

GDS POLICIES AND PROCEDURES FOR COMPLIANCE WITH FOREIGN CORRUPT PRACTICE ACT

Version	2016.v1
Reviewed by	CEO; CFO
Recommended by	Audit Committee
Effective Date	22 January 2017
Approved by	Board of Directors

Contents

1	Introduction to FCPA	3
2	Definitions.....	5
3	Compliance Organization	6
4	Policy.....	7
5	Consequences of Violations.....	10

1 Introduction to FCPA

1.1 Foreign Corrupt Practices Act (“FCPA”) of 1977 is a United States federal law enacted for the purpose of making it unlawful for certain classes of persons and entities to make payments to foreign government officials to assist in obtaining or retaining business.

1.2 FCPA has two main provisions:

- The anti-bribery provisions, which prohibit offering to pay, paying, promising to pay, or authorizing the payment of money or anything of value to a foreign official in order to influence any act or decision of the foreign official in his or her official capacity or to secure any other improper advantage in order to obtain or retain business.
- The accounting provisions, which have two primary components. Firstly, the books and records provision requires that issuers make and keep books, records, and accounts, which, in reasonable detail, accurately and fairly reflect the transactions and dispositions of the assets of the issuer. Secondly, the internal controls provisions require that issuers devise and maintain a system of internal accounting controls sufficient to provide reasonable assurances that, among other things, transactions are executed in accordance with management’s general or specific authorization, access to assets is permitted only in accordance with management’s general or specific authorization, and transactions are recorded as necessary to permit a preparation of financial statements in conformity with generally accepted accounting principles and to maintain accountability for assets.

1.3 Who is subject to the FCPA?

The anti-bribery provisions apply to “issuers,” “domestic concerns,” and “persons” other than “issuers or domestic concerns.”

- An “issuer” is generally a company (US or foreign) that has a class of securities (including so-called American Depositary Receipts) traded on a US exchange or an entity that is otherwise required to file reports with the SEC.
- A “domestic concern” is generally any business form (e.g. private corporations, limited liability companies, partnerships, sole proprietorships) with a principal place of business in the US or organized under US law. A “domestic concern” also includes “any individual who is a citizen, national, or resident of the US.”
- The books and records and internal control provisions only apply to issuers.

1.4 “Bribery”

Bribery is defined as offering or providing an inducement to someone in order to influence any decision making affecting an entity’s business or the personal gain of an individual. Improper purpose include but not limited to): (1) influencing any

act or decision of such person; (2) inducing such person to do or omit any act in violation of a lawful duty or in breach of trust; (3) securing an improper advantage; (4) inducing such person to use his/her influence with a government entity; and (5) inducing such person to breach his/her duties with respect to the sale of goods and services.

Bribery need not require payment to actually change hands. A bribe can take many forms, including an irregular payment of money (such as “kick-backs,” secret commissions, and similar payments), a payment in-kind (including any non-cash items of value such as travel, golf outings, loans on favorable interest rates or repayment terms, etc.), or an inappropriate gift. A bribe may also be made indirectly via a third party, such as an agent or other intermediary.

1.5 “Foreign Officials”

The FCPA defines “foreign officials” as “any officer or employee of a foreign government or any department, agency, or instrumentality thereof, or of a public international organization, or any person acting in an official capacity for or on behalf of any such government or department, agency, or instrumentality, or for or on behalf of any such public international organizations.”

The term “foreign official” includes traditional foreign government leaders (such as presidents, prime minister, and other heads of state) as well as employees of various foreign government departments and agencies such as tax officials, customs officials, and others tasked with issuing foreign government licenses, permits, certifications, etc.

1.6 “Anything of Value”

“Anything of value” could be monetary or any forms other than cash payments. FCPA enforcement actions can be based on the following “things of value” provided directly or indirectly to a foreign official:

- Cash or other benefits (discounts, loans, providing use of cars for an extended period of time, etc.);
- Gifts, such as cars, jewelry, wine, vases, etc.;
- Excessive travel and entertainment expenses;
- Personal services (construction services, jobs for family members, etc.);
- Honors (awards that come with a monetary or other “prize”; charitable donations in the name of the officials, etc.)
- Educational or executive training expenses;
- Promise of future employment;
- Shares or dividends of a company;
- Others.

