



Global Compact Network
United Kingdom

3RD QUARTERLY MEETING REPORT 2011
6 OCTOBER 2011

ANTI-CORRUPTION: EXTRA-TERRITORIAL LEGISLATION AND GROUND REALITIES

3rd Quarterly Meeting Report of the UK Network of the United Nations Global Compact

HSBC Plc London
Thursday, 6 October 2011

UNGC UK Network

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The UK Network of the United Nations Global Compact held its 3rd Quarterly Meeting of 2011 on 6 October with presentations and discussions on the Anti-Corruption issue area and the UK Bribery Act 2010. The meeting was hosted by HSBC in London.

The event was moderated by Andrew Cave, UK Network Chairman and Head of Corporate Sustainability, RBS. Presenters showcased good practises and discussed the challenges businesses face as they navigate through the UK Bribery Act, as well as recommendations on how to confront these challenges.

- **Steve Kenzie**, UK Network Secretariat, IBLF presented the agenda dealing with extra-territorial legislation and ground realities and introduced the key note speakers. www.ungc-uk.net
- **Brook Horowitz**, Director of Regions & Business Standards IBLF discussed the various challenges companies face in Russia, India and China and potential solutions to these obstacles. www.iblf.org
- **John Root**, Senior Compliance Manager, HSBC, discussed the UK Bribery Act and how HSBC had responded to it. www.hsbc.co.uk
- **Jane de Lozey & Rosemary Donnabella**, Serious Fraud Office, presented the SFO's recommendations on how companies can confront the challenges they face. www.sfo.gov.uk
- **Professor Sheldon Leader**, University of Essex, highlighted some of the less navigable aspects of the UK Bribery Act by illustrating likely scenarios. www.essex.ac.uk

This report summarises the key points and insights shared at the meeting. It does not officially represent the views of the speakers, participants, or UN Global Compact.

UNGC Anti-Corruption Issue Area & the UK Bribery Act : DISCUSSIONS ON BEST PRACTICE, EXTRATERRITORIAL LEGISLATION AND GROUND REALITIES

INTRODUCTION

Ivor Godfried-Davies, Senior Manager of Reputation and Risk, HSBC, welcomed guests on behalf of HSBC. Having formerly represented HSBC in the Global Compact (UNGC), he reflected on the UNGC conference in 2004 that formally adopted the 10th Principle on Anti-Corruption. Commenting on the controversy surrounding this basic principle, he reminded participants that progress on the issue of corruption is often slow and mired in debate, but is indeed happening. Despite being a sensitive issue, eradicating corruption is of crucial importance to both business and society alike.

As the meeting's moderator Steve Kenzie, Head of the UK Network Secretariat, began the meeting by introducing the topic for the day and the speakers. With the recent passage of the UK Bribery Act, companies must be more vigilant than ever in their efforts to rid corruption from their operations. The 3rd Quarterly Meeting of the UK Network was convened to explore various approaches to overcoming or addressing this challenge from the perspective of the UK Bribery Act's enforcers (the SFO), companies, civil society, and academia.



The meeting addressed the following:

- The potential benefits of extra-territorial anti-bribery legislation for the private sector;
- Key provisions of the UK Bribery Act and how these demands correspond to ground realities;
- How companies can address the disconnect between rules and these realities.

"The UK Bribery Act is the US Foreign Corrupt Practices Act on steroids."

DISCUSSION

Extra-territorial Anti-Bribery Legislation— Why should it be seen as a positive development for business?

Background:

When placing the UK Bribery Act within a wider context of democratisation and development, the rationale behind it becomes evident. Business can be viewed as a vehicle through which to establish the transparency and accountability needed to drive market development and democratisation. The World Bank has identified corruption as the single greatest obstacle to economic and social development, inhibiting progress by distorting the rule of law and weakening institutions upon which economic growth depends.

The Dangers of Corruption:

"Paying a bribe may reveal your company's product as inferior and expose a lack of confidence in its competitiveness on the world market, in terms of quality and innovation."

Corruption Cost: The cost of corruption according to the World Bank Institute is estimated to be \$1 trillion per year in both developed and developing countries.

Product Quality Worldwide: Bribery can pose a physical danger when it is used to bypass quality assurance or health and safety screening. The possibility of resulting injuries or product abnormalities would not only hurt the business' reputation but also impact negatively upon the business' operating environment.

Product Integrity: The need to pay a bribe to gain entry or recognition in a market may



reflect inadequate demand or need for a product, which in turn may indicate product inferiority or inappropriateness in a given market. In addition to being seen as unethical, a company that is exposed for corruption may also appear to lack confidence in its own competitiveness, in terms of quality or innovation.

Global Trends: Global economic trends introduce an additional justification for extra-territorial anti-bribery legislation. There is a strong correlation between the prevalence of corruption and the high growth indicative of emerging markets. Many multinationals are forced into no-win situations, needing to do business in these geographic locales, yet aware of the reputational and operational costs posed by doing so. As businesses and investors continue to shift their resources and focus from traditional markets to these more uncertain economies, the rule of law must be strengthened to ensure investments translate into sustainable development and businesses can operate in a transparent and predictable environment.

