

## The Australia-Africa Minerals & Energy Group's ("AAMEG") Statement on Facilitation Payments

### Introduction

AAMEG and its members are fully committed to the eradication of facilitation payments in business dealings in the countries of Africa. However, in order to achieve this challenging objective, there must be a coordinated effort by all stakeholders to develop a reform process that has realistic timeframes and achievable interim milestones. Any externally driven attempt to apply such a legislative change in one giant step across the 54 countries on the African continent, will not in the opinion of AAMEG, succeed.

### Background

The factors that have led to the practice of making facilitation payments are complex and often deeply ingrained in the cultures of many African economies and institutions, most notably those that are poor and consequently lack governance and accountability. Many of the countries of Africa have only recently emerged from authoritarian rule and/ or serious conflict and operate at very different levels of maturity.

AAMEG believes the use of facilitation payments is an inappropriate method of securing the timely delivery of routine government services to which its members are legally entitled. It is noted however that in certain situations in some countries they are currently unavoidable.

Ultimately, facilitation payments constitute regressive behaviour for those nations that are striving to develop stronger systems of governance and fairness. However, it is poverty that is the main driver of such behaviour. Regrettably, until the economic well-being of such host-countries improves sufficiently so that host governments are adequately resourced to be able to pay their public servants properly and they themselves implement practices and foster a culture in which facilitation payments are not accepted, the demands and requests for these payments are likely to continue.

Such change will only occur over time and will require cooperation amongst various parties including companies, investors, host governments, international donors, foreign judiciaries, local councils and other civil service institutions.

### AAMEG Commitment

AAMEG is committed to working with its members and policy makers in Africa and Australia on all aspects related to anti-bribery and corruption issues including the facilitation payment reform process. Facilitation payments can be eradicated and AAMEG is currently engaged in a number of initiatives to help its members make this happen, including the following:

- Roundtable Sessions with members (under The Chatham House Rule) designed to increase the awareness of the difference between facilitation payments and bribery as well as discussing and sharing mechanisms designed to avoid making facilitation payments;
- Canvassing AAMEG members working on the ground in Africa in order to identify cases where members were successful in handling demands or requests for, and avoiding making facilitation payments. Such examples will be used to assist other members to identify practical ways to work efficiently to manage such demands or requests;
- Promoting the recommendations in the OECD Phase 3 Report on Implementing the OECD Anti-bribery Convention in Australia (2012), also taking into consideration the principles contained in Australia's Response in April 2015 to the OECD Phase 3 Report;

- Inviting representatives from the Australian Federal Police and the Federal Attorney General's Department to present at AAMEG Anti-bribery & Corruption workshops;
- AAMEG Submission to the Senate Standing Committee on Economics concerning Foreign Bribery, dated 24<sup>th</sup> August 2015;
- Engaging with Transparency International to plan joint sessions involving AAMEG members on the facilitation payment issue during 2016; Engaging with the Australian Government and DFAT to explore possible programs to support African governments on the issue of facilitation payments; and
- Encouraging AAMEG members to become supporting companies of the Extractive Industries Transparency Initiative.

Through such activities, AAMEG has been and will continue to assist its members to develop demonstrably ethical corporate cultures that also do not support or accept the practice of making facilitation payments. AAMEG's members are therefore well placed to be key contributors to the eradication of facilitation payments within the resources industry, at large. However they will not be able to effect this change by themselves.

The industry requires the support of all stakeholders, including host and foreign governments.

## **Conclusion**

AAMEG believes that more is required than simply changing black letter law in Canberra, or other major legislative centres. Furthermore, change can only be implemented within a timeframe that recognises the historical complexity of the contributing factors that have entrenched the practice of making facilitation payments.

AAMEG agrees with Transparency International in its submission to the Australian Senate Enquiry into Foreign Bribery that there should be a transition phase to allow all parties currently using facilitation payments to transition to the new legal framework. However while we acknowledge the urgency, we note that in many cases the proposed timeframe of two years may be too short.

AAMEG looks forward to a time when facilitation payments are a practice of the past. AAMEG proactively encourages its members to continually review their corporate practices and governance systems.

AAMEG believes that countries that operate without the use of facilitation payments improve their attractiveness as an investment destination, are likely to develop their industries at a much faster rate and in time will develop a more just and equitable society for all.