The South African National Roads Agency SOC Limited

Anti-Fraud and Corruption Policy
THE SOUTH AFRICAN NATIONAL ROADS AGENCY SOC LIMITED

Anti-Fraud and Corruption Policy

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1. INTRODUCTION

The purpose of fraud and corruption prevention measures within the South African National Roads Agency SOC Limited (“SANRAL”) is to manage the susceptibility to related risk with a view to eliminate it, and to raise the level of fraud awareness among employees and other stakeholders. Fraud and corruption prevention is a process that is intended to eliminate the risk of fraud and, upon the occurrence of a fraud, to ensure detection and provide contingency plans that will protect the interests of SANRAL, where possible, and result in successful prosecution of the offender.

Fraud prevention strategies must be integrated into and synchronized with overall business strategies and policies, and comply with relevant legislation and government initiatives.

In this policy document and where the context lends itself, the word ‘fraud’ or ‘crime’ should be read to include white-collar crimes such as fraud, corruption, bribery, theft, maladministration, misrepresentation or any other dishonest activities of a similar nature.

2. POLICY STATEMENT

SANRAL is committed to protecting its reputation, revenue, expenditure and assets from any attempt by any person to gain financial or other benefit in an unlawful, dishonest or unethical manner. Fraud, corruption, theft, bribery, maladministration, misrepresentation or any other dishonest activities of a similar nature will not be tolerated. Incidents and suspicions will be investigated and treated with the application of the full extent of the law.

In implementing the anti-fraud and corruption policy:

SANRAL is instituting and maintaining an anti-fraud environment

- SANRAL will not tolerate crime within SANRAL nor within the organisations with whom we interact
- A Fraud and Corruption Prevention Plan has been implemented throughout SANRAL
- Fraud elimination is a concern of all governing and independent structures
- SANRAL acknowledges the contribution of all employees and stakeholders who assist in the combating of fraud and in the prosecution of fraudsters.

SANRAL understand and manage our risks

- Our fraud and corruption risks are reviewed regularly
- Cognisance to fraud risk is given in all procedural implementations and changes
- Internal controls and audit measures are in place to identify and manage fraud risk.
**SANRAL** is proactive in defending its assets

- SANRAL actively and continuously searches for evidence of fraud and corruption through appropriate prevention and detection mechanisms
- SANRAL monitors direct and indirect losses incurred due to fraud, through effective information and communication
- SANRAL encourages the practice of well-intentioned whistle-blowing and have implemented the Tip-Offs Anonymous external service.

**SANRAL** reacts swiftly when a crime is uncovered

- This policy applies to any actual or suspected fraud, corruption or theft or irregularities of a similar nature, involving the following persons or entities:
  - All employees of SANRAL
  - All members of the various governing structures of SANRAL, including the Board.
  - Consulting engineers, contractors, other service providers, suppliers and their employees.

The term ‘employee’ may be used in this Policy, the Prevention Plan and the Response Plan, to encompass any of the above persons or entities, within the right context.

3. **DEFINITIONS**

- **Audit and Risk Committee (ARC)**: a subcommittee of the Board established in terms of the Companies Act, 2008

- **Companies Act**: provides for the incorporation, registration, organization and management of companies, the capitalization of profit companies, and the registration of offices of foreign companies carrying on business within the Republic; to define the relationships between companies and their respective shareholders or members and directors; to provide for equitable and efficient amalgamations, mergers and takeovers of companies; to provide for efficient rescue of financially distressed companies; to provide appropriate legal redress for investors and third parties with respect to companies; to establish a Companies and Intellectual Property Commission and a Takeover Regulation Panel to administer the requirements of the Act with respect to companies, to establish a Companies Tribunal to facilitate alternative dispute resolution and to review decisions of the Commission; to establish a Financial Reporting Standards Council to advise on requirements for financial record-keeping and reporting by companies; to repeal the Companies Act, 1973 (Act No. 61 of 1973) and make amendments to the Close Corporations Act, 1984 (Act No. 69 of 1984), as necessary to provide for a consistent and harmonious regime of business incorporation and regulation; and to provide for matters connected therewith.

