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# Excelsior Capital Limited

(ACN 050 542 553)

## Whistleblower Policy

## 1 INTRODUCTION

- 1.1** Excelsior Capital Limited (ECL or the Company) including its associated entities (**the Group**) is committed to encouraging and supporting ethical and responsible behaviour, to ensuring a safe workplace and to the prevention of fraud, misconduct and inappropriate behaviour. The Group recognises the important role a robust and effective **whistleblowing policy** can play in **the early detection of misconduct**.

The Company recognises that such behaviour may occur at all levels of the Company and that identification of such behaviour is a responsibility of employees, contractors and officers of the Company at all levels.

The Group also recognises that individuals who are considering disclosing misconduct may fear retribution or other detriment and require an assurance of protection. The Group is committed to ensuring that any whistleblower who makes a disclosure, having reasonable grounds to do so, suffers no retribution, penalty or other detriment, **even in the event** misconduct is not identified or no action results from disclosures made by the whistleblower.

**It is important to note that**, wherever possible, the first point of call for any concerns, suspicions of misconduct or other behaviour that an employee, contractor or officer of the Company considers unacceptable is to raise the matter with supervisors, management, the Chairman of the Board or members of the Board of Directors, as appropriate to the circumstances of the matter being raised. The Company is committed to a flat, transparent and collegial management structure in which disagreements, concerns or complaints are able to be dealt with in a professional and outcome-focused manner.

The Group's whistleblowing policy delivers statutory protections and processes for addressing misconduct that an employee, contractor or officer of the Company believes **cannot** be dealt with through the normal management structure of the business, **or where** that employee, contractor or officer of the Company has grounds to fear they may suffer retribution, penalty or other detriment from raising the matter through such channels.

## 2 PURPOSE

- 2.1** The purpose of this Policy is to establish an internal reporting system which ensures the protection individuals, in accordance with the law, who disclose suspected or known misconduct and encourages employees, officers, contractors and joint venture partners to promptly report suspected or known misconduct without fear of retribution or other adverse consequences.

## 3 DEFINITIONS

- 3.1** In this Policy:

**'eligible whistleblower'** (as defined in the *Corporations Act 2001 (Cth)* (the **Act**) means any of the following:

- a) a director, company secretary or employee of a Group entity;
- b) a person who supplies services or goods to a Group entity (whether paid or unpaid) or an employee of such a person;
- c) a relative of an individual referred to in paragraph (i) or (ii);
- d) a dependant of an individual referred to in any of paragraphs (i), (ii) or (iii), or of such an individual's spouse;

**'misconduct'** means conduct which includes or amounts to any of the following:

- a) fraud, negligence, default, breach of trust or breach of duty in relation to a Group

## Whistleblower Policy

entity, including any theft, misappropriation, direction of assets for any unauthorised purpose or the provision of inappropriate advantages to third parties in connection with the affairs of the Company;

- b) an improper state of affairs or circumstances in relation to a Group entity;
- c) conduct in breach of a Group policy or procedure;
- d) behaviour likely to bring the Company or the Group into disrepute;
- e) conduct which constitutes a contravention of or an offence against any state or federal law; or
- f) conduct which represents a danger to any person including any failure to adhere to reasonable standards of personal safety or the safety others.

## 4 PROTECTED DISCLOSURES UNDER THIS POLICY

### 4.1 Disclosures which qualify for protection:

A disclosure of information by an employee, contractor or officer is protected under this Policy if the employee, contractor or officer has **reasonable grounds** to suspect that the information concerns or indicates **misconduct** in relation to a Group entity and the disclosure is made in accordance with this Policy (**Protected Disclosure**).

### 4.2 How to make a Protected Disclosure:

There are approved channels available for making a Protected Disclosure under this Policy:

- a) if you are an employee of a Group entity, the CMI Operations Limited **General Manager** is eligible to receive Protected Disclosures. The **General Manager** must then report the information disclosed to a **Protected Disclosure Officer** in accordance with the confidentiality protocols detailed in this Policy.
- b) If you are other than an employee of the Company or a Group entity (i.e. are a contractor or joint venture partner) or feel uncomfortable for any reason in providing a Protected Disclosure to the **General Manager of CMI Operations Pty Ltd** (including for reason of the Protected Disclosure being related to that individual), you should make your Protected Disclosure to the Company's Protected Disclosure Officer.
- c) The Group's Protected Disclosure Officers are eligible to receive Protected Disclosures. The Group's Protected Disclosure Officer is:

**Independent Non-Executive Director**

**Mr. Oliver Schweizer**

**Email:** [contact@excelsiorcapital.com.au](mailto:contact@excelsiorcapital.com.au)

A person making a Protected Disclosure may advise that they wish to remain anonymous, or place restrictions on who knows their identity.

