

## **Letter from England: The Bribery Act Guys and the Act's US Implications**

Earlier this week I had the opportunity to sit down and lunch with Barry Vitou and Richard Kovalevsky, QC, authors of the website, *thebriberyact.com*. A great time was certainly had by all and in honor of their website and the venue; I enjoyed a fine meal of fish and chips.

The two are a great pair, with Barry a solicitor and Richard a barrister (hence the omnipresent 'QC' after his name). One of the things I was interested in was how these two came to the field of anti-corruption and how they came to start up such a focused, and maintain what I believe to be the best, and comprehensive website for information on the UK Bribery Act; and other anti-bribery and anti-corruption news across the globe. Back in 2009 they began to follow the legislative meanderings for the Bribery Act and decided to start a website to highlight on the legislation and bring commentary and analysis to the Bribery Bill as it worked its way through Parliament and to the Bribery Act after it received its Royal Assent.

From my perspective, the site has been an excellent resource for the US compliance practitioner. As I previously wrote their commentary and analysis is insightful and cuts much of the speculation about the reach and over-reach of the Act. They blog about concrete topics and issues and provide to the compliance practitioner useful guidance on how to implement or enhance a compliance program to comply with the strictures of the Act. However, for my money, the one thing that makes their website stand out is the interviews they have provided of UK officials charged with implementing the Act. These interviews provide, not only, awareness into the thinking of the very highest level of UK officials but more importantly they allow the US compliance practitioner to read and inform his or her own views of how the Act will be implemented going forward.

One of the areas we discussed was US companies and their implementation of Bribery Act compliance programs or enhancing their Foreign Corrupt Practices Act (FCPA) based compliance programs to incorporate the requirements of the Bribery Act. One area which I do not see significant thought or compliance program enhancement for is regarding the fact that under the Bribery Act, the US is a foreign jurisdiction, therefore all the requirements of the Act come into play in transactions in the US.

Most US companies do not subject their US sales channel: whether they are sales agents, representatives, distributors or others to the same type of compliance due diligence that is required of their sales channel outside the US. The same is true for vendors in the supply chain; a Dun and Bradstreet credit worthiness report may be all the investigation that they do.

The same lack of process and procedure is true for other components of the Six Principles of an Adequate Procedures compliance regime. There is no compliance training required of US based sales channel or supply chain, no requirement for ongoing compliance assessment or evaluation,

no requirement for a like or similar overall company compliance program, no requirement of risk assessment or ongoing monitoring or review. In short the vast majority of US companies do not meet the standards of Adequate Procedures of the Bribery Act when looking at the companies they do business with, both ingoing and outgoing in the US.

As our lunch was winding down I told both Richard and Barry one thing was definitely, and certainly, required and that was that they come to the US and put on Bribery Act events across the US. They somewhat blushed when I told them that the *Bribery Act Guys on Tour* would be quite successful and many, many of my fellow compliance practitioners would certainly benefit from their collective wit and wisdom. I know I would....

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