CLOTH FAIR CHAMBERS

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CROSS BORDER CRIMINAL INVESTIGATIONS:

THE UNITED STATES MARSHALL AT RECEPTION

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CLOTH FAIR CHAMBERS SPECIALISES IN FRAUD AND COMMERCIAL CRIME, COMPLEX AND ORGANISED CRIME, REGULATORY AND DISCIPLINARY MATTERS, DEFAMATION AND IN BROADER LITIGATION AREAS WHERE SPECIALIST ADVOCACY AND ADVISORY SKILLS ARE REQUIRED.

CROSS BORDER CRIMINAL INVESTIGATIONS:

THE UNITED STATES MARSHALL AT RECEPTION

NICHOLAS PURNELL QC

1. Newspaper columns are increasingly becoming filled with accounts of criminal investigations and trials concerning UK and European corporations and their employees and officers taking place in foreign jurisdictions – principally in the United States of America.

2. Whilst this phenomenon has been steadily developing over recent years, the degree of aggression that is now characterising the policy of the US Department of Justice is rooted in its growing disillusion with law enforcement agencies in the UK and Europe and its corresponding and increasing confidence that it can and does achieve results by undertaking its own prosecutions of foreign nationals which are in the interests of American consumers.

3. By the 1980's, if not before, governments world-wide were becoming increasingly concerned that the growth of international business, the globalisation of markets and the development of e-commerce were making it increasingly difficult to identify a precise physical location at which a questionable transaction had taken place. If the transaction gave rise to investigation because of suspected corruption or anti-competitive practice, the territorially based jurisdiction model of domestic legislation was proving impotent to tackle these cross-border activities.

4. At the same time, corruption and cartel activity were perceived as becoming almost endemic in business transactions in certain areas of the world and in particular industries. The economic harm, the obstruction to sustainable development and the potential for undermining respect for human rights created an ineluctable necessity for the introduction of measures internationally to promote higher standards of business fairness and propriety. It was hoped that a co-ordinated strategy to tackle corruption and anti-competitive practices might provide the businessman and woman with a supporting framework within which to negotiate and undertake business commitments.

5. Recent history has also demonstrated that corrupt practices provide obvious targets for infiltration by organised crime and terrorist activity into legitimate areas of business.

6. The dual role of the SEC in the USA as regulator and prosecutor, with access to civil and criminal processes, provided it in the mid 1970's with the appropriate authority and potency to conduct a widespread review of the penetration of corrupt practices into international business conducted by US companies.

7. The review produced admissions from more than 400 US entities that questionable or obviously illegal payments in excess of $300 million had knowingly been made to foreign government officials during the period under investigation. If this was the scale of the admitted conduct in the 1970's, the extent of the probable penetration since then of corrupt practice into international commerce is infinitely deeper.

8. The abuses which were disclosed, ran the gamut from straightforward bribery of high foreign officials to secure favourable treatment by the commissioning foreign government to soi-disant facilitation payments apparently required to fast track ministerial or clerical processes.

9. As a result of the investigation, Congress enacted the Foreign Corrupt Practices Act 1977 to make criminal the payment of bribes to foreign officials and thereafter further amended the provisions of that statute by sections of the International Anti-Bribery and Fair Competition Act 1988.

10. The main effect of the 1977 Act was to introduce a five element approach to making unlawful the bribery of a foreign official to obtain or retain business.

11. However, by these enactments, American business now found itself subject to civil and criminal enforcement actions, individual sentences of imprisonment and the consequential further penalty of corporate suspension and debarment from federal procurement contracting.

12. The commercial reaction was to develop pressure groups and lobbying tactics to confront Capitol Hill with the uncomfortable facts that the legislative framework that faced the US business community put it at a distinct competitive disadvantage against foreign companies who not only routinely paid bribes but were permitted by their native revenue authorities to deduct such payments as business expenses on their corporate tax returns.