Food for Thought:

Bribery does not stand in isolation but rather creates a race to the bottom, in which ethical standards must continually be depreciated to maintain competitiveness. Consequently, it is in the interest of business to press for global

coordination that will ensure that all companies are held to common standards. The UK Bribery Act can be seen as part of a broader international effort to level the playing field and not as an isolated initiative.

Extra-territorial Anti-Bribery Legislation: The provisions of the UK Anti-Bribery Act vis-a-vis ground realities.

Several key provisions of the new legislation have been identified as potentially challenging for some companies.

Major issues:

A strict liability offence for legal entities of “**failure to prevent bribery**,” which imposes vicarious liability on companies in which they hold responsibility for the acts of any “**associated person**,” or anyone who performs services on the behalf of the principal (i.e. introducers, intermediaries, joint ventures, suppliers, contractors, employees, etc.) Based on the ‘*respondeat superior*’ legal doctrine, the often undefined power dynamics in business relationships—as compared to a master-servant relationship—limits the authority found in a more widely recognised hierarchy.

“Respondeat Superior – let the master answer for the criminal acts of his subordinates.”

Businesses are now tasked with clarifying those lines of authority so the perception of accountability in their business relations matches that of the law.

The strict prohibition of **facilitation payments** will create challenges in markets where it is the norm to pay small amounts to expedite a process. Further complications may arise from the fact that facilitation payments are not considered bribery under US law and OECD guidelines. Justifying the inclusion of facilitation payments in the UK Bribery Act, many argue that bribery is a slippery slope and small payments could easily proliferate, creating an overall atmosphere of corruption.

Some have argued that certain **industry sec-**

tors raise red flags, in terms of greatest susceptibility to corruption and bribery. This has led to fears that some industries, such as defence and pharmaceuticals, will be targeted unfairly.

Much **wider extraterritoriality** is attached to the UK Bribery Act as compared to other anti-bribery legislation. The failure to prevent bribery offence applies to not only British businesses, but any legal entity anywhere as long as it does business in the UK.

There remains uncertainty as to what characterises appropriate levels for **gifts, hospitality and corporate entertainment**.

Ground Realities: Understanding the landscape and the challenges it poses to compliance

The provisions outlined above pose the greatest challenges to companies operating in



emerging markets. Many actors have commented on the high level of investment (time, resources, and money) needed for companies to pre-empt corruption in these highly predisposed environments. With this need to take action well understood, the question now becomes: *how* can companies efficiently and effectively invest their time and resources into safeguarding themselves against corruption while maintaining their competitiveness?

The first step to addressing this question is to understand the unique contexts found in each market. Three emerging markets—China, In-

dia, and Russia—present an unique sets of challenges and complications.

India: Through an insistent civil society, public opinion is driving political and legislative changes in India. There is some indication that CEOs perceive corruption as inhibiting growth and are consequently signing onto an anti-corruption agenda. However, the drive for shifting the business response to the corruption environment was only subsequent to a number of scandals.

China: The role of civil society in China is very limited and strictly controlled. There is, however, a dialogue between companies and the government about attempting to mitigate corruption. Multinational corporations are alarmed by the standards of business ethics in China and are keen to explore ways to manage this issue; as such, there is a place for civil society organisations to interject as brokers between the key stakeholders.

Russia: Russia is an interesting tug-of-war example, where a sole participant, Prime Minister Putin, is simultaneously pushing for the anti-corruption agenda and apparently holding it back when it suits him. New entrepreneurs, rather than the old oligarchs, have recognized the value in corporate good practice and anti-corruption corporate culture as a way of investing in Russia's future. Unfortunately, there are fears of stagnation on the corruption issue, unless there is a stark power change in Russian politics.

While each of these environments offers their own unique challenges, direct engagement

“UK companies are now caught between a rock and a hard place; the need to adhere to the UK Bribery Act and the ground realities they are operating in.”

Brook Horowitz,
Director of Regions & Business Standards,
IBLF

with local industry leaders, civil society and government is a prerequisite for creating more transparent and accountable market.

The Indian context



CIVIL SOCIETY: ACTIVE	Focus on a law granting oversight of all politicians. Created sense of individual empowerment. Success with social media.	Challenge will be focusing power on practical change. Mass action could become dangerous
GOVERNMENT: BELEAGUERED	2G scam threatens ministers. Wikileaks exposed 'cash 4 votes'. Scams in Karnataka (Iron Ore) & Maharashtra (land) taint opposition.	No sign of a credible clean candidate. Scrutiny causing paralysis across legislature
BUSINESS: MORE VISIBLE	Crony capitalists linked to scams. Data shows CEOs believe corruption hurting growth. Most business advocacy focuses on need for government reform.	No data on actual corporate practice

