

UK Economic Crime Group Enforcement Update

Serious Fraud Office Update

The third quarter of 2012 has been challenging for the Serious Fraud Office (SFO) and its new Director, David Green QC. Robert and Vincent Tchenguiz applied to set aside search warrants obtained by the SFO which, they submitted, were procured by misrepresentation and non-disclosure. On 31 July 2012, judgment was delivered in favour of the Tchenguiz brothers and the search warrants were set aside. The judgment concludes that the SFO's application for search warrants was deficient in its heavy reliance on the work and conclusions of Grant Thornton, the accountancy firm instructed by parties to litigation connected to matters which the SFO were investigating. Secondly, the written and oral evidence of the SFO was also criticised, with the judgment concluding that *"The failure to set out the background, lack of clarity in the presentation in the Information and in the oral evidence, the errors made and the failure to put the matters that weighed against the granting of the warrant have been set out by us in detail. At the hearing before the judge, the oral evidence given at the hearing was both unfair and inaccurate. The tone of that evidence was unjustified. We have no doubt that, if what was in the Information had been presented in such a way that the background was properly explained, the errors were corrected and the matters that weighed against the grant of the warrant had been drawn to the judge's attention, it would have made a real difference and he would not have granted the warrants. This is very far from the case where the failures only might have made a difference; they plainly did, as the warrants would not have been granted."* As a result we will likely see a significant High Court damages claim against the SFO.

The SFO has been successful in its long awaited trial of Asil Nadir. In the 1980s, Nadir achieved remarkable success in developing Polly Peck International Plc into a multinational business. He misappropriated the company's funds and was later arrested and charged with theft and false accounting. In 1993, he fled to Northern Cyprus but 17 years later returned to the UK to face trial and was recently convicted of the theft of nearly £29 million for which he was sentenced to 10 years imprisonment. David Green QC, reputed to be a proponent of conventional criminal prosecutions, commented that the Nadir trial *"confirms that the proper role of the SFO is to investigate and where appropriate, to prosecute the most difficult*

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cases of fraud and corruption.” If anyone is able to assist the SFO in achieving this goal, it is His Honour Judge Rivlin QC, who was recently recruited to act as adviser to David Green QC. Moreover the Tchenguiz cloud may have a silver lining for the SFO. There is a growing consensus among interested parties including the judiciary, the OECD, and Transparency International that the SFO is under-funded and the Government needs to act. In this regard, the SFO recently announced that it has decided formally to accept the LIBOR matter for investigation and is satisfied that existing criminal offences are capable of covering conduct in relation to the alleged manipulation of LIBOR and related interest rates. This will be a huge investigation for the SFO, however, the government has, at least, indicated that support will be forthcoming with Danny Alexander, Chief Secretary to the Treasury, saying: “We of course as a government will make sure that they have all the resources that they need to carry out this investigation absolutely to the full.”

Financial Services Authority Update

The third quarter of 2012 has seen significant enforcement activity by the Financial Services Authority (FSA). On the regulatory side, the FSA fined Turkish Bank (UK) Ltd £294,000 for breaching the Money Laundering Regulations 2007. This was the first occasion in which the FSA has taken enforcement action against a firm in relation to money laundering weaknesses in its correspondent banking arrangements. In addition, the FSA fined Stephen Goodwin, a former commercial insurance broker, £471,846 for using clients’ insurance premiums to fund his business rather than paying them to the relevant insurer. According to the FSA, this was one of the largest fines ever levied on an individual for insurance fraud. On the criminal side, the FSA successfully obtained convictions against Ali Mustafa, Pardip Saini, Paresh Shah, Neten Shah, Bijal Shah, and Truptesh Patel for insider dealing contrary to section 52 of the Criminal Justice Act 1993 following a four and a half month trial at Southwark Crown Court. This brings the FSA’s tally of convictions for insider dealing to 20 since 2009. In addition, the FSA took full advantage of the confiscation regime under the Proceeds of Crime Act 2002 by obtaining confiscation orders totaling £1,534,000 against Christian Littlewood, a former senior investment banker, and his wife Angie Littlewood. This sum represented benefit received by each of them from insider dealing contrary to section 52 of the Criminal Justice Act 1993. With so many convictions to its name, the FSA increasingly has the feel of a prosecutorial agency that is growing in confidence and stature.