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# CORPORATE CRIME BULLETIN

**SEPTEMBER 2013**

Welcome to the ninth edition of our Corporate Crime Bulletin. This is the ninth 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. BRIBERY AND CORRUPTION

### The Serious Fraud Office (the "SFO") Prosecuted Its First Case Of Bribery Since The Enactment Of The Bribery Act 2010

On 14 August 2013, Gary Lloyd West, James Brunel Whale and Fung Fong Wong of Sustainable AgroEnergy plc (the "Company") and Stuart John Stone, an independent financial adviser associated with the Company, were charged with offences of conspiracy to commit fraud by false representation and conspiracy to furnish false information in connection with the SFO investigation into the sale of "bio fuel" investment products in the UK. West, Stone and Wong have also been charged under Sections 1(1) and 2(1) of the Bribery Act 2010 with offences of "making and accepting a financial advantage". The alleged fraud totals £23 million, and the offences are said to have occurred between April 2011 and February 2012. This is the first instance of the SFO charging individuals under the Bribery Act since it first came into force in July 2011. The defendants will appear in front of the Westminster Magistrates Court on 23 September 2013.

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- Our Compliance and Enforcement Practice
- Recent Publications
- Corporate Crime Bulletin - July 2013
- Corporate Crime Bulletin - May 2013
- Corporate Crime Bulletin - April 2013

## II. MONEY LAUNDERING

### a. The Financial Conduct Authority's (the "FCA") Annual Report On Anti-Money Laundering

In our August 2013 E-Bulletin, we discussed the efforts of the FCA, the UK Government and Joint Money Laundering Steering Group to combat money laundering in the UK financial system, and explored the ways in which they intend to integrate the newly revised Financial Action Task Force (the "FATF") recommendations and the Fourth Money Laundering Directive. This month the FCA has issued a report presenting their observations and the measures they intend to take to reduce the risk to financial firms of facilitating financial crime. More detail on the Fourth Money Laundering Directive can be found in our April 2013 E-Bulletin. The full FCA report can be found on the FCA's website.

### b. FCA Enforcement For Failing To Show Adequate Anti-Money Laundering Procedures

On 8 August 2013, the FCA fined Guaranty Trust Bank (UK) Limited ("GTBUK") £525,000 for its failure to demonstrate that it had adequate systems and controls in place to prevent money laundering. The FCA stated that the failures presented an unacceptable risk that the firm could have been used by customers to launder the proceeds of crime, and considered the failures to be particularly serious because they affected customers based in countries associated with a higher risk of bribery and corruption, including accounts held by politically exposed persons ("PEPs"). The FCA found that GTBUK had failed to:

- Carry out or document an adequate risk assessment of potential money laundering risks posed by high-risk customers;
- Screen prospective customers against sanctions lists or PEP databases;
- Obtain and/or document senior management approval before initiating business relationships with PEPs;
- Show that they had established the customer's source of wealth or funds, and the intended purpose for opening the account; and
- Conduct on-going reviews and monitor high-risk customers' accounts.

It was concluded that these failings were a breach of FCA Principle 3, namely the requirement for firms to take reasonable care to organise and control their affairs responsibly and effectively. GTBUK settled at the early stages of the investigation, qualifying for a 30% reduction on a fine that would have been £750,000. For further information see the FCA's website.

## III. MARKET ABUSE

### FCA Fines Broker

On 8 August 2013, the FCA published that it had fined David Davis, a senior partner and compliance officer of Paul E Schweder Miller & Co, £70,258 and Vandana Parikh, a broker at Schweder Miller, £45,673 for failure to exercise due

skill, care and diligence in breach of Principle 2 of the FCA's Principle and Code of Practice for Approved Persons. The fines were levied in connection with the illegal manipulation of the closing price of securities traded on the London Stock Exchange by Rameshkumar Goekna, a private investor based in Dubai, in October 2010. The FSA had previously fined Goekna $9,621,240 on 11 November 2011 for market abuse, constituting the largest fine ever imposed by the FSA on an individual. Further information on Goekna's penalty can be found here.

Although Davis was not aware of Goekna's desire to manipulate price, the FCA found that he had failed to challenge instructions; refused to accept the orders to trade, and did not report the trades as suspicious. They concluded that he had failed to act with due skill, care and diligence. Further information and a copy of the Final Notice can be found here.

The FCA found that Parikh had explained the process of market manipulation to Goekna without any real challenge or enquiry as to his intentions or adequate assessment of the risks associated with providing him with such information, and thus had failed to act with due skill, care and diligence. The seriousness of her failure was heightened by the fact that she had received the relevant training for preventing market abuse, and had failed to raise questions or discuss concerns for the compliance function. Further information and a copy of the Final Notice can be found on the FCA's website.

## IV. SANCTIONS

### a. Financial Sanctions

#### HM Treasury issue new guidance note

On 14 August 2013, HM Treasury added new guidance on compliance to their frequently asked questions. The guidance can be accessed through their website or by clicking here. The new sections include:

- Sector-specific advice for financial institutions, insurers, charities and law firms;
- Advice on humanitarian transactions;
- Information on what constitutes ownership and control; and
- Advice for designated persons on how they may use their assets.

The guidance will be reviewed every six months and feedback can be made to financialsanctions@hmtreasury.gsi.gov.uk.

### b. Trade Sanctions

#### HM Treasury changes to licence

Also on 14 August 2013, HM Treasury issued a notice outlining the introduction of new licence application forms for all country sanctions regimes other than Libya and Syria.