The China context



CIVIL SOCIETY: STRICTLY CONTROLLED	Both NGOs and media lacks autonomy; Internet: utilised to monitor corruption while applying self – censorship required by authority	Social networks, such as Weibo, Chinese version of twitter, are more active on public supervision; Danger of 'false rumors' destabilising the society
GOVERNMENT: LIMITED PROGRESS	First Anti-Corruption White Paper issued in Dec 2010 Rigorous procedures and well-matched regulations in place, problematic enforcement.	Dim prospect to change its administrative approach, allowing modest amount of citizen monitoring
BUSINESS: MORE ACTIVE	Wide spread corruption in all business and grey areas in business culture; Growing risks for multinationals and overseas Chinese companies	Globalising Chinese companies are new drives for business standard. More collective action is needed

The Russian context



CIVIL SOCIETY: SUPPRESSED	Control of media suppresses public opinion Government co-opts protest Some internet activism	Change is most likely to come from disgruntled elites than popular uprising
GOVERNMENT: AMBIVALENT	Medvedev brings new laws and new expectations Transneft scandal undermines them	12 more years of tandem is unlikely to lead to radical change
BUSINESS: UNRESTED CYNICAL	"Oligarchs" are central to the rent system Scams for infrastructure consumption Corporate governance is still poor	New entrepreneurs and generational change are part of the agenda

“Does any of this matter? It is keeping the CEO up at night speculating how to rectify the discrepancy between an employee being forced to make a facilitation payment en route to his home and a manager at work instilling the values of anti-corruption and business ethics, or how to resolve the disparity between sales targets and compliance.”

Similarities within markets:

- Corruption is viewed as a way of life;
- There is a correlation between incidence of corruption and high, rapid growth from poverty
- Large bureaucracies tend to tolerate bribery;
- Facilitation payments are relied upon for a basic standard of living, where standard job salaries do not suffice;
- There is a fundamental view that if corruption were to stop, the economy would also. The myth is that corruption is needed to oil the wheels of an otherwise deficient institutional framework.
- The hypocrisy of the developed world is widely recognised: not only is corruption common in Western businesses (e.g. Enron, dePuy, BAE Systems) but up until 1996,

when the OECD Council made efforts in lowering corruption, bribes were fully tax deductible in notable Western states including Germany and Belgium.

- Anti-corruption campaigns are seen as the last vestiges of neo-colonialism. Efforts to combat corruption are seen as yet another way of imposing Western will and development constraints on emerging markets.

Reforming a well established environment of corruption is a dire and complex task. Information and problem sharing is a necessary first step, as is collaboration between government, the business community and civil society. Combating corruption can only be realised through collective action and through heightened engagement of multiple sectors, who collectively encourage transparency and open dialogue.

“‘Why no one blew the whistle?’ seems to be the recurrent question practitioners, academics and the public pose following a major corruption scandal. Perhaps, whistle-blower hotlines present a remedy to the problem. However, before you get too enthusiastic, as a company, consider how easily accessible your hotline is and, above all, what is the prevailing corporate culture in terms of attitudes towards those who are willing to blow the whistle – fears of alienation, differential treatment and even scapegoating are common among employees.”

UK Bribery Act – How best to respond to its conditions and requirements?

Recognising that even the most responsible companies may have rogue actors engaged in unsanctioned behaviour, the Act specifies that a company may disprove liability if it can demonstrate that “adequate procedures” were taken to prevent the incident. The term “adequate procedures” is intentionally left ambiguous, precluding a company’s ability to base their defence on a checklist of actions. For this reason, many companies have developed a framework for adequate procedures.

Adequate Procedures:

HSBC has identified 6 tools upon which a company can base its ‘adequate procedures’ policy:



Risk Assessment: Several factors may indicate a higher likelihood of corruption, including location, company size, and industry sector. For example, HSBC has a direct policy against financing the defence industry.

Top-Level Commitment: There is a strong correlation between the likelihood of corruption and the visibility of a top-level commitment to a zero-tolerance policy

Due Diligence: Due diligence that is conducted as an on-going process is more likely

The Investigatory Process – How does the SFO Proceed:

To investigate both whether an incidence has occurred and the level of blame attributable to a company, SFO investigators may choose to explore the following:

Topic	Questions
Law Research	What does the law say, especially if the business conduct is in an overseas country?
Industry Research	What is the market in which the company is operating? What are the industry challenges and overall environment a company is facing?
Company Culture Research	Is there a clear culture against corruption? Does the given company culture make it more prone to corrupt practices?
Company Attitude Examination	Can a top-level commitment to anti-corruption be identified and what are the senior and managerial members’ attitudes towards the allegedly corrupt situation? If both company culture and attitude is relaxed and evasive, the likelihood of corruption being endemic in the corporation is elevated.
Investigation at all levels	The board, senior compliance officers, paper trails employees may have left, and anything which may explain the justification for making a given payment.
Consideration as to where any incentivisation is illegal	How transparent is the incentivisation payment and was there open dialogue? What is the nature and value of the reward? Why has it been authorised? Have Facilitation Payments been made which have always been and always will be illegal?
Hospitality	Has the value and consequence of hospitality resulted in winning a given contract? Does the corporation have a clear policy on gifts and hospitality? Are the gifts proportional and moderate? Is there a genuine business purpose behind the hospitality in question?
Company Responsibility	Has the company prevented or adequately dealt with a corruption incident?

to identify potential risks than when it is conducted as a one-off exercise.

