

Anti-Bribery Policy and Procedures

Overview

The “**Anti-Bribery Policy**” of 360 Capital FM Limited and its related entities (**360 Capital** or the **Company**) states that no Employee may offer payments, or anything else of value to a government official that will assist 360 Capital in obtaining or retaining business or securing any improper business advantage, including making, promising or offering bribes to maintain existing business relationships or operations. Anyone at 360 Capital found to be violating 360 Capital’s Anti-Bribery Policy will be subject to disciplinary action, which may include termination. 360 Capital requires all Employees to report any suspicious activity that may violate this policy to the Compliance Manager. An Employee’s failure to report known or suspected violations may itself lead to disciplinary action.

What is Bribery

In general terms, bribery is the offer, payment or provision of a benefit to someone to influence the performance of a person’s duty and/or to encourage misuse of his or her authority.

Key areas of the Australian Law relating to bribery and corruption described below are as follows:

- bribery of foreign public officials
 - false accounting offenses
 - domestic bribery
 - political donations
 - enforcement of contracts procured by bribery
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Bribery of a Foreign Public Official

Who is a foreign public official?

The definition of ‘foreign public official’ is very broad, and includes:

- an employee / official of a foreign government;
- a member of the executive, judiciary or magistracy of a foreign country;
- a person who performs official duties under a foreign law;
- a member / officer of the legislature of a foreign country; or
- an employee / official of a public international organisation (such as the United Nations).

The offence of bribing a foreign public official is contained in section 70.2 of the Criminal Code Act 1995 (Cth) (the Code).

The Code has a number of elements which can be divided into steps. All of these elements must be present for the offence to apply. A person is guilty of an offence if:

1.
 - the person provides a benefit to another person,
 - offers or promises to provide a benefit to another person, or
 - causes a benefit to be provided, offered or promised to another person

AND

2. the benefit is not legitimately due to the other person

AND

3. step 1 was carried out with the intention of influencing a foreign public official (who may or may not be the other person) in the exercise of the official's duties as a foreign public official in order to obtain or retain business or obtain or retain a business advantage which is not legitimately due.

AND

4. there is a relevant connection with Australia which is established by the alleged offence occurring:

- wholly or partly in Australia; or
- wholly or partly on board an Australian aircraft or ship; or
- wholly outside Australia and the person is an Australian citizen, resident of Australia or a body corporate incorporated under a law of Australia.

The following types of benefits could be captured by s 70.2:

- making political or charitable donations.
- gifts or corporate hospitality.
- promotional expenses, travelling expenses or accommodation.
- employing foreign public officials or their relatives.
- provision of services such as a car.

Liability of corporations to their representatives

Companies need to be aware that they may be liable for the actions of their employees and agents under Australian law and foreign law. People that engage in bribery while acting as an agent also may be individually liable and may be prosecuted under Australian or foreign law.

It is important to be aware of what actions may constitute a bribe and what obligations companies have to ensure employees and agents comply with the law. The foreign bribery offence is defined in Division 70 of the Criminal Code and the nature of corporate liability is defined in Division 12 of the Criminal Code.

Companies and individuals engaging in bribery may be liable under the laws governing the foreign public official and may be liable under the laws of third-party countries. The United States Foreign Corrupt Practices Act 1977, for example, has extended jurisdiction over any company issuing registered securities under US law (eg. companies listing shares on a United States stock exchange).

The defences to the Australian foreign bribery offence

There are two defences to the offence:

1. The advantage was permitted or required by the written laws that govern the foreign public official.

This defence applies where a written law governing the foreign public official expressly permits or requires the benefit to be given. Subsection 70.3(1) of the Criminal Code lists the laws that govern different public officials.

2. The benefit provided constituted a 'facilitation payment'.

A defence is also provided where a benefit constitutes a 'facilitation payment'. In order to satisfy this defence, the benefit must be 'of a minor value' and be offered 'for the sole or dominant purpose of expediting or securing performance of a routine government action of a minor nature', and it must be recorded.

A routine government action is an action that is "ordinarily and commonly performed by that official" and falls within one of the following categories:

- Granting a permit, licence or other official document that qualifies a person to do business in a foreign country or in a part of a foreign country.
- Processing government papers such as a visa or work permit.
- Providing police protection or mail collection or delivery.
- Scheduling inspections associated with contract performance or related to the transit of goods.
- Providing telecommunications services, power or water.
- Loading and unloading cargo.
- Protecting perishable products, or commodities, from deterioration.

Individuals and companies must be aware that, even if a benefit constitutes a legitimate facilitation payment under Australian law, people making these payments may be liable for bribery under the laws that govern the foreign public official.

The Australian Government recommends that individuals and companies make every effort to resist making facilitation payments.

Penalties and Enforcement

The maximum penalty for an individual is 10 years imprisonment and/or a fine of 10,000 penalty units, that is, \$1.8 million.

