

The Risk of Trundling Tim Plc Being Held Liable for the Actions of Their Employees

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Abstract

The author believes that, to some degree, the TT should be responsible for the illegal behaviors of its senior employees, in accordance with the Identification Principle and omissions-based liability for corporations. Based on the Bribery Act 2010, concrete accusations involved in the TT could be “Bribery of foreign public officials” and “Failure of commercial organizations to prevent bribery”.

Keywords

Trundling Tim Plc (TT); Bribery Act 2010; Case Study.

1. The Basic Facts of the Case

Trundling Tim Plc (TT) is a global company with corporate headquarters in Headingly, Leeds. TT provides highly-efficient integrated power and propulsion solutions. Their power systems are predominantly used in aerospace, marine, energy and off-highway applications. TT and its subsidiaries employ around 40,000 people across 50 countries. Its civil aerospace business, which manufactures engines for the commercial large aircraft and corporate jet markets, generates approximately 50% of its revenue. Its most recent engine, the B6660, is a market leader.

In 2019, TT senior employees discussed developing relationships with figures in positions of influence to advance TT sales in Bolivia, in particular with Bolivar Air, the national airline. In June 2019, a contact was made between TT and Alfonso Salazar (AS), a former commander of the Bolivian Air Force. AS alleged he could represent the interests of TT with Bolivar Air in securing governmental contracts to purchase 20 B660 engines in return for purchasing ‘Insurance Contracts’ from Palace Group (PG), an independent corporation wholly owned by AS. A Commercial Adviser Agreement between TT and PG was signed in December 2019. It provided for a commission of 5% on the price of any new engines and spares. In February 2020, Bolivar Air purchased 6 of the B660 TT engines. Following the purchase of the engines the following memo was sent from the TT South American Sales Director to the head of finance:

‘Whilst PG has not achieved the target set of 20 engines, AS is in constant contact for payment. Please arrange payment in line with the required insurance contract.’

In June 2020, £35,000 was transferred to the accounts of PG. In 2020, TT purchased state of the art anti-bribery software and since January 2019 have required all staff to engage with anti-bribery training on a 6-month basis. The Serious Fraud Office have recently contacted TT seeking information and asserting that some of the recent payments made by TT to intermediaries may have breached bribery laws.

2. Focus of Dispute

The focus of dispute, in this case, is the responsibilities that whether the TT should undertake for the wrongdoings of its senior staffs. Specifically, the researcher should illustrate the reason and the liability exception that the TT is responsible for commercial bribery.

3. Brief Answer

The author believes that, to some degree, the TT should be responsible for the illegal behaviors of its senior employees, in accordance with the Identification Principle and omissions-based liability for corporations. Based on the Bribery Act 2010, concrete accusations involved in the TT could be "Bribery of foreign public officials" and "Failure of commercial organizations to prevent bribery".

4. Analysis and Recommendation

1) Identification Principle and Omissions-based liability

Although generally, commercial bribery is carried out by natural persons, the legal liability arising from the duty behavior of corporate staff may also have an influence on legal persons. Therefore, the subject of commercial bribery could be an individual or a unit.

When judging whether the commercial bribery belongs to the personal responsibility or the unit responsibility, the researcher needs to consider that whether the behavior of commercial bribery is determined by the will of the individual or the juridical person, and the interest is possessed by the individual or the juridical person. If a crime requires proof of criminal intent, the law will attempt to identify that who is really in charge of the thoughts and will of the company, and assess whether they are aware of the alleged crime to ensure the conviction of the company itself. Only the legal responsibility caused by the action of the person "representing the guiding ideology and will" could be attributed to the juridical person. If business organizations neglect to build an internal bribery prevention system, lead to the result of bribery, they need to bear the corresponding legal responsibility. However, If the business organization could exhibit the proof of proper procedures established to prevent the related bribery, it can be mitigated or exempted from the corresponding punishment.

2) Bribery of foreign public officials

The senior employees have promised and offered related improper interests to the AS, A foreign public official, with an improper purpose. Both direct and indirect approaches could be regarded as bribery. That is to say, although the senior employees choose to offer bribes indirectly, their illegal actions could still be regarded as bribery crime. In detail, the senior employees intend to persuade the AS, a foreign public official to exercise his public authority and the AS has potentially implicated the illegal reward afterwards by means of establishing a fake insurance account. In terms of the AS, regardless of the achievement of exercise of authority or the incomplete implementation of that, as long as the identity of the AS could be accurately defined at the legal level, the charge of the senior employees will be correct. Although the AS neither work in one of the legislative, executive or judicial organizations of a country outside the United Kingdom nor work in a public agency or a public enterprise, the AS Exercised public functions or might still be likely to have influence in his field. Hence, the AS could be identified as a foreign public official with legal provisions.

However, the TT might still have a reasonable plea. After all, the AS is subordinated to the local army and more importantly, he has retired with no abilities to directly abuse his official capacity, so that the definition of his identification may need to be taken into consideration in a further step by legislations.

3) Failure of commercial organizations to prevent bribery

With regard to the TT, as long as it fails to prevent its senior employees from commercial bribery, it is bound to commit relevant bribery crimes. In brief, there is no need to prove the fault of the TT under the doctrine of no-fault liability. Because those illegal actions given by senior employees were utilized to pursue more benefits for the TT rather than themselves. Although the TT is a transnational corporation, it is still able to be recognized as the relevant commercial organization because the TT is legally established in the UK and its main business is carried out in the same country. On the one hand, Senior employees are persons associated with the business organization TT, so that as long as they take the interests of the business organization TT as the starting point when engaging in business activities and involve the illegal act of deliberately bribing the AS, the TT should undertake their responsibilities. On the other hand, senior employees have already maintained a close association with the UK and the bribery crime has been executed under the agreement and acquiescence of more than one senior employees so that it is reasonable for the TT to be sued together with the senior employees.

However, there could be witnessed some evidence that the business organization TT has established and developed “adequate procedures” to prevent bribery from its employees, which could be utilized for the plea of the TT. Furthermore, the TT has established some anti-bribery procedures commensurate with the risks of commercial bribery, taking effective measures to make internal anti-bribery policies known to employees and requiring the staff to make commitments of that. Furthermore, the TT could also attempt to evaluate the risk of bribery regularly, conducting a special investigation of due diligence on employees and improving the anti-bribery policy regularly.

5. Conclusion

Although the senior employees are specific executors of commercial bribery, the TT still have relevant legal responsibilities. Nevertheless, general defences could still be proclaimed by the TT itself.

References

- [1] Bribery Act 2010 Guidance.
- [2] Bribery Act 2010, s.6.
- [3] Capital Partners Ltd v Marino, 2018 WL 03377481 (2018).
- [4] Serious Fraud Office v Guralp Systems Ltd, 2019 WL 10726073 (2019).