2 Definitions

For the purposes of this policy, the following definitions shall apply:

- 2.1 “The GDS companies”** means all GDS 100% owned or partially-owned entities companies, and variable interest entities.
- 2.2 “Facilitation Payments”** means payments made for the purpose of expediting or securing routine government action by a foreign public official, political party or party official. Routine government actions include: a) obtaining permits, licenses or other foreign public official documents to qualify a person to do business in a country other than the United States; b) processing governmental papers, such as visas and work orders; c) providing police protection, mail pick-up and delivery, or scheduling inspection associated with the contract performance, or inspections related to transit or goods across country; d) providing phone services, power and water supply, loading and unloading cargo, or protecting perishable products or commodities from deterioration; or e) actions of a similar nature.
- 2.3 “Government”** means any government and government department, agency, or public international organization.
- 2.4 “Knowledge”** means the state of mind which exists when a person actually knows or is substantially certain that a particular fact of circumstance exists or will exist. Knowledge includes conscious disregard and deliberate ignorance of facts which indicate a high probability that the relevant payment will occur.
- 2.5 “SOE”** means state-owned entities. In this policy, it refers to any entities in which the state directly or indirectly owns 50 percent of stakes or more, or otherwise holds voting rights or effective ownership whereby control over the direction and management of such entity is exercised.
- 2.6 “Government-Related Entities”** refers to 1) SOE, 2) companies in which the government owns less than a controlling share(50%) of stocks, 3) companies whose management and operations are directly or indirectly influenced by the state even though the state does not own any shares; 4) companies whose management, board of directors, or shareholders consist of officials, former officials, or relatives of officials; 5) government-backed business associations; 6) non-enterprise organizations or public institutions owned or controlled by government public organizations.
- 2.7 “Sensitive Period”** refers to a period during which a gift, entertainment and other expenses or payment may be perceived by a reasonable and objective person as influencing a specific decision to be made by the recipient. For example, a period where 1) the company is in the process of applying license / permits and 2) the company is attending an open bidding of the government purchase.
- 2.8 “OA system”** refers to the work flow system used by GDS.

3 Compliance Organization

3.1 The Board of Directors serves as the highest decision making body in GDS' FCPA compliance-related matters and supervises and monitors the FCPA related internal controls. Governed by the Board of Directors, the Audit Committee is responsible for reviewing GDS's relevant policy and program to monitor compliance with the Company's Code of Business Conduct and Ethics, including FCPA. The overall FCPA compliance practices and major issues (if any) are reviewed during Audit Committee meeting. The committee reports, if any, to the board of directors of the major issues related to FCPA compliance and the findings of internal auditor and external auditor for the board's decision. Furthermore, those who might be potentially involved in an ongoing investigation of the FCPA compliance violations should not take part in any decision made by Audit Committee or Board of Directors regarding the relevant matters.

3.2 The Ethics Committee is hereby organized and delegated by the Audit Committee to handle the FCPA compliance-related matters on a routine basis. Members of Ethics Committee include: CEO, CFO, Internal Control VP, General Counsel, Compliance Officer and other members appointed by the Audit Committee. The committee meets quarterly to review the overall FCPA compliance practices and major issues, if any. The Chairman of Ethics Committee, assigned by the Audit Committee, acts as the permanent representative of Ethics Committee and are entitled to call a meeting of Ethics Committee when necessary.

The Ethics Committee assumes the following responsibilities:

- Monitoring of FCPA compliance practices and major issues
- The overall FCPA compliance practices and major issues (if any) are reviewed on Ethics Committee meeting. The Ethics Committee reports to AC on major issues, including whistle blower related to FCPA compliance.
- Issuance of GDS FCPA policy and oversight of the enforcement and promulgation of this policy within the GDS Companies.
- Review the FCPA policy on an annual basis.
- Determine the compliance management structure
- Prepare annual budget for FCPA compliance function

3.3 BU/Department Head should be held accountable (i.e., immediate responsible) for the approvals they granted in relation to FCPA compliance, e.g. Vendor/customer background check, T&E expense and gift approval etc. Compliance Officer and General Counsel takes the consultation role and will review afterwards from reasonableness perspective.

3.4 The internal audit department is responsible for conducting FCPA compliance audits. FCPA compliance audits shall be conducted annually in GDS.

