Ruling on Historic Foreign Corruption May Have Implications for Other Pending SFO Cases

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In a judgment on 15 January 2016, the Court of Appeal found that, prior to 14 February 2002, it *was* an offence to corrupt an agent of a foreign principal or foreign body. This is significant as it may have consequences for a number of the SFO's other pending corruption cases.

Background

The case involved allegations that a UK company and two individuals associated with it were involved in paying bribes and arranging false consultancy agreements between June 2000 and November 2006 to secure various transport contracts in India, Poland and/or Tunisia. As such, the accused were charged with offences under s.1 Prevention of Corruption Act 1906 (the "1906 Act").

However, the accused submitted at a preliminary hearing that, prior to 14 February 2002 when the Anti-Terrorism, Crime and Security Act 2001 (the "2001 Act") came into force, no offence could be committed under the 1906 Act in circumstances where the bribes targeted the agent of a foreign principal, even if all the relevant parties were present in England and all the conduct took place in jurisdiction. The 2001 Act introduced express provisions to include foreign principals and foreign public bodies within the scope of UK anti-corruption legislation.

The Crown Court found in favour of the accused, with Judge Pegden QC finding that if Parliament had intended the corruption of an agent of a foreign principal to be a crime, it would have said so clearly and that the need to pass the 2001 Act was indicative that a change in the law was required to include foreign principals and bodies.

The Court of Appeal's Ruling

The Court of Appeal overturned this decision, basing its judgment on pure statutory construction.

The Court noted that English criminal law defines offences, whether common law or statutory, simply by reference to the elements of the offence. As such, there is no general principle which excludes crimes committed by or against foreign persons and, absent clear words, the nationality, residence or location of the victim or perpetrator is irrelevant.

Against that backdrop, the Court found that the meaning of the words "agent" and "principal" was

clear and that, absent other indications, it included both foreign and domestic persons and organisations. The Court concluded that, if Parliament had intended to exclude foreign principals from the scope of the 1906 Act, it would have done so.

The Court also disagreed with the argument that the 2001 Act was introduced to widen the scope of the 1906 Act. It instead found that the 2001 Act was enacted simply to put it "beyond argument" that foreign agents and principals fell within the scope of UK anti-corruption legislation. In support of this finding, the judgment cites a Law Commission report from 1998, which stated that foreign agents and principals were always covered by s.1 of the 1906 Act.

Comment

Clearly, with the passage of time, we can expect fewer cases to be brought under the 1906 Act and more under the Bribery Act for conduct post-dating 30 June 2011. However, this judgment is nevertheless important because of its implications for other pending corruption cases currently on the SFO's books. To that extent it is a significant victory for the SFO—subject of course to any appeal—in a start to the year that has seen it defeated elsewhere (see our analysis of the recent LIBOR acquittals).