13. Accordingly in conjunction with the more stringent arrangements introduced by the International Anti-Bribery and Fair Competition Act, the American Government opened negotiations in 1988 with the Organisation for Economic Co-operation and Development, the OECD, to secure the agreement of the major trading partners with the US to persuade them to introduce comparable legislation.

14. Because the 1988 Act also extended to cartel activity, it was quickly appreciated that breaking the circle of silence which is wrapped around a price-fixing ring was the key to uncovering and prosecuting cartels. On 10 August 1993 the Anti-Trust Division of the Department of Justice introduced a new Corporate Leniency Policy which enabled a corporation to avoid criminal prosecution by confessing its role in anti-trust violations and by co-operating with the DoJ to secure the conviction of other cartel members.

15. This programme was surprisingly successful in uncovering anti-trust activity, so much so that the following year, on 10 August 1994, the programme was extended to individuals who approached the DoJ on their own behalf – not as part of a corporate role.

THE CULMINATION OF TEN YEARS OF NEGOTIATION

16. By 1997 that process had brought about the signature by the US and 33 other countries to the OECD Convention on Combatting Bribery of Foreign Public Officials in International Business Transactions.

17. That Convention was ratified by the UK in 1999 and in that year the UK became a party to a number of other international instruments which have evolved from the process described above.

These include:

- The Council of Europe Criminal Law Convention on Corruption
- The European Union Corruption Convention
- The Corruption Protocol to the EU Fraud Convention.

18. The UK Government is also a leading player in the Group of States against Corruption which has been set up to monitor the implementation of the Conventions.

19. The question which arises, however, certainly in the minds, if not out of the mouths, of the personnel within the DoJ, is "What has the UK Government done to reflect its vaunted 'leading role' in the fight against corruption and cartel activity?"

20. In contrast, the US Law Enforcers point to the success of their leniency programmes. In the period between 1999 and 2006, the DoJ has prosecuted 84 US nationals for cartel crimes and an astonishing 27 foreign nationals from 9 different countries have been extradited to and tried within the US. The average prison sentence for these convicted prisoners is 21 months in a US prison.

21. More significant perhaps is that since the introduction of the 2003 Extradition Act, which came into effect in January 2004, the DoJ has successfully sought the extradition of 45 UK citizens to be tried in the US.

22. The principal domestic statutes in England and Wales dealing with corruption date back to the end of the 19th and the early years of the 20th centuries. They are:

    - THE PUBLIC BODIES CORRUPT PRACTICES ACT 1889 which covers corruption in office;
    - THE PREVENTION OF CORRUPTION ACT 1906 which covers bribes offered to or accepted by agents;
    - THE PREVENTION OF CORRUPTION ACT 1916 whichintroduced a presumption of corruption where money or gifts were received by public officials; and
    - THE COMMON LAW OFFENCE OF BRIBERY OF A PUBLIC OFFICIAL directed at those under a duty to carry out a public function.

23. This combination of offences has provided a generally effective framework of measures to

"Do you think they'd take a bribe to drop the corruption charges?"

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"It's the competitive tendering process."

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prosecute crimes where the offer, acceptance or agreement to accept a bribe could be proved to have taken place within the UK. However the offences overlap, they lack a common statutory definition of "corruption," they distinguish between public and private persons and they provide no effective control for offences committed outside UK territorial jurisdiction.

24. It is against this background that criticism of UK policy and law enforcement, of the consequential introduction of Part 12 of the Anti-Terrorism Crime and Security Act 2001, of the ill-fated Corruption Bill, of the rejected consultation papers and Law Commission proposals and of Government intervention in the SFO Saudi arms investigation, must be considered.

25. The starting point is to understand the underlying policy of the grandfather statute – the United States' Foreign Corrupt Practices Act 1977 as amended and, perhaps even more importantly, the way in which UK personnel may find themselves subject to the effects of that statutory regime.

THE STRUCTURE OF THE FOREIGN CORRUPT PRACTICES ACT 1977 – AS AMENDED BY THE INTERNATIONAL ANTI-BRIBERY AND FAIR COMPETITION ACT 1988

26. This United States' Act makes it unlawful to bribe foreign government officials to obtain or retain business and has five elements which must be met to prove a violation.

