

CORPORATE CRIME BULLETIN

MAY 2013



Welcome to the sixth edition of our Corporate Crime Bulletin. This is the sixth publication of a regular corporate crime bulletin covering updates and developments with respect to bribery and corruption, money laundering, sanctions, market abuse, insider dealing and financial crime. Our aim is to keep our clients informed and up-to-date with the current legal and regulatory issues and their practical implications.

I. FINANCIAL SERVICES REGULATOR

New Financial Services Regulators with Additional Powers

The UK Financial Service Authority (the “FSA”) was replaced on 1 April 2013 by a new set of regulators: the Financial Conduct Authority (the “FCA”) and the Prudential Regulatory Authority (the “PRA”). These new regulators have gained additional investigative and enforcement powers. For example, the FCA and PRA now have the ability to publish details of enforcement actions at a much earlier stage in proceedings. Both agencies also have new information gathering powers. A more detailed note on the changes will be available in a specific client bulletin we will publish in due course.

U.S. PARTNER CONTACT

► Martin J. Weinstein Biography

U.K. PARTNER CONTACT

► Peter Burrell Biography

U.K. TEAM CONTACTS

► Peter Burrell
Partner
T +44 20 7153 1206

► Joanna Ogden
Associate
T +44 20 7153 1228

RELATED LINKS

► Our Compliance and Enforcement Practice

► Recent Publications

► Deferred Prosecution Agreements Will Come to the U.K.

► Financial and Trade Sanctions Briefing III

► Enforcement Under The New UK Regulatory Architecture

Proposals for Increased Transparency of the New FCA

The FCA is currently consulting on a discussion paper that includes proposals for increased transparency of the FCA. The consultation paper highlights the following areas: information that the FCA could release about its own operations; information that the FCA could release about firms, individuals and markets; and information that the FCA could require firms to publish.

Of particular interest is a proposal that the FCA could provide more information to whistleblowers about the action taken on the information they provided. There is also a proposal to publish more detail about the information the FCA receives from whistleblowers on an aggregate basis. This could include publishing reports on the number of whistleblower incidents, the types of cases and an overview of the type of action taken.

The FCA has also suggested that it could publish more on its enforcement activities generally, including more about what it is seeking to achieve, information about the average length and cost of investigations and the allocation of resources by sector. The discussion paper is available [here](#).

II. MONEY LAUNDERING

Guidelines by the Financial Action Task Force (the “FATF”) regarding its Recommendations and Updated List

In February 2013, FATF issued a new mechanism for determining whether a country is compliant with the 2012 FATF Standards and whether the country’s Anti-Money Laundering Counter Financing Terrorism (“AML/CFT”) systems are sufficient. The FATF guidance focused on guiding and encouraging national risk assessments and management strategies and considered the importance of consistency between assessment and management processes at national, sub-national and supra-national levels. The guidance comprises two inter-linked components, including a technical assessment which aims to address the specific requirements of each FATF recommendation and an effectiveness assessment which aims to assess the extent to which a country achieves certain outcomes that are central to a robust AML/CFT system. A copy of this guidance can be accessed via the [FATF website](#).

Updates to FATF Members Lists

On 22 February 2013, FATF published a list of jurisdictions it had identified as having strategic AML/CFT deficiencies without action plans to address those deficiencies. A more detailed analysis can be found on the [FATF website](#).

FCA fines EFG Private Bank £4.2m for AML Control Failures

On 28 March 2013, the FCA fined EFG Private Bank Ltd (“EFG”) £4.2 million for failures in its anti-money laundering systems and controls (Principle 3). EFG is the UK subsidiary of the Switzerland-based EFGI Group. The enforcement follows the FSA’s thematic review into AML systems and controls at UK banks.

The Final Notice highlighted a number of key failings which were identified in relation to the majority of EFG’s higher risk customer files, including:

- not documenting how potential money laundering risks identified in due diligence conducted on higher risk customers had been assessed and mitigated;
- not demonstrating that EFG’s policies and procedures for higher risk customers were followed;
- failing to adequately establish, or record how it had established, the source of wealth and source of funds of higher risk customers; and

- not conducting ongoing reviews of higher risk customer files to ensure that information and risk assessments were up-to-date and account activity was consistent with what was expected for that customer.