Policies & Procedures—Clear, Practical, Accessible: A prominent commitment to a code of ethics and a position on anti-corruption—which is unambiguous and well communicated to all staff at every level—is an essential starting point. In response to the UK Bribery Act, HSBC immediately revised their procedures to ensure compliance.

Effective Implementation: The policies and procedures are most effective when applied through a coherent implementation strategy. Following the revision of their policy, HSBC established a committee to ensure effective implementation. Additionally, this committee served a dual purpose by demonstrating a strong top-level commitment.

Monitoring and Review: A robust monitoring and review system can both ensure initiatives are having their desired effect as well as provide mechanism to feedback grievances and/or information on unsanctioned activity. To supplement the monitoring of their internal auditors, HSBC has set up an internal database, where events or incidents can be immediately reported. Additionally, an anonymous whistle blower hotline provides an alternative method of reporting.



“Self-Reporting Guidelines: If you, as a company, approach the Serious Fraud Office exposing a known incidence of corruption, as a gesture of good will, you may be given time to get your house in order before any investigation is initiated.”

Increased Engagement: The Serious Fraud Office approach to investigations and prosecutions of corruption cases

The Serious Fraud Office (SFO) is the lead authority charged with investigating and prosecuting overseas corruption. It aims to reduce both the incidence and cost of fraud and corruption, deliver justice and the rule of law, and maintain confidence in the UK’s business and financial institutions. The UK Bribery Act has endowed the SFO with effective tools to achieve these aims. Counter-intuitively, but in line with its mission, the SFO has dedicated significant resources to reaching out to the private sector to explain their approach to enforcing the UK Bribery Act.

Distinct from other criminal case proceedings, the SFO is tasked with both investigating and prosecuting cases.

To manage this “cradle to grave” process, they have extensive resources at their disposal, including the use of coercive powers.

For any company, insight into the SFO’s approach to investigating and prosecuting bribery can be helpful in identifying potential risk factors as well as identifying the actions necessary if an instance of corruption comes to light.

To avoid intense investigation and feasible, subsequent prosecution, **reporting and self-disclosure** to the SFO is encouraged in the event of corruption incidence.

As preventive measures, effective **whistle-blower hotlines** and **adequate transparency**

measures and familiarity with overseas entities and subsidiaries are encouraged.

Why Should Corporations Be Concerned?

Some critics have said it's cheaper to sit back and take your medicine if it comes your way than to spend the money complying with the Act. This thinking is based on the premise that the only costs born by a company on trial are those associated with the trial and fine. These critics, however, often fail to calculate the hidden costs to businesses undergoing investigation and prosecution. Hours of productivity will be lost when an employee must be questioned by the SFO. In regards to legal assistance, there is an opportunity cost to utilizing in-house counsel and a direct cost to contracting outside legal assistance. Both capital and operational costs may result from confiscated computers or hardware. Additionally, the mere announcement of criminal investigations alone can damage investor confidence and company reputation.

A Civil Recovery Order is a powerful tool which does not require a criminal conviction. Instead, the SFO can engage the company in civil proceedings. If investigators can demonstrate money was obtained through unlawful conduct, the SFO may be able to recover funds from the company using a Civil Recovery Order. Businesses are, thus, advised to be mindful of the fact that there are multiple avenues through which the SFO can pursue offenders and that avoiding prosecution does not preclude further costs. More specifically, the Companies Act 2006 makes it a civil offense for failing to keep adequate books and records, as evidenced through inaccurate accounting practices and/or payment irregularities.

When Should Businesses Act?

Timing is crucial. In the event that the SFO commences an investigation, it is generally too late for a company to significantly mitigate potential damage. As a result, immense importance is placed on self-reporting if an internal

incident of corruption is suspected. In this event, the SFO is generally willing to engage with the company in question to explore whether the matter can be disposed of without the need for a full blown investigation and criminal prosecution. A company that self-reports to the SFO demonstrates openness, honesty and willingness to resolve the situation in compliance with the law. Self-reporting may also enable a company to proactively and strategically manage public relations.

Reporting corruption could benefit business and society by reducing instances of corruption, protecting the public and thereby, reducing the cost to society from future such incidences. Delivery of justice is also enabled, especially the important recovery of assets and compensation paid to victims. The practice of self-disclosure would, further, help maintain confidence in UK business and finance in the long-run. In terms of benefits to companies, there is a degree of control that a company who engages with the SFO can expect which would not otherwise be available to the company which finds itself under investigation. Where appropriate, business confidentiality may be maintained and reputation



upheld, as well.

CONCLUSION

Debates and discussions surrounding the UK Bribery Act will continue to evolve as cases emerge and conditions change. As this happens it is important to remember the underlying aims of extra-territorial anti-bribery legislation. Beyond the need to level the playing field, maintaining British companies' reputation for fair play and international respect is important to Britain's economic future. As civil society and transparent institutions gain authority in high growth markets, this reputation will be seen as a source of competitive advantage.

