

UK Economic Crime Group Enforcement Update

Corporate Sentencing Guidelines

The Sentencing Council has published new guidelines for the sentencing of organisations convicted of fraud, money laundering and bribery offences. The guidelines apply to all corporate offenders who are sentenced on or after 1 October 2014.

Although these new guidelines do not apply to Deferred Prosecution Agreements (DPAs), they are important for the calculation of the likely level of a financial penalty that would form part of a DPA. Such a penalty should be largely comparable to the likely fine that would be imposed following a guilty plea. Companies and other bodies are expected to provide comprehensive accounts for the previous three years in order to assist the court in establishing the appropriate level for any fine.

The court must first consider whether a compensation order should be made, and secondly, where the Crown asks or the court thinks appropriate, if confiscation should be considered. To assess the level of any fine the court must then determine the offence category by reference to culpability and harm indicators, after which an appropriate starting point and range is arrived at on a percentage-scale of culpability.

Having arrived at an appropriate level, the court should consider other factors which might indicate that the fine should be adjusted to reflect the size and financial position of the organisation and the seriousness of the offence. In some cases putting the offending organisation out of business may be an acceptable consequence.

Deferred Prosecution Agreements

On 24 February 2014, the Serious Fraud Office (SFO) was given the power to enter into DPAs with companies charged with certain financial offences, including both fraud and bribery. Upon agreeing to a DPA, which must be approved by a judge, the prosecution is suspended for a set period in return for an investigated company's agreement to be bound by specified conditions.

On 14 February 2014, both the SFO and the DPP published a joint code of practice which sets out their intended approach to the use of DPAs under the Crown and Courts Act 2013. The Code sets out a series of factors that prosecutors may take into account when deciding whether to enter into a DPA. It also indicates how DPA negotiations should start, the use of information obtained during the DPA negotiation period, terms of a DPA, financial penalties, breach of a DPA, discontinuance and publishing decisions.

Both the SFO and the DPP have also published their formal response to the public consultation on DPAs which summarises submissions received and provides a joint response to each in turn.

Contacts



Kathleen Harris
+44 (0)20 7786 6249



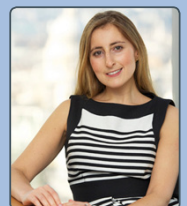
Davina Banks
+44 (0)20 7786 6204



Simi Grewal
+44 (0)20 7786 6173



James McSweeney
+44 (0)20 7786 6184



Rochelle Mello
+44 (0)20 7786 6117

Both the code of practice and the formal response are available on the SFO's website: <http://www.sfo.gov.uk/about-us/our-policies-and-publications/deferred-prosecution-agreements-code-of-practice-and-consultation-response.aspx>.

The National Crime Agency's (NCA) guidance on submitting Suspicious Activity Reports (SARs).

On 24 January 2014, the NCA published guidance for firms within the regulated sector that need to submit an SAR. This guidance updates the Serious Organised Crime Agency's (SOCA) guidance published in February 2013.

Firms are required under the Proceeds of Crime Act 2002 (POCA) and the Terrorism Act 2000 (TACT) to make an SAR where they know or suspect, or have reasonable grounds for knowing or suspecting, that another person is engaged in money laundering or terrorist financing, in respect of information coming to them within the course of business in the regulated sector. The Money Laundering Regulations 2007 (*SI 2007/2157*) (MLRs) also require firms to establish internal reporting procedures.

The guidance is intended to provide advice and relay best practice to firms that need to make an SAR. This guidance goes beyond that of the previous guidance set out by SOCA. It provides practical information on a variety of matters which had not been included in the previous guidance and includes the following:

- Setting up an online account and submitting an SAR online.
- Advice on making and writing an SAR and the subject information to include. The SAR should be as comprehensive as possible. The guidance distinguishes between the information required for an SAR being reported by an individual and that by a business, trust or other corporate entity.
- How to contact the UK Financial Intelligence Unit (UKFIU), which is situated within the NCA.

Once a SAR is submitted, the person making the disclosure should remember that they are under the usual obligations not to make any disclosures which might constitute an offence of tipping off under section 33A of POCA or section 21D of TACT.

The guidance is intended to complement the MLRs and HM Treasury-approved guidance relating to money laundering and terrorist financing.

Financial Conduct Authority (FCA) Activity Update

Three men have been banned from working in financial services, and a fourth from holding key positions, by the FCA. The men provided advice to six occupational pension schemes, moving investments between funds without clear benefit to stakeholders in order to generate over £4 million in commission.

The FCA stepped in to investigate the behaviour of individuals approved to offer financial services. The investigation concluded that Michael Conway and Andrew Powell lacked integrity, whilst Martin Gwynn and Daniel Conway were incompetent and incapable of properly discharging their duties.

On 23 July 2013, David John Hobbs, a proprietary trader at Mizuho International plc, was made the subject of a financial penalty and prohibition order by the FCA. The original prohibition order was made on the basis that Hobbs had engaged in market abuse by instructing Andrew Charles Kerr, a broker at Sucden, to buy 600 lots of September 2007 coffee futures on the Euronext Liffe exchange in August 2007. Hobbs appealed the decision to the Upper Tribunal (Tax and Chancery Chamber), which decided on 22 November 2013 that although Hobbs had lied to the Tribunal, he had not committed market abuse. The FCA was directed to take no action against him.

The FCA appealed to the Court of Appeal on the basis that lying alone demonstrated that he was not a fit and proper person. The case was remitted to the Tribunal for consideration of Hobbs' false defence. The Tribunal found that he had exhibited a lack of integrity such that he was not a fit and proper person.

SFO Activity Update

On 23 December 2013, the SFO confirmed it was formally investigating Rolls Royce in relation to allegations of bribery and corruption at the company. It has now been disclosed that the SFO has secured extra funding by the UK Treasury in order to “bolster” its criminal investigation into the company. This will be the third time such funding has been secured by the current director, the most recent being on the LIBOR investigation, and shows renewed support by the Government to back such multijurisdictional investigations despite the SFO’s overall budget being cut.

A boiler room fraudster who was originally sentenced to seven years imprisonment in July 2010 for conspiracy to defraud has been sentenced at Margate Magistrates’ Court to an additional six years imprisonment for failure to pay a confiscation order of £2,19,087.28. The additional sentence will be served after the original sentence, unless the confiscation order plus any accrued interest is paid in full.

Transparency International (TI) calls for tougher anti-corruption laws in the UK

TI has drafted a paper looking at corruptly obtained assets that it asserts are flowing freely through the financial system. They estimate that under 1% of illicit assets are detected with a comparative seizure rate of less than 0.2%.

TI therefore calls for legislation:

- (1) to allow the seizure of suspicious assets of public officials and politicians unless they can prove their legitimacy;
- (2) the creation of greater sanctions against front-line service providers such as lawyers and accountants for not assisting the government; and
- (3) further investment in the investigation and prosecution of corruption (including by recouping enforcement costs from seized assets before returning them).

If you have any questions about any of the topics discussed in this Enforcement Update, please contact your Arnold & Porter attorney or any of the following attorneys:

Kathleen Harris

+44 (0)20 7786 6249

Kathleen.Harris@aporter.com

Davina Banks

+44 (0)20 7786 6204

Davina.Banks@aporter.com

Simi Grewal

+44 (0)20 7786 6173

Simi.Grewal@aporter.com

James McSweeney

+44 (0)20 7786 6184

James.McSweeney@aporter.com

Rochelle Mello

+44 (0)20 7786 6117

Rochelle.Mello@aporter.com