



**AFP**  
AUSTRALIAN FEDERAL POLICE



**ASIC**

Australian Securities & Investments Commission

**Memorandum of Understanding  
between the  
Australian Federal Police**

**and**

**Australian Securities and Investments  
Commission**

**on collaborative working arrangements**

## 1. Participants

1.1 The Participants to this Memorandum of Understanding (MOU) are the:

- Australian Federal Police (AFP)
- the Australian Securities and Investments Commission (ASIC)

## 2. Purpose

2.1 This MOU:

- sets out the agreement between the AFP and ASIC in relation to cooperation on law enforcement issues and the exchange of information between the participants
- establishes the overall framework, mutual objectives and principles as agreed by the participants.

2.2 Nothing in this MOU is intended to create a legally binding relationship between the participants.

## 3. Interpretation

3.1 Unless a contrary intention is stated, the acronyms and terms used in this MOU have the following meanings:

<b>AFP</b>	Australian Federal Police
<b>AFP Act</b>	<i>Australian Federal Police Act 1979 (Cth)</i>
<b>Annex</b>	An annex to this MOU made in accordance with Clause 6 of this MOU.
<b>ASIC</b>	Australian Securities and Investments Commission
<b>Attachment</b>	A document (e.g. schedule, list, pro forma etc.) authorised by the participants to be part of this MOU and be revoked or varied in accordance with 11 of this MOU.
<b>Authorised Delegate</b>	AFP National Manager Crime Operations may vary this MOU and may delegate the authority to vary this MOU to AFP Manager Fraud and Anti-Corruption.  ASIC Chairperson may vary this MOU and may delegate the authority to vary this MOU.
<b>MOU</b>	Memorandum of Understanding

#### 4. Roles of the participants

- 4.1 The AFP provides police services as described in Section 8 of the *Australian Federal Police Act 1979* (Cth). The AFP, in the performance of its functions under the AFP Act, is responsible for safeguarding Commonwealth interests and investigating serious and complex crime against the Commonwealth.
- 4.2 ASIC is a regulatory agency created by the *Australian Securities and Investments Commission Act 2001* and charged with promoting market integrity and consumer protection across the financial services sector. It is responsible for the general administration and enforcement of the *Corporations Act 2001* and other legislation.

#### 5. Duration

- 5.1 This MOU will commence on the date the last signature is affixed, and operate until terminated in accordance with Clause 12.1 of this MOU.

#### 6. Annexes

- 6.1 This MOU establishes the framework for the relationship between the participants. Annexes relating to specific areas of operation may be developed by the parties and will form part of this MOU when agreed in accordance with this clause.
- 6.2 An annex is taken to be agreed under this MOU if it is signed by an authorised delegate from both participants.
- 6.3 An annex becomes effective from the last date of signing unless expressly stated otherwise in the annex, and will operate until terminated in accordance with the termination provision in that annex.
- 6.4 All annexes cease effect from the date this MOU is terminated in accordance with Clause 12.1.

#### 7. Information exchange

- 7.1 The participants will exchange information, including intelligence, relevant to meeting the objectives of this MOU. More detailed arrangements for information exchange may be outlined in annexures under this arrangement.
- 7.2 The participants will exchange information pursuant to this MOU in accordance with relevant Australian law relating to privacy and secrecy.
- 7.3 The participants will protect any information provided by the other participants from unauthorised access or disclosure.

- 7.4 The participants will comply with any conditions, restrictions or caveat imposed by the other party in respect of the handling or disclosure of information in accordance with the relevant legislation.
- 7.5 An employee of either participants authorised to have access to information or intelligence under this MOU may not record, divulge or communicate such information except in the performance of the employee's official duties and for the purposes for which the information was provided.
- 7.6 The participants will not disclose information obtained under this MOU to a third party without the written consent of the information provider.
- 7.7 If information provided by a participant becomes the subject of a subpoena, Freedom of Information Act request, or other compulsory process, the other participant will immediately notify the providing participant to enable the providing participant to take any action it considers necessary relating to the release, disclosure, publication or production of such information.
- 7.8 It is intended that the confidentiality obligations in this clause survive the termination of this MOU.

## 8. Communication, policy and media strategy

- 8.1 The participants agree that maintaining open lines of communication is essential to maintaining an effective relationship.
- 8.2 Briefs to Ministers on operational matters involving both participants should be the subject of consultation prior to submission.
- 8.3 Each participant agrees to consult the other participant on any proposed legislative changes that may have impact on the other participant before seeking approval for the proposed legislative change from Ministers.
- 8.4 Where both participants are involved in a matter of media interest, media statements should be the subject of consultation prior to release. Where it is unclear as to who is the lead agency in a matter, the participants will agree on a case by case basis as to which participant shall be the lead agency for media purposes. The participants agree that contributions provided by each participant shall be reflected in any media release.