4 Policy

4.1 Avoid even the appearance of impropriety

GDS Holdings Limited (“GDS” or the “Company”), strives to uphold the highest possible ethical standards and has zero tolerance with respect to corruption, even the appearance of impropriety in the actions of its companies, directors, management personnel, employees, and vendors (including third-party agent, consultant, joint venture partners, and any other third-party representatives if or when acting on GDS’ behalf). Accordingly, the prohibitions and requirements of this GDS FCPA Compliance Policy are designed not merely to comply with the U.S. Foreign Corrupt Practices Act (“FCPA”) and other anti-corruption laws, but also to avoid even the appearance of questionable conduct in connection with GDS.

It is strictly prohibited for any directors, management personnel, employees, and vendors of the GDS Companies to engage in bribery or corrupt activities of any kind for any purpose, including but not limited to the Company’s benefit, the employee’s benefit, or that of the employee’s family, friends, or business associates.

4.2 Accurate Record Keeping

The Company should make and keep books, records, and accounts that, in reasonable detail, accurately and fairly reflect transactions in conformity with generally accepted accounting principles and effectively prevent off-the-books slush funds and payments of bribes.

4.3 Adherence to Internal Controls

The Company should devise and maintain a system of internal accounting controls sufficient to assure management’s control, authority, and responsibility of the Company’s assets, as well as provide reasonable assurance that:

- Transactions are executed in accordance with management’s general or specific authorization;
- Transactions are recorded as necessary (I) to permit preparation of financial statements in conformity with generally accepted accounting principles or any other criteria applicable to such statements, and (II) to maintain accountability for assets;
- Access to assets is permitted only in accordance with management’s general or specific authorization; and
- The recorded accountability for assets is compared with the existing assets at reasonable intervals and appropriate action is taken with respect to any differences

4.4 Application

This policy applies to GDS and all of its subsidiaries, branch offices and variable interest entities (VIEs) (hereinafter referred to as “the GDS Companies”; a list of these companies is detailed in Appendix I), and its directors, management

personnel, and employees. This policy also has certain applications to vendors (including third-party agent, consultant, joint venture partners, and any other third-party representatives if or when acting on GDS' behalf). This policy contains standards of conduct and practices that must be followed in representing GDS Companies before Government-Related Entities.

4.5 Training

Regular training will be provided to directors, officers, employees, vendors (third-party agent, consultant, joint venture partners, and any other third-party representatives if or when acting on GDS' behalf) of this policy on an annual basis. Should there be any changes to this policy, training on the changes is to be carried out within one month of the issuance of the updated policy.

4.6 Compliance confirmation

All senior management are required to provide a declaration on an annual basis, specifying his/her FCPA compliance practices by disclosing his/her kinship with company employees, interest relationships with vendors and suppliers, interest relationships with government-related entities, and interest relationships with competitors if any.

Any failure to comply with this disclosure requirement will be subjected to the disciplinary consequences detailed in Section 5.

4.7 Consultation

This policy is intended to provide guidance on FCPA compliance requirement, however anti-bribery matters may not be always clear and must often be addressed on a case-by-case basis. In all situations where there is a doubt relating to any interactions with government officials or potentially-to-be government related personnel or entities, employees should consult the Compliance Officer before proceeding with any actions.

4.8 Reporting violations

When in doubt if any behavior is appropriate, an employee should consult the Compliance Officer as soon as possible.

Anyone (employee or external parties) who suspects that the policy may have been violated must immediately notify their supervisors, the Compliance Officer, the General Counsel, the Ethics Committee or the GDS Ethics Hotline. Any person who, in good faith, reports suspected legal, ethical, or policy violations will not suffer any adverse consequence for having so done.

4.9 Violations

Violations of this Policy will not be tolerated and will be subjected to disciplinary measures. See section 5 for more information.

4.10 Specific policy and procedures

Please see a separated FCPA procedures for further guidance on specific areas.
(e.g. bidding, gifts, entertainment, etc.)

4.11 This policy is issued and released by the Board of Directors. In cases of any conflict between English version and Chinese version, English version shall prevail.

5 Consequences of Violations

This policy is mandatory and any willful violations will not be tolerated. Violations will result in one or more of the following, as appropriate:

- A warning
- A reprimand (recorded as individual's permanent personnel record)
- Observation
- Demotion
- Temporary suspension
- Discharge
- Required reimbursement of losses or damages
- Criminal prosecution or civil actions.

The Ethics Committee will propose which of the above consequence shall be applied to the individual who violated this Policy, and obtain the approval from the Board of Directors. The Company keeps the right to take further actions.