In order to break the vicious cycle of corruption, drastic measures must be taken. Extra-territorial anti-bribery legislation is just that; it disrupts unethical business as usual. However a single piece of legislation cannot, on its own, transform a vicious cycle into a virtuous one. Rather, companies must embrace this shared objective, infusing honesty, accountability, and transparency into their corporate cultures. This cultural shift must be reinforced by an empowered civil society and incentives for public sector reform and transparency.

The UK Bribery Act creates many challenges for companies operating in markets where corruption is the norm. It is clear, however, that drastic measures must be taken to level the growing dissymmetry on the playing field. Recognising both these realities, companies are encouraged to be proactive, to use the resources available to them, and to engage in the collective action and collaboration needed to minimize obstacles to transparent, accountable, and predictable business activity.

Serious Fraud Office on Bribery Act 2010

What is corruption?

Corruption is paying or making funds available for high value expenses or school fees, etc on behalf of others. By its nature corruption can be difficult to detect as it usually involves two or more people entering into a secret agreement. The agreement can be to pay a financial inducement to a public official to secure favour of some description in return.

In overseas corruption this can manifest itself in a UK company paying a bribe for the benefit of an overseas public official in order to win a contract. This can be done through a third party (commonly known as an agent or advisor) who then passes the bribe on to the public official or directly by the UK company to the public official.



People involved in corruption have ingenious methods of making the payments, including moving the money through a number of offshore companies (that, on the face of it, have nothing to do with the intended recipient) registered in various jurisdictions.

The secret nature of the agreement means that it is difficult for anyone other than those involved to know what is going on. As a result of the work the SFO has conducted, we have identified a number of questionable practices within various sectors. We call these corruption indicators.

It is possible that in your day to day life or in your working environment you have or will come across questionable practices; things that, given your knowledge and experience, just do not seem to add up. This may not necessarily mean that corruption is present but it may be something that you would want to bring to the attention of your manager or, better still, tell us about. If so, you can contact us on our hotline - 020 7239 7388.

Where should I report corruption?

The SFO is the national reporting point for allegations of bribery of foreign public officials by British nationals or companies incorporated in the United Kingdom - even if the matter occurred overseas.

- Some of these allegations, where they involve serious or complex fraud and corruption, may fall to us to investigate
- Some may be more appropriate for other agencies to investigate, such as the Overseas Anti-Corruption Unit of the City of London Police (OACU)

When we receive a report of possible corruption, our anti-corruption team assesses the information and decides if the matter is best dealt with by the SFO or passed to one of our law enforcement partners.

It is important to remember that the SFO reporting regime complements the Suspicious Activity Report (SAR) regime in place for the regulated sector and we greatly encourage these reports.

For more information on reporting corruption, please call our hotline on 020 7239 7388 or report it in confidence at <https://report.sfo.gov.uk/providing-information-to-the-sfo.aspx>.

For our guidance on self reporting see - <http://www.sfo.gov.uk/bribery-corruption/the-sfo's-response/self-reporting-corruption.aspx>



Corruption indicators

This list is not exhaustive and the ingenuity of the people involved in corruption knows no bounds! You should beware of:

- Abnormal cash payments
- Pressure exerted for payments to be made urgently or ahead of schedule
- Payments being made through a third party country, for example, goods or services supplied to country 'A' but the payment is being made (usually to a shell company) in country 'B'
- An abnormally high commission percentage being paid to a particular agency. This may be split into two accounts for the same agent, often in different jurisdictions
- Private meetings with public contractors or companies hoping to tender for contracts
- Lavish gifts being received
- Individuals who never take time off even if they are ill, or holidays, or who insist on dealing with specific contractors him/herself
- Making unexpected or illogical decisions when accepting projects or contracts
- An unusually smooth process of cases where the individual does not have the expected level of knowledge or expertise
- Abusing the decision process or delegated powers in specific cases
- Agreeing contracts that are not favourable to the organisation either with terms or a time period
- Unexplained preference for certain contractors during the tendering period
- Avoiding independent checks on tendering or contracting processes
- Raising barriers around specific roles or departments which are key in the tendering/contracting process
- Bypassing the normal tendering/contractors procedure
- Invoices being agreed for more than the contract without reasonable cause
- Missing documents or records regarding meetings or decisions
- Company procedures or guidelines not being followed

Action on Macmillan Publishers Limited

22 July 2011

The Director of the Serious Fraud Office (SFO) has taken action in the High Court, which has resulted in an Order for the company, Macmillan Publishers Limited (MPL), to pay in excess of £11 million in recognition of sums it received which were generated through unlawful conduct related to its Education Division in East and West Africa. The Order was made under Part 5 of the Proceeds of Crime Act 2002.

The initial enquiry commenced following a report from the World Bank. An attempt had been made by an agent to pay a sum of money with the view in mind of persuading the award of a World Bank funded tender to supply educational materials in Southern Sudan. The Company did not win the contract.

As a result of this report search warrants were executed by the City of London Police (CoLP) in December 2009. In March 2010 MPL reported the corporate case to the SFO. The SFO required MPL to follow a procedure based on the guidance contained within its published protocol document - the Serious Fraud Office's approach to dealing with overseas corruption.