The penalty for a body corporate can be a fine issued in penalty units or it can be a proportional penalty, calculated according to the value of benefits obtained from bribery, or the annual turnover of the company. If the value of benefits obtained through bribery can be ascertained, the penalty is 100,000 penalty units (\$18 million) or 3 times the value of benefits obtained, whichever is greater. If the value of benefits obtained through bribery cannot be ascertained, the penalty for a body corporate is 100,000 penalty units or 10% of the 'annual turnover' of the body corporate and related bodies corporate, whichever is greater.

The high penalties for foreign bribery reflect the seriousness of bribery and its consequences.

In addition to criminal penalties, any benefits obtained by foreign bribery can be forfeited to the Australian Government under the Proceeds of Crime Act 2002 (Cth).

Preclearance Requirement

Any payment or anything else of value given to a foreign official must be pre-approved by the Chief Financial Officer.

False Accounting Offenses

There are two offenses under the Criminal Code Act 1995 (Cth) related to false accounting in the form of acts or omissions, for the purposes of concealing or enabling bribes to a foreign public official.

The first offence, at section 490.1, applies where:

- a person makes, alters, destroys or conceals an accounting document; or
- where a person fails to make or alter an accounting document that the person is under a duty to make or alter with the intention that the conduct would facilitate, conceal or disguise:
 - the receipt or giving of a benefit that is not legitimately due; or
 - a loss that is not legitimately incurred.

The second offence at section 490.2 applies in the same circumstances as the first, but where the person is reckless as to whether the benefit or loss would arise. In general terms, recklessness occurs where a person can foresee some probable or possible consequence, but nevertheless decides to continue with their actions with disregard the consequences.

360 Capital's financial accounts are subject to Board and senior management oversight, an annual independent audit and a half year independent review.

Domestic Bribery

Each State and Territory has legislation criminalising bribery of both public officials and private individuals. The Commonwealth also criminalises the bribery of Commonwealth public officials under Divisions 141 and 142 of the Criminal Code.

Each piece of legislation is different and needs to be specifically considered. However, they have a number of similar features and the following situations are likely to give rise to serious concerns:

- agents (including employees) of private persons or entities or agents of the crown/public bodies providing, offering or accepting benefits (of any kind)
- as an inducement or reward for doing, or not doing something re the principal's affairs which might tend to influence the agent to show favour or disfavour re the principal's affairs.

As with foreign bribery, custom and practice are no defence, though there is generally a requirement that the benefit must be given or accepted dishonestly or corruptly. The courts have interpreted "dishonestly" or "corruptly" as meaning "with intention to influence". So even where the legislation refers to payments which "tend to influence" (which suggests it is not necessary to have a particular intention), the need for dishonesty or corruption means that there must be an intention to influence.

In many States, paying secret commissions for advice given to others about their business dealings is also an offence, even if the adviser is not an "agent". Companies may be criminally liable for bribery committed by their employees, officers or agents. Some States and Territories (SA, ACT, NT) have adopted the expansive Commonwealth model (described above in relation to foreign bribery). In others, corporate liability is likely to arise only where a directing mind or will of the company – typically a director or senior manager – is involved in the offence.

As with foreign bribery, companies/directors may also be liable where they aid, abet, counsel or procure bribery – that is, if they intentionally participate in the offence, for example by requiring or encouraging bribery, or providing funds to allow employees or agents to commit offences. The penalties for domestic bribery are also heavy: prison terms ranging from up to 7 years (NSW) to up to 21 years (Tas) may be imposed on individuals, and companies are liable to significant fines.

In addition to criminal liability, all states have created bodies (commissions) charged with investigating and reporting on corrupt conduct in relation to public sector agencies.

Preclearance Requirement

A payment, other than approved salary, or anything else of value given to a domestic individual or official must be pre-approved by the Chief Financial Officer.

Political Donations

Political donations are seen as giving rise to particular risks of corruption or perceptions of corruption, and are accordingly subject to additional regulation by the Commonwealth, States and Territories. In all of the States and Territories except for Tasmania, there are requirements to file returns or make public disclosures of donations in some circumstances, with financial penalties for non-compliance. Under Commonwealth, South Australia, Queensland and Northern Territory laws the donor (rather than the party or politician) is frequently required to file the return. NSW, Victoria and Western Australia also cap or prohibit donations above certain amounts/from certain industry sectors.

The failure to properly disclose a donation may also be evidence from which a corrupt or dishonest intention could be inferred, for the purposes of domestic bribery offences, and may be of some interest to the commissions.

360 Capital will not make political donations or otherwise endorse or support political parties or candidates with the intent of directly or indirectly influencing any investment management relationship.

Enforcement of Contracts Procured by Bribery

Where contracts are entered into as a result of bribery of an agent, an innocent principal may be entitled to:

- rescind the contract and recover moneys paid over under it; and/or
- recover the amount of the bribe from the agent and seek damages for any losses suffered.

Enforcement of contracts entered into following a bribe is therefore far from certain, even if the bribe was small in nature and perhaps did not have any real impact on the principal's entry of the contract.

All contracts entered into by 360 Capital are approved by Executive Committee members and directors. Any contracts that have elements which may relate to bribery will be reviewed legally for preclearance. Signing of contracts can only be done by authorised signatories.
