

Foreign bribery and money laundering indicators

Information for reporting entities and cash dealers

Foreign bribery

It is a criminal offence under Australian law to bribe a foreign public official. Details of the offence can be found within section 70.2 of the *Criminal Code Act 1995* (Cwlth). Bribery distorts markets, artificially inflates prices, undermines democracy and leads to sub-standard products being procured.

Money laundering and foreign bribery

It is a criminal offence under Australian law to deal in proceeds of crime or an instrument of crime under Division 400 of the *Criminal Code Act 1995* (Cwlth). Foreign bribery offences against section 70.2 of the *Criminal Code Act 1995* (Cwlth) often involve money or property being provided to foreign public officials or their intermediaries in exchange for business or a business advantage. In these scenarios, the following applies:

- Money or property provided as a bribe is considered an instrument of the offence in relation to the facilitation or commission of an offence against section 70.2 of the *Criminal Code Act 1995* (Cwlth).
- Money or property provided as a bribe is considered an instrument of the offence in relation to the facilitation or commission of a foreign indictable offence against the foreign country's domestic anti-corruption legislation.
- Money or property provided as a bribe is considered the proceeds of crime resulting from the commission of a foreign indictable offence against the foreign country's domestic anti-corruption legislation.
- Any profit generated from any business or business advantage gained from the bribe is considered proceeds of crime resulting from the commission of an offence against section 70.2 of the *Criminal Code Act 1995* (Cwlth).

Methodologies implemented

Typically, offenders use the same money laundering methodologies in foreign bribery as they do when laundering the proceeds of other complex criminal offences. Often funds are transferred through shell companies in tax havens purportedly for goods and services, which are never delivered.

Case Study 1

To avoid law enforcement, an Australian company make a bribe payment to a business registered in the British Virgin Islands, for services purportedly provided in the Philippines. The payment is made through Luxembourg to an account in Switzerland and then sent back to second account in Luxembourg.

Financial institutions exposure to foreign bribery risks

Financial institutions and service providers face a raft of foreign bribery risks when dealing in foreign countries. Based on the experiences of foreign law enforcement agencies and regulators, banks and financial institutions have been subject to investigation for bribery related offences committed in return for the following business and business advantages:

- Higher interest rates to be paid on loans taken out by foreign governments.
- Access to favourable finance from state owned banks.
- Favourable access to the sale of state owned assets.
- Favourable access to state owned or run pension and superannuation funds.
- Access to inside information from state owned banks.
- Obtaining investments from foreign sovereign wealth funds.

Bank and financial institution employees and corporate entities have already faced prosecution for bribery related offences in Japan and the United States.

Case Study 2

Two directors of a United States based brokerage firm were charged in June 2013 with paying bribes to an officer of a state owned Venezuelan Bank. The bribes were paid in exchange for favourable access to the bank's bond trading business.



Reporting entities and cash dealers obligations

Reporting entities for the purposes of the *Anti-Money Laundering and Counter-Terrorism Financing Act 2006* (AML/CTF Act) and cash dealers for the purposes of the *Financial Transaction Reports Act 1988* (FTR Act) should be cognisant of the offences set out under section 70.2 of the Criminal Code Act 1995 and the implications these offences have for follow on money laundering offences when undertaking ongoing customer due diligence and the reporting of suspicious matters and suspect transactions.

AUSTRAC officers are able to provide general information relating to the FTR Act and the AML/CTF Act.

How do I contact the AFP to report someone for bribing a foreign public official?

It is incumbent upon all Australian citizens to do their part to report foreign bribery when it is discovered. This ensures the integrity and transparency of international business contracts is maintained and prevents the exploitation of vulnerable economies and people.

You can report matters:

- online by accessing the 'Reporting a Commonwealth crime to the AFP' form located at: https://forms.afp.gov.au/online_forms/report_a_crime
- by contacting an AFP liaison officer through the AFP's International Liaison Officer Network which has appointees in 30 countries
- by contacting the AFP Operations Monitoring Centre:
 - in writing to:
AOCC Client Liaison Team
GPO Box 401
Canberra ACT 2601
 - or by calling:
(02) 6126 7777
(in Australia)
or +61 2 6126 7777
(from outside of Australia).

Reports of foreign bribery should include all known information (where possible) relating to the suspected offence and contain copies, or preferably originals, of any documents or emails relied upon when making the referral.

Useful links

Attorney-General's Department

www.crimeprevention.gov.au/Financialcrime/Pages/Briberyofforeignpublicofficials.aspx

www.crimeprevention.gov.au/Financialcrime/Pages/Briberyofforeignpublicofficials.aspx

Australian Taxation Office

www.ato.gov.au/content/81908.htm

Austrade

www.austrade.gov.au/Exporters/About-Exporting/Legal-issues/Bribery-of-foreign-public-officials

Department of Foreign Affairs and Trade

www.dfat.gov.au/issues/measures-against-corruption.html

The Export Finance and Insurance Corporation

www.efic.gov.au/corp-responsibility/Pages/anticorruptioninitiatives.aspx

Organisation of Economic Cooperation and Development

www.oecd.org/corruption/oecdantibriberyconvention.htm

United Nations Convention against Corruption

www.unodc.org/unodc/en/treaties/CAC/

AUSTRAC

www.austrac.gov.au/aic-42-bribery-foreign-public-officials.html

www.austrac.gov.au/information_circular.html

www.austrac.gov.au/acg-chapter-7-reporting.html

AFP Foreign Bribery Fact Sheet

www.afp.gov.au/~media/afp/pdf/f/Foreign-Bribery-AFPFactSheet.ashx