

## CORPORATE CRIME BULLETIN

AUGUST 2013



Welcome to the eighth edition of our Corporate Crime Bulletin. This is the eighth 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

#### Draft Code of Practice for Deferred Prosecution Agreements

The Deferred Prosecution Agreements Code of Practice (the “Code”) was issued by the Director of the UK Serious Fraud Office (“SFO”) and the Director of Public Prosecutions on 27 June 2013. There is a consultation process pending that will close on 20 September 2013. We have published a longer article which highlights a number of issues arising from the Code, available [here](#).

#### Draft Sentencing Guidelines: Fraud, Bribery, Money Laundering and Corporate Offenders

On 27 June 2013, the Sentencing Council for England and Wales published Draft Guidelines for Sentencing Fraud, Bribery and Money Laundering offences; which include specific guidelines for sentencing corporate offenders (the “Guidelines”). The Guidelines are the first of their kind in England and Wales to

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▶ Sentencing Council Publishes New Draft Sentencing Guidelines: Fraud, Bribery, Money Laundering and Corporate Offenders

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cover bribery, money laundering and corporate offenders and are likely to be used by prosecutors to help gauge the correct level of penalties for corporates entering into DPAs (see above). We have published a longer article on the Guidelines, available [here](#).

The Guidelines are open for consultation until 4 October 2013. The full draft text of the Guidelines and an online questionnaire for responding to the consultation are available on the Sentencing Council's [website](#).

### **New guidance from the Director of Public Prosecutions on multi-jurisdictional criminal cases**

On 17 July 2013, the Director of Public Prosecutions for England and Wales issued new guidance to be used by prosecutors for cases of concurrent jurisdiction, i.e. those involving suspected criminal conduct in multiple countries (the "Guidance"). The Guidance does not cover circumstances where the courts of England and Wales have jurisdiction to try UK nationals for offences committed wholly abroad, such as foreign bribery cases, in which specific public policy considerations apply.

In summary, the Guidance sets out a step-by-step approach to deciding how to prosecute cases of concurrent jurisdiction:

#### **1. Sharing information and consultation with foreign prosecutors**

The Guidance encourages the early sharing of information in cases of concurrent jurisdiction in order to form a coordinated strategy. The Guidance notes that such information could include the facts of the case, key evidence, representations on jurisdictional issues and any other relevant information.

#### **2. Jurisdictional Principles**

The Guidance sets out a number of principles for prosecutors to consider in cases of concurrent jurisdiction, including:

- A prosecution should ordinarily be brought in the jurisdiction where most of the criminality or most of the loss or harm occurred.
- A prosecutor should consider the prospects of the potentially relevant material held in another jurisdiction being identified and provided to prosecutors in England and Wales for review.
- If practicable and consistent with the above principles, all relevant prosecutions in cases involving concurrent jurisdictions should take place in one jurisdiction.
- Only in exceptional circumstances should proceedings in one jurisdiction be discontinued and commenced instead in another jurisdiction.

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- Other factors, including:
    - the location of the witnesses, their ability to give evidence in another jurisdiction and where appropriate, their right to be protected;
    - the location of the accused and his or her connections with the UK;
    - the location of any co-defendants and/or other suspects; and
    - the availability or otherwise of extradition or transfer proceedings and the prospect of such proceedings succeeding.

The Guidance notes that where the factors are finely balanced between jurisdictions, any delay and the cost and resources of prosecuting in one jurisdiction rather than another may be relevant. By contrast, relative sentencing powers and/or powers to recover the proceeds of crime should not be a primary factor in determining where a case should be prosecuted, although prosecutors should ensure that potential sentences and powers of recovery are available which reflect the seriousness and extent of the offence.

## II. MONEY LAUNDERING

### Financial Conduct Authority (“FCA”) Thematic Review: Banks’ control of financial crime in trade finance

On 1 July 2013, the FCA published a Thematic Review of how UK banks control money laundering, terrorist financing and sanctions risks in trade finance. A failure to take account of Thematic Reviews published by the FSA has been cited in previous FSA decision notices as an aggravating factor where regulatory fines have been imposed on firms for failures to implement adequate systems and controls. Whilst this Thematic Review is particularly relevant to those involved in trade finance, it is also generally relevant to all regulated firms when considering the adequacy of their systems and controls in this area. The Thematic Review includes examples of both good and bad practice from the FCA’s review of 17 banks in the UK between September 2012 and February 2013 and examples of trade-based ‘red flags’. The Thematic Review focuses on the FCA’s findings in a number of key areas, including:

- Governance and management information;
- Risk assessment;
- Policies and procedures;
- Due diligence;
- Training and awareness;
- AML procedures; and
- Sanctions and CTF controls.

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The FCA intends to use its findings to form the basis of a new Chapter (15), which will be added to Part 2 of the 'Financial Crime: a guide for firms' and invites comments and feedback from interested parties. Information on how to feedback on the Thematic Review can be found on the [FCA's website](#).

