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INTERNATIONAL TRADE, REGULATORY & GOVERNMENT AFFAIRS UPDATE

FOREIGN BRIBERY AND CORRUPTION - AUSTRALIAN LAW

INCREASINGLY, AUSTRALIAN COMPANIES ARE ENTERING INTO CROSS BORDER BUSINESS RELATIONSHIPS AND IN DOING SO ARE DISCOVERING THAT THE LAW AND THE LOCAL CULTURE CAN BE QUITE DIFFERENT. THIS IS ESPECIALLY TRUE IN THE USE OF BRIBES AND FACILITATION PAYMENTS IN CERTAIN MARKETS WHERE SUCH PAYMENTS ARE SEEN AS THE NORMAL WAY OF DOING BUSINESS.

As several high profile cases in Australia have recently highlighted, dealing with demands for such payments is one of the most challenging aspects of international business operations and a significant risk which must be closely managed.

The Australian Federal Police has announced this week that it has 14 active foreign bribery investigations at the moment and has two matters currently before the courts, including a case against two directors of an Australian construction company charged with attempting to bribe Iraqi government officials in order to secure multi-million dollar contracts there.

This is also an area where Australian law is not identical to the law in other countries such as the United Kingdom and the United States. Understanding what is permitted and what is prohibited is an important commercial issue - not just a legal one.

It is important that your business understand the Australian law in this area which is different to the bribery and corruption laws that operate for domestic business. To manage the legal, political, insurance and commercial risks relevant there is a need for a well-considered and planned commercial strategy and code of conduct for dealing with these issues.

The potential consequences for your business from these risks if they are not managed appropriately include:

- criminal prosecutions against the company and/or individuals;
- business costs associated with managing investigations and prosecution;
- reputational damage and loss of business partners;
- vulnerability to increasing demands;

- operational cost increases for systemic escalation of demands;
- potential risk to the safety of employees; and
- potential risk to company assets located in foreign jurisdictions.

The offence of bribing a foreign public official is contained in section 70.2 of the *Criminal Code Act 1995* (Cth) but there are very specific components to the offence and there are two defences which in effect permit certain payments if the conduct is lawful in the country in which it occurred or that the benefit was a facilitation payment to secure the performance of routine government actions of a minor nature. The Australian Federal Police has the primary law enforcement responsibility for investigating criminal offences against Commonwealth laws including foreign bribery offences.

The Commonwealth Government has released a resource available [here](#) to assist companies. It is a 15 minute online learning module which canvasses practical measures that can be taken, to minimise the risk of breaching the relevant laws. It is general but it is an excellent starting point.

Each business should consider its specific operations, markets and risks and develop an integrated compliance and ethics policy which provides clarity in this area for managers and staff. Each business has a different risk appetite and also very different needs so it is important that your program is tailored to your business operations and markets. Even recognising what is a bribe or corrupt conduct can be a challenge for your business or for the employee on the ground when faced with such demands. Bribery can take many forms including gifts, hospitality, lavish entertainment, travel, supporting a favoured cause, employment, donations to a political party, education for family members and tangible assets.

Each company must determine as part of its Code of Conduct and Bribery-Corruption program what are acceptable limits for gifts, hospitality etc.

We can assist you with advice on the law as it applies to your business and also with the drafting of your compliance programs, protocols and training for the specific risks associated with your business including how to integrate these policies with your domestic bribery-corruption policies and your anti-money laundering programs.

Our extensive international network also provides us with the ability to advise you on the law in multiple jurisdictions around the world so that your Australian strategy complies with both Australian law and the law in the relevant countries.

MORE INFORMATION

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