A. The Identity of Potential Offenders

27. The Act applies to any individual, company, officer, director, employee, agent or **stockholder acting on behalf of a company**.

28. The nature of the jurisdiction varies according to whether the 'offender' is:
    - an **issuer**, a company issuing securities registered in the US or required by the SEC to file periodic reports; or
    - a **domestic concern**, an individual who is a citizen, national or resident of the US, or a company with its principal place of business in the US or which is organised according to the laws of a State or territory of the US.

29. This is self evidently a huge swathe of potential offenders.

30. The FCPA will apply under either **territorial** or **nationality** jurisdiction principles and, for acts within the US, use must be shown to have been made of some means of interstate communication for an act in furtherance of the corrupt payment. Such means are defined very widely – mail, telephone, fax, telegraph, cross border travel.

31. Oddly, for acts **outside the US** no such use needs be shown and a company or individual may be liable for authorised acts by employees or agents outside the US which cause corrupt payments to be made, even if the money itself is paid from a foreign bank account.

32. Before the 1988 amendments, only such foreign companies and individuals who already qualified as an 'issuer' or a 'domestic concern' might be held liable under the Act. However, the 1988 amendments expanded the assertion of jurisdiction to embrace any foreign company if it causes, directly or though agents, an act in furtherance of a corrupt payment to take place within the territory of the US.

33. The amended Act also makes US parent companies liable for the corrupt acts of foreign subsidiaries where the acts were authorised, directed or controlled and applies to US citizens and residents who are employed by or act on behalf of such foreign incorporated subsidiaries.

B. The Corrupt Intent

34. The maker or authoriser of a payment must have a corrupt intent – that is he must intend the payment:

    - to induce the recipient to misuse his official position;
    - to direct business wrongfully to the payer or another.

35. The offer or promise is sufficient for a violation.

36. The offer or promise does not have to succeed.

37. A corrupt payment may be one intended to influence an act or decision or to induce an act or omission or to induce an improper use of the official's influence.

C. The Payment

38. The Act prohibits paying, offering, promising to pay or authorising to pay or to offer money or anything of value.

D. The Recipient

39. The Act extends only to payments etc made to a foreign official, **foreign political party or candidate for foreign political office**.

40. This in fact is defined much more widely than might be imagined. It covers any officer or employee of a foreign government, public international organisation or department or agency thereof. In reality any person acting in an official capacity.

41. The rank or position of the receiver is irrelevant and the focus of the legislation is upon the purpose of the payment not the particular function of the receiver.

E. The Business Purpose Test

42. The prohibited payment must be made in order to assist the payer in obtaining or retaining business or for directing business to a person.

43. Once again the Department of Justice gives a wide definition to the meaning of this test and it is important to note that the business obtained or retained need not be business with the foreign government or foreign organisation.

44. Third party payments are prohibited when the 'offender' knows that the payments or a portion of them are made directly or indirectly to a foreign official.

45. 'Knowingly' is given the Nelsonian blind-eye interpretation – a conscious disregard or deliberate ignorance will suffice.

THE FCPA PENALTIES

46. The Act provides for both criminal and civil penalties. The Justice Department may bring

criminal prosecutions which carry fines and sentences of up to five years' imprisonment for individuals.

47. Either the Attorney General or the SEC may bring civil actions under the Act for fines against companies and or individuals.

48. The Office of Management and Budget has issued guidelines by which persons or companies found guilty of violations under the Act may be barred from doing business with the Federal Government. Indictment alone may be sufficient for suspension. The President has issued directions that no barred or suspended company may participate in any procurement or non-procurement activity.

49. A violation may also lead to ineligibility for export licences, suspension by the SEC from securities business and suspension or debarment by the Commodity Futures Trading Commission and the Overseas Private Investment Corporation from agency programmes.