- **Corruption**: is the misuse of entrusted power for private gain
• **Financial Intelligence Centre Act, (FICA):** establishes a Financial Intelligence Centre and a Counter-Money Laundering Advisory Council in order to combat money laundering activities and the financing of terrorist and related activities; to impose certain duties on institutions and other persons who might be used for money laundering purposes and the financing of terrorist and related activities; to clarify the application of the Act in relation to other laws; to provide for the sharing of information by the Centre and supervisory bodies; to provide for the issuance of directives by the Centre and supervisory bodies; to provide for the registration of accountable and reporting institutions; to provide for the roles and responsibilities of supervisory bodies; to provide for written arrangements relating to the respective roles and responsibilities of the Centre and supervisory bodies; to provide the Centre and supervisory bodies with powers to conduct inspections; to regulate certain applications to Court; to provide for administrative sanctions that may be imposed by the Centre and supervisory bodies; to establish an appeal board to hear appeals against decisions of the Centre or supervisory bodies; to amend the Prevention of Organised Crime Act, 1998, and the Promotion of Access to Information Act, 2000; and to provide for matters connected therewith.

• **Fraud:** is the unlawful and intentional making of a misrepresentation which causes actual and or potential prejudice to another

• **Prevention and Combating of Corrupt Activities Act, (PCCA):** provides for the strengthening of measures to prevent and combat corruption and corrupt activities; to provide for the offence of corruption and offences relating to corrupt activities; to provide for investigative measures in respect of corruption and related corrupt activities; to provide for the establishment and endorsement of a Register in order to place certain restrictions on persons and enterprises convicted of corrupt activities relating to tenders and contracts; to place a duty on certain persons holding a position of authority to report certain corrupt transactions; to provide for extraterritorial jurisdiction in respect of the offence of corruption and offences relating to corrupt activities; and to provide for matters connected therewith.

• **Protected Disclosures Act, (PDA):** makes provision for procedures in terms of which employees in both the private and the public sector may disclose information regarding unlawful or irregular conduct by their employers or other employees in the employ of their employers; to provide for the protection of employees who make a disclosure which is protected in terms of this Act; and to provide for matters connected therewith.

• **Public Finance Management Act, (PFMA):** regulates the management of finances in national and provincial government. It sets out the procedures for efficient and effective management of all revenue, expenditure, assets and liabilities.
4. PURPOSE

The purpose of the policy is:

- To prevent and respond to any fraud and/or crime that could hinder SANRAL’s business; and
- To ensure that SANRAL’s policies and practices comply with applicable legislation.

5. LEGISLATIVE FRAMEWORK

Government has recognised that public sector entities must proactively combat fraud and corruption and to this end has ensured that these entities fall into the ambit of various anti-crime legislation and initiatives, including, but not limited to:

- The Public Finance Management Act (PFMA), No 1 of 1999 and regulations
- The Prevention and Combating of Corrupt Activities Act (‘PCCA’), No 12 of 2004
- The Companies Act, No 71 of 2008
- The Financial Intelligence Centre Act (FICA), No 38 of 2001
- The Protected Disclosures Act (‘PDA’), No 20 of 2000
- Cabinet’s approval in January 2002 of the Public Service’s Anti-Corruption Strategy, which requires that all departments in the Public Service (including the entities listed in Schedule 3 of the PFMA) establish a Minimum Anti-Corruption Capacity (‘MACC’).

SANRAL embraces these requirements by including compliance therewith as a crucial aspect of this policy. This specifically includes the MACC requirements which have been addressed in the Fraud and Corruption Prevention Plan.

Chapter 9(A) of the Companies Act, No. 71 of 2008, details the offences and penalties including those of breach of confidence, falsification of statements, reckless conduct, non-compliance etc.

6. SCOPE/POLICY DETAIL

This policy addresses the crimes of fraud and corruption as defined in the following paragraphs.