### The Joint Money Laundering Steering Group ("JMLSG") reviews money laundering guidance

Amendments to the UK and other European anti-money laundering regimes are set to come into force at the end of this year/early 2014 with the transposition of the 4th Anti-Money Laundering Directive into national law. In anticipation of this, the JMLSG has published a provisional set of revisions to its Anti-Money Laundering Guidance (the "AML Guidance"), which aims to bring the AML Guidance in line with the 4th Anti-Money Laundering Directive.

We previously set out the main themes of the 4th Anti-Money Laundering Directive in our April 2013 e-Bulletin, available [here](#).

The AML Guidance is used by both the courts and regulators to determine whether or not those in the regulated sector have complied with relevant anti-money laundering legislation. As a result, many financial institutions in the UK use it as a basis for designing and assessing their anti-money laundering systems and controls.

The proposed amendments include setting out higher-risk circumstances when enhanced due diligence must be applied, based on customer, geographic, product and service risk factors. The amendments also add a similar list for lower-risk circumstances, when simplified due diligence may be appropriate. A specific list of enhanced due diligence measures has been added, many of which measures firms will already employ for higher-risk customers. These include:

- Obtaining additional information on the customer and regularly updating the identification of the customer and any beneficial owner;
- Obtaining additional information on the intended nature of the business relationship;
- Obtaining information on the source of funds or source of wealth of the customer;
- Obtaining information on the reasons for intended or performed transactions;
- Obtaining the approval of senior management to commence or continue the business relationship;
- Conducting enhanced monitoring of the business relationship, by increasing the number and timing of controls applied, and selecting patterns of transactions that need further examination; and
- Requiring the first payment to be carried out through an account in the customer's name be with a bank subject to similar customer due diligence standards.

The JMLSG is inviting comments on the draft AML Guidance to be submitted by 16 September 2013; details on how to submit comments are available [here](#).

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**The Financial Action Task Force (“FATF”) issued guidance and examples of best practices for dealing with Politically Exposed Persons (“PEPs”) (FATF Recommendations 12 and 22) and for complying with Financial Sanctions/Counter Terrorist Financing procedures (FATF Recommendation 6)**

**1. Guidance for dealing with PEPs (FATF Recommendations 12 and 22)**

In June 2013, FATF issued guidance on how to manage and assess relationships with PEPs. The guidance integrates Recommendations 12 and 22, which require participating countries to ensure financial institutions and designated non-financial business or professions (“DNFBP”) implement measures to detect and prevent the misuse of the financial system by PEPs. The guidance emphasises the importance of ongoing monitoring and recommends that a variety of sources be used to identify the nature of business the PEP carries out, and the risk it poses to the financial institution or DNFBP. Recommendation 12 specifically requires involvement of senior level management in the due diligence process at on-boarding and throughout the business relationship with the PEP and in the event that the relationship is terminated. The full guidance includes examples of red-flags that might be considered when carrying out due diligence for PEPs. A copy of the guidance is available [here](#).

**2. Best Practices Report on targeted financial sanctions related to terrorism and terrorist financing (FATF Recommendation 6)**

In June 2013, FATF also issued a report on best practices for targeted financial sanctions relating to terrorism and terrorist financing. Recommendation 6 requires that participating countries implement the targeted financial sanction regimes to comply with United Nations’ Security Council Resolutions relating to the prevention and suppression of terrorism and terrorist financing. The report includes recommendations that countries implement an efficient and effective communication strategy in relation to asset freezing in order to help the private sector comply with the law. A copy of the full report is available [here](#).

**UK Action Plan to prevent the misuse of companies and legal arrangements in money laundering and terrorist financing**

On 18 June 2013, the UK Government published an [Action Plan](#) on the implementation of the revised FATF standards on anti-money laundering and combating the financing of terrorism, in an effort to prevent the misuse of companies and legal arrangements. The action plan sets out a high-level proposal of how the UK intends to enhance transparency and encourage good corporate governance, including:

- Conducting a national review of money laundering and terrorist finance risks by 2014;
- Obliging companies to retain adequate, accurate and current information on who actually controls them through reforms to the Companies Act 2006 and UK Money Laundering Regulations;
- Establishing a new central register for the sharing of information on beneficial owners of companies at Companies House. The public availability of such information is to be consulted on.

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- Ensuring that trustees of express trusts are obliged to obtain and hold adequate, accurate and current information on beneficial ownership regarding the trust.
  - Introducing mechanisms for the sharing of information on trusts between competent authorities and different jurisdictions for the purpose of bilateral and multilateral agreements.
  - Carrying out a review of the current practice at UK trust and company service providers. This may include additional measures to ensure company formation agents conduct effective due diligence, including identification and verification of beneficial owners.
  - Carrying out a review of corporate transparency, to be undertaken by the Department of Business, Innovation and Skills. A consultation paper for this review is open for feedback until 16 September 2013 and is available [here](#).

