

Zen & The Art of Legal Networking

INSIGHTS & COMMENTARY ON RELATIONSHIP BUILDING WITHIN THE INTERNATIONAL LAWYERS NETWORK

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Corporate Breakout Session - Anti-Corruption Laws - UK Bribery Act

So far, we've re-capped [Alishan Naqvee's introduction to anti-corruption laws](#), and [Stuart Gerson's comments on the US's Foreign Corrupt Practices Act](#).

Following Stuart's presentation, the group heard from [Charles Wander](#) of [Fladgate LLP](#), who spoke about the new UK Bribery Act.

Charles began by saying that he would give a brief overview of what's coming on July 1, 2011 in the UK. As he had mentioned during an earlier session, the firm has been doing some work on this

with their clients, trying to understand what the issues might be. As Stuart had said, this is going to be applied on a worldwide basis, so it will be applied to anyone with any kind of tenuous connection with the UK.

The UK was not without anti-bribery legislation - through the end of June they would have a piece of legislation dating back to the 19th century. It was ultimately felt that this didn't have sufficient teeth. The UK was criticized in 1997 by the OECD when the incoming Labour administration discontinued an investigation into alleged bribery by British Aerospace, as part of the Al Yamamah contracts in Saudi Arabia. This was heavily criticized as being a decision made for political reasons.

The OECD working group on bribery reaffirmed its serious concerns about the UK's discontinuance of the investigation and outlined continuing shortcomings in the UK's anti-bribery legislation. It urged the UK to remedy the shortcomings as quickly as possible, and decided to conduct further examination of the UK's efforts to prevent bribery. So fourteen years later, they're now introducing this new piece of legislation.

Charles said that Alishan had mentioned Transparency International earlier, which monitors anti-corruption around the world. There was some delay in introducing this new piece of UK legislation, because it required that guidelines be produced by the government. The reason for this was this new offence of "failure to prevent," so in addition to the overt offences of bribing on the giving and receiving side, the separate offence that we've been talking about of the bribery of a foreign government official, there is also this offence of failing to prevent. The guidelines relate to that and they've been waiting for them for some time.

Transparency International said that the delay in implementing the Act while they were waiting for these guidelines was "disastrous news." Charles thought this was overstating it slightly, since it was only a delay of a few months. But once the guidelines were published, Transparency said that part of it reads more like a guide on how to evade the act than how to develop company procedures that will uphold it. Charles said that he's spent a fair amount of time looking at these procedures and he doesn't understand where they're coming from, until they have some prosecutions and see how people are trying to use these defenses. So he thinks they're being a bit premature in saying that.

Charles said that there are essentially four offences, then qualified this to say that there are actually five - the fifth offence is one that targeted individuals directing minds behind corporations and is something that's going to put an individual who made themselves a party to failing to prevent bribery at risk of a fine or imprisonment. He's certain that that's something that will focus the mind, because you can't necessarily hide behind your corporation.

Charles asked Stuart to clarify again whether there is a limit on the fines in the US. Stuart said that there's no limit, but there is a limit of up to \$2 million per offence. Charles said that the fines in the UK will be unlimited and imprisonment can be up to ten years.

There was a little bit of guidance on the UK courts' approach to the issue of the level of fines, not under the new Act, but under the old legislation. There was an agreed deal on a US/UK cross-border issue surrounding a global settlement for a US chemical company called Innospec. They are involved in the UN Oil for Food program, and they had made kickback payments to a member of the former Iraqi government, and bribed members of the Indonesian government. There was a settlement of \$40.2 million in fines - about a third of this would go to the UK and the rest would go to the US.

This had to be approved by the courts in the UK, and the judge there was critical. He compared the level of fines to the level that might be awarded in a cartel case. He said first, that he thought the fine was rather less than you'd see in a cartel case and second, that it's self-evident that corruption is much more serious in terms of both culpability and harm caused. So it may be that because of this pronouncement from a very senior judge in the UK, we will see fines awarded in

excess of those that have been awarded in cartel cases. There is a great deal of money at stake, as well as people's liberty.

Charles finished up by saying that [a summary of the legislation](#) is available on the firm's website, along with [a separate note on the guidance that's been produced for companies](#) in the UK. He said that they're advising their clients on how to do this, and that it has to come from the top of the company. This is not something that can be delegated. Charles said that one of the defenses for the offence of failure to prevent is that it's been delegated, but one of the criteria is that the people at the top of the company have to give the lead on this. If it's seen to be delegated down to some compliance individual, it may well be that that defense isn't going to fly. So companies need to take it seriously.

Alan then invited the rest of the group to share their thoughts on anti-corruption laws in their own countries, which we'll look at in a future post.

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