

London Calling: The Olympics and Corporate Hospitality under the Bribery Act

As The Clash sang; *London is Calling* as the London Olympics are now less than 100 days away. One of the areas which has generated the greatest amount of hyperbole is over corporate hospitality at the upcoming 2012 summer Games. There has been rampant speculation that under the UK Bribery Act, corporations may well be prosecuted for providing corporate hospitality events before or during the Games. Indeed some have speculated that even purchasing a ticket at the face price for a client or customer would draw the scrutiny of the Serious Fraud Office (SFO). As a lawyer, I certainly appreciate the going-down-the-slippery-slope argument and I may have even engaged in it once or twice. However, neither the Bribery Act nor the US Foreign Corrupt Practices Act prohibits corporate hospitality. Further I think the slippery slope argument is one that fails to stand up to scrutiny.

However, recognizing that my interpretation of UK law is simply that and I am not licensed to practice law in the UK and hence cannot provide a legal opinion on the Bribery Act, I went to the site, thebriberyact.com to see what thebriberyact.com guys might have opined on this issue. They have a couple of interesting posts up on this specific issue. They had the opportunity to put this question to the SFO a recently and they posted what they heard from the SFO, which I quote in its entirety. In a post entitled “***The SFO’s five factors***” they said:

The SFO have told us that they will be looking at five factors when considering corporate hospitality in the context of the Bribery Act.

Where the SFO is considering whether any particular case of corporate expenditure appears to fall outside the bounds of reasonable and proportionate hospitality, it will be looking to see whether:

- 1. the company has a clear issued policy regarding gifts and hospitality,*
- 2. the scale of the expenditure in question fell within the confines of such policy and if not, whether special permission for it had been sought at a high level within the organization,*
- 3. the expenditure was proportionate with regard to the recipient,*
- 4. there is evidence that such expenditure had been recorded by the Company,*
- 5. the recipient was entitled to receive the hospitality under the law of the recipient’s country.*

The inference that the expenditure was intended as a bribe would be strengthened if it should transpire (a) that there had been any unjustifiable ‘add-ons’, for example with regard to travel or accommodation, or (b) that the expenditure in question could be related in time to some actual or anticipated business with the recipient, particularly in a competitive context.

In another post, they asked this question to a compliance practitioner-Jo Morgan the Chief Compliance Officer of IMI PLC, global engineering group focused on the precise control and

movement of fluids in critical applications. In a post entitled, “**Jo Morgan CCO IMI PLC – Debunks Olympic corporate hospitality myths**” she was asked the following question and thusly responded:

***Question:** I’d like to entertain some clients at the Olympics in the summer. I’ve read lots in the press about lavish hospitality being outlawed by the Bribery Act. My concern is that some of the tickets for popular events run into thousands of pounds and so I’m concerned that the amount is too much. On the other hand, the Olympics is a once in a lifetime chance for us to entertain our best clients. Surely, I can’t be prevented from inviting clients along as a result of the Bribery Act? Help.*

***Answer:** Here at IMI plc we have very clear guidelines on entertaining. We have monetary limits above which one needs Executive Director approval for the event. In reviewing such requests the Directors look at:*

- a) who the entertainment is being offered to (i.e. customer, supplier, public, private, what level in the organization the person receiving the entertainment is);*
- b) what circumstances exist at the time the offer of the entertainment, and at the time the entertainment will take place, (i.e. is there a live bid or other circumstance which would mean that the entertainment could improperly influence a decision or provide an improper advantage);*
- c) whether there are any other circumstances which might make the entertainment look inappropriate – essentially this is the “newspaper test” – how would we feel if the entertainment was reported in the newspaper? Would it look OK to the ordinary man? That will generally tell you how the law enforcers would view it too.*

I do not believe that it was the intention behind the Bribery Act to prevent attendance at events such as the Olympics and therefore if you consider the points above and you are comfortable with answers then you should be OK.

So for those of you who need “English English” translated into American English, I think what both thebriberyact.com guys and Jo are saying is that your company should have a written policy on corporate hospitality and procedures for following that policy. If you want to take a customer or client to the Olympics, follow your company’s written procedure so that if the amount you intend to spend is above the limit set forth in the follow, fill out the procedures form and obtain approval before you engage in the corporate hospitality. You need to make certain that the hospitality is proportional AND that it is allowed by both the laws of the home country of the recipient and his or her employer. Lastly, all corporate hospitality must be correctly recorded in your company’s books and records. But at the end of the day, I think Jo Morgan’s final test may be the most appropriate, what we might call the “Wall Street Journal” test. How would your company feel (and you too for that matter) if the corporate hospitality you engaged in at the Olympics was reported on the front page of the Wall Street Journal.

Sometimes common sense is a good rule of thumb. And document, document, document.

