

**PM CAPITAL ASIAN OPPORTUNITIES FUND LIMITED**  
**ACN 168 666 175**

**WHISTLEBLOWER POLICY**

**PREAMBLE**

Combating crime and misconduct is a longstanding aim of corporate, financial and tax law enforcement. Criminal conduct can be difficult to detect or prove satisfactorily in a court. It can be concealed by a complex web of transactions and falsified or misleading corporate records, and a proliferation of entities in corporate structures can make responsibility opaque.

Often such wrongdoing only comes to light because of individuals who are prepared to disclose it, sometimes at great personal and financial risk.

To reduce these risks and encourage disclosure of wrongdoing, Australia and many other countries have statutory whistleblower regimes with legally enforceable protections for people who make disclosures. The existence of strong statutory protections, coupled with appropriate corporate policies, to encourage whistleblowing can improve compliance with the law and promote a more ethical culture because individuals know there is a higher likelihood that misconduct will be reported.

On 19 February 2019, the House of Representatives passed the Treasury Laws Amendment (Enhancing Whistleblower Protections) Bill 2018 (*Enhancing Whistleblower Protections Bill*). This Bill came into effect on 1 July 2019.

PM Capital Asian Opportunities Fund Limited (*PAF*, or *Company*) has a culture that encourages openness, integrity and accountability. As such, the Whistleblower Policy (*Policy*) aims to provide an avenue for eligible whistleblowers to raise concerns and offer reassurance that they will be protected from reprisals or victimisation for any qualifying disclosures.

**Why do we need this Policy?**

Whistleblowing is often referred to as public interest disclosure. It is generally acknowledged that whistleblowers perform an essential function in the community, ensuring that public officials are held to account and private actors operate within the confines of the law. Protection of whistleblowers is therefore integral to fostering transparency, promoting integrity and detecting misconduct.

Laws protecting whistleblowers aim ‘to protect disclosures which would otherwise breach the law such as the law of confidential information and of defamation’ and ‘provide legal remedies for whistleblowers if they suffer reprisals for making the disclosure’.

The Company has implemented this Policy to:

- ensure an open and honest communication between its officers, staff and others engaged by PAF in the running of its business. By doing this PAF is able to maintain a high standard of business ethics;
- deter wrongdoing and promote standards of good corporate practices;
- provide proper avenues for eligible whistleblowers to raise concerns about actual or suspected improprieties in matters of financial reporting or other matters and receive feedback on any action taken; and
- provide eligible whistleblowers with the comfort that they will be protected from reprisals or victimisation for whistleblowing in good faith.

**Application**

This Policy applies to all officers, employees and contractors of PAF and its controlled entities, including when acting in any other capacity.

PAF will comply with the minimum standards set out in this policy. In the event a legal obligation imposes a higher standard or requirement on PAF, the legal obligation will prevail over the applicable minimum standard.

To the extent that the Company conducts activities in, or which we are governed by the law of, another jurisdiction, other requirements may apply in those jurisdictions. If any requirement of this Policy is inconsistent with a legal obligation, the legal obligation prevails over the Policy.

Any breach of this Policy (including cases of mistreatment of a whistleblower, or a breach of their rights to confidentiality) is serious and is grounds for termination of employment and other remedies in law (including civil and criminal penalties).

### **Implementation and Review**

The Company Secretary (or their delegate) will oversee the implementation of the Policy. A copy of this Policy will be provided to all officers and employees of the Company.

All personnel authorised under the operation of this Policy will receive training to ensure they know what to do when receiving a whistleblower disclosure, and how the whistleblower, the information provided by the whistleblower, and anyone identified in the whistleblower's allegations, should be dealt with.

The Policy will be reviewed as required. Any material deficiencies or improvements in the Policy will be prepared by the Company Secretary (or their delegate) and given to the Board for approval and implementation.

## **KEY POLICY DETAILS & OBLIGATIONS**

The following principles apply to whistleblowing at PAF:

1. All officers, employees, and/or contractors making disclosures must act in good faith - acting honestly, ethically and in the best interest of PAF.
2. PAF encourages former officers, employees, and/or contractors and auditors to make a disclosure under this Policy if they chose but the protections under this Policy will be limited to protecting identity only.
3. PAF will ensure officers, employees, and/or contractors who disclose reportable conduct, as well as those assisting or participating in an investigation are not victimised or disadvantaged.
4. PAF will regularly review all disclosures to ensure that no adverse consequences have been applied as a result of making a disclosure.
5. All officers, employees, and/or contractors have the right to communicate with regulators at any time, in relation to any concern within the scope of this Policy.
6. All investigations undertaken under this Policy must be conducted in accordance with the principles of fairness and natural justice.
7. Investigations must be timely, conducted impartially and comprehensively documented.
8. Each disclosure will have a unique identifier which will be provided to the whistleblower so they can liaise with the relevant whistleblower protections officer or seek feedback.
9. Where possible the outcomes of all disclosures will be provided to the whistleblower.

Prior to making a report under this Policy you should consider whether a matter can be more appropriately escalated or effectively addressed under another PAF policy or process before making a report (e.g. to a line manager; compliance officer; etc).

