

	Premier	Approved by	
	Whistleblowing Policy	Continuous Improvement	
		Doc No: WP01	
		Issue Date: 7 Apr 2017	Rev: 4

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1 Introduction

Whistle-blowing is about “raising a concern about unethical or dishonest conduct within or outside an organisation, and which conduct has an impact on the organisation’s operations”.

It is a key tool to promoting individual responsibility and organisational accountability in combating fraud, corruption, misconduct and unethical conduct.

The duty to report misconduct and criminal behaviour goes further than an ethical or moral obligation to do so. The legislative measures summarised below impose reporting duties, the failure of which may result in disciplinary action, criminal procedures and even incarceration.

Premier embraces the prescriptions contained in its regulatory framework pertaining to pro-actively deterring fraud, corruption, unethical behaviour and irregular activities. The phrase ‘deterrence of fraud and corruption’ in this policy refers to the prevention, detection and reaction to fraud and corruption.

To this extent, an independently managed fraud hotline is imperative. This is recognized globally by best practice, and locally through the regulatory framework applicable to Premier. The latter includes:

- 📢 The Protected Disclosures Act, No 26 of 2000 (‘PDA’)
- 📢 The Companies Act, No 71 of 2008; and
- 📢 The employee’s common law duty to report (the ‘utmost good faith principal)

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a) **The Protected Disclosures Act**

In its preamble, the PDA recognizes -

- 📣 That every employee has a responsibility to disclose criminal and any other irregular conduct in the workplace; and
- 📣 Every employer has a responsibility to take all necessary steps to ensure that employees who disclose such information are protected from any victimization as a result of such disclosure.

To this end, the PDA provides for mechanisms and protection of bone fide whistle-blowers who comply with their reporting duty.

Premier subscribes to the above referenced duty of protection and to this extent has invested in an anonymous reporting facility, enabling and empowering employees and other stakeholders (such as operators) to dispose of their reporting duties, without fearing victimisation and retribution of any kind.

This independently managed facility provides for a safe alternative to silence, and offers various reporting media, as detailed below. Anonymity is guaranteed, and the facility is managed in compliance with the Protected Disclosures Act, No. 26 of 2000.

Information on this reporting facility / Whistle Blowing hotline is available on Premier’s website and provisions contained therein must be read in conjunction with this policy.

b) **The Companies Act**

Section 159(7) of this Act applies to Premier, and reads that all public companies **must** -

- 📣 Directly or indirectly establish and maintain a system to receive whistle-blower reports confidentially, and act on them; and
- 📣 Routinely publicise the availability of a whistle-blowing mechanism to stakeholders in the company, including its employees.

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2 Premier's Statement of Intent regarding whistle-blowing

Premier -

- 👉 Encourages employees who have knowledge or suspicion of fraudulent activities that Premier, or any of its employees, is in violation of any law, rule or regulation to report it internally.
- 👉 Will conduct a prompt and thorough investigation of any alleged violation and take appropriate corrective action.
- 👉 Prohibits any retaliatory action against an employee for making a report in good faith.
- 👉 Prohibits any retaliatory action against an employee who has provided information in connection with an internal investigation against an employee, or stakeholders.
- 👉 Will take appropriate action against employees who have engaged in retaliatory conduct prohibited by this policy, and who have broken any laws, rules or regulations.
- 👉 Each stakeholder of Premier needs to be familiar with the types of improprieties that might occur within his or her area of responsibility and activity and be alert for any indication of irregularity.

3 Purpose of the policy

The implementation of this policy is aimed at -

- 👉 Effectively managing Premier's risk of fraud, corruption, theft, unethical and irregular conduct
- 👉 Effective Ethics Management
- 👉 Implementing Premier's zero tolerance approach to any unethical conduct; and
- 👉 Capacitating Premier's employees to report any suspicion of unethical and criminal behaviour.

It is the intent of Premier to provide guidelines in this policy on -

- 👉 **WHAT** must be reported
- 👉 **WHO** must report
- 👉 **WHEN** must a report be made
- 👉 **WHY** must a report be made; and
- 👉 **HOW** a report must be made.

