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CORPORATE CRIME BULLETIN

JULY 2013

Welcome to the seventh edition of our Corporate Crime Bulletin. This is the seventh 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. LEGAL UPDATE

Deferred Prosecution Agreements: Draft Code of Practice

On 27 June 2013, the Director of the Serious Fraud Office ("SFO") and the director of Public Prosecutions published a draft Code of Practice on Deferred Prosecution Agreements (the "DPA Code") which explains the intended use of DPAs. The purpose of the DPA Code is to give guidance to prosecutors negotiating DPAs with an organisation with whom the prosecutor is considering prosecuting; to provide guidance to those applying to the court for approval of DPAs; and to provide guidance on the oversight of DPAs following court approval.

The SFO has invited comments on the guidance from interested parties, which is due for receipt by 20 September 2013. We will be publishing a more detailed e-bulletin in due course. In the meantime, for further information please see the SFO website.

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Sentencing Guidelines on Corruption

On 27 June 2013 the Sentencing Council published their draft guidance on fraud, bribery, and money laundering offences in the UK. The Council is seeking views on, amongst other issues, the principal factors that make the offences more or less serious, any additional factors that should influence the sentence, and the approach that should be taken in structuring the draft guidelines. Currently the guidelines apply to fraud, money laundering, and bribery offences. We will be publishing a more detailed e-bulletin in due course. In the meantime, for further information please see the Sentencing Council website.

Criminal Confiscation

In the case of *R v Waya* [2012] 3 WLR 1188, the Court of Appeal accepted that the Crown Court had a duty to avoid making a confiscation order that was disproportionate and therefore a breach of Article 1 of Protocol 1 to the European Convention on Human Rights ("A1P1"). However, the court was clear in saying that an order was not to be regarded as disproportionate simply because it removed from the defendant more than may in fact represent his net profits from the crime, highlighting that an example of where an order may be considered disproportionate is the case where the proceeds of crime which have been restored intact to the loser are nevertheless counted as part of the benefit. In cases of corporate corruption, for example, the decision continues to suggest that the starting point for confiscation may be the gross revenues derived from, for example, a tainted contract, but that allowance should be made for compensation paid to the affected party or tax paid on the profits.

II. BRIBERY AND CORRUPTION

The Third Conviction Under the Bribery Act 2010 (the "Bribery Act")

On 23 April 2013, Mr Yang Li, an international student at the University of Bath and the son of a Chinese government official, pleaded guilty to an offence of bribery under Section 1 of the Bribery Act. The Crown Court at Bristol heard that, in an attempt to have his dissertation mark raised, Mr Yang Li met with his personal tutor and placed £5,000 in cash in front of Professor Andrew Graves, stating "*I am a businessman*" and "*you can keep the money if you give me a pass mark and I won't bother you again*".

Mr Yang Li was sentenced to twelve months imprisonment for the Bribery Act offence.

III. FINANCIAL SANCTIONS

Burma/Myanmar Sanctions Permanently Lifted

On 3 May 2013, the European Council enacted Regulation (EU) 401/2013, which permanently removes asset freezing measures and financial restrictions in respect of Burma/Myanmar. Accordingly, on 8 May 2013, the Burma/Myanmar (Financial Restrictions) (Revocation) Regulations 2013 revoked the criminal penalties for breaches of the financial sanctions provisions in the U.K. The arms embargo and the embargo on equipment which might be used for internal oppression remains in force.

Syrian Sanctions and Restrictive Measures

On 22 April 2013, the European Council eased certain EU sanctions against Syria, and competent authorities of an EU Member State can now authorise certain transactions relating to the Syrian oil industry. However, competent authorities are required to consult with the Syrian National Coalition for Opposition and Revolutionary Forces before

approving any relevant transactions. Council decision amending decision concerning restrictive measures against Syria.

On 27 May 2013, the European Council agreed to adopt new restrictive measures against Syria for a period of 12 months. The restrictive measures include: export and import restrictions; restrictions on financing of certain enterprises; restrictions on infrastructure projects; restrictions of financial support for trade; restrictions on participation in financial institutions; restrictions on the entry of Syrian Arab Airlines into Member States' jurisdictions; restrictions on the admission of persons responsible for the violent repression of the citizens of Syria; and the freezing of funds and economic resources owned or controlled by persons responsible for the violent repression. Council decision concerning restrictive measures against Syria.

Libyan Sanctions

On 22 April 2013, the European Council amended EU sanctions to allow the supply of non-lethal military equipment and certain technical assistance for security or disarmament to the Libyan government. Provision was also made to allow the supply of small arms, light weapons and related materials to UN personnel and development workers in Libya. Council decision amending decision concerning restrictive measures in view of the situation in Libya.

IV. MONEY LAUNDERING

Money Laundering Network Broken

On 31 May 2013, two individuals were jailed for their contributions to a £19 million money laundering regime which serviced international organised crime groups. Eight men have now been jailed for their roles in the scheme. The men worked with criminal organisations in the Middle East and Pakistan to transfer what was predominantly drug money for criminals in Europe. They used a money laundering technique known as "cuckoo smurfing" whereby the sums were transferred through the accounts of unwitting customers who were expecting large sums of genuine payments from overseas.