## 9. Legal and financial liabilities

- 9.1 This MOU does not establish any legal liabilities between the participants. Any legal liability arising from action under this MOU will be dealt with according to law, legislation and/or other instruments intending to establish a legal relationship.

9.2 The participants will liaise with each other over any legal liabilities or other legal issues arising from action under this MOU.

## 10. Dispute resolution

10.1 For any matter in relation to this arrangement that may be in dispute between the participants, the participants will attempt to resolve the matter at the workplace level, including, but not limited to:

- the participants or their representatives meeting and conferring on the matter
- if the matter is not resolved at such a meeting, the participants arranging further discussions involving more senior levels of management meeting and conferring on the matter until such time as the matter is resolved.

## 11. Variation and review

11.1 It is important that this MOU and its annexes remain consistent, relevant and current. The participants will review this MOU and annexes on a two yearly basis, and in the event any issue arises.

11.2 Should either participant seek to vary this MOU, the participants will negotiate in good faith.

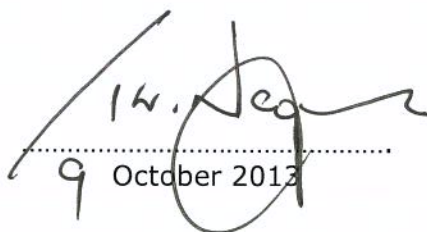
11.3 This MOU may be varied at any time by agreement in writing and signed by persons holding the offices of the original signatories, or their authorised delegates as defined in Section 3.1 of this MOU.

## 12. Termination

12.1 Either party may terminate this MOU without reason by giving the other party 60 days notice in writing.

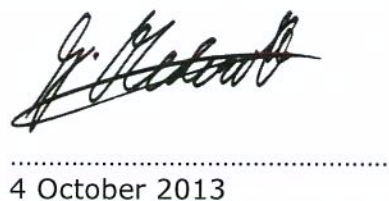
12.2 Termination does not affect liabilities and obligations separately established by law and legislation.

SIGNED for and on behalf of the  
Australian Federal Police by  
T.W. Negus APM, Commissioner



9 October 2013

SIGNED for and on behalf of the  
Australian Securities and Investments  
Commission by  
Greg Medcraft, Chairman



4 October 2013

## Annex A

### **Coordination of interagency information sharing and corporate economic crime expertise to evaluate and investigate foreign bribery allegations**

1. This annex forms part of the Memorandum of Understanding (MOU) between the Australian Federal Police (AFP) and the Australian Securities and Investments Commission (ASIC) on collaborative working arrangements.
2. The agreed principles and arrangements in this annex are intended to clarify the respective responsibilities of the participants in relation to enforcement of Australian laws relating to bribery of foreign public officials (Foreign Bribery).

#### **Objective**

3. To support a whole of government approach towards Australia's implementation of the Organisation of Economic Cooperation and Development (OECD) *Convention on Combating Bribery of Foreign Public Officials in International Business Transactions*.

#### **Agreed principles**

4. The AFP is the primary law enforcement agency with responsibility for the investigation of offences against the *Criminal Code 1995 (Cth)* (Code), including Division 70 – Bribery of foreign public officials.
5. ASIC is the primary regulatory agency with responsibility for the investigation of *Corporations Act 2001 (Cth)* (Corporations Act) breaches, including conduct by Australian corporations and their directors, officers and auditors who action, direct, authorise, facilitate or fail to prevent breaches of the Corporations Act relating to Foreign Bribery.

6. Participants recognise that both the Code and, in limited circumstances, the Corporations Act, contain provisions requiring consideration when evaluating or investigating Foreign Bribery allegations.
7. Participants acknowledge that where there is sufficient evidence to meet the criminal threshold, Code offences will take precedence over Corporations Act breaches not least because potentially relevant Corporations Act provisions:
  - are ancillary provisions which do not necessarily reflect the true seriousness of Foreign Bribery;
  - carry much lower penalties; and,
  - will not arise in all cases of Foreign Bribery.
8. Participants undertake to notify each other upon receipt of a new Foreign Bribery referral where it can reasonably be expected that the jurisdiction of both participants may be engaged. When consulting in such circumstances, the participants agree to make their relevant subject experts available to contribute to the discussion, evaluation process and/or investigation planning. At this time, appropriate consideration will also be given to the following options:
  - an independent investigation led by AFP focused on offences against the Code and subsidiary Corporations Act contraventions which form part of the conduct where separate action by ASIC would be inefficient or of minimal utility, or both;
  - a joint agency investigation into breaches of both the Code and Corporations Act;
  - an independent investigation led by ASIC focused on Corporations Act breaches where they are central to the conduct or if action under the Code is not practicable, or both; or
  - alternate regulatory or compliance action.

A participant may at any time, including during an investigation, request information from the other participant that may be relevant to the requesting participant's jurisdiction.

