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CORPORATE CRIME BULLETIN

MARCH 2014

Welcome to the twelfth edition of our Corporate Crime Bulletin. This publication is 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. REGULATION

Deferred Prosecution Agreements ("DPAs") Entered Into Force

On 24 February 2014, Deferred Prosecution Agreements became available to prosecutors dealing with organisations in cases of economic crime. Please see our longer E-Bulletin, Crime and Courts Act 2013: Deferred Prosecution Agreements Code of Practice, for more information.

The Serious Fraud Office (the "SFO") press release is available here: Deferred Prosecution Agreements: new guidance for prosecutors.

Corporate Sentencing Guidelines Published

On 31 January 2014, the Sentencing Council published final Guidelines for sentencing corporate offenders (the "Sentencing Guidelines"). The Sentencing Guidelines will apply to corporate offenders sentenced on or after 1 October 2014. The finalised Sentencing Guidelines are largely the same as the draft published last year, covered in our longer E-Bulletin: Sentencing Council Publishes New Draft Sentencing Guidelines: Fraud, Bribery, Money Laundering

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- Corporate Crime Bulletin - December 2013
- Corporate Crime Bulletin - October 2013
- Corporate Crime Bulletin - September 2013

and Corporate Offenders. However, there have been a few notable changes including:

- The addition of a further ground for increasing a corporate's culpability (and therefore its likely fine) where it has engaged in wilful obstruction of detection (such as destroying evidence, misleading investigators, or suborning employees).
- An increase in the suggested percentage range of revenue used by a court to determine harm (a factor used to calculate the ultimate fine applied) in circumstances where a court is unable to determine the actual, intended or likely gain from an offence. This has been raised from 10 per cent to 10-20 per cent of worldwide revenue derived from the product or business area to which the offence relates.
- The addition of a note that there may be cases of fraud or bribery in which the true harm is to commerce or markets generally. Such cases may justify adopting a harm figure beyond the normal measures set out in the Sentencing Guidelines.

The text of the Sentencing Guidelines is available here.

II. MARKET ABUSE

a. Another Conviction For The Financial Conduct Authority ("FCA") And Serious Organised Crime Agency ("SOCA") In 'Operation Tabernula'

In our May 2013 E-Bulletin we reported on the conviction of Paul Milson as part of the FCA and SOCA (together, the "Authorities") worldwide investigation into a complex network of insider dealing.

On 26 February 2014, the Authorities charged Graeme Shelley ("Shelley"), a former trader at Novum Securities Ltd, with two counts of insider dealing as part of the same investigation. Shelley is due to appear in court in May 2014.

The most recent update on the progress of the FCA action against insider dealing is available here.

b. Court Of Appeal Dismisses Swift Trade Inc. ("Swift Trade") Appeal In Market Abuse Case

On 19 December 2013, the Court of Appeal dismissed an appeal by Canadian company Swift Trade and its former director, Peter Beck, in a market abuse case.

The Court of Appeal confirmed that orders placed for contracts for difference ("CFDs") can still be considered within the scope of the market abuse provisions in section 118 of the Financial Services and Markets Act ("FSMA"). This is because, although CFDs are not themselves qualifying investments for the purposes of FSMA, effecting transactions in CFDs can be behaviour 'in relation to qualifying investments'. Lord Justice Longmore noted: "Once the orders for CFDs had been made and automatic transactions on orders to trade (by way of hedging the CFDs) had been made or effected, Swift Trade's behaviour was 'in relation to' those shares".

A summary of the appeal is available here.

c. London Inter-Bank Offered Rate ("LIBOR") Fixing Investigation Update

On 26 February 2014, three former traders appeared at Westminster court for a preliminary hearing regarding their alleged involvement in manipulating LIBOR. The SFO investigation into the alleged manipulation of LIBOR is ongoing. There have been charges against former trader Tom Hayes and two alleged co-conspirators. The charges were reported in our December 2013 E-Bulletin.

III. REGULATORY ENFORCEMENT

a. Forex Capital Markets Ltd And FXCM Securities Ltd (Together, "FXCM UK") Have Been Fined £4 Million For Regulatory Breaches

On 26 February 2014, the FCA fined FXCM UK £4 million for regulatory failures, including allowing the US-based FXCM Group to withhold profits worth approximately £6 million, that should have been passed on to FXCM UK's clients. FXCM UK also failed to inform the FCA that US authorities were investigating another part of the FXCM Group for the same misconduct, and by failing to do so were in breach of FCA Principle 11.