Generic licence applications can be accessed here, along with application forms for Libya and Syria. For licence applications which come under the Terrorist Financing Act 2010, applicants are still advised to write to HM Treasury at financialsanctions@hmtreasury.gsi.gov.uk.

Previously issued general licences which come under the Terrorist Financing Act 2010 might be subject to restrictions and reporting requirements in relation to terrorist asset freezes. This is to reflect changes to the contact email address for the financial sanctions team. The application forms for general licences may be found here.

### Notice 2013/24 and Notice 2013/23 – EU suspend all export licensing to Egypt

On 23 August 2013, the Department of Business, Innovation and Services (the "BIS") issued Notice 2013/23 suspending the provision of all export licences to Egypt for any equipment which might be used for internal repression. Licences governed by the Common Position 2008/944/CFSP, which outlines the common rules governing the control of the export of military technology and equipment, will now be reassessed. Any licences no longer consistent with the Consolidated EU and National Arms Export Licensing Criteria will also be reassessed, and should a licence need revoking, suspending or amending, the BIS will contact the licence holder.

On 28 August 2013, the BIS issued a notice extending Notice 2013/23 to apply the suspension to licences for the Egyptian Army, Air Force and Internal Security Forces and the Ministry of the Interior. This Notice 2013/24 also adds Egypt to the list of non-permitted destinations on a number of Open General Export Licences ("OGELs"). Please see the full Notice for the list of OGELs.

### Notice 2013/22 – Changes to EU sanctions

- **Syria**

  The Export Control (Syria Sanctions) Order 2013 (S.I. 2013/2013) which comes into force on 6 September 2013, introduces new provisions in an attempt to impose national controls on the supply of certain equipment which may be used for internal repression, and which was previously subject to EU-wide embargo. For more details on the old and new restrictions, see the BIS website or our comments in our August 2013 E-Bulletin.

- **Burma and related UK legislation**

  As reported in our July 2013 Bulletin, The European Council enacted Regulation (EU) 401/2013, permanently lifting a number of restrictive measures on Burma/Myanmar. However, it left in its place prohibitions concerning the direct or indirect sale, supply, transfer or export of arms or equipment which might be used for internal repression, and restrictions on the provision of brokering services and technical and financial assistance related to the sale, supply, transfer or export of those items to any person in, or for use in, Burma. The EU measure was implemented in the UK by The Export Control (Burma Sanctions) Order 2013, which came into force on 28 August 2013.

## V. REGULATION

### Transparency Discussion Paper – Extended Protection For Whistleblowers

Following up on their approach to increase transparency published in March 2013, the FCA issued a response report on 3 August 2013. A summary of the original discussion paper can be found in our May 2013 E-Bulletin. One of the key areas highlighted for development was the protection offered to whistleblowers. As such, the Government have issued a response to the Parliamentary Commission on Banking Standards which focuses on whistleblower policies and practices in a number of areas. A copy of this response can be found here. One of the recommendations suggested involves the use of cash incentives as a way to encourage whistleblowing reports, a system currently used in the USA (Section 922 of the Dodd-Frank Wall Street Reform and Consumer Protection Act 2010. Other recommendations include making it the duty of appointed senior persons within a bank to ensure the protection of whistleblowers, and making it the role of the regulator to support whistleblowers and afford them greater protection.

### The Enterprise and Regulatory Reform Act 2013 (the "2013 Reform Act")

Part Two of the 2013 Reform Act made changes to employment law with particular amendments regarding the protection of whistleblowers. Sections 17 to 20, which came into force on 25 June 2013, concern protected disclosures under the Employment Rights Act 2012 (the "ERA 2012"). In order for the disclosure to qualify for protection under the ERA 2012, Section 17 requires the employee to show that it was his or her reasonable belief that making the disclosure was in the public interest. Section 18 removed the requirement for a disclosure to be made in good faith; however, a court may reduce recoverable compensation by up to 25% if equitable in the circumstances, discouraging disclosures made in bad faith. Section 19 introduces vicarious liability: an employer will be responsible for any act done by an employee, or failure to prevent an act done by an employee, against the whistleblower during the course of his or her employment. An employer may have a viable defence if they can show that they took reasonable steps to prevent the worker's act or an act of that description. It is important to take note of the new liability which may be created in light of the new protection for disclosures in the corporate environment.

## VI. OTHER

### High Court Declares The SFO May Disclose Information Obtained From Third Parties Under Compulsory Orders

On 18 July 2013, the High Court concluded the case of *Tchenguiz & Others v Deutsche Bank & Others* [2013] EWHC 2128 (QB), and held that the SFO was not prevented from giving disclosure as a defendant in civil proceedings of documents received from third parties in response to notices issued under Section 2 of the Criminal Justice Act 1987 (the "CJA").

The claimants brought proceedings against the SFO seeking damages of £300 million in respect of the SFO's alleged unlawful raids on their premises. Following a court order for disclosure, the SFO had written to various parties to say that they had provided information they had received in response to Section 2 requests. Several parties objected to this on the basis that the CJA prohibited the SFO from disclosing such material without their consent. The SFO disagreed with this, and sought a declaration to the effect that there was no such prohibition under the CJA.

The court held that although the SFO owed a duty of confidence in relation to material received under its compulsory powers, there was no implied restriction under the CJA to override the SFO's obligation to provide disclosure pursuant to a court order. Further, the court was not satisfied that the public interest in maintaining the confidentiality of material provided under the SFO's compulsory powers justified an outright bar on disclosure.

A consequence of this decision is that parties that are required to provide documents to the SFO in response to Section 2 notices should be aware of the fact that the documents may be disclosed by the SFO in the event of a court order ordering such disclosure. For more information on this subject please find the judgement in full here.

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