The first stage of this process involved MPL, instructing external lawyers to conduct a review of the books and records of the company with a view to identifying areas of corruption risk. The costs of this exercise were met by MPL. That exercise was completed to the satisfaction of the SFO. The product of that work enabled the SFO, working co-operatively with the City of London Police and the World Bank Group, to identify the limited area within the business which potentially presented a bribery and corruption risk. This work also informed the basis on which, the SFO (again in cooperation with CoLP and the World Bank Group) selected the three jurisdictions (Rwanda, Uganda and Zambia) in relation to which it would require MPL's external lawyers to conduct detailed investigations. These jurisdictions fell within the business activities of the MPL's Education Division operating in East and West Africa. There were parallel investigations relating to these three jurisdictions conducted for the World Bank and the SFO. The SFO remit was broader in its scope in that it required investigation of all public tender contracts in the three jurisdictions over the period 2002-2009 [1] whether funded by the World Bank or otherwise.

It was plain that the Company may have received revenue that had been derived from unlawful conduct. Following an accounting examination and taking an aggressive approach to the revenue received in order to capture all potential unlawful conduct the SFO was in a position to determine the appropriate amount to be recovered. The value of the Order [2] made by the High Court is £11,263,852.28. MPL will also pay the SFO costs of pursuing the order which amount to £27,000.

A number of relevant features, which have informed the resolution of this enquiry include the following:

1. MPL approached the SFO with a view to co-operation;
2. MPL had fully co-operated with the SFO throughout the process and complied with an agreed timetable;
3. MPL had fully complied with other authorities including the World Bank Group;
4. The Company had, in response to learning of the allegations of bribery and corruption, reacted appropriately in firstly, reviewing its internal anti-bribery and corruption policies and procedures, appointing external consultants to recommend and help implement an internal appropriate anti-bribery and corruption compliance regime;
5. As a result of the parallel World Bank Process the company has been debarred from participating in World Bank Funded tender business for a minimum period of three years. In addition, the Company has taken the decision to cease all live and prospective public tenders in its Education Division business, in East and West Africa regardless of the source of funds;
6. The Company, as a result of withdrawing from the sector lost significant revenue including surrendered bid securities;
7. The actual products supplied were of a good quality; and
8. There was no material identified to support a conclusion that the products supplied were overpriced. MPL will be subject to review by a monitor who will report to the Director of the SFO within twelve months and to the World Bank. The monitor must meet strict criteria including clear independence from the company.

Richard Alderman, the Director of the Serious Fraud Office stated:

"I am pleased with this outcome. Civil recovery allows us to deal with certain cases of corporate wrongdoing effectively. It delivers value for money to the public by saving the cost of lengthy investigations and protracted legal proceedings and removes any property obtained as a result of the wrong-doing. At the same time it forces the company to reform its practices for the future."

This is the fifth Civil Settlement action by the SFO. The others are Balfour Beatty plc, October 2008, £2.25 m; AMEC plc, October 2009, £4.95m; M W Kellogg Ltd, February 2011, £7m; DePuy International Ltd, April 2011, £4.83m. (Figures may be rounded).

[1] The relevance of the 2002 date reflects the clarification of the jurisdictional reach of the Prevention of Corruption Act 1906 following the implementation of the Anti Terrorism Crime and Security Act 2001 on the 14th February 2002.

[2] The Order is made under section 276 of the Proceeds of Crime Act 2002

MW Kellogg Ltd to pay 7 million pounds in SFO High Court action

16 February 2011

The Serious Fraud Office (SFO) has taken action in the High Court which has resulted in an Order for the company, M.W. Kellogg Limited (MWKL), to pay just over £7 million in recognition of sums it is due to receive which were generated through the criminal activity of third parties. The High Court made the Order under Part 5 of the Proceeds of Crime Act 2002.

The SFO recognised that MWKL took no part in the criminal activity which generated the funds. The funds due to MWKL are share dividends payable from profits and revenues generated by contracts obtained by bribery and corruption undertaken by MWKL's parent company and others. The agreement will lead to the payment of £7,028,077 within fourteen days in full and final settlement of the case. This sum represents the share dividends due and the interest which has accrued on these sums.

The contracts were awarded to a company partly owned by MWKL on behalf of its US parent company. MWKL reported concerns to the SFO under the "self referral" scheme and fully co-operated with the subsequent investigation. The SFO, working in partnership with the US Department of Justice, reviewed the conduct of MWKL and decided that the most appropriate approach was to remove the funds which will become due to the company through the unlawful conduct. This reflects the finding that MWKL was used by the parent company and was not a willing participant in the corruption.

The US parent company was one of four corporate entities which formed a joint venture to bid for contracts on a liquefied natural gas project in Nigeria. The joint venture created three special purpose vehicles to bid for, and subsequently run, the contracts. Three of the four contracts won by the joint venture were obtained through promises to pay or payments of bribes. The US parent company, Kellogg Brown and Root LLC and its predecessors (KBR) has been subject to a criminal and civil investigation in the US. The criminal investigation, which was conducted by the Department of Justice (DOJ), into the Bonny Island Project related to KBR and a number of other corporate and individual parties being involved in bribery and corruption. KBR has acknowledged, in its plea agreement with the DoJ, that it owned the special purpose vehicle created for the Nigerian project, through MWKL in order to distance itself from the corruption and avoid the consequences of the Foreign Corrupt Practices Act 1977. KBR had resolved all matters with the US authorities, including a civil settlement with the Securities and Exchange Commission, by February 2009.