The Group will comply with these requests and will still make best endeavours to investigate an anonymous disclosure. However, there may be limitations in investigating a disclosure where a whistleblower does not consent to disclosure of their identity.

## 5 CONFIDENTIALITY

- 5.1 The Group will take disciplinary action, **which is likely to include dismissal**, against any person who makes an unauthorised disclosure of the identity of a person who makes a Protected Disclosure under this Policy, or of information that is likely to lead to the identification of that person.

## Whistleblower Policy

- 5.2** It is an offence under the Act for a person who has directly or indirectly obtained information about the identity of a person who has made a Protected Disclosure, to disclose the identity of that person or information that is likely to lead to the identification of that person, without authorisation.

In connection with this policy, such authorisation may only be provided by the Group Acting Chairman.

## **6 DUTIES OF EMPLOYEES IN RELATION TO MISCONDUCT**

- 6.1** Employees of the Group who become aware of known or suspected cases of misconduct are **required** to report that information by making a Protected Disclosure under this Policy (except where such cases are able to be dealt with in the ordinary course of business through line management processes).

Failure to make such a report will be grounds for disciplinary action which is likely to include dismissal.

## **7 INVESTIGATION OF MISCONDUCT**

- 7.1** The Protected Disclosure Officers are responsible for receiving, forwarding and acting upon disclosures made under this Policy.

- 7.2** The Protected Disclosure Officers will:

- a) at the earliest opportunity and within no more than 14 days after receipt of a Protected Disclosure, except where the person has chosen to remain anonymous, clearly explain to the person making the disclosure what will happen in relation to the information received;
- b) when required or requested, make arrangements such that that disclosures can be made privately and, if appropriate, at a location other than the workplace;
- c) appropriately document any disclosures received verbally and ensure absolute security of such documentation;
- d) determine the appropriate action to be taken in relation to a disclosure, which may include:
  - (i) taking no action;
  - (ii) conducting, or arranging for the conduct of, a preliminary or informal investigation;
  - (iii) delegating to another officer or employee responsibility for dealing with matters raised pursuant to the disclosure;
  - (iv) conducting a formal investigation personally or with appropriate resources of the Group;
  - (v) Referring matters raised pursuant to the disclosure to an external authority, such as police or regulators;
  - (vi) Making recommendations to the Board, or Group management, regarding disciplinary action in consequence of any of the above;
- e) deal with disclosures impartially;
- f) report to the Board as to outcomes of any investigation;
- g) take all necessary steps to maintain confidentiality of the identity of persons who make disclosures, and the subject matter thereof; and
- h) provide all reasonable and practicable personal and moral support (within the power of the Protected Disclosure Officer, acting reasonably) to persons making a Protected Disclosure.

- 7.3** All information relating to a Protected Disclosure and any resulting investigation will be treated with the utmost confidentiality, which may include physically separating such information from Group IT systems. In any circumstances the Protected Disclosure Officer must act with reasonable care and skill to ensure security of such information.

Unauthorised release of information to someone not involved in the investigation without

## Whistleblower Policy

the consent of the whistleblower will be a breach of this Policy other than where the disclosure is required by law or an obligation exists to make such a disclosure to a regulator.

### 7.4 Fair treatment of parties named in or implicated by Protected Disclosures

7.4.1 Where investigations or other enquiries do not substantiate a Protected Disclosure, the fact the enquiry has been carried out, the results of the enquiry, and the identity of any person the subject of the disclosure will remain wholly confidential, unless the subject of the disclosure requests otherwise.

7.4.2 Subject to compliance with any legal requirements, an individual who is the subject of a Protected Disclosure has the right to expect principles of natural justice to be applied and in particular has the right to:

- a) be informed as to the substance of the allegations;
- b) be given a reasonable opportunity to put their case (either orally or in writing) to the Protected Disclosure Officer, directly or via any delegated investigator; and
- c) be informed of the findings in respect of the Protected Disclosure.

## 8 WHISTLEBLOWER PROTECTION

### 8.1 Protection against Detriment

8.1.1 If a person causes you any detriment or threatens to cause you detriment because that person believes or suspects that you have made, propose to make or could make a Protected Disclosure under this Policy or the Act, you must immediately bring the allegations to the attention of the Protected Disclosure Officer to whom you made the Protected Disclosure.