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4 What must be reported

Any knowledge or suspicion of any misconduct within Premier. For this purpose, misconduct means non-compliance with any rule / policy / value applicable to Premier.

Committing criminal offences such as corruption, fraud and theft are, for obvious reasons, not compliant with our values, and thus reportable.

a) What conduct or behaviour amounts to Corruption?

Corruption is the giving or accepting of any gratification as an inducement or reward for doing something one should not do, or for not doing something one should. It differs from fraud in that both parties are involved knowingly and both benefit in some way from the agreement.

It should be noted that the Prevention and Combating of Corrupt Activities Act's (PRECCA) definition of giving and accepting is very wide. According to the PRECCA:

- 📣 Giving includes lending/granting/conferring/promise/procure and agreement or offer; and
- 📣 Accepting includes demanding/soliciting/promise/offer/ask for/ seek/request/receiving and agreement or offer of the above.

Due to this wide definition, the following examples of conduct will amount to corruption:

- 📣 The mere asking for, or soliciting in any way payment or any favour from any person (irrespective of whether the payment or favour realised); or
- 📣 The mere offering to any person of a portion of a corrupt payment, in exchange for that person doing something he should not do or not doing something he should (i.e. breaking of a Premier rule), irrespective of whether that person accepts the offer.

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It is important to note that irrespective of whether the other ‘corrupt party’ agrees to make the payment or not, or acts in the requested way in exchange for gratification, this will have no bearing on whether corruption was committed or not.

c) Gratification

Gratification has a very wide definition in PRECCA, and includes -

- 👉 Money, whether in cash or otherwise;
- 👉 Any donation, gift, loan, fee, reward, valuable security, property or interest in property of any description, whether movable or immovable, or any other similar advantage;
- 👉 The avoidance of a loss, liability, penalty, forfeiture, punishment or other disadvantage;
- 👉 Any office, status, honour, employment, contract of employment or services, any agreement to give employment or render services in any capacity and residential or holiday accommodation;
- 👉 Any payment, release, discharge or liquidation of any loan, obligation or other liability, whether in whole or in part;
- 👉 Any forbearance to demand any money or money's worth or valuable thing;
- 👉 Any other service or favour or advantage of any description, including protection from any penalty or disability incurred or apprehended or from any action or proceedings of a disciplinary, civil or criminal nature, whether or not already instituted, and includes the exercise or the forbearance from the exercise of any right or any official power or duty;
- 👉 Any right or privilege;
- 👉 Any entertainment or hospitality of any kind, in circumstances where the intended recipient is not expected to incur costs he or she would otherwise have to bear, had it not been for the offer;
- 👉 Any real or pretended aid, vote, consent, influence or abstention from voting; or
- 👉 Any valuable consideration or benefit of any kind, including any discount, commission, rebate, bonus, deduction or percentage.

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d) **The doing what you should not do, or not doing what you should**

Corruption covers any dishonest or unethical behaviour, or any form of misconduct, and includes:

- 👉 Exercising preferential treatment in the awarding of tenders;
- 👉 Tampering with OBC equipment
- 👉 Forced balancing of diesel bowsers
- 👉 Deliberate input of incorrect information at an asset to force balance fuel or let the vehicle/branch seemingly perform better
- 👉 Performing favours for relatives and friends;
- 👉 Avoiding compliance with laws and regulations;
- 👉 Failing to comply with Premier policies in exchange for, or in anticipation of gratification;
- 👉 Collusion with any person to sell Premier assets and splitting the profit;
- 👉 Overriding or manipulating Premier systems to hide anomalies, or delay detection;
- 👉 Disclosing confidential and proprietary information to outside parties;
- 👉 Making profit, directly or indirectly, through abusing one's position of trust or access to Premier systems or information;
- 👉 Failing to report knowledge or suspicion of unauthorised behaviour of a colleague, contractor, service provider or other Premier stakeholder; and
- 👉 Turning a 'blind eye' to theft of Premier's assets.

e) **Section 10 of PRECCA**

PRECCA does not only criminalize misconduct (doing something you should not do, or not doing something you should in the workplace), but also contravention of Premier's Gift Policy, even if you do nothing wrong in exchange for the gift. Premier's Gift Policy must be read together with this section of this policy.