The agreement also ensured that MWKL overhauled its internal audit and control measures to enable it to satisfy the SFO that its compliance systems are in accordance with UK law. MWKL has also agreed to pay the costs of the investigation.

The Director of the Serious Fraud Office, Richard Alderman said:

"The SFO will continue to encourage companies to engage with us over issues of bribery and corruption in the expectation of being treated fairly. In cases such as this a prosecution is not appropriate. Our goal is to prevent bribery and corruption or remove any of the benefits generated by such activities. This case demonstrates the range of tools we are prepared to use."

Insurance Broker jailed for bribing Costa Rican officials

26 October 2010

Julian Messent was sentenced today to 21 months' imprisonment after admitting making or authorising corrupt payments of almost US \$2 million to Costa Rican officials in the state insurance company, Instituto Nacional de Seguros (INS) and the national electricity and telecommunications provider Instituto Costarricense de Electricidad (ICE).

He was ordered to pay £100,000 compensation within 28 days to the Republic of Costa Rica or serve an additional 12 months imprisonment if he fails to do so.

Following a joint investigation by the Serious Fraud Office and the City of London Police which opened in 2006, Julian Messent (d.o.b. 20/02/60), who was a director of London based insurance business PWS International Ltd ("PWS"), pleaded guilty at Southwark Crown Court to two counts of making corrupt payments between February 1999 and June 2002, contrary to s1 (1) of the Prevention of Corruption Act 1906. The sentence passed was 21 months imprisonment on each count to run concurrently. He also asked for 39 similar offences to be taken into consideration.

Background

The defendant was head of the Property (Americas) Division at PWS. In this role he was responsible for securing and maintaining contracts for reinsurance in the Central and South America regions.

Between 1999 and 2002, PWS acted as broker on behalf of INS, which in turn was the insurer for ICE. Both INS and ICE were state institutions of the Republic of Costa Rica.

During this period, Messent authorised 41 corrupt payments totalling \$1,982,230.77 to be paid to Costa Rican officials, their wives and associated companies, as inducements or rewards for assisting in the appointment or retention of PWS International Ltd as broker of the lucrative reinsurance policy for INS.

Following elections in Costa Rica in 2002, officials in INS and ICE were replaced. Enquiries were made into the contract with PWS and questions were raised about payments made under it. The Foreign and Commonwealth Office referred the case to the SFO in October 2005 and the case was accepted for investigation in August 2006.

Proceedings

The defendant was charged in April 2010. He had already started plea negotiations under the Attorney-General's Guidelines with the SFO and these were successfully concluded in September. He pleaded guilty at Southwark Crown Court on 22 October, in accordance with the agreement, and has today been sentenced to 21 months' imprisonment on both counts on the indictment, each sentence to run concurrently. He was also ordered to pay £100,000 in compensation to the Republic of Costa Rica and was disqualified from acting as a company director for five years. In passing sentence The Hon. Recorder of Westminster, HHJ Rivlin QC, quoting Lord Justice Thomas (in the Innospec case) said, *"It is no mitigation to say others do it [pay bribes] or that it is the way of doing business...anyone minded to do it should be deterred from doing so"*. Judge Rivlin also commended the SFO and the City of London Police saying that, *"The investigation has been carried out to the highest possible standard"*.

SFO Director Richard Alderman said,

"This case shows how determined we are to pursue businessmen who bribe. Working with agencies in other countries is a key feature of our approach which can result in action being taken against both sides of the bribe. This case is also a good example of how an early plea agreement can bring a swift resolution."

Ongoing proceedings

There are proceedings in the Republic of Costa Rica against those alleged to have taken bribes. The SFO has been working with prosecutors there to bring both cases to court. A trial date for the Costa Rican case has not yet been set.

Mabey & Johnson Ltd sentencing

25 September 2009

Mabey & Johnson Ltd appeared at Southwark Crown Court today for sentence in relation to admitted offences of overseas corruption and breaching UN sanctions. The company is to pay £6.6M. This is the first prosecution brought in the UK against a company for these offences.

The company, which is a supplier of steel bridging and is based in Twyford, Berkshire, had already indicated at a magistrates' court hearing on 10 July 2009 that it would plead guilty to these offences.

Corruption

The prosecution for corruption arises from the company's voluntary disclosure to the SFO of evidence to indicate that the company had sought to influence decision-makers in public contracts in Jamaica and Ghana between 1993 and 2001. The decision to voluntarily disclose the corruption offences to the SFO was taken by the management of Mabey & Johnson's holding company in February 2008 whereupon an investigation was opened.

Breach of UN sanctions

The prosecution for breach of UN sanctions during 2001/02, as they applied to contracts in the Iraq "Oil-for-food" programme, arises from an investigation commenced in January 2007. During the course of these investigations the company cooperated with the SFO.

