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Serious consequences for bribery shortcut

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MANY Australian mining companies attempting to sell coal to the emerging countries of India and China have a palpable lack of the understanding of the harsh penalties under Australian legislation if they are found to have used bribery.

The energy and resources sector also bears a higher corruption risk than most because it operates in high-risk jurisdictions that contain unexplored or underdeveloped resources, according to Steven Fleming, a partner at law firm Jones Day.



"Australian companies have taken the view this is the way you do business in those jurisdictions and they would rather not do it, 'but that is the way it is'," Fleming told *ILN*.

"Now they are beginning to be more serious about it because they realise the very serious consequences that will flow, and now even more so given they know the AFP is alive to it and they will prosecute them.

"Our experience is, Australian companies are asking a lot of questions about compliance."

While many Australian mining companies have anti-bribery codes of behaviour in place, they must remain vigilant to corrupt behaviour masked by complex third-party contractor structures in foreign countries, according to Fleming.

"I would be surprised if there's not a major Australian corporation that is not alive to these issues going forward," Fleming said.

"But the structuring of this [bribery] can be quite sophisticated.

"So while you might have a blue ribbon compliance program – you might have the top executives pronouncing that a company policy where it's not done – it still quite easy for an organisation to be liable under the Corporations Act for some of these types of structures that we've seen."

It is not just small resources companies susceptible to bribery. The largest resources companies would find it challenging to ensure that the entire organisation does not undertake or deal with bribery, Fleming said.

"They are the biggest companies with the most projects. They are also the companies that are most aware of it and one would suspect they have some outstanding compliance programs in place," he said.

"But even they can slip up.

"The best you can do is have in place a clearly defined policy and make sure it is communicated and ensure that it is monitored.

"So it can be simple as ensuring there are sign offs on the contract level so the person that is responsible signs off that there are no bribes being paid on the project.

"With the certificate of compliance and the people signing it knowing the consequences if they are proven to falsely certify."



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