



BRIBERY OF FOREIGN OFFICIALS

November 2005

The recent press regarding AWB's dealings in the Middle East provides a timely reminder that Australian companies doing business abroad have a myriad of legal issues to contend with.

In 1999, Australia ratified the OECD's Convention on Combating Bribery of Foreign Public Officials in International Business Transactions. Subsequent amendments to the Criminal Code Act 1995 (Cth) make it an offence for a person to whom that Act applies (e.g. Australian citizens, residents and companies) to offer to or actually provide a "benefit" or cause a benefit to be provided to another person, where that benefit is "not legitimately due" to the second person and where the first person's intent is to influence a "foreign public official" in the exercise of that official's duties, in order to obtain or retain business or an illegitimate "business advantage".

The definition of "foreign public official" is broad, and includes an employee or official of, or an individual who contracts to perform work for, a foreign government body or a public international organisation, and any individual who is or who holds himself out to be the authorised intermediary of a foreign public official.

One defence to a prosecution, assuming the basic elements of the offence are present, is that the conduct was legal in the country where it took place. A further defence is available where the payment is of a minor value only and is paid for the purpose of expediting or securing the performance of a "routine government action" of a minor nature. Examples of "routine government action" include the grant of a permit or licence or the processing of a government paper such as a visa or work permit.

The Attorney-General's Department, in discussing these anti-bribery provisions, comments that Australian companies doing business abroad should ensure that they develop and implement a corporate "anti-bribery" compliance plan and exercise due diligence and take reasonable precautions to ensure that employees do not commit foreign bribery offences (see www.ag.gov.au/foreignbribery). The need for such precautions is evident from the penalties that apply to a bribery offence – up to 10 years imprisonment and/or heavy fines (for a company, potentially hundreds of thousands of dollars).

In addition to ensuring that their own practices are beyond reproach, clients who are considering an acquisition of a company that does business abroad should include the anti-bribery provisions among the areas of legal compliance that may be material to their due diligence investigations.

If you have any questions in relation to these issues, please contact either:

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