

Some aspects of the Procedural law of prosecuting Corporations

In principle ...

If

1. Crimes by corporations \approx Crimes of any other person,

then

2. Procedure for investigating crimes by corporations (search + seizure, surveillance, questioning, compelled production) \approx Procedure for investigating crimes by corporations

Issues

Obtaining evidence from corporations

Who speaks for corporation?

Can they be compelled?

Obtaining evidence from corporations about its employees

In principle, no bar (save as to legal professional privilege).

Obtaining evidence from employees/directors/shareholders about the corporation

In principle, no bar (+ possible whistleblower protection).

What about?

Privilege against self-incrimination?

Legal professional privilege?

... where they do not extend to corporations?

At trial

Multiple defendant trials when one defendant is a corporation?

Whistleblowing as anti-corruption tool

“whistleblowing” “the disclosure by organization members (former or current) of the illegal, immoral or illegitimate practices under the control of their employers to persons or organizations that may be able to effect action.”

The 2009 Recommendation of the OECD Council for Further Combating Bribery of Foreign Public Officials in International Business Transactions similarly recommends that member states should put in place

“easily accessible channels... for the reporting of suspected acts of bribery of foreign public officials in international business transactions to law enforcement authorities, in accordance with their legal principles.”

(Why) do we need whistleblowers?



Protecting whistle-blowers

[Public Interest Disclosure Act 1998](#)

No disciplinary proceedings or other adverse workplace consequences

Financial rewards?

Costs?

Protection of Identity of whistleblower?

OECD, [“G20 Anti-Corruption Action Plan Protection of Whistleblowers: Study on Whistleblower Protection Frameworks, Compendium of Best Practices and Guiding Principles for Legislation”](#) (2011).

UNCAC

Article 33. Protection of reporting persons Each State Party shall consider incorporating into its domestic legal system appropriate measures to provide protection against any unjustified treatment for any person who reports in good faith and on reasonable grounds to the competent authorities any facts concerning offences established in accordance with this Convention.

Lawyer as whistle-blower

Q Is the position of the lawyer different from that of other advisers (accountant, banker, tax adviser)?

A. In English Law, yes: *R (on the application of Prudential Plc) v Special Commissioner of Income Tax* [2013] UKSC 1; [2013] 2 AC 185.

Q Does it matter whether s/he is in-house or not?

A. No: *Alfred Crompton Amusement Machines Ltd v Customs and Excise Commissioners (No 2)* [1972] 2 QB 102 per Lord Denning MR at 129

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