

New act allows individuals to be imprisoned for health and safety offences in UK

Gerard Forlin QC is a senior barrister in the UK. He practises in regulatory law, including health & safety, environmental, consumer, product liability and corporate and gross negligence manslaughter. He was educated at Trinity Hall, Cambridge University and also at the London School of Economics.

He acts globally for many PLCs and other bodies and has conducted over 200 fatality cases across numerous industries, including oil and gas, rail, chemical, aviation, manufacturing and shipping. He has been ranked as a leading lawyer in five different sections of the independent directories - Health & Safety; Consumer; Environmental; Crime and Public Inquiries and Inquests.

He can accept direct access work <http://www.barcouncil.org.uk/about/find-a-barrister/public-access-directory/index.php>.

Gerard has authored over 80 articles and is the general editor of *Corporate Liability: Work Related Deaths and Criminal Prosecutions* (Bloomsbury) 2nd Edition (2010). He has also lectured and consulted in over 20 countries.

The UK passed the Corporate Manslaughter & Culpable Homicide Act 2007; the first successful conviction occurred recently and the company was fined 116% of annual turnover. This Act removed the old law that required an individual directing mind of an organisation to be guilty of manslaughter. Now an organisation can be found guilty of corporate manslaughter if, in essence, senior management is found by a jury to have fallen short of what is reasonably expected by an organisation.

Further, the Health & Safety (Offences) Act 2008 allows individuals to be imprisoned for health and safety offences. Recently, the first individual received a suspended custodial sentence for a breach of section 7 of the Health & Safety at Work Act 1974 when Philip Dutton, a Health and Safety Manager,

poured an accelerant on a fire which caused him serious injuries!

In a recent case in the English Court of Appeal - *R v Bodycote HIP* - a sister company in the United States had, according to the Court, failed to take into account "... the serious aggravating feature in this case was that a similar incident has led to the death of two employees at a HIP plant operated by another company in the same group that occurred in May 2001 in Tarzana, California". Further, "the other aggravating feature of particular note was that there had been two deaths and the appellant had not adequately heeded the warnings from the failures in the Californian plant."

This development will be viewed as ominous by many as it signifies a clear intention by the English Courts to take into account conduct in other jurisdictions even if they have different laws and court procedures.

Further, there has been a recent increase in Coroners utilising Rule 43 of the Coroner's Rules, namely making reports after the completion of inquests. These are reports made to various government bodies (with copies to the interested parties and the Lord Chancellor) in the aspiration that they will prevent future deaths (see 'Come in number 43' by Forlin QC et al, *New Law Journal*, 4th March 2011').

There is currently a review of health and safety laws being undertaken by the coalition government (the Department for Work and Pensions) and we wait with interest what the pending consultation and report will recommend.

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Discussing Corporate Tax in the Principality of Liechtenstein

Allgemeines Treuunternehmen (ATU), Vaduz, was established in 1929 and is one of Liechtenstein's first and leading trust companies. The firm has a long tradition and is proud to be currently serving numerous second- and third-generation clients.

According to Roger Frick, today ATU is an outward-looking and modern company with access to business contacts in important financial centres through its well-established and extended network. ATU owns subsidiaries in Switzerland, Panama, British Virgin Islands and Uruguay. In Asia, ATU is represented by offices in China and Singapore.

Mr. Frick, an expert in the field, explained that Liechtenstein's corporate tax regime has the following provisions:

- Corporate income tax rate with a flat tax rate of 12.5 %;
- No withholding tax;
- No capital tax on equity;
- A minimum corporate income tax of CHF 1'200. In the case of taxpayers conducting commercial business, but whose average balance sheet total

over the last three years did not exceed CHF 500'000, this minimum tax is not levied;

- Domiciliary and holding status, which exempted certain entities operating without business ties to the domestic Liechtenstein market from payment of corporate income tax, is not existing (no ring-fencing);
- Exemption of income tax on dividends, capital gains and liquidation proceeds on participations;
- A regime of Private Asset Structure exists (confirmed by EFTA Surveillance (ESA)) which will be available for managing the private assets of individuals through a corporate structure;
- Various other features exist ensuring increased tax neutrality of business actions, such as replacement purchases, corporate restructurings, notional interest deduction, deduction for income from intellectual property rights, unlimited loss carry forward, group taxation, etc.

Mr. Frick also pointed out that as Liechtenstein is part of the European Economic Area, the country expressed its willingness in March 2009 to comply with the OECD standards on tax cooperation.

"Since then, Liechtenstein has continued signing TIEA and Double Tax Treaties to assure the benefits of international investments and the recognition of its structures," he added. "It is normal that certain relationships will be dissolved out of this - and other new relationships will take the opportunities offered by this new approach."

Indeed, ATU has a globalised approach to tackling tax problems and, due to its very diversified database of clients, can easily support clients by giving guidance how target countries of domicile, investment or trading may react during certain activities.

Mr. Frick concluded: "We have a broad practical tax experience which we share with our clients. We work swiftly, professionally and are responsive to clients' needs."

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