise the issue in your organisation directly, you can contact Elkem's Legal Department by [ole.garborg@elkem.no](mailto:ole.garborg@elkem.no) or phone +47 911 98 400.

## 4 What is corruption?

### 4.1 Legal background

International conventions and agreements of the United Nations, the World Bank, IMF, WTO, the Organization of American States, OECD and the EU oblige participating countries to implement comprehensive national legislation against corruption. Corruption is forbidden in most countries around the world. It is important to be aware that Norwegian and other national anti-corruption legislation applies regardless of in which country the acts have been carried out and regardless of whether corruption is lawful according to that country's national law. In practice, citizens and companies may be prosecuted according to national anti-corruption legislation for acts committed anywhere in the world. Notably, the US Government enforces extraterritorial jurisdiction to prosecute corrupt activities anywhere in the world pursuant to the U.S. Foreign Corrupt Practices Act (the FCPA).

### 4.2 Corruption defined

While the specifics of anti-corruption law may be different in different parts of the world, most anti-corruption laws share a common core definition of "corruption".

For the purpose of Elkem's anti-corruption policy, corruption will include any attempt to directly or indirectly (through middlemen):

- Give or offer someone an improper advantage based on position, assignment or duty (**active corruption**), or
- Demand, receive or accept an offer to receive an improper advantage based on position, assignment or duty (**passive corruption**).

Examples of corruption:

Bribing an official to obtain a contract is corruption. Corruption may also include activities such as paying for illegitimate or unlawful travel or entertainment expenses for officials or their family members; agreeing to purchase goods or services from officials or their friends or family members in return for favors; or donating to a charity linked to an official in expectation of a benefit from that official.

Improper advantage:

Whether an advantage or a benefit is improper will depend on concrete judgment, where several factors may be relevant such as: the nature of the benefit, the position of the recipient, the relationship between the parties and the specific context in which the benefit is being provided. Any benefit provided in return for the misuse of the receiver's position, task or assignment will generally be considered an improper advantage. Do note that an advantage can be improper even if no benefit is provided in return. An improper advantage will usually be a benefit in the form of cash or objects with economic value, but may also include benefits without economic value. Personal benefits provided in relation to the recipient's position, task or assignment, such as services carried out for free or with a discount, invitations to otherwise private organisations or clubs may easily be regarded as improper. Benefits in exchange for, or benefits that constitute, a breach of statutory or contractual obligations, such as the receipt or delivery of proprietary information, will by its nature easily be considered an improper advantage in regard to anti-corruption law. Benefits exchanged in relation to discretionary acts and lack of transparency associated with granting of a benefit should be red flags for a potential improper advantage.

Facilitation payments:

Facilitation payments are payments to secure the performance of routine governmental acts ordinarily performed by lower level officials, such as issuing non-discretionary permits, processing visas and other papers, providing utility service, loading and unloading cargo, or protecting perishable products or commodities from spoilage. Routine governmental acts do not include decisions where the government official has legal discretion on how he or she will act on the issue at hand. In accordance with applicable anti-corruption legislation, Elkem has a general policy against facilitation payments. This is further described in section 5.5 below.

Trading in influence:

Trading in influence is an offer of an improper advantage to, or acceptance to receive an offer by, someone who has the ability to influence the performance of a position, assignment or duty. Trading in influence is a particular offence similar to corruption and falls within Elkem's anti-corruption policy.

Public and private sector payments prohibited:

Some anti-corruption laws focus mainly on corrupt payments to officials of governmental or public sector entities. However, several national regimes, including the Norwegian Penal Code, prohibit corrupt payments to any person, including public officials and executives, employees or agents of private sector companies. Elkem's anti-corruption policy prohibits corrupt activities of any type, whether those activities are related to a position, assignment or duty within public or private sector.

Liability for corrupt acts of affiliates or representatives:

Corruption may also include payments made by subsidiaries, affiliates, agents or others acting on behalf of the parent company or as part of the parent company.

Accurate accounting:

Anti-corruption law requires that Elkem has in place effective internal accounting control and maintains books and records that accurately reflect the companies' transactions. All entities within the group must correctly account for income and expenditures and must ensure that payments are not recorded falsely in company books.

Misreporting or omitting any subsidiary's or affiliate's payments in the parent company's consolidated accounts on knowledge or even suspicion of these payments being bribes may in itself be a breach of anti-corruption law by the parent company. This does not mean that accurately reporting bribes will somehow make them legal, but that the misreporting of such payments in an effort to conceal them is itself a violation.