Section 10 of PRECCA states that it is a criminal offence to accept 'unauthorized gratification' for anything you do relating to your workplace.

Two aspects are important, namely -

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-  The 'gratification' (or gift - it carries the same meaning as gratification defined in PRECCA referred to above) must be offered or received in relation to your position / function in Premier. Thus, a gift offered by friends because of your birthday is excluded, because it is not given in relation to something you do in the workplace.
-  The gratification must be unauthorised - if for instance it is not against Premier's gift policy to accept a gift during the December period from a supplier to Premier, as long as you disclose the gift, such receipt of the gift is not illegal. However, if the gift is received without the necessary disclosures of permission, it would constitute a criminal offence in terms of PRECCA, as well as misconduct in terms of the gift policy.

f) **What conduct or behaviour amounts to Fraud?**

Fraud is defined as the unlawful and intentional making of a misrepresentation, or concealment of a material fact, which causes actual or potential prejudice to another.

A misrepresentation is a false statement made by one person to another. In laymen terms: a misrepresentation is a lie about something that the other party wants to know the truth about.

The misrepresentation may take the form of words, words and conduct or just conduct. As such, a misrepresentation may also consist of a failure to disclose certain information in circumstances where there is a legal duty to do so.

Examples of fraud (by failing to disclose information, i.e. silence) are:

-  A Premier employee engages with a supplier to Premier in which he/she has a commercial interest. The misrepresentation lies in the fact that the procurement officer failed to disclose his/her interest in the supplier. The legal duty to disclose in this instance emanates from the employment relationship of trust.
-  A prospective appointee fails to disclose his/her criminal record to Premier, notwithstanding the fact that he/she is asked on the application form whether he/she has any criminal record. The applicant committed fraud, because he/she failed to disclose a material fact. The reporting duty arises from the position of trust that is established between job applicants and prospective appointees to Premier.

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Examples of fraud by simply lying about something are -

- 🚩 Overstating (or ‘inflating’) by an employee of any information relevant to the key performance criteria taken into account for bonus purposes for that employee; and
- 🚩 Manipulation of data on Premier’s systems to hide errors, even if it is not in exchange for gratification.

g) Abuse or misappropriation of Premier assets and theft

In laymen terms, theft is defined as the unauthorised assumption of ownership rights over a tangible thing, by somebody who is not the owner.

All employees are responsible for safeguarding and making proper and efficient use of Premier’s assets and revenue. Assisting somebody else to ‘get away’ with theft also constitutes theft.

5 WHO must report, and WHY must a report be made

All employees have a **legal duty** to report any knowledge or suspicion of anything that may be prejudicial to his or her Employer, to that Employer.

This duty applies to all employees in South Africa, irrespective of his or her Employer, and is derived from the common law right of the employer to always expect the utmost good faith from employees. The duty has also been taken up in PRECCA, which results in the fact that non-compliance with this duty may result in disciplinary action or a criminal offence.

The disciplinary transgression

Failure to report any knowledge or suspicion of fraud, corruption, irregular or unethical conduct constitutes derivative misconduct, which is a dismissible transgression.

The criminal offence

Section 34 of PRECCA provides that **any person in a position of authority** who knows or ought reasonably to have known or suspect that another person has committed -

- 🚩 Corruption, or

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- 📌 The offences of theft or fraud involving R100 000 or more must report such knowledge or suspicion or cause same to be reported to a police official.

Note the distinction between corruption and other offences - the reporting of a suspicion of corruption is not dependent on the amount involved (as with fraud or theft), where the reporting duty kicks in only when the amount exceeds R100 000.

In terms of Section 34 the following persons hold a position of authority:

- 📌 A manager, secretary or director of a company;
- 📌 Any person appointed as a chief executive officer or equivalent officer of an agency, authority, board, commission, committee, corporation, council, department, entity, financial institution, foundation, fund, institute, service or any other institution or organization whether established by legislation, contract or any other legal means;
- 📌 Any person responsible for overall management of the business of an employer;
- 📌 Any person appointed in an acting or temporary capacity in any of the above mentioned positions.