50. The potential scope for this legislation to entangle the unwary UK businessman and UK companies with US parents or subsidiaries is wide. The consequences for personal liberty and continued trading activity are potentially very grave.

PERMISSIBLE PAYMENTS AND AFFIRMATIVE DEFENCES

51. The Act sets out exceptions for 'facilitation payments' to fast-track routine governmental or bureaucratic processes such as procuring licences, permits, visas and work orders etc.

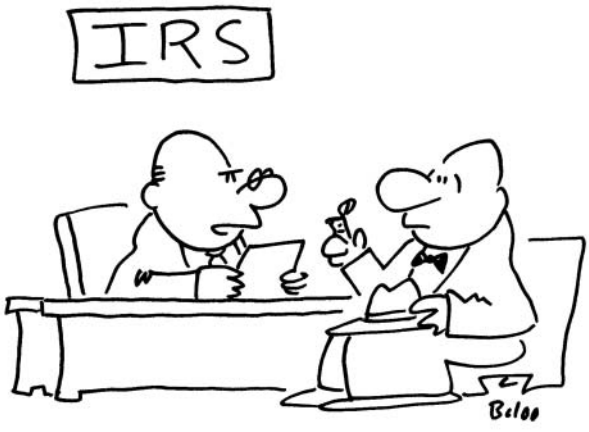
52. The key to such legitimate payments is their open characterisation and their general availability to those who pay the requisite premium fees.

53. Similarly there is a number of available 'affirmative' defences – defences the burden of proof for which rests with the accused – for example that an act was lawful by reference to the written laws of the country in question or that money was spent on demonstrating a product or performing a contractual obligation.

54. However, the lawfulness of the contractual obligation is itself a fundamental pre-requisite.

THE RESPONSE OF THE UNITED KINGDOM

55. The UK has received reports from the Committee on Standards in Public Life,



"No, I wouldn't like a mint, and do you know what the *penalty* is for attempted bribery of a Federal agent?"

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recommendations from the Law Commission and has become signatory to the series of international conventions already referred to and the ratification of those conventions.

56. By so doing, the UK government assumed objectives of clarifying and updating the law to demonstrate its determination to fulfil its domestic and international commitments to combatting corruption in public and private sectors.

57. The first step was to remove the territorial limitation of the jurisdiction of the existing offences. That Parliament has done.

PART 12 OF THE ANTI-TERRORISM, CRIME AND SECURITY ACT 2001 SECTIONS 108-110

58. This statute extends the jurisdiction of the current anti-corruption offences to cover
    (i) a definition of public official which embraces a non-UK 'public';
    (ii) offences committed wholly or partly within the UK; and
    (iii) offences committed by UK nationals abroad.

59. Section 108(1) renders it immaterial, for the purposes of any common law offence, whether the functions of the public official receiving the reward have any connection with the UK or are carried out in territories outside the UK.

60. Section 108(2) amends the 1906 PCA s.1 to make it immaterial to that Act that the principal's or the agent's affairs have no connection with the UK and are conducted outside the UK.

61. Section 108(3) amends s.7 of the Public Bodies Corrupt Practices Act 1889 to include any public body which exists in a country or territory outside the UK.

62. Section 108(4) amends s4 (2) of the 1916 PCA to include as public bodies, local and public authorities of any description – including authorities existing in territories outside the UK.

63. The effect of these amendments is to remove the territorial boundaries which confined the acts undertaken and to extend the scope of the offences to acts directed at persons who have no connection with the UK but are officials of foreign countries. This reform does not reflect some vigorous policy shift. The Government was committed to do this much in order to render the UK compliant with the OECD Convention on Bribery which the UK had ratified as long before as 1998.

64. Section 109 has the like effect upon the existing offences with regard to UK nationals committing corruption offences abroad. If a UK national or a body incorporated under the law of the UK carries out any act abroad which, if carried out within the UK, would constitute an offence of corruption, whether common law or statutory, such acts may now be prosecuted within the UK.

