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Printed by Elizabeth Peak 05:41 PM Tuesday, 27 June 2006
CE1517H
Title: Bribery: Potential Allegations against Australian Companies
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To: FAF Posts
From: Canberra (CHCH/DFAT/fLD/LGB)
From File: b (*A*- r
References:
Response: Routine, Information Only *0*
Summary

Cable outlines Australia's criminal legislation with respect to the offence of bribery public officials overseas. Posts are requested to report on any credible allegations that Australian individuals and/or companies operating abroad are bribing local public officials. The OECD's Working Group on Bribery (WGB) will review our implementation of this legislation mid-2005.

In 1999, Australia ratified the OECD's Convention on Combating Bribery of Foreign Public Officials in
International Business Transactions (Foreign Bribery Convention), and implemented domestic legislation which makes it an offence for an Australian individual or company to bribe a foreign official. This legislation has extra-territorial application, so extends criminal jurisdiction to Australian individuals or companies operating overseas.
2. The OECD's Working Group on Bribery (WGB) will oversee a detailed review of Australia's implementation of the Convention in May 2005. That report will include a review of Australia's investigation and/or prosecution of allegations of bribing foreign officials. To date, Australia has not prosecuted anyone under its criminal legislation. The Attorney-General 's Department is coordinating Australia's preparation for the review.
3. In recent months there have been several allegations of bribery made against Australian interests abroad which, if true, would have been offences under Australia's criminal code. As the Australian Federal Police may have an interest in investigating credible allegations, posts are asked to remain alert to information which could suggest a potential breach of Australia's criminal code, and to report accordingly. This could include
clarification with local law enforcement agencies as to the status of any local investigation where an Australian interest has been implicated.

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4. The Commonwealth Criminal Code sets out the relevant offences. Key aspects of Australia's foreign bribery offences are:
• It is an offence for an Australian citizen, resident or and Australian-incorporated body to bribe a foreign public official.

• A person is gui]ityof an of fence if they provide or cause the provision of a benefit to a foreign public official, and the benefit is not legitimately due to that official.
• Offers and promises to provide a benefit to a foreign public official person are also an offence.
• Foreign Officials also include those who perform work for a public international organisation (for example, the UN).
• It is an offence to influence the foreign public official in order to obtain a business advantage not legitimately due to them.
• It is irrelevant that bribery is, or is perceived to be, socially or officially tolerated, or is nominal only.
• Foreign Bribery is treated as a serious offence, and attracts a maximum imprisonment of 10 years jail, although courts may impose a fine instead of or in addition to imprisonment.
• The maximum fine that could be imposed on a company is $330,000.

5. Grateful Posts ensure that all officers are aware of the offences, and the need to follow up on all credible allegations involving Australian interests.
6. Further information on the of fences is being prepared for an awareness strategy in the lead up to Australia's Phase II review, and will be forwarded to Posts later this year.
7. The point of contact for queries is marianne. j ago@ag. gov. au.
8. This cable has been cleared by PLI.

text ends
Sent by: Jonathan S Chew
Prepared by: Marianne **Jago, AGD**

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