The implementation of these changes will take place with the transposition into national law of the European Union's ("EU") 4th Anti-Money Laundering Directive and reforms to the Companies Act 2006.

### III. BRIBERY AND CORRUPTION

#### Transparency International publishes Global Corruption Barometer 2013

On 9 July 2013, Transparency International published the results of a global opinion survey, which included feedback from 114,000 individuals from 107 countries in a 'Global Corruption Barometer'. The Global Corruption Barometer is based on survey interviews with individuals regarding their perception of corruption in their own country, their own experiences with corruption, and a breakdown of the industries where corruption was perceived to be most prevalent. The Global Corruption Barometer is separate from the Corruption Perceptions Index, which relies on expert opinions, and may be a further helpful tool in assessing country-level corruption risk. A copy of the Global Corruption Barometer may be found [here](#).

### IV. MARKET ABUSE

#### Two further individuals charged in LIBOR investigation

On 15 July 2013, Terry Farr and James Gilmour, former brokers at RP Martin Holdings Limited, were charged with offences of conspiracy to defraud in connection with the SFO's investigation into the manipulation of the London Inter Bank Offered Rate ("LIBOR"). This follows the charging of Tom Hayes in June 2013 as part of the same SFO investigation mentioned in our [July 2013 E-Bulletin](#).

#### Four arrested on suspicion of insider dealing

On 31 July 2013, three men and one woman were arrested in London for questioning in an insider dealing and market abuse investigation. According to the FCA, the individuals have not been charged nor are the arrests connected with any other ongoing insider dealing investigation. The FCA is continuing the policy of 'credible deterrence', started by its

predecessor the FSA, in seeking to maintain an active enforcement function, including in cases of insider dealing and market abuse; see our [May 2013 E-Bulletin](#) for more on this topic.

## V. SANCTIONS

### 1. Financial Sanctions

#### North Korea

On 23 July 2013, the European Council published [Regulation 696/2013](#), which amends Council [Regulation 329/2007](#) concerning restrictive measures against the Democratic People's Republic of Korea (the "North Korea Regulations"). Regulation 696/2013 further tightens the EU sanctions on North Korea, including:

- Prohibiting EU credit and financial institutions from opening a new bank account with credit or financial institutions domiciled in North Korea, or certain other credit or financial institutions as defined in the North Korea Regulations..
- Prohibiting EU credit and financial institutions from establishing new and, in certain circumstances, maintaining existing correspondent banking relationships with credit or financial institutions domiciled in North Korea, or certain other credit or financial institutions as defined in the North Korea Regulations.
- Including an additional annex of restricted persons working on behalf, of or at the direction of a person, entity or body already listed in the sanctions or assisting in the evasion of sanctions or otherwise violating the provisions of the North Korea Regulations.

#### Syria

On 23 July 2013, the European Council published [Regulation 697/2013](#), which amends Council [Regulation 36/2012](#) concerning restrictive measures in view of the situation in Syria (the "Syria Regulations"). Regulation 697/2013 permits HM Treasury to issue licenses for the opening of bank accounts with Syrian credit or financial institutions, opening representative offices in Syria and establishing branches and subsidiaries in Syria. It also expands the list of goods subject to trade controls and adds an express exemption, noting that trade controls will not apply to products identified as consumer goods packaged for retail sale for personal use or packaged for individual use, with the exception of isopropanol.

### 2. Trade Sanctions

#### Syria

See the note set out in the Financial Sanctions section above for amendments to the Trade Sanctions applicable to Syria.

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## Croatia joins the EU

As of 1 July 2013, Croatia became a member of the EU, and therefore the trade control restrictions imposed on exports from EU member states to Croatia have been relaxed. A licence to export dual-use items to Croatia is no longer required, with the exception of items listed in Annex IV to Regulation 428/2009. Note, however, that certain record keeping and other requirements for the export of dual-use items within the EU still apply. A list of the updated licensing requirements can be found in [Notice 2013/17](#) on the Department for Business Innovation and Skills (“BIS”) website and details of what this means for an exporter is outlined in [Notice 2013/16](#).

## Important changes to the Strategic Export Control Transparency Initiative

On 31 July 2013, the BIS issued a notice reducing the reporting requirements under the Strategic Export Control Transparency Initiative. Open Licence holders are to make reports on an annual basis, not quarterly as previously proposed. This will apply from 1 January 2014. The notice includes a list of information that should be included in the report, including:

- country of destination
- type of end user;
- number of times the licence has been used for that country/end user type;

In addition, there will be no requirement to provide control list classifications or descriptions of the items exported. The first year’s data will be published in an aggregated form in 2014.

The reports will be made using the online system “SPIRE” and guidance on data collection and annual returns is set to be made available on the SPIRE website shortly. More information on the requirements, including those licences exempt from the reporting requirements, is available in the BIS notice available [here](#).

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.

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