65. The same section defines a UK national.

66. Section 110 removes the application of the presumption of corruption contained in section 2 of the PCA 1916 from any offence which now falls within the jurisdiction of the UK only by reason of these amendments. This serves to limit the effect of the presumption to its pre-2001 status as part of the government's proposed intention to move towards the eventual abolition of the presumption altogether.

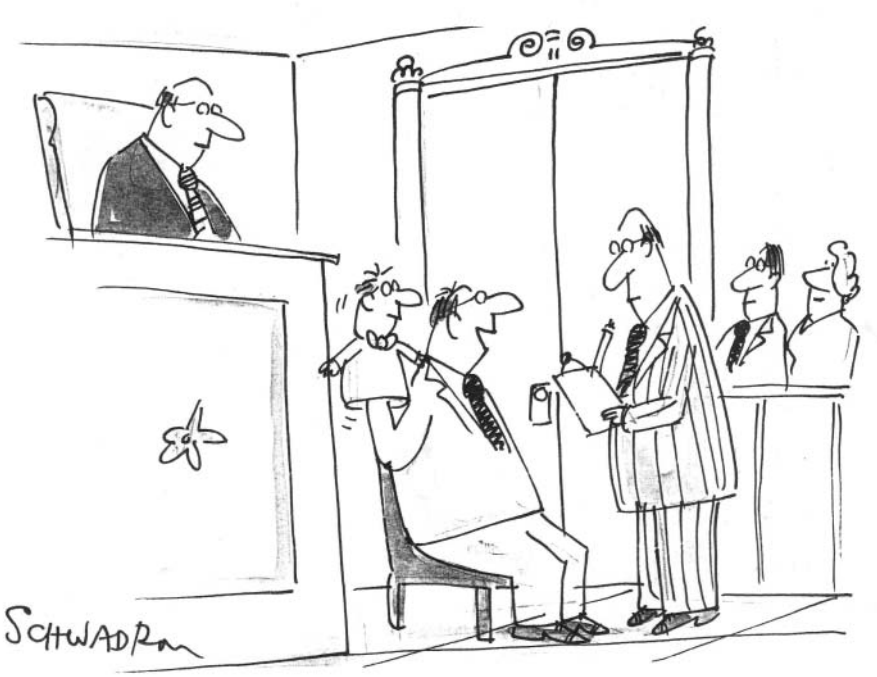
67. The presumption has proved increasingly inappropriate as the distinction between public and private functions becomes more blurred and as it has no application to charges of conspiracy to corrupt. Such conspiracy charges are not grounded in the statutes containing the presumption.

68. The principal reason for the policy of removal, however, was again not some reforming zeal but the fear that the provision might be deemed incompatible with the ECHR .

69. The observer from abroad will note, moreover, that as 2007 draws to a close, no prosecution has yet been brought under the 2001 Act.

THE LEGISLATIVE AND INVESTIGATIVE HIATUS

70. Instead of surveying a vigorous investigative



"While I admit to being the CEO, the actual fraud was carried out by my right hand man, Mr Puppeto."

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and prosecution programme, consistent with the public stance of the UK as a leading power in the fight against corruption and cartel offences, the DoJ and other interested bodies – the OECD and Transparency International among them – see the UK apparently floundering about in a legislative flummox.

71. The Law Commission devoted valuable time consulting on and proposing draft legislation which went before the Joint Parliamentary Committee on Parliamentary Privilege. In March 2004 the Government published a draft Corruption Bill. The Bill was roundly criticised and was withdrawn in November 2005. The Government issued further consultation papers. Transparency International, the Berlin based international anti-bribery think tank, proffered a simplified legislative framework for government consideration.

72. The Government instead has asked the Law Commission to begin afresh and to produce proposals for new legislation. The time-scale is fluid.

LENIENCY PROGRAMMES AND CO-OPERATION WITH THE PROSECUTING AUTHORITIES

73. Section 190 of The Enterprise Act 2002 and Part 2 of the Serious Organised Crime and Police Act 2005 introduce leniency programmes into UK law for the first time. The first statute covers cartel offences and the second extends similar powers to the principal prosecuting authorities to offer immunity from prosecution on certain terms.