Proceedings

Earlier this year the SFO was given consent by the Attorney General to bring these proceedings.

Sentence

The company having agreed that it would be subject to financial penalties to be assessed by the Court, will pay reparations and will submit its internal compliance programme to an SFO approved independent monitor. The details of the sentence today are:

Country Fine Reparations

Country	Fine	Reparations
Ghana	£750,000	£658,000
Jamaica	£750,000	£139,000
Iraq	£2,00,000	£618,000

Costs to the SFO £350,000

First year monitoring cost up to £250,000

Commenting on the conclusion of this prosecution, SFO Director Richard Alderman said:

"This is a landmark outcome. The first conviction in this country of a company for overseas corruption and for breaking the UN Iraq sanctions and, satisfyingly, achieved quickly. The offences are serious ones but the company has played its part positively by recognising the unacceptability of those past business practices and by coming forward to report them and engage constructively with the SFO. I urge other companies who might see some parallels for them, to come and talk to us and have the matter dealt with quickly and fairly".

UK Network Updates & Reminders

- Website:** The Secretariat routinely updates the website (www.ungc-uk.net). You can find news stories reports after events, upcoming events announcements, results of COP Peer Review Rounds, among other useful information. Please refer to the screen shot below for more information.
- Twitter:** You can now find network updates on twitter: [UNGC_UK](#)
- LinkedIn:** Both the UK Network and the Global Compact now have LinkedIn groups
- Colleagues:** Please note that network members are allowed to have multiple representatives at meetings, so you are welcome to bring an interested colleague. Please consider inviting those colleagues whom you feel would benefit from attending meetings on particular topics.
- Next Event:** UK Network Annual Outreach Meeting: 5 December 2011. Please register at <http://ungc-outreach-event-2011.eventbrite.com/>

The screenshot shows the homepage of the Global Compact Network United Kingdom. At the top, there is a navigation bar with links: About the UK Network, How to Join, Communicating Progress, Case Studies, Issues, and Events. Below this is a banner featuring a quote from Ban Ki-moon, United Nations Secretary-General: "Business practices rooted in universal values can bring social and economic gains." The main content area includes a "WELCOME" section with text about the UK Network's role, a "Read the UK Network's report" link, and a "Launch of the Global Compact Annual Review 2010" section. On the right, there are links to Human Rights, Labour Standards, The Environment, and Anti-Corruption. At the bottom, there are sections for "Latest News" and "Events". A "Participant Login" section is also visible, with a "LOGIN" button. Annotations with arrows point to various parts of the page: "Stay up to date with announcements on twitter." points to the Twitter link; "News: Summaries of recent events, links to full event reports, and Global Compact related news." points to the "Latest News" section; "Information on upcoming and past events" points to the "Events" section; and "UK Network members can sign in to view the results of COP Peer Reviews." points to the "Participant Login" section.



Global Compact Network United Kingdom

The United Nations Global Compact is a strategic policy initiative for businesses that are committed to aligning their operations and strategies with ten universally accepted principles in the areas of human rights, labour, environment and anti-corruption.

The UK Network was formed by UK-based signatories in 2003 and is led by a Chair with support from an Advisory Group, Secretariat, and working groups. The UK Network serves as a focal point of co-ordination and communication for its members and its key goals are:

- to provide UK signatories with a facility to consider and advance issues of mutual interest and concern
- to provide a mechanism through which performance and reporting on UN Global Compact principles can be improved by mutual support
- to enable participants to share and exchange practice and experience
- to provide input to the Global Compact on its future development and activity
- to promote the Global Compact principles throughout the UK business community
- to help promote and support the Global Compact worldwide

For more information or to join the UK Network, please contact:

Steve Kenzie, UK Network Secretariat c/o International Business Leaders Forum

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The UK Network Secretariat is hosted by the **International Business Leaders Forum (IBLF)**, an independent, not-for-profit organisation working with leading global companies on responsible business solutions to sustainable development challenges. For more information, please visit: www.iblf.org.

ABOUT THE GLOBAL COMPACT: Anti-Corruption

The Global Compact Anti-Corruption principle is derived from the United Nations Convention Against Corruption (2004):

Principle 10: Businesses should work against corruption in all its forms. Including extortion and bribery.

By partnering with the UN Office on Drugs and Crime (UNODC), Transparency International (TI), the International Chamber of Commerce (ICC), the World Economic Forum Partnership Against Corruption Initiative (PACI) and the World Bank Institute (WBI), the UN Global Compact contributes to the fight against corruption by providing a platform for learning and dialogue and by offering guidance to companies on how to implement principle 10.

Global Compact Working Group on the 10th Principle

The goal of the multi-stakeholder working group is to provide strategic input to the Global Compact's work on anti-corruption and to define the needs of the business community in implementing the 10th principle. The Working Group aims to contribute to greater coherence by supporting the alignment of existing initiatives and avoiding the duplication of efforts.

How to Engage

To join the UNGC Working Group on the 10th Principle or to take a more active role in UNGC Anti-Corruption initiatives, please contact:

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