8.1.2 All employees, contractors and joint venture partners of the Group must not engage in any activity that is or could be perceived to be victimisation or harassment of persons who make disclosures under this Policy. The Group will take disciplinary action, which is likely to include dismissal, against any person who causes detriment or threatens to cause detriment to a person because they believe or suspect that the person has made, proposes to make or could make a Protected Disclosure under this Policy.

8.1.3 For the purposes of this Policy, '**detriment**' means dismissal, injury of an employee in his or her employment, alteration of an employee's position or duties to his or her disadvantage, discrimination, harassment, intimidation, harm or injury to a person including psychological harm, damage to a person's property, reputation, business or financial position, and any other damage to a person, including ostracism at work or otherwise.

8.1.4 The Act provides that a court may order a person who causes detriment to a whistleblower to pay the whistleblower compensation in respect of any loss or damage suffered. The Company may also take civil action against any Group employees, contractors or joint venture partners who breach this policy, in particular the above clause 8.1.3

### 8.2 Protection against actions

8.2.1 A person who makes a disclosure which qualifies for protection under this Policy, is not subject to any liability for making the Protected Disclosure and no action, claim or demand may be taken or made of or against the person for making the disclosure. A person who has made a Protected Disclosure is taken not to have committed any offence against any legislation which imposes a duty to maintain confidentiality with respect to any information disclosed.

## **9 NOTIFICATION OF FINDINGS**

- 9.1** Subject to any confidentiality restrictions or other legal requirements and provided a person who makes a Protected Disclosure has not chosen to remain anonymous, the person will be notified, within six months of the disclosure being made, of the Group's findings in respect of the disclosure.
- 9.2** The findings may be that an allegation has been fully substantiated, partially substantiated, is not able to be substantiated or is disproven.
- 9.3** If a Protected Disclosure is made in accordance with this Policy, the Protected Disclosure Officer (or if applicable, the offshore based independent director) is responsible for the six month notification to the person who made the disclosure.

## **10 PROTECTED DISCLOSURES UNDER THE CORPORATIONS ACT**

- 10.1** Part 9.4AAA of the Act provides special protection to disclosures made by whistleblowers where the conditions detailed in the Act are satisfied. Section 1317AA details the conditions under which a disclosure qualifies for protection under the Act. These conditions apply to a disclosure being made:
- a) by an eligible whistleblower; and
  - b) to an eligible recipient; and (iii) about information which is a disclosable matter under the Act.
- 10.2** The information in this Policy regarding to whom disclosures that qualify for protection under this Policy may be made, how the Group will investigate disclosures that qualify for protection and how the Group will ensure fair treatment of employees who are mentioned in disclosures that qualify for protection or to whom such disclosures relate, applies equally to a disclosure which qualifies for protection under Part 9.4AAA of the Act.
- 10.3** Aside from making a disclosure under this Policy, individuals are free to make a Protected Disclosure at any time directly to an external party, such as ASIC, APRA and the Australian Federal Police, as provided for in Part 9.4AAA of the Act or under any other law.

## **11 ACCESS TO THIS POLICY**

- 11.1** This Policy will be made available in the Corporate Governance section of the Group's website or a copy may be obtained from a Protected Disclosure Officer. Copies of the policy will also be made available to Group employees, contractors and officers electronically, via email on request or as appropriate.

## **12 TRAINING**

- 12.1** The Company will provide training as appropriate to employees in respect of their rights and obligations under this Policy and will provide training to Officers and others who may receive disclosures made under this Policy on how to handle those disclosures.
- 12.2** Training regarding this policy will be promptly included in the Group's site induction and new employee/contractor induction processes. The policy will be brought to the attention of all partners of the Group.

## **13 REVIEW**

- 13.1** This Policy and related procedures shall be reviewed periodically (but at least annually) by the Board. This policy was approved and adopted by the Board on 09/9/2021.

## 14 Effective date

This code is effective from 9 September 2021.

## 15 Definitions

In this code:

<b>Term</b>	<b>Definition</b>
<b>ASX</b>	means ASX Limited (ASX:ECL) ACN 050 542 553 or the securities exchange operated by it (as the case requires).
<b>Board</b>	means the board of Directors.
<b>Chairman</b>	means the chairman of the Board.
<b>Committee</b>	means a committee of the Board.
<b>Company</b>	means Excelsior Capital Limited ACN 050 542 553.
<b>Corporations Act</b>	means <i>Corporations Act 2001</i> (Cth).
<b>Director</b>	means a director of the Company.
<b>Key Personnel</b>	means the key personnel specified in clause 1.1.
<b>Secretary</b>	means the secretary of the Company.