

Combating Bribery & Corruption for Australian Companies

The Crimes Legislation Amendment (Combating Foreign Bribery) Act 2024

September 2024



Overview

The Crimes Legislation Amendment (Combatting Foreign Bribery) Act 2024 ('2024 Amendment') came into effect on 8 March 2024. The 2024 amendment in the existing foreign bribery offences in Australia introduces a new corporate offence of 'failure to prevent' foreign bribery under Section 70.5A of the Criminal Code Act 1995 (Cth) (the Criminal Code) requiring that a corporation will not be liable under the corporate 'failure to prevent' offence if it can prove it had 'adequate procedures' in place to prevent foreign bribery.

The 'failure to prevent offence' shall be applicable with effect from 8 September 2024. Companies need to ensure that they have in place adequate procedures to prevent foreign bribery by associates before the effective date. Failure to introduce 'adequate procedures' to mitigate the risk of foreign bribery would result in a corporation being found guilty of 'failure to prevent' foreign bribery. As per the recent guidelines published by the Attorney General on adequate procedures, the senior management of a company is expected to play a key role in establishing a culture of compliance and must be engaged with anti-bribery and corruption framework.

Salient features of the anti-bribery and corruption compliance systems as per the guidance issued by the Attorney-General's department of the Australian government are as follows:



Fostering a control environment to prevent bribery and corruption



Communication and training



Responsibilities of top-level management



Reporting bribery and corruption



Risk assessment



Monitoring and review

The offence shall apply to an associate of the company, including officer(s), employee(s), agent(s), contractor(s), subsidiary(es) and person(s) performing services on the company's behalf, committing an offence of bribing a foreign public official; and the associate does so for the profit or gain of the company or corporation.

With the amendments, the companies will be subject to higher penalties, consisting of the greatest of three times the value of the benefit obtained by the company or 10% of the company's annual turnover, thereby further necessitating the need for strong measures to be in place to prevent bribery and corruption.

Grant Thornton Bharat's anti bribery and corruption professionals are part of an experienced team that has advised companies on setting up compliance programmes, testing operating effectiveness, suggesting control enhancements (financial and operating controls), helping develop and review policies and procedures, training, third party due diligence and assisted clients on anti-bribery and corruption investigation matters. Our team also has ISO 37001 certified implementers for anti-bribery management systems.

How Grant Thornton Bharat can assist you

What we do



Phase 1

Short term – Assessment of the 'As-is state' of ABC framework

- Discussion with key management personnel to understand and assess the tone at the top
- Review of existing ABC compliance framework
- Assessment of financial controls
- Recommendations on any modifications or enhancements

Phase 2

Medium term – Strengthening/development of ABC compliance framework

- Devising/updating existing policies, as far as they relate to anti-bribery and corruption
- Assist in setting up a compliance structure
- Training and awareness around the ABC framework
- Conducting third party due diligence

Phase 3

Long term – Review/monitor ABC framework

- Periodic monitoring reviews to assess the effectiveness of the framework implemented
- Enhanced remediations in the framework

How we add value

1

Help clients assess the effectiveness of the existing anti-bribery and corruption framework.

2

Assist clients in setting up/enhancing the anti-bribery and corruption framework within the company.

3

Risk mitigation and reputational protection through third party due diligence.

4

Create awareness among the employees and third-party intermediaries of the clients regarding the anti-bribery and corruption framework.

5

Periodic monitoring to ensure compliance with the laid down policies and procedures and remediate gaps, if any.

6

Help clients minimise the risk of non-compliance and avoidance of fines and penalties.

For more information contact our experts:



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