

# Vigilance needed to deal with offshore corruption

## Opinion

Steven Fleming

**R**io Tinto's subsidiary in Mongolia, SouthGobi Resources, joined an exclusive club last month no one wants to join: Australian businesses that have had to deal with corruption allegations in connection with their overseas operations.

Fellow members include Leighton, Securrency and AWB. SouthGobi's Mongolian travails come in the context of a sea change around foreign corrupt practices in Australia, which hasn't escaped the market's notice. Corruption is a hot topic in Australian boardrooms.

The Organisation for Economic Co-operation and Development is not satisfied the federal government is doing enough to stop corrupt conduct by companies. In submitting its phase three report on Australia on October 12, the OECD working group on bribery expressed "serious concerns that overall enforcement of the foreign bribery offence to date has been extremely low". Companies are increasingly cognisant of potential legal liability under Australian law if they engage in corruption overseas: up to 10 years' jail for individuals, and \$11 million-plus in fines for companies.

This is in addition to other sources of significant liability, such as under the Proceeds of Crimes Act, or to the

Tax Office, as well as potential regulatory and civil lawsuits.

The commercial downsides of corrupt deals are too frequently overlooked. While they may initially seem lucrative, bribe payers are often extorted by corrupt public officials who refuse to make good on their contractual obligations without further payments. Companies also find it increasingly difficult to win business without further and larger bribes; and business strategy becomes increasingly distorted by non-commercial factors.

Despite the significant downside, companies cannot simply retreat from markets that bear a higher degree of corruption risk. A recent study found 75 per cent of top

companies operate in areas or countries with a high risk of corruption. The federal government has committed to a deepening of economic, political and social links with our Asian neighbours.

Simply put, businesses cannot afford to lock themselves out of their own future. The Association of South-East Asian Nations bloc is our largest trading partner and merchandise exports there grew 23 per cent last year. ASEAN's gross domestic product is predicted to grow by 5 per cent in 2012 and its population exceeds 570 million.

Complying with Australian law has never meant companies need walk away from legitimate deals even in risky jurisdictions.

The first step is to identify risk.

The Corruption Perception Index shows risky jurisdictions; companies dealing extensively with government agencies or state-owned companies should be aware of that risk.

The second step is mitigating that risk by developing a commercially sensitive compliance program with input from all sides of the business.

The final, perhaps most difficult step is to create a culture of vigilance where companies recognise the true cost of paying bribes and where employees are freely able to escalate their concerns and seek advice when dilemmas or corrupt demands arise.

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