74. This legislation has been widely considered elsewhere and a comprehensive guide is available on the Cloth Fair Chambers website at **www.clothfairchambers.com** (bottom of the Latest News page). The effects are already becoming felt.

75. For example, in the current 'Pharmaceuticals' criminal investigation which is about to come to trial and concerns alleged price-fixing rings for commonly used treatments and antibiotics, more than a dozen individuals were informed that they were under investigation as suspects and were offered and accepted the role of co-operating witnesses in the prosecution of their former employers.

76. As yet there have been no Enterprise Act prosecutions but perhaps the important indication – and certainly the focal point of this paper – is to look forward by having regard to the impact such programmes have already had in the United States.

SENTENCING TRENDS IN EUROPE AND THE UNITED STATES

77. Reference has already been made to the number of foreign nationals prosecuted to conviction in the USA and to the number of successful extradition requests which will lead to future prosecutions.

78. Public attention has been excited by the *Norris* case, currently on its way to be argued before the House of Lords. However the history of the investigation is less well known. Morgan Crucible and two of its subsidiaries entered into a criminal price fixing ring which ran from 1989 and 2000. The ring was operated by 'committees' of one of which Mr Norris is alleged to have been a member. He is further alleged to have conspired with others to influence the evidence that was provided to the DoJ and the FBI.

79. In November 2002, Morgan Crucible entered a plea bargain with the DoJ and paid fines of US$1 million and US$10 million. At the same time, Morgan Crucible provided the European Commission with information concerning cartel activity in Europe and in December 2003, the EC granted Morgan Crucible immunity from prosecution as the first undertaking to inform on the European cartel activity.

80. The vigour and persistence of the DoJ in continuing to pursue Mr Norris in 2007 is partly explained by the nature of the second allegation against him which is in direct contrast to the plea bargain entered by the company and the 'voluntary' disclosure to the EC before the Commission had undertaken any investigation.

81. However another company involved in the same European price-fixing ring, *Carbon Lorraine*, applied to the EC for leniency by co-operating **after** Morgan Crucible had made its approach. As 'second' through the door, it was deemed eligible for a 40% reduction in penalties but this in practice turned out to be a fine of 43 million euros!

82. Other illustrations of the leniency programmes in action are not hard to find. The Christie's/Sotheby's cartel is one such. The collusive agreement to fix commissions which operated from 1993 to early 2000 came to light when the former chief executive of Christie's provided evidence to the Commission and to the DoJ. Sotheby's rushed to co-operate when served with notice of the investigation. Christie's was granted total immunity from prosecution and penalty. Sotheby's was given a 40% discount on penalty but were still fined 20.4 million euros, equivalent to 6% of its worldwide turnover.

83. The effect of delay is even more starkly illustrated by the fate which befell Roche and BASF in the EC 'vitamins' 2003 investigation. Aventis received total immunity in return for providing the Commission with written evidence but Roche and BASF were given only a 50% reduction in penalty **although they had approached the Commission a week before their competitor**. What they had failed to do was to provide the first written evidence which Aventis had succeeded in doing. The reduced fines for Roche and BASF weighed in at 462 million euros and 219 million euros respectively.

84. The summer of 2007 has seen a flurry of enforcement activity. BA has submitted to fines in the UK of £121 million imposed by the OFT after its investigation into fuel surcharge agreements between BA and Virgin. The DoJ has imposed its own fine of $300 million for the same agreement. Virgin, the provider of information to the OFT and the DoJ was given total immunity. Scott Hammond, the US Assistant Deputy Attorney General commented on the outcome in customary style:

"virtually every American business and consumer was impacted by these crimes... American companies rely on competitive shipping rates to export their goods to foreign markets, American consumers rely on imports for so many consumer and household goods, American families flew these airlines on international destinations."