9. In addition to the options outlined above, during the evaluation and investigation of Foreign Bribery matters participants will endeavour to collect and share information that may inform or enhance joint agency initiatives in the area of training, detection and prevention.
10. Nothing in this MOU removes each participant's decision maker's responsibility to decide whether to take action or not in respect of each referral, with regard to their respective organisation's strategic goals and prioritisation thresholds that would normally apply. This annex provides a framework and recording mechanism, through the AFP hosted Fraud and Anti-corruption Centre, for accountable and transparent evaluations and considerations arising from those referrals.
11. Participants recognise that matters accepted for investigation should be the subject of ongoing review. These reviews should be conducted jointly or in consultation with the other participant, and may identify a requirement to vary the investigation plan and objectives from the original evaluation process. Any AFP review will be conducted in line with the Australian Government Investigation Standards (AGIS).

#### **Referral process and considerations**

12. Referrals from ASIC to the AFP, including where the participants may have consulted pursuant to clause 8 of this annex, should comply with the standard procedures for Australian Government department or agency referrals to the AFP as outlined on the external AFP website. For initial enquiries or pre-referral advice specific to Foreign Bribery matters, ASIC should contact the AFP Fraud and Anti-Corruption Centre based in Canberra via email address 'NAT-CO-FAC-Coordination@afp.gov.au'.
13. Referrals from the AFP to ASIC, including where participants may have consulted pursuant to clause 8 of this annex, should be directed to Senior Executive Leader, Markets Enforcement, ASIC.



14. Where practical, and following receipt of sufficient material to conduct a referral evaluation, the referring participant will be advised within 28 days of the evaluation outcome, or if the evaluation is not complete, interim advice or expected timeframes for completion.
15. In the case of rejected referrals, the evaluating participant will provide advice outlining the reason(s) for rejection. Where appropriate, alternative methods for handling the matter will be proposed.
16. Where a participant has referred a matter to the other participant and it has been accepted for investigation, the referring participant will not knowingly take any action which may compromise the investigation without prior consultation with the other participant.
17. Participants will ensure that all matters accepted for investigation are the subject of appropriate investigation planning. All AFP investigation planning will be consistent with AGIS.
18. Each matter that the participants agree to investigate jointly will be the subject of a separate formal Joint Agency Agreement consistent with the attached template (refer to Attachment A).
19. Following finalisation of a Foreign Bribery investigation, the receiving participant will provide feedback to the referring participant on lessons learnt or emerging issues which may inform:
  - best practice in the area of investigative methodologies;
  - community and/or Government education and training requirements;
  - deficiencies in policy and legislation; and
  - risk management strategies.

This section does not preclude immediate or remedial action being taken during the course of an investigation if deficiencies are identified.

**Variation and review**

20. This annex or any attachment to it may be varied at any time by agreement in writing and signed by persons holding the offices of the original signatories or by their authorised delegates.

**Termination**

21. Either participant may terminate this annex without reason by giving the other participant sixty days notice in writing.

22. This annex and its attachments terminate when the MOU terminates without a succeeding head MOU being established to continue this annex.

23. Termination does not affect liabilities and obligations separately established by law and legislation.

SIGNED for and on behalf of the  
Australian Federal Police by  
T.W. Negus APM, Commissioner

SIGNED for and on behalf of the  
Australian Securities and Investments  
Commission by  
Greg Medcraft, Chairman



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9 October 2013



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4 October 2013

**Attachment A**

Opportunities for concurrent or joint agency investigations relating to foreign bribery and related company and director conduct			
	AFP	ASIC	Possible outcomes
Same or different companies within the same factual matrix	Criminal Code offence	Corporations Act – criminal offence	<ol style="list-style-type: none"> <li>1. a joint investigation into the same individuals and possible joint brief to the CDPP;</li> <li>2. an independent investigation by the AFP; and/or</li> <li>3. an independent investigation by ASIC for Corporations Act criminal offence, into the same or different individuals.</li> </ol>
Same or different companies within the same factual matrix	Criminal Code offence	Corporations Act – civil penalty	<ol style="list-style-type: none"> <li>1. a joint agency investigation (i.e. AFP criminal, ASIC civil) into the same individuals; or</li> <li>2. an independent criminal investigation by the AFP; and/or</li> <li>3. an independent civil investigation by ASIC, into the same or different individuals.</li> </ol>
Same or different companies within the same factual matrix	Criminal Code offence	Corporations Act – administrative action (e.g. banning a company Director)	<ol style="list-style-type: none"> <li>1. a joint agency investigation (i.e. AFP criminal, ASIC administrative) into the same individuals; or</li> <li>2. an independent criminal investigation by the AFP; and/or</li> <li>3. administrative or compliance action by ASIC, into the same or different individuals.</li> </ol>

Note: Given ASIC's legislative coercive powers, where a criminal prosecution by the AFP or ASIC proceeds in parallel to any ASIC civil or administrative matter, case law suggests there is a risk of a temporary or permanent stay being ordered by the relevant court or courts. As such, when working collaboratively and planning a way forward on matters, the parties should be mindful of this risk and liaise with the CDPP as appropriate.