Failure to report is a criminal offence in terms of PRECCA, punishable by imprisonment for up to 10 years.

6 WHEN must a report be made

A report must be made when a person -

- 📌 Has actual knowledge or a suspicion of a reportable transgression; or
- 📌 Should have known or suspected misconduct.

Knowledge or suspicion

These terms relate to actual knowledge or suspicion. A suspicion does not require proof. A suspicion is merely a state of conjecture or surmise where proof is lacking. Suspicion arises at or near the starting point of an investigation of which obtaining of prima facie proof is the end. The investigation will be conducted by Premier, on the basis of the report.

As such, an excuse for not reporting such as *I suspected, but could not prove it, therefore I did not report my suspicion or knowledge* will not suffice.

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Should have known or suspected

The words ‘should have known or suspect’ apply to derivative misconduct and the criminal offence of failure to report, referred to above. The effect of these words means that in circumstances where you should have known or suspect something (but you still don’t), the reporting duty still kicks in.

As such, the following excuses will not suffice if no report is made -

- 👉 That you did not suspect or acquired the necessary knowledge, because you failed to properly perform your oversight responsibility; or
- 👉 You turned a blind eye.

7 HOW must a report be made

A report can be made in writing or verbally.

Given the legal duty to report and the consequences of not complying with these reporting duties, it is advisable to reduce any report to writing.

There is no defined format in which you are required to report your knowledge or suspicion. Merely providing the detail you know to either the whistle-blowing hotline or another employee at Premier will be sufficient. It is important to divulge as much information as possible, to ensure effective verification and investigation of reports.

To whom must a report be made?

Knowledge or suspicion of reportable transgressions can be reported in one of the following ways:

- 👉 Line managers or Executives;
- 👉 The Chief Financial Officer directly;
- 👉 Directly to the Security Officials on site;
- 👉 The Chief Executive Officer, if it involves any Executive manager;
- 👉 Human Resources Department
- 👉 Anonymously through the fraud reporting whistle blowing hotline.

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It should be noted that the anonymous fraud reporting facility is but one channel of communication for reporting. The safety of a whistle-blowing hotline makes it an ideal reporting channel for individuals who fear victimisation.

What must you not do?

When you know or suspect a reportable transgression -

-  Do not contact the suspected individual in an effort to determine facts or demand restitution
-  Do not discuss the case, facts, suspicions or allegations with anyone unless specifically asked to do so by the investigating agents
-  Do not attempt to personally conduct any investigations, interviews and / interrogations related to the suspected fraudulent act; and
-  Do not make the report directly to the SA Police services, or the press.

It should be borne in mind that if a whistle-blower does not follow the prescribed reporting procedures detailed above and make a report directly to, for instance, the press or in the public domain, that whistle-blower may have forfeited the protection he or she is entitled to in the Protected Disclosures Act.

8 Investigation of a report

All Reports will be escalated to relevant Premier EXCO and will be investigated - either internally by the Risk Department or externally by appointed independent investigators.

On receipt of reports, Premier will respond formally, via The Vuvuzela Hotline, within 21 days (should contact information have been made available by the whistleblower to The Vuvuzela Hotline), whether

-  Premier will investigate the matter (including time-frame where possible);
-  Premier will not investigate the matter, with reasons; or
-  The whistleblower needs to be referred to another person or body better suited to investigate the matter.

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9 Policy Administration and Compliance

Policy Owner

This policy is owned and managed by the Risk Department, who will address any queries that may arise about this policy, and be responsible to make any changes, amendments or updates to this policy.

Non-compliance with this policy

Any employee who contravenes this policy is guilty of misconduct.

Irrespective of any other prescription in any other Premier policy, the sanction for any instance of misconduct in terms of this policy will initiate a disciplinary process.

Employees are sensitized that any non-compliance with this policy may result in the following enforcement actions -

- 🚩 Disciplinary charges for derivative misconduct
- 🚩 Disciplinary charges for victimization
- 🚩 Criminal charges for failing to report knowledge or suspicion, as prescribed in PRECCA.

Premier will, in compliance with its regulatory framework and in addition to any other internal disciplinary steps, institute criminal proceedings against any employee who contravenes this policy, where the circumstances justify such action.