85. Intel currently faces anti-trust enforcement actions in South Korea and before the European Commission alleging abuse of dominant market position in the distribution of its microprocessing chips. The actions, prompted by complaints from rival CPU manufacturer AMD, come in the wake of the EU fining Intel 497 million euros in 2004 for abuse of a dominant position in PC operating systems.

86. On 17 September the European Court substantially upheld the Commission's decision to find Microsoft had abused its market position as the dominant supplier of PC operating systems and media players and confirmed the fine which the Commission had set at just over 497 million euros.

87. In the course of its judgment, the European Court approved the approach of fixing fines at a deterrent level:

"... the objective of deterrence which it is entitled to pursue when setting the amount of fines is intended to ensure that undertakings comply with the competition rules laid down in the Treaty when conducting their business within the Community .... It follows that the deterrent nature of a fine imposed for infringement ... cannot be assessed by reference solely to the particular situation of the undertaking sanctioned. It is necessary ... also to deter other undertakings 'of similar size and resources' from committing similar infringements." (Judgment of the Court of First Instance 17 September 2007 Case T-201/04 page 147 paragraph 1321.)

88. It would be a fundamental mistake, however, to form the impression that the imposition of a fine upon the corporate undertaking is the end of the matter. As recent experience with the fuel surcharge investigation shows, the issue of the individual criminal liability of the responsible executives remains a live investigation. Moreover, the resolution of the regulators' investigations does nothing to remove the risk of third party civil class actions in the jurisdictions in which the 'victims' are domiciled.

89. Moreover, the domino effect of further action by other regulators elsewhere in the global business world is a reason why even those companies who avail themselves of leniency programmes need to consider parallel disclosures to the OFT, the DoJ, the European Commission and elsewhere.

VULNERABLE AREAS OF TRADE AND COMMERCE

90. The OECD has recently published a report entitled *Bribery in Public Procurement: Methods, Actors and Counter-Measures* ISBN 978-92-64-01394-0 2007. It draws upon experience from 12 separate countries. It notes that, as visible trade barriers are reduced or eliminated, increasingly more subtle and sophisticated protectionist practices arise and in public procurement projects, in particular, each link in the tendering and implementation processes is potentially vulnerable to corruption.

91. The report identifies the sectors which are most vulnerable and in which the most sophisticated corrupt schemes have been investigated. The energy sector, the exploitation of mining resources, major construction or infrastructure projects, telecommunications and the arms sector are nominated as the areas of trade most prone to corrupt practices. They are areas which have a strong capital intensity, involve new and often high technologies, call for sophisticated materials and are characterised by economic rarity, moroever they each involve network activities.

COMPLIANCE AND ADVICE

92. The nature of global commercial arrangements, the widespread incorporation of foreign registered subsidiaries and the preponderance of such joint venture vehicles in the above and other sectors has required the legislature to introduce extra-territorial criminal offences. The risks to UK businesses arising from the implementation of such penal policies are obvious but as yet may have gone unrecognised.

93. Every business should inform itself and its directing minds of the current and proposed legislation. Every business should conduct a review of (i) its audit process regarding commission payments and (ii) the arrangements which are in place to monitor the relationships with agents and business

"I'm going out Miss Smith, I'll be back in five years."

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partners through whom it conducts its commercial activities.

94. The emphasis which current international legislation places on the impact of arrangements between those who commission work and those who solicit work and the incidence of public/private finance initiatives may not be ignored.

95. To understand how the legislation is framed in countries in which a company seeks to trade and its potential application to the sphere of operations of individual businesses is the first priority.

96. The machinery which is in place to make accountable and transparent the trading arrangements which an undertaking may enter into – or has already entered into – is of parallel importance.

97. One clear distinction between the US experience and UK practice is the availability in the US of an advice service provided by the Office of the Attorney General. The American statute in force – The FCPA as amended by the IAFCA 1988 – provides for two distinctive features.

98. The first is a statutory requirement for the issuance by the Attorney General of Guidelines further to clarify the effect of the statute. These guidelines describe (i) particular types of conduct which currently conform to the Department of Justice's present enforcement policy; and (ii) general precautionary procedures which issuers and domestic concerns may utilise on a voluntary basis to conform their conduct to the present enforcement policy.

