Why You Need To Know About Foreign Bribery and Its Implications

The consequences for individuals and companies who bribe or attempt to bribe

Bribing or attempting to bribe a foreign public official is a serious crime. Australian companies or individuals that bribe an official in a foreign country can be prosecuted under Australian law and the laws of foreign countries.

Australia takes a strong stance against foreign bribery and other forms of corruption.

The offences for foreign bribery carry significant penalties for individuals and companies.

This includes offences which carry maximum penalties of 10 years imprisonment and fines of up to $1.8 million for individuals. The maximum penalty for a company is the greater of the following:

- an $18 million fine
- three times the total benefit obtained from the bribe, or
- 10% of the company’s annual turnover.

These penalties reflect the serious criminal nature of bribery and the detrimental effects it has on Australian trade and reputation, and international governance.

You must be aware of the types of activities that are legal and illegal when interacting with foreign officials. It is not possible to argue that you did not realise that your conduct constituted bribery. The offence applies whether or not the alleged offender intended to bribe a particular foreign public official. The offence also applies regardless of the outcome or result of the bribe or the alleged necessity of the payment: companies and individuals may be held liable regardless of whether or not the bribe obtains the advantages sought and whether or not the bribe was considered necessary to do business. (See Fact Sheet 2 – The Offence for more information on the offence and defences.)

The consequences for Australia

Australia is a party to the Organisation for Economic Cooperation and Development (OECD) Convention on Combating Bribery of Foreign Public Officials in International Business Transactions (the Anti-Bribery Convention). Australia is also a party to the United Nations Convention against Corruption (UNCAC). Australia’s obligations under the Anti-Bribery Convention and UNCAC include making foreign bribery an offence and prosecuting the individuals and companies who engage in it. More information on Australia’s international obligations is at Fact Sheet 4.
Supporting ethical business practices, and prosecuting those who engage in unethical practices, helps to improve Australia’s investment opportunities overseas and is an important aspect of Australia’s excellent global reputation as a corruption-free trading partner.

Foreign bribery and other types of corruption skew competition, inhibit business growth and ultimately shrink the global market for Australian exports and investment.

Incidents of foreign bribery in Australia or by Australians undermine the reputation of all Australian businesses and impact negatively on business and government relations.

**The broader effects of foreign bribery**

As stated in the Anti-Bribery Convention, ‘bribery is a widespread phenomenon in international business transactions, including trade and investment, which raises serious moral and political concerns, undermines good governance and economic development, and distorts international competitive conditions’.

Foreign bribery results in an inefficient allocation of resources and economic distortions. It is also a threat to democracy, corrosive of good governance and an impediment to economic development.

**Liability under foreign laws**

Nearly all countries have criminal laws against bribing domestic officials and a growing number of countries have laws against bribing foreign officials.

Bribery by an Australian company or individual of an official in a foreign country may give rise to liability under the laws of that country.

However, Australian companies and businesses may also be liable under anti-corruption laws of third-party countries. For example, the extended jurisdiction of the United States Foreign Corrupt Practices Act of 1977 includes businesses that issue registered securities under US law.

This extended jurisdiction has enabled the United States to prosecute non-US companies and individuals for actions outside the United States, including mobile phone manufacturer Siemens, which in 2008 was fined a record US$1.6 Billion in the United States for corrupt activity in Europe. People considering whether or not a payment to a foreign official is lawful must therefore consider a wide range of potential liability, may face prosecution in multiple countries, and should take all appropriate steps to ensure neither they nor their employees or agents engage in bribery.