III. FINANCIAL SANCTIONS

New Financial Sanction concerning the Democratic People's Republic of Korea

On 26 March 2013, HM Treasury implemented Council Regulation (EU) 296/2013 amending Council Regulation (EC) 329/2007 regarding restrictions on the Democratic People's Republic of Korea. The 2013 Regulation introduced a new article 5a which restricts EU credit and financial institutions from opening new branches, offices or subsidiaries in North Korea or from establishing new joint ventures with credit institutions domiciled in North Korea. A new Article 9a, prohibits public or public guaranteed bonds issued after 19 February 2013 from being sold directly or indirectly, to or from North Korea, as well as prohibiting brokering services in relation to such bonds.

More information and the full Regulations can be found on the [HM Treasury website](#).

Zimbabwe Financial Sanction Suspension

On 5 April 2013, HM Treasury announced the implementation of Council Regulation (EU) 298/2013, which suspended the prohibitions under Article 6 of the Council Regulation (EU) 314/2004. The suspension period has been extended from 28 March 2013 to 20 February 2014 and is subject to review every three months. The effect of the suspension is that there is no longer any prohibition on dealing with funds or economic resources of persons referred to in Article 6 of the 2004 regulation (effectively 81 individuals and 8 corporate entities) or making funds or economic resources available to them within the suspended period. Compliance requirements have also been lifted during the suspended period. Only 10 individuals and 2 entities remain subject to an asset freeze under the 2004 Regulation.

The complete Regulations can be found on the [HM Treasury website](#).

Syrian Financial Sanctions Amendments and Human Rights

The HM Treasury has issued Council Regulation 325/2013 which amends Council Regulation 36/2012. This is effective from 12 April 2013. The new Regulation introduces two exemptions to the existing Regulation. The first gives HM Treasury the authority to release certain frozen funds or economic resources, if to do so would be necessary in order to ensure human safety or environmental protection. The second states that the prohibition on making funds or economic resources available to legal persons or entities does not apply to transactions carried out with respect to Syrian Arab Airlines for the sole purpose of evacuating citizens of the EU and their family members from Syria.

These exemptions highlighted above will be reflected in the national criminal law through the Syria (European Union Financial Sanctions) (Amendment) Regulations 2012 and will be effective from 7 May 2013.

The Regulations can be found on the [HM Treasury website](#).

EU lifts Sanctions on Burma/Myanmar

On 22 April 2013, the EU announced that it was lifting its sanctions on Burma/Myanmar. The sanctions were temporarily lifted under Regulation 409/2012, which suspended the restrictive measures, save the embargo, until 30 April 2013. However, a spokesperson for the EU stated that Burma's democratic progress merited the move being made permanent "in response to the changes that have taken place and in the expectation that they will continue". The arms embargo, however, still remains in force.

IV. BRIBERY & CORRUPTION

Extension of Legislation for the Protection of Whistleblowers

The UK government has proposed a number of changes to the Enterprise and Regulatory Reform Bill to enhance protection for whistleblowers by making employers responsible for preventing detrimental acts by co-workers towards whistleblowers. The proposals will also introduce a defence for employers if they can show that they have taken reasonable steps to prevent such circumstances occurring.

Disclosure Rules for Oil, Gas and Mining Companies

On 9 April 2013, the European Union ("EU") agreed to implement new rules of disclosure for companies involved in the extraction of natural resources. The rules will be included in the EU's Accounting and Transparency Directive (the "2013 EU Directive"), which is expected to be approved in June 2013.

The rules will require EU publically listed companies and large EU unlisted companies to publish a breakdown of the payments made to government bodies in each country and for each project through which they acquire natural resources. The rules require the disclosure of payments for entry to the country, licences companies may require and leases they may need to obtain in order to carry out the extraction. The rules are intended to increase transparency and provide residents of the involved countries access to the financial income their government receive from such projects. The rules expressly include an anti-evasion clause which requires all payments, including aggregate and series payments, over EUR 100,000 to be disclosed, preventing any avoidance methods. Implementation of the rules in the UK will be considered in June 2013.

Enhanced Business Transparency on Social and Environmental Matters

On 16 April 2013, the European Commission proposed an amendment to existing accounting legislation in order to improve the transparency of certain large companies on social and environmental matters. Under the new proposal, large companies with more than 500 employees will be required to disclose "relevant and material" environmental and social information as part of their annual reports, including disclosing information on anti-corruption and bribery issues, respect for human rights, employee-related matters, and information on their diversity policies for the boards of directors. It has not yet been proposed to extend this to smaller and medium sized enterprises, as it is thought that the costs of doing so could outweigh the benefits.