### **1. TYPES OF PROTECTED DISCLOSURES**

The conduct that may be the subject of a protected disclosure ("**qualifying disclosure**") includes actual or suspected conduct by PAF that is:

- misconduct, or an improper state of affairs or circumstances in relation to the Company;
- contravention of any law administered by ASIC and/or APRA;
- conduct that represents a danger to the public, or the financial system;
- an offence against any other law of the Commonwealth that is punishable by imprisonment for a period of 12 months or more; or
- is other conduct as prescribed by the regulations.

Examples of conduct that would be caught are:

- insider trading;
- insolvent trading;
- fraud; and
- failure to comply with statutory accounting and reporting requirements.

Other types of conduct that would be covered under the broad definition include:

- money laundering offences;
- offences involving terrorism financing;
- unethical and dishonest behaviours;
- unsafe work practices;
- activity that exploits loopholes in the financial services laws; or
- any other conduct which may cause financial or nonfinancial loss to PAF or be otherwise detrimental to PAF's interests or reputation.

Disclosures that concerns personal employment grievances of the discloser only, and do not have significant implications for PAF, have limited protection.

### 1.1 Public interest disclosure and emergency disclosure

A public interest disclosure to a journalist or parliamentarian also qualifies for protection if:

- the whistleblower has previously disclosed the information to the Australian Securities and Investments Commission (**ASIC**), Australian Prudential Regulation Authority (**APRA**) or other prescribed Commonwealth authority (the previous disclosure) and that previous disclosure qualified for protection;
- at least 90 days has passed since the previous disclosure was made;
- the whistleblower does not have reasonable grounds to believe that action is being, or has been, taken to address the matters to which the previous disclosure related;
- the whistleblower has reasonable grounds to believe that making a further disclosure of the information to a journalist or Member of Parliament would be in the public interest;
- the whistleblower has given written notification, including sufficient information to identify the previous disclosure, to the authority to which the previous disclosure was made that they intend to make a public interest disclosure of the information previously disclosed; and
- the extent of the information disclosed is no greater than is necessary to inform the recipient of the misconduct or improper state of affairs to which the previous disclosure related.

## 2. WHO CAN MAKE A QUALIFYING DISCLOSURE?

A qualifying disclosure can be made by an individual who is or has been in a relationship, such as officer/employee, with PAF about which the disclosure is made. These individuals are defined as “eligible whistleblowers”.

The following individuals are eligible whistleblowers if they are, or have been:

- an officer, employee, or associate of PAF (or its corporate group);
- an individual (or their employee) who supplies services or goods to PAF (or its corporate group) - whether paid or unpaid;
- a relative or dependent of any of the above (this includes a spouse, parent or other linear ancestor, child or grandchild, and sibling); or
- an individual prescribed by the regulations.

The motivation of the eligible whistleblower is not relevant, nor is the currency of their relationship to the Company. As such disclosures do not have to be made in good faith, but only on the basis of an objective test requiring the discloser to have ‘reasonable grounds to suspect’ misconduct or other disclosable matters exist.

## 3. WHO TO REPORT TO

The eligible whistleblower should direct their report to an eligible recipient (**Eligible Recipient**) being:

### Company Representatives

A protected disclosure can be made to a director or officer of the Company or a related body corporate.

### Company Auditor

A protected disclosure can be made to the Company’s auditor HLB Mann Judd (NSW Partnership), or a member of the audit team conducting an audit of the Company.

The relevant contact details are:

HLB Mann Judd (NSW Partnership)  
Level 19, 207 Kent St, Sydney NSW 2000

Mr Steve Grivas  
Partner, Audit and Corporate Advisory

Email: SGrivas@hlbnsw.com.au  
Phone: +61 (2) 9020 4065  
Fax: +61 (2) 9020 4191

Ms Amanda Sweeting  
Manager, Audit and Assurance

Email: ASweeting@hlbnsw.com.au  
Phone: +61 (2) 9020 4114  
Fax: +61 (2) 9020 4191

## ASIC

A protected disclosure can be made directly to ASIC. Nevertheless, the Company encourages initial reporting being made to the Company (on either an anonymous or non-anonymous basis) in order to assist the Company to more readily investigate, and respond to, the allegations itself.

## Member of Parliament or Journalist

Emergency disclosures (as per Section 1.1) can only be made to:

- a member of the Parliament of the Commonwealth or of a state or territory Parliament, or
- a journalist, defined to mean a person who is working in a professional capacity as a journalist for a newspaper, magazine, radio or television broadcasting service, or an electronic service (including a service provided through the internet) that is operated on a commercial basis and is similar to a newspaper, magazine or, or radio or television broadcast.

## Legal Representative

The disclosure may be made to the whistleblower's lawyer, for the purpose of legal representation or legal representation regarding the whistleblower protections.

## 4. PROTECTIONS

### 4.1 Legal Protections

Under law, Whistleblowers who make protected disclosures are protected from any civil, criminal or administrative liability (including disciplinary action) for making the disclosure. No contractual or other remedies can be enforced against the whistleblower if they are exercised because of their disclosure.