Fraud

Fraud is the unlawful and intentional making of a misrepresentation which causes actual and or potential prejudice to another”. Fraud includes all activities involving dishonesty and deception that steal value from SANRAL.

Fraud includes (this is not an exhaustive list):

- Theft of money or other assets through misrepresentation or deception of any nature (i.e. fraud)
- Theft of money, consumables or assets of any nature, including intellectual property
Misconduct in the handling or reporting of cash or financial transactions
Misrepresentation of qualifications
Misrepresentation of timesheets
Making profit from inside knowledge
Disclosing confidential information to outside parties without proper authorisation
Acts of financial misconduct contemplated in terms of Section 83 and 85 of the PFMA.

The potential sources of fraud include employees in management and other positions within SANRAL, persons acting within governing structures, employees of consulting engineers, suppliers and other service providers and employees and owners of construction companies providing goods and services to SANRAL.

Corruption

Corruption is the “the misuse of entrusted power for private gain”. It differs from fraud in that both parties are involved knowingly, and both benefit in some way from the action.

The Prevention and Combating of Corrupt Activities Act, No 12 of 2004 (PCCA) came into existence on 27 April 2004.

The following list constitutes instances of corrupt activities which list by its nature is not exhaustive:

- Exercising special treatment in the awarding of tenders
- Manipulating the procurement process
- Disclosure of confidential information by an employee about his/her company/department
- Manipulating the value of assets
- Being influenced in the allocation of public funds
- Performing favours for relatives, friends, colleagues and government officials
- Averting the legal consequences of unlawful acts or omissions
- Avoiding compliance with laws and regulations.

Protected Disclosures

The Protected Disclosures Act, 26 of 2000, makes provision for the protection of employees who make a disclosure that is protected in terms of this Act.

Any disclosure made in good faith and substantially in accordance with any reporting procedure prescribed by SANRAL is a protected disclosure under this Act. An employee making such a protected disclosure is protected from being subjected to any occupational detriment because of the protected disclosure.

Any employee or other stakeholder who suspects or reports suspected dishonest activity or such activity which he/she witnessed, should be afforded the opportunity to remain anonymous should this be his/her wish.
It is the responsibility of every employee of SANRAL to report all incidents of fraud, corruption, theft and maladministration or any other dishonest activities of a similar nature to his/her manager, the Risk Officer or the CEO either directly or through the whistle-blowing facility.

All information relating to irregularities will be treated as highly confidential. The investigation will be handled in a confidential manner and no information will be disclosed or discussed with any person other than those who have a legitimate right to such information. This is to avoid damage to the reputation of a suspect who is, subsequent to an investigation, found innocent of wrongful conduct.

No information with regard to the issues covered within this policy may be shared with any external parties or the media without the express permission of the CEO.

S159 of the Companies Act, No 71 of 2008 also establishes the protection of whistle-blowers.

**Reporting Requirements**

Various pieces of legislation and regulations create reporting duties that must be complied with and which, inter alia, sanction disciplinary action or criminal prosecution with non-compliance.

Legislation/regulations imparting reporting duties include:

- FICA (section 29)
- PCCA (section 34)
- The Public Service Code of Conduct
- Common law requirements governing the employer – employee relationship.

It is important to understand that an employee does not have to be involved in the commission of a crime for the reporting duty to apply. Knowledge or suspicion of criminal conduct triggers the reporting duty. Furthermore, these triggers are not confined to a definite proof of criminal activity; when somebody “ought to have known or suspected” a criminal action, the reporting duties also apply. Thus, willful blindness and negligence in failing to detect or report an obvious irregularity will also be punishable.

*The reporting duty in terms of FICA*

In terms of section 29 of FICA anybody who knows or suspects that a transaction of his employer is being used to launder money, must report the knowledge or suspicion to the Financial Intelligence Centre.

