

WHAT CAN WE LEARN FROM AUSTRALIA'S SECOND FOREIGN BRIBERY CASE?

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Legal Briefings - By **Jacqueline Wootton, Tania Gray and Winnie Liu**

A landmark sentencing decision delivered on 27 September 2017 brings to a close Australia's second foreign bribery prosecution. As the first individual offenders under Australia's foreign bribery offence commence their sentences, we reflect on 5 learnings from the case. Our full briefing on the sentencing decision is available [here](#).

1. BEWARE INTERMEDIARIES AND THIRD PARTIES.

The majority of foreign bribery cases around the globe involve intermediaries. The Elomar case is no exception. One of the 3 individuals convicted was a middle-man, a conduit and facilitator, who introduced the Elomars to Iraqi officials, encouraged them to travel to Iraq and lawfully invest in establishing their business in Iraq well before they became aware that a bribe would be necessary to win contracts. While the Elomars would have preferred to do business in Iraq lawfully without having to pay a bribe, the intermediary was well aware at the outset that a bribe would likely be requested and hid this fact from the Elomars until they had seen the projects that were on offer.

2. DETECTING BRIBERY AND CORRUPTION IS DIFFICULT

The sentencing judge acknowledged that authorities appear to have discovered the individuals involved in this case by chance after listening to telephone conversations intercepted under warrant. The judge commented "Absent telephone interception or a whistleblower, it is difficult to discern how it could be detected." These comments are likely to lend further support to the government's focus on encouraging and protecting whistleblowers.

3. THE FOREIGN BRIBERY OFFENCE REMAINS UNTESTED

The sentences in the Elomar case followed guilty pleas by the 3 accused. One of the legal issues that was left unresolved was whether, at the time of the offence, prosecutors would have had to prove that they intended to bribe a particular foreign public official, in circumstances where the Elomars did not know the identity of the foreign officials or officials for whom the bribe was intended. In future cases prosecutors may not need to prove this point, as the law was clarified by amendments introduced in 2015. However, this issue is but one of a range of potential aspects of the foreign bribery offence that may cause difficulties for authorities in proving their case. A number of these aspects are the subject of proposed amendments to the foreign bribery offence, suggested by the government earlier this year. We are still waiting to see if and when the government intends to introduce these proposed amendments.

4. PREVENTING FOREIGN BRIBERY TAKES MORE THAN FOREIGN BRIBERY LAWS

Much of the evidence in the Elomar case focused on the various attempts to transfer the bribe money to Iraq either directly or through countries like Hong Kong and Lebanon, and to give the transfers an appearance of legitimacy. Sanctions and other financial crime restrictions precluded transfers being made with ease, and the bribe money was eventually transferred using \$100, \$50 and \$20 denominations with the assistance of a money remitter. These facts reinforce the role that wider financial crime laws play alongside the foreign bribery offence in efforts to prevent and detect corruption.

5. INVESTIGATIONS CAN MOVE QUICKLY (SOMETIMES)

Most foreign bribery investigations in Australia and overseas tend to be protracted; the international average is over 7 years. However the Elomar prosecutions show that matters can move at a swifter pace with the right resources, information and evidence. Authorities commenced investigating in March 2014, and warrants were first issued in April 2014. Charges followed in February 2015. Guilty pleas were entered a week before trial in July 2017. In all, the investigation took less than a year and the entire matter was concluded 3.5 years after information first came to the attention of authorities.

KEY CONTACTS

If you have any questions, or would like to know how this might affect your business, phone, or email these key contacts.



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