Any information that is part of a disclosure is not admissible in evidence against a whistleblower in criminal proceedings or proceedings involving a penalty, except in proceedings about the falsity of the information.

Whistleblowers are also protected from 'victimising conduct' as a result of making a disclosure. Victimising conduct includes dismissal from their position, injury, adjusting job duties that impact the whistleblower negatively, discrimination, harassment or intimidation, psychological harm, as well as damage to their property, reputation or financial position.

Under the Enhancing Whistleblower Protections Bill, whistleblowers and victims are protected from an award of costs against them where they seek compensation. There are some limited exceptions to this rule.

### 4.2 PAF protections

When a director/officer, employee, and/or contractor makes a disclosure of reportable conduct and that disclosure is made in good faith then that party must not be victimised or personally disadvantaged in any way. This applies whether or not the reportable conduct is found.

A party may be personally disadvantaged or victimised if they have been:

- dismissed or suspended;
- demoted;
- harassed or threatened;

- discriminated against;
- subject to current or future bias;
- subject to derogatory treatment.

#### **4.2.1 Obligations to act in good faith - acting honestly, ethically and in the best interest of PAF.**

Disclosures of reportable conduct are a serious matter and as such parties must ensure that when making such disclosures they do so honestly and in the best interests of PAF.

Parties who make disclosures in good faith will not be subject to disciplinary or any other action even under circumstances where no reportable conduct is found to have occurred. Parties who make malicious allegations of reportable conduct under the Policy may be subject to disciplinary action that may include PAF or another person taking legal action against them.

#### **4.3 Remedies and penalties**

Whistleblowers are entitled to remedies if they are subject to reprisal, or even a threat of reprisal, because they made the disclosures.

Some of the remedies include monetary compensation, exemplary damages, injunctions to restrain the conduct or reinstating their employment (in the case of employees who are terminated because of their disclosure). In some cases, PAF may be required to apologise for their conduct towards the whistleblower.

The maximum civil penalties for 'detrimental conduct' are:

- for a company, approximately \$10.5 million, three times the benefit derived or detriment avoided or 10% of annual turnover; and
- for an individual, approximately \$1.05 million or three times the benefit delivered or detriment avoided.

The maximum criminal penalty is 2 years imprisonment.

## **5. HOW TO REPORT**

Concerns or information are preferably raised or provided in writing (letter or e-mail). Ideally, PAF recommends the whistleblower to be detailed in setting out the background and history of events and the reasons for the concern(s).

If the whistleblower is not comfortable about writing in, he or she can telephone or meet an authorised Company representative or other Eligible Recipient in confidence at a time and location to be determined together.

### **5.1 Confidentiality**

Confidential information is information that identifies the discloser or information likely to lead to the identification of the discloser. PAF is committed to protecting, and not disclosing the confidential information obtained (including the identity of a whistleblower).

Exceptional circumstances under which the identity of, and information provided by, the whistleblower could be disclosed include where the disclosure is made to:

- ASIC, APRA or the Australian Federal Police (AFP);
- a legal practitioner for the purpose of obtaining legal advice in relation to the operation of the whistleblower provisions;
- a person or body prescribed by the regulations, or
- any person where the disclosure is made with the consent of the discloser.

PAF is not restricted from disclosing information likely to lead to a whistleblower's identification where:

- the disclosure is not of the identity of the discloser and is reasonably necessary for the purposes of investigating a 'disclosable matter', and
- the PAF takes (and can demonstrate that it has taken) all reasonable steps to reduce the risk that the whistleblower will be identified as a result of the disclosure.

PAF recognises that the Corporations Act makes it a criminal offence to victimise a whistleblower because of a protected disclosure made by the whistleblower. The Act also provides that if a whistleblower suffers damage because of such victimisation, the whistleblower can claim compensation for that damage from PAF. It is the responsibility of whistleblowers to bring any action for compensation.

## **5.2 Reporting anonymously**

Whilst reports may be made anonymously, there may be no protection for information or the whistleblower's identity.

## **6. HOW WILL PAF RESPOND**

Any investigation that is undertaken as a consequence of a disclosure of reportable conduct will be conducted fairly, and investigated impartially to ensure that each case is evaluated on its merits - to ensure the fair treatment of officers/employees of the company who:

- (i) are mentioned in disclosures that qualify for protection, and
- (ii) to whom such disclosures relate.

For this to occur investigations will be conducted as soon as is practicable and records of the disclosure will be comprehensive and securely retained.

Investigations may require the investigator to contact the officer, employee or contractor who made the disclosure to obtain additional information relevant to the investigation.

The appointed Whistleblower Protection Officer (being the Company Secretary) will provide the whistleblower with updates on progress, as well as details of outcomes on the disclosure they have made. Where a Whistleblower is not satisfied that a disclosure has been investigated and acted upon appropriately, that person may request that the investigation be further reviewed.

### **6.1 Where reports are made anonymously**

Reports made anonymously are much less persuasive and may hinder investigation work as it is more difficult to look into the matter or to protect the whistleblower's position. Nevertheless, PAF will investigate anonymous reports fairly, and on its merits.