*The reporting duty in terms of the PCCA*

Section 34 of the PCCA stipulates that any person in a position of authority who knows or ought reasonably to have known, or suspects that another person has committed:

- Corruption or
- The offences of theft, fraud extortion, forgery or uttering of a forged document, involving R100 000 or more must report such knowledge or suspicion or cause same to be reported to a police official.
In terms of Section 34 (2) of the PCCA, failure to comply with this obligation will constitute an offence. Provision is made for a sentence of not exceeding 10 years in the case of a High Court, whereas a Magistrate's Court can impose a fine or a period of imprisonment not exceeding 3 years.

Section 34 of the PCCA includes the following persons employed at SANRAL as holding a position of authority:

- The Chief Executive Officer
- Any member of senior management (which would include Board Members)
- Any person appointed in an acting or temporary capacity in any of the above-mentioned positions.

The reporting duty in terms of the Public Service Code of Conduct

According to the Code of Conduct any employee must report any knowledge or suspicion of irregularities or criminal conduct. Failure to comply with this may result in disciplinary action.

The reporting duty in terms of common law principles related to the employer – employee relationship

As the employer - employee relationship includes the requirement of trust, every employee has a common law duty to report to the employer knowledge of any fact that may have a negative impact on the employer’s business. Failure to comply may result in disciplinary action.

No Gifts Policy

With effect from 01 June 2017 SANRAL has adopted a no gifts policy. A gift is a consideration which an employee of SANRAL would not have ordinarily received but by virtue of the fact that the person is an employee of SANRAL

Should employees and directors receive such a consideration, they are advised to prepare an acknowledgement letter returning that gift or consideration referring to this policy.

The no-gift policy is to avoid:

- any conflict of interest that may arise from receipt of gifts
  - any suspicion on the director’s objectivity and impartiality;
  - any compromise of the integrity of the company; and
  - any perception of either of the above.

Disclosures of Interest

In cases where an employee has a beneficial interest in any matter to be considered by SANRAL, or should a potential conflict of interest arise:
• the interest and its nature must be disclosed at the earliest opportunity, if not in advance.
• there are various types of disclosures:
  o a general declaration of interest which is furnished annually in advance;
  o a special declaration at any point in time throughout the year, when there is a change in interests; and
  o disclosure at the time of tender evaluation or adjudication
• the person must not influence or seek to influence any decision relating to the matter;
• the person must provide all material information but should take no part in a decision on the matter; and
• the person will withdraw from the proceedings and shall not contribute further to that item.

The Public Finance Management Act, No 1 of 1999 [Clause 50(3)], as amended, and the Companies Act, No 71 of 2008 (Section 75), as amended, set procedures for the disclosure of interests.

The Board, the executive team and the managers involved in the evaluation and adjudication of tenders must sign an annual Disclosure of Interests form and must disclose any conflict of interests at the time of evaluation or adjudication of tenders. In addition, the members of SANRAL’s Treasury team must sign the Personal Account Trading Declaration.

Disclosures shall include active private or other business interests of themselves, their immediate family members (up to 2 levels of consanguinity) and any business associates. The disclosure must include any matters which may lead to potential or actual financial conflicts of interest with SANRAL’s business.

The ownership of 1% or more of the shares of any organisation must be disclosed.

An employee or director, as an individual, is disqualified, by virtue of his/her employment or office in SANRAL, from contracting with SANRAL.

Moreover, employees may not accept any other work for remuneration unless prior approval has been granted by the CEO, after due consideration has been given regarding a potential conflict of interest that might arise.

7. RESPONSIBILITIES

• The custodian of this policy is the Risk Officer.

• The Risk Focus Group is responsible for the administration, revision, interpretation and application of this policy, which will be reviewed annually and revised as required.

• Any alteration to this policy must be agreed by the Social, Ethics and Transformation Committee (SETC) as well as the Audit and Risk Committee (ARC) and is subject to approval by the Board.

8. LINKS TO OTHER POLICIES
9. ANNEXURE: PROCEDURES

- Fraud and Corruption Prevention Plan
- Fraud and Corruption Response Plan