### **4.3 Consequences of non-compliance**

The potential consequences of non-compliance with applicable anti-corruption laws are substantial:

- Companies have been subjected to hundreds of millions of USD of fines, penalties and government-ordered compliance costs as a result of corruption allegations. And in Norway the same number has been imposed in NOK.
- Companies may be prohibited from doing business in certain countries or industries, with certain governments or from participating in public tenders.
- Companies may be liable for damages claims by third parties disadvantaged by the corrupt activity, such as competitors who may have lost business.
- Corruption often results in negative publicity which can do tremendous damage to a company's reputation and business relationships.
- The mere decision by relevant authorities to initiate investigation of a suspected anti-corruption infringement may cause serious harm to the involved party's reputation and business interests and trigger substantial costs.
- Individuals involved in corrupt activities may be subject to criminal sanctions, including fines, imprisonment, and in certain jurisdictions even corporal punishment.

## **5 Relations with customers, suppliers and public officials**

### **5.1 General principles**

Elkem shall act in an open, ethical and lawful manner towards all potential or existing customers, suppliers, and public officials.

In addition to following Elkem's anti-corruption guidelines in their dealings with customers, suppliers and public officials, employees must also verify whether applicable customer, supplier or public body anti-corruption policies require additional precautions to ensure compliance with the anti-corruption policies of such parties.

Elkem shall always perform its contractual obligations in accordance with the terms of the relevant contract unless exceptions are approved by authorized line management and properly documented in company records.

Payments without transparent receipts or payments to unconfirmed recipients or account numbers shall not be accepted. Payment for all sales and marketing activities, including coverage of third parties' expenses, and payment for contract performance on behalf of Elkem shall be open and transparent internally and vis-à-vis Elkem's counterparties. Any invitation for individuals to participate in events or activities fully or partly paid by Elkem shall be addressed to the appropriate management level within the relevant legal or public entity. Special caution must be exercised in relation to public officials and in situations where the recipient at the time is in a

particular position to make a discretionary decision or act that could be beneficial to Elkem. Elkem employees must consult their supervisor if there is any doubt whether particular marketing or service activities conform to Elkem's or relevant third party's anti-corruption policies.

All expenses shall be approved under standard company procedures and documented and recorded in accordance with appropriate accounting standards.

Under no circumstances may any Elkem employee receive or provide any kind of improper benefit from or to a supplier or business partner, including personal rebates, kickbacks, undocumented discounts, etc. Elkem companies must take reasonable steps under the circumstances to ensure that Elkem's business partners, including suppliers, do not engage in corrupt activities or other illegal or unethical activities. Elkem employees who suspect that independent business partners are involved in corrupt activities must report and seek advice in the matter according to the procedures referred to in section 3; Anti-Corruption Guidance and Reporting.

## **5.2 Travel and entertainment expenses**

Payment for reasonable and true expenditures for seminars, travel, meals, lodging and entertainment for potential or existing customers may be permissible if those expenditures are directly related to the promotion, demonstration or explanation of Elkem's products or services or the performance of a contract. The principles in section 5.1 above apply correspondingly for Elkem's payment for the participants' expenses. In addition, such payments:

- Must be directly related to true marketing, business development or contract performance expenses.
- May not be provided, or appear to be provided, in expectation of or return for any personal benefit.
- Must be reasonable in amount, and appropriate under the circumstances.
- Must be verified through reasonably detailed documentation of actual expenses, including receipts and explanations of the payments' purposes and the legitimate business reasons for them.
- Must be in line with the receiver's company policy and provided in an open and transparent manner.

Payment of travel, meal, lodging or entertainment expenses for family members or friends of government or business officials is not permitted.

## **5.3 Gifts**

While exchanging gifts with customers, suppliers and business partners is a customary part of international business, under no circumstances should Elkem offer gifts in cash. Gifts other than cash may be permitted, however, they:

- Must be of minimal economic value, infrequent in nature and clearly appropriate under the circumstances.
- Must not be given in a context or a way where there are reasons to suspect that the recipient will keep such gift or benefit hidden from his or her superiors, e.g. gifts should be addressed to the recipient's working address at the relevant legal or public entity.
- Must not be provided in return for any benefit.

## **5.4 Political contributions**

Political contributions, such as contributions to the political campaign or fundraising efforts of public officials in support of their ability to run for office may be viewed differently under the laws of the countries in which Elkem does business. Additionally, such contributions may have a potential impact on Elkem's corporate image. Such contributions must therefore be approved in advance by Elkem. Requests for approval should be directed to Elkem's Legal Department. If such contributions are approved, they must be provided in an open and transparent manner in compliance with all applicable laws and accounting principles.

## **5.5 Facilitation payments**

"Facilitation payments", as further explained in section 4 above, are payments to secure the performance of routine governmental acts and do not include discretionary decisions or acts. In accordance with applicable anti-

corruption legislation, Elkem has a general policy against facilitation payments and does not justify facilitation payments merely because it is customary or advantageous in the circumstances.

In certain extortion-like situations facilitation payments *may* be necessary and justifiable in order to avoid a significant harm to Elkem's values or legitimate business interests. This will have to be assessed in the specific circumstances at hand, but will generally not include any of the following:

- Payments of significant amounts.
- Payments made repeatedly to the same officials, or
- Payments of a type and nature which is treated as illegal by national law enforcement authorities.