V. INSIDER DEALING AND INADEQUATE CONTROLS ENFORCEMENT

As part of the FSA's continuing crackdown on insider dealing, the FSA secured two convictions in March 2013.

Conviction for the FSA and SOCA in 'Operation Tabernula'

On 7 March 2013, Paul Milsom, a former senior equities trader, pleaded guilty to insider dealing, and was sentenced at Southwark Crown Court to two years' imprisonment. A confiscation order was also made in the sum of £245,000. From October 2008 to March 2010, Milsom had been passing on price sensitive information he gained from his employment at Legal and General Management (Holdings) Ltd, shortly before the firm executed its own trades. Tracey McDermott, director of enforcement at the FSA, said "*Milsom was an approved person who was entrusted by his employer with sensitive and valuable information. He betrayed that trust by exploiting the information for his own benefit. Those who work within the industry should be the custodians of its reputation...His personal greed will have cost him his reputation, his career and his liberty.*"

Conviction for the FSA of a Former Futures Trader

On 11 March 2013, Richard Joseph, a former futures trader, was convicted of six counts of conspiracy to deal as an insider, and sentenced to four years' imprisonment.

Joseph's trading from September 2007 to July 2008 is calculated to have made a net profit of £591,117. Joseph placed spread bets based on sensitive and confidential inside information provided to him by Ersin Mustafa, a print room manager at JP Morgan Cazenove. Mustafa was a source of information to six others who were prosecuted in July last year for insider dealing. Joseph had unsuccessfully attempted to disguise his communications through the use of numerous unregistered mobile phones and webmail "drop boxes" where the confidential information was placed for him to access.

FSA fined Nestor Healthcare Group Limited ("Nestor") £175,000 for Failing to Ensure Adequate Internal Systems and Controls

On 14 February 2013, the FSA fined Nestor for failing to take adequate steps to ensure that its senior executives and board members complied with the share dealing provisions of the FSA's Model Code. This was not a case of having an inadequate policy, rather a case where breaches occurred principally due to Nestor's weak procedures, which allowed the policy to be "forgotten" by the board. The FSA found that from October 2006 to June 2010 there was inadequate compliance with Paragraphs 3-7 of the FSA's Model Code and as such a breach of Listing Rule 9.2.8, which provides that a listed company must require every person discharging managerial responsibility ("PDMR"), including directors, to comply with the Model Code, so as to ensure that they do not abuse, or put themselves or others in a position where they might be thought to be abusing, inside information.

The FSA considered numerous mitigating factors before reaching the figure for the fine, including the fact that Nestor's actions were not deliberate or reckless, and that they had previously implemented a Share Dealing Policy, for which legal advisers had been instructed to assist with the construction. However, the Share Dealing Policy had not been circulated, signed and incorporated into PDMRs' and employees' contracts.

VI. FRAUD

Ponzi Schemes

An investigation which started in June 2010 has seen three men, Jolan Marc Saunders, Michael Dean Strubel and Spencer Mitchell Steinberg, charged with conspiracy to defraud investors in an alleged investment fraud relating to electrical contracts in the hotel sector. It is alleged that between 2006 and 2010 the trio made false representations that Saunders Electrical Wholesalers Limited had high-value contracts with blue chip hotel chains. As a result, an estimated £40 million is said to have been attracted to the scheme. Saunders has also been charged with acting as a director of a company whilst disqualified.

Please be aware that all information contained within the bulletin is intended for general guidance only and should not be taken as legal advice. If you believe that you have a corporate crime risk, please speak to your usual contact at Willkie Farr & Gallagher LLP.

Willkie Farr & Gallagher (UK) LLP is a limited liability partnership formed under the laws of the State of Delaware, USA and is authorised and regulated by the Solicitors Regulation Authority with registration number 565650.

© 2013 Willkie Farr & Gallagher LLP. All rights reserved.

Under New York's Code of Professional Responsibility, this communication may constitute attorney advertising. Prior results do not guarantee a similar outcome. Willkie Farr & Gallagher LLP is an international law firm with offices in New York, Washington, Paris, London, Milan, Rome, Frankfurt and Brussels. The firm is headquartered at 787 Seventh Avenue, New York, NY 10019-6099. Our telephone number is (212) 728-8000 and our facsimile number is (212) 728-8111. Visit us online at www.willkie.com.