



**14TH INTERNATIONAL
ANTI-CORRUPTION
CONFERENCE 2010**

SHORT WORKSHOP REPORT FORM

Number and title of workshop:

WS 4.1 Settling Foreign Bribery Cases: A Deterrent or a Dodge?

Date and time of workshop:

Date: Wed- November 10, 2010,

Time: 5.30pm to 7.30 pm

Moderator:

Nancy Boswell, Pres.& CEO, Transparency International-USA

Rapporteur:

Shruti Shah, Senior Policy Director, Transparency International-USA

Panellists

- Mark F. Mendelsohn, Partner at Paul, Weiss, Rifkind, Wharton & Garrison LLP (Former Deputy Chief of the Fraud Section, Criminal Division, United States Department of Justice)
- Richard Alderman, Director of the Serious Fraud Office, Government of United Kingdom
- Elena A. Panfilova, Director, TI Russia

Main Issues Covered

Mark Mendelsohn and Richard Alderman began the session by providing brief backgrounds on Foreign Corrupt Practices Act and the UK Bribery Act, respectively.

The discussion then turned to the enforcement regimes in each country. Mark set out the essential elements of deferred prosecution agreements (DPAs) and non prosecution agreements (NPAs) in the US. One element is a statement of facts that sets out, in some detail, the underlying conduct. For DPAs, there also is an indictment filed in court which is a matter of public record.

Richard, noting that “the SFO is at a much earlier stage than the DOJ in developing case law,” emphasized that in the UK, the judge has the final say in approving any settlement agreement to resolve the case. The issue remains as to how much information to make public. Richard indicated that the SFO is still exploring the appropriate level of disclosure.

Richard and Mark agreed that alternatives to conviction are particularly important in the context of debarment, which may not be the appropriate remedy in every case.

Elena Panfilova discussed the impact of settlements in countries such as Russia, which she termed as “systemically corrupt.” The statement of facts accompanying the settlement, absent the names of the extorting officials, may have little impact in countries where there is no credible threat of prosecution. When bribes takers are not punished, it sends the wrong message and emboldens the corrupt officials to continue extorting.



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Issues and questions raised and discussed were:

- The danger that the increasing use of settlements may lead to prosecuting authorities stopping investigations prematurely and “outsourcing” their responsibilities to law firms selected by companies;
- How money paid by companies as part of settlements might be used to help the victims of corruption;
- The extent to which US and UK authorities assist other countries by providing evidence of bribes taken by corrupt officials;
- Whether more information can be made public and proactively provided to authorities in jurisdictions where the bribery occurred; and
- Other tools available to address foreign extortion in the absence of prosecution in the countries in which the bribes were paid. These include denying visas to corrupt officials and issuing bilateral demarches.

Main Outcomes

The participants gained a good understanding about the elements of settlements, the potential benefits and the challenges associated with them.

Main Outputs

N/A

Recommendations, Follow-up Actions

Potential follow up actions include:

- Conducting a comparative study on the perspectives of different stakeholders from different countries on the benefits and the challenges associated with settlements of foreign bribery cases; and
- Working towards identifying guiding principles on how settlements can be used more effectively by law enforcement and civil society to promote corporate integrity, and to address the concerns of the victims.

Workshop Highlights (including interesting quotes)

- Expressing frustration on the absence of investigations and convictions in Russia, Elena noted that only a “miracle” could explain how “there can be bribe givers but no bribe takers.”