Facilitation payments should be distinguished from situations of true extortion, e.g. a direct threat of an unlawful and harmful act *vis-à-vis* Elkem's property in a situation that Elkem could not foresee and where Elkem is not able "to turn its back and walk away from the situation". Further, necessary payments to ensure personal health or safety are generally legitimate as an act of necessity.

Any payments related to facilitation payments or extortion shall, when possible, be properly authorised in advance through line management in consultation with Elkem's Legal Department and shall always be documented and recorded in accordance with normal company accounting and control procedures.

## **6 Relations with agents and other representatives**

Elkem does not tolerate corrupt activities undertaken by its agents or representatives.

Agents and other representatives acting on behalf of Elkem ("agents") shall uphold the same standards of anti-corruption compliance as Elkem. Elkem entities shall always undertake due care and take appropriate steps to ensure that Elkem's agents comply with Elkem's anti-corruption standards. The requirement of due care will vary depending on the circumstances, but will always include the following steps:

- Conducting a documented due diligence screening of potential agents before engagement.
- Formalising the engagement by a written contract including a clear description of the agent's performance of work, provisions prohibiting corrupt activities and appropriate monitoring mechanisms.
- Ensuring that the payment for the services rendered is reasonable in relation to the services to be performed. The methods of payment shall be transparent and in accordance with applicable law and good business standards. Payments in cash and payments to third parties are generally not permissible. Any payments to foreign accounts must be treated with utmost caution and appropriate verification must be obtained to ensure that Elkem does not contribute to tax evasion, corruption, fraud or other illegitimate business practices.
- A reasonable level of follow-up to ensure that agents are fulfilling their obligations in this area.

The risk of possible corruption issues is generally higher in countries with less government and corporate transparency and in cases where an agent is the Elkem entity's sole representative in a particular area. The risk may also depend on the services rendered by the agent, e.g. advisors interacting with local authorities, lobbying and closing of high value sale contracts may be considered to be especially exposed.

## **7 Relations with minority-owned companies, joint ventures and M&A**

Prior to any merger or acquisition of another company, Elkem companies must perform thorough due diligence research to rule out any outstanding anti-corruption liabilities. Similarly, before entering into partnerships, Elkem entities shall always undertake due care and take appropriate steps to ensure that Elkem's partners uphold, and that the contemplated partnership will uphold the same standards as Elkem in relation to anti-corruption. The requirement of due care will vary depending on the circumstances, but will always include:

- Conducting a documented due diligence screening of potential partners before entering into any partnership.
- Formalising the partnership by a written contract, including provisions prohibiting corrupt activities and appropriate monitoring mechanisms.

Elkem entities must exercise special care when entering into joint ventures or other partnerships with local entities mandated by national law. Such partnerships may involve payments by the local company to persons or entities with close ties to the government. Elkem entities contemplating involvement in such partnerships must first guard against any improper payments or any perception of improper advantage which may derive as a result of the contemplated partnership.

Elkem shall use its influence in minority-owned affiliates and joint ventures to prevent or discourage corrupt activities by those entities in accordance with the policies in this manual.

It is particularly important that any financial information included in Elkem's books and records are audited and confirmed as not containing any inaccurate information. Prior to relying on or including any affiliate information in any Elkem report or statement, Elkem employees shall take all reasonable steps under the circumstances to confirm that such information is accurate and complete.

## **8 Receipt of acknowledgement**

All employees in the target group must sign the below receipt of acknowledgement to confirm that they have read and understood the Elkem Anti-corruption policy and manual. The employee's immediate superior is responsible for this action. After the receipt is signed it must be forwarded to the local HR-department. The local HR-department is responsible for filing the receipt in accordance with the company's standard. In Elkem locations with no local HR the manager is responsible for filing the receipt.

### **RECEIPT OF ACKNOWLEDGEMENT for Elkem Anti-corruption Policy and Manual**

I hereby confirm that

- I have read and understood the Elkem Anti-corruption policy and manual R03
- I also confirm that I have completed the Elkem Anti-corruption e-learning program.

I further undertake to comply with the procedures and guidelines described in the Elkem Anti-Corruption Policy and Manual R02.

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Date

Employee name (in capital letters) and signature

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Elkem unit and country

## **9 E-learning**

All employees in the target group must complete an e-learning course on anti-corruption. The course is found here <http://ackurs.elkem.com/>

## 10 Target group

The target group is:

- Corporate management
- Division management teams
- Finance:
  - ✓ Divisional finance people
  - ✓ Plant finance managers & controllers
  - ✓ Treasury and credit management personnel
  - ✓ Corporate business support personnel
- Technology:
  - ✓ Management team / department leaders
  - ✓ All project managers
  - ✓ All managers in research and product development
- Sales and marketing:
  - ✓ All personnel
- Procurement:
  - ✓ All personnel
- Production managers
- General managers of subsidiaries
- Key managers in logistics/supply chain/raw materials