Sarah Goodhall, Regional Head of Investigations at Serious Organised Crime Agency ("SOCA") commented:

"*SOCA has demonstrated that no matter how sophisticated criminals think their money laundering arrangements are, and no matter what measures they take to disguise their illegal activities, they will be tracked down and brought to justice.*"

V. MARKET ABUSE

First Individual Charged in the LIBOR Investigation

On 20 June 2013, Tom Hayes, a former broker, was charged with eight offences of conspiracy to defraud and to manipulate Yen interbank offered rates and other interbank offered rates in connection with the SFO's ongoing investigation into the manipulation of LIBOR. Hayes already faces criminal charges in the US, and is the first individual to face criminal charges in the U.K. in connection with the manipulation of LIBOR. Two brokers, Jim Gilmour and Terry Farr, were arrested alongside Hayes on 11 December 2012, but have not been charged to date.

Employees of eight other financial firms were also named as co-conspirators to the offences but have not been charged. It is unusual in the U.K. for a prosecutor to proceed with charges against one conspirator and not others where the others are within the same jurisdiction. We will need to wait and see what this signifies in due course in terms of the Prosecution and Defence approach to the case.

Two Arrested in West London for Insider Dealing

On 30 April 2013 a man, 41, and woman, 37, were arrested and questioned regarding their involvement in an insider dealing investigation being conducted by the Financial Conduct Authority (the "FCA"). No further details of the investigation have been released, however the FCA have said this is a new investigation, and is not connected to their current seven open investigations. Insider dealing is a criminal offence, punishable by a fine or up to seven years imprisonment. The FCA has made 23 insider dealing convictions in the past.

VI. FRAUD

Final Conviction in Torex Retail False Accounting Case

On 20 June 2013, Mark Woodbridge was sentenced to a concurrent sentence of three years and ten months imprisonment for two conspiracy to defraud offences and one false accounting offence. Woodbridge was also disqualified from acting as a company director, and was ordered to pay costs of £170,000 within 12 months. This concluded the SFO's fraud prosecution against four former executives of retail software company Torex Retail Plc ("the Company"). Nigel David Horn, the Legal Director and Company Secretary of the Company, was acquitted of both the conspiracy and false accounting offences. The two other directors on the same indictment pleaded guilty to the charges ahead of trial. The firm acted for one of those directors.

As part of the same investigation, two directors of a Torex subsidiary company, XN Checkout Ltd. Edwin Dayan and Christopher Ford were subject to separate proceedings and were convicted of conspiracy to defraud Torex shareholders by causing false profits to be entered into the 2005 end-of-year accounts and the interim results for 2006, which were attributed to a false agreement with pub chain outlet Mitchells & Butler.

VII. OTHER

SFO Explores its Powers to Investigate the Allegations of Price-Fixing in the Oil Industry

On 16 May 2013, it was reported that the SFO was undertaking an "urgent review" to assess whether it had the power to investigate allegations of price-fixing within the oil industry. This came in response to a statement made by the European Commission on 14 May 2013 that numerous OFT raids had taken place on oil companies due to concerns that "*companies may have colluded in reporting distorted prices…to manipulate the published prices*" since 2002. All four oil companies implicated in the allegations have confirmed their co-operation with the authorities with regard to the continuing investigation.

The U.K. Joins 38 Other Countries in a Commitment to Requirements of the Extractive Industries Transparency Initiative (EITI)

Following the G8 Summit, the U.K. announced that it would sign up to the Extractive Industry Transparency Initiative ("EITI") as part of an international commitment to increasing transparency and tackling corruption in the mineral extraction industry. The EITI requires foreign companies to disclose details of what they pay for extracting natural resources, such that citizens in countries where oil, gas and mining groups operate may be made aware of how these resources are being managed by their governments. The EITI currently has 23 member countries that are fully compliant, with a further 16 awaiting full accreditation.

Further information on the requirements and details of the EITI is available on their website.

Transparency International Reports on Anti-Corruption Practice in the Defence Industry

On 10 June 2013, Transparency International reported on anti-corruption practice in the defence sector. Transparency International released the Defence Companies Anti-Corruption Index in October 2012, which analysed what the 129 biggest defence companies around the world do to prevent corruption. The initial report suggested that two-thirds of those companies needed to improve. The follow-up report shows that one-third of those companies included in the original report have taken measures to improve their anti-corruption systems. Mark Pyman, director of Transparency International U.K.'s Defence and Security Programme, highlights that within a "sector characterised by high-value contracts and secrecy, recent anti-corruption legislation like the U.K. Bribery Act and stronger enforcement of the U.S. Foreign Corrupt Practices Act (FCPA) are making the defence industry increasingly aware that their corruption risk is high."

The follow-up report, 'Raising the Bar', is made up of two parts. The first lists seven areas which distinguish those defence companies which have taken action to improve their anti-corruption systems. The second part contains 104 examples of good practice. Better company practices mentioned in the report included public statements, methodologies for assessing corruption risks, training for their staff, particularly for those working in high-risk areas, for example, those dealing with government officials or in countries with poor governance. Protection for whistleblowers was another key anti-corruption feature highlighted in the report. The examples of best practice could equally apply to other industries, and no doubt would be taken into account if the SFO were assessing the adequacy of procedures in a case where an offence under section 7 of the Bribery Act was being considered.

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.