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HD **Foreign bribery laws must be tightened**

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The central role that Asia has in Australia's future was on display at Thursday's packed The Australian Financial Review and JPMorgan Chanticleer lunch in Melbourne.

One of Chanticleer's guests was Ken Borda, the chairman of Santos, a group that has tied its future to Asia with massive LNG export project investments, and has an appetite for more.

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Santos was having a "serious look" at high-quality **oil** and gas assets being offered for **sale** in the region as groups including Apache **Energy** rationalised their portfolios, Borda told the gathering.

Sitting next to Borda was Catherine Livingstone , Telstra 's chairman. Just before she took the stage, Telstra 's chief executive, David Thodey , had been on his feet in Sydney, briefing investors on Asian expansion that is a crucial part of that group's growth strategy.

Beside Livingstone was Ken Henry . The former Treasury secretary chaired the committee that produced the Australia in the Asia Century white paper for the Gillard government in 2012. It is still the most comprehensive exploration of what Asia offers - and how Australia might pursue it.

Telstra has established a joint venture with Telkom Indonesia as part of its push into the region, and Livingstone told the Melbourne lunch that partnerships were a product of patient relationship building in Asia.

That is a comment that nobody would disagree with but, in one crucial area, successive Australian governments have failed to give Australian companies the best possible base for finding partners.

It is a fact of life that companies investing in Asia are more likely to encounter demands for what are euphemistically called "facilitation payments" and are more accurately described as bribes. And while laws here and overseas ban payments to government officials, the boundary between business and government in Asia is less distinct than it is in the West.

The timing of payments can also be controversial, as Fairfax Media highlighted earlier this month when it revealed that Australian-listed UGL had agreed in 2011 to pay £4 **million**, or about $7 **million**, to a **Hong Kong**-based businessman, C.Y. Leung.

The deal helped seal negotiations for UGL's **acquisition** of DTZ, a real estate and real estate services **company** that Leung had founded. Soon after it was struck, Leung became chief executive of **Hong Kong**. Payments occurred after he took the post, the highest in the **Hong Kong** Special Administrative Region.

UGL said the payments were part of a non-compete, non-poach agreement that ensured DTZ's founder would not try to set up in opposition to DTZ after UGL acquired it. Such agreements were standard in acquisitions, it said, and UGL did not receive any "inappropriate benefit or favour".

Exactly what constitutes a payment by an Australian **company** for an inappropriate benefit is less clear than it could be and a review of the anti-bribery rules begun by the Labor government and inherited by the Abbott government has taken longer to conclude than expected.

Bribing or attempting to bribe a foreign public official is illegal in Australia, and carries heavy penalties.

Australian law does however allow facilitation payments, if they are documented, made "for the sole or dominant purpose of expediting or securing performance of a routine government action of a minor nature", and of "minor value".

The government obviously thinks facilitation payments are a bad idea. In a fact sheet on the current anti-bribery regime it acknowledges that refusing to make facilitation payments raises short-term risks, particularly for smaller companies that do not have significant bargaining power, but nevertheless urges individuals and companies to make "every effort" to avoid them.

It also warns that facilitation payments can still fall foul of anti-bribery laws passed by other countries. Companies with extensive offshore networks are particularly exposed to that risk.

The government would, however, give companies a better legal anchor for negotiations and relationship building if it banned facilitation payments entirely.

Britain's anti-bribery laws do that, in both the public and private sectors. The OECD opposes them and Canada has recently outlawed them. America still allows them, but has narrowed their scope. It's unclear whether Australia is going to follow suit.

The Labor government circulated a consultation paper that included the possible banning of all facilitation payments in 2011. Submissions were made, but nothing was announced by the government before it lost power in September last year. A plan to create a new anti-corruption framework that makes whistleblowing by public servants compulsory also failed to see the light of day.

The Abbott government inherited Labor's facilitation payment review and you would think it could turn it around quickly.

It's true that refusing demands for facilitation payments can be difficult. There are short-term risks for businesses that stay pure. The ability of companies to withstand pressure for payments is, however, being compromised by the existing regime, and its allowance of payments in some circumstances.

The negotiating strength of Australian companies would be strengthened, not weakened, by the elimination of the moral hazard that the regime creates. The prohibition of payments would be unequivocal, and they could rely on it.

What looks to me to be a relatively simple decision is apparently more difficult when viewed from the bowels of Parliament House.

Asked what progress was being made with the previous government's discussion paper, and the submissions it generated, an adviser to Justice Minister Michael Keenan said the submissions had been reviewed and the government was "undertaking its own consultation on the matter before making a decision".

One has to hope that doesn't drag on. The longer this country allows facilitation payments, the more off the pace it will appear to be.

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