99. The second measure is the provision of a statutory procedure by which relevant parties may seek response from the Attorney General to specific enquiries concerning the conformance of their conduct with the current enforcement policy. This procedure requires a response from the Attorney General within 30 days determining whether such proposed conduct would in fact violate the statutory provision.

100. The application for a response and the receipt of advice that no violation will occur together create a rebuttable presumption that such conduct does not violate the statute.

101. There are no equivalent procedures in English law. There is no established precedent by which any interested

governmental body, the ECGD, NCIS, SFO, DTI, OFT and so on, provides an advice service to industry and commerce about specific arrangements.

102. Whether any such informal arrangements exist or not for a favoured few British exporters or joint venture partners in Middle Eastern or Asian projects I know not. It is arguable however that the introduction of these measures militates in favour of a recognised channel by which corporate entities might bring concerns about proposed arrangements to the attention of the authorities in a consultative role.

103. The British Government is under pressure to demonstrate its determination to give effect to the conventions and protocols to which it has become signatory in the fight against international corruption and its consequences for both mature and emerging economies. If UK business fails to recognise this and to take adequate steps to audit commercial practices, then the risks spread wider than the potential loss of reputation. Individual liberty and the ability to participate in public projects are in question.

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or contact Charlotte Bircher, email charlottebircher@clothfairchambers.com

CLOTH FAIR KALISHER SCHOLARSHIP 2007

The Kalisher Trust was set up in 1996 in memory of the late Michael Kalisher QC and is a unique charity which has funded one talented student through the Bar Vocational Course each year. Cloth Fair Chambers now sponsors a second scholarship and this is the first year that the Cloth Fair Kalisher Scholarship has been awarded. Emma Duckett, the winner of the 2007 award, writes about her progress towards a career at the Bar.

Emma Duckett

I followed the traditional route into the legal profession having decided from an early age that a career in law was for me. I had an enthusiasm for debating and public speaking, which provided me with encouragement and direction throughout my education.

I studied law at the University of Newcastle upon Tyne and decided to gain some practical experience before commencing the Bar Vocational Course. In 2003, I became a Presenting Officer for the Home Office, a job which has provided a valuable insight into the challenges and demands of a career at the Bar. My role involves arguing the case for the Secretary of State in asylum, immigration and human rights hearings before the Asylum and Immigration Tribunal. Work placements in other areas of the Home Office have provided experience of drafting written grounds of appeal to the High Court and Court of Appeal.

In recent times, an increasing feature of my workload has been to act upon Crown Court recommendations for deportation following the conviction of a foreign national in the UK. This experience has involved the presentation of bail cases and criminal deportation hearings, the foundations of which are based in criminal law. The opportunity to become involved in the final stages of many high profile criminal cases has arisen in this way. Most notably, I recently represented the Secretary of State in the deportation and asylum appeal of one of the gang-leaders of the Chinese Cockle Pickers incident.

In 2006, I began my studies on the Bar Vocational Course at Manchester Metropolitan University. Throughout the academic year, I continued my work with the Home Office and was able to put the practical elements of the course into practice in court every week. It was during this time that my interest in criminal law was cemented, with frequent visits to the Crown Court providing inspiration. The advocacy element of the course was where I felt most comfortable and confident and I became certain that being 'on my feet every day' was what I hoped for in my career.

For me, the changing professional climate of the Criminal Bar encapsulates the attraction of a career as a barrister. Such is the dynamic and diverse nature of criminal practice, that it demands excellence in those skills which are the very hallmarks of such a career; outstanding advocacy, adaptability and communication skills.

My experiences have instilled in me a deep commitment to obtaining pupillage. The Cloth Fair Kalisher Scholarship serves as confirmation that, in spite of the current difficulties faced by the profession, such commitment, coupled with drive and determination, can provide for a lengthy and successful career at the Criminal Bar.

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