FXCM UK placed 'over the counter' foreign exchange transactions on behalf of retail clients, which were then executed by another part of the FXCM Group. Between August 2006 and December 2010, the FXCM Group kept favourable market profits, whilst any losses were passed on to clients in full. The FCA concluded that, in doing so, FXCM UK had failed to check that its order execution systems were effective, and as such that they had failed to comply with FCA rules on best execution. The FCA conclude that FXCM UK had also breached FCA Principle 6 to treat customers fairly.

b. JLT Specialty Limited ("JLTSL") Fined Over £1.8 Million By The FCA For Failing To Show Adequate Procedures To Mitigate Bribery And Corruption Risk Overseas

On 19 December 2013, the FCA fined JLTSL over £1.8 million for failing to have appropriate systems and controls in place to guard against the risk of bribery or corruption when making payments to overseas third parties. JLTSL, which provides insurance broking and risk management services, was found to have failed to conduct proper due diligence before entering into a relationship with overseas introducers. JLTSL also failed to adequately assess the potential risk of new insurance business secured through its existing overseas introducers.

The FCA found that, between 19th February 2009 and 9th May 2012, JLTSLs had failed to manage the risks created by these overseas payments, and as such had breached FCA Principle 3 on management and control. During this period, JLTSL received almost £20.7 million in gross commission from business provided by overseas introducers, and paid them over £11.7 million in return.

The FCA found that inadequate systems surrounding these payments had created an unacceptable risk that overseas introducers could use the payments made by JLTSL for corrupt purposes, including paying bribes to people connected with the insured clients and/or public officials. JLTSL's penalty was increased because of its failure to respond adequately to the numerous warnings the FCA had given to the industry generally and to JLTSL specifically. However, the fine of £1,876,000 followed JLTSL's agreement to settle at an early stage of the investigation. As a result, it qualified for a 30% reduction on the original penalty of £2,684,013.

The statement by the FCA is available here.

IV. SANCTIONS

a. Financial Sanctions

Russia

On 6 March 2014 the European Council announced, following a meeting of EU heads of state, that it in the absence of negotiations between the governments of Ukraine and Russia the EU will decide on additional measures, including travel bans and asset freezes, targeting Russia. Latest press reports at the time of publication suggest the EU could move to impose sanctions on Russia this week, Monday 17 March 2014.

Ukraine

Financial Sanctions

On 6 March 2013, the Council of the European Union introduced Council Regulation (EU) No 208/2014, which imposed restrictive measures, including asset freezes, against certain individuals linked to the misappropriation of Ukrainian state funds and human rights violations in Ukraine. The UK has also introduced the Ukraine (European Union Financial Sanctions) Regulations 2014, criminalising breaches of the EU's restrictive measures.

The HM Treasury notice on Council Regulation 208/2014 is available here.

Export Licenses To Ukraine Have Been Suspended

On 20 February 2014, the EU Foreign Affairs Council (the "Council") introduced asset freeze and visa ban measures against individuals in Ukraine due to concern over the increasing levels of violence and repression. Member States have also agreed to suspend all export licences to Ukraine for equipment which might be used for internal repression.

The Council will reassess export licences of equipment covered by Common Position 2008/944/CFSP, which sets out the common rules governing the control and export of military technology and equipment.

Existing licences are currently under review by the Export Control Organisation. Further guidance will follow if they consider it appropriate to amend, revoke or suspend licences that are inconsistent with the Consolidated EU and National Arms Exports Licensing Criteria.

The Notice to Exporters 2014/04 is available here.

Zimbabwe

On 17 February 2014, the Council introduced Council Regulation 153/2014 which amended Regulation (EC) No 314/2014. Regulation 314/2004 contains the original list of individuals and entities subject to asset freezing measures. Council Regulation (EU) No 298/2013 amended Council Regulation (EU) No 314/2004 suspending the asset-freezing measures. Only two individuals and one entity remain subject to the asset freeze out of the original 81 individuals and 8 entities.

The HM Treasury notice is available here.

Iran

On 20 January 2014, the Council of the European Union published an amending Regulation to Regulation (EU) No 267/2012 concerning restrictive measures against Iran (the "Amending Regulation"). The Amending Regulation implements the EU's commitments under the Geneva Joint Action Plan on the Iranian nuclear programme and comes after a common understanding was reached between the E3/EU+3 (China, France, Germany, Russia, the United Kingdom and the United States) and Iran as to how the first step of the Joint Action Plan should be implemented.

The Joint Action Plan is an agreement between the E3/EU+3 and Iran as to initial steps that will be taken by both sides over a period of six months. It will see certain sanctions targeting Iran relaxed in return for Iran taking action in relation to its nuclear programme. The International Atomic Energy Agency ("IAEA") will monitor Iran's implementation of the nuclear-related measures it has agreed to.

The EU has agreed not to pursue new nuclear-related EU sanctions, as well as introducing the Amending Regulation which:

- Suspends the prohibition on the import, purchase or transport of Iranian petrochemical products. The suspension covers the provision of all related services such as financing, financial assistance, insurance and reinsurance, including for third states.
- Suspends the prohibition on trade in gold and precious metals with the government of Iran, its public bodies and the Central Bank of Iran, or persons and entities acting on their behalf. The suspension also covers related services such as transportation. The items concerned are listed in the EU legislation.
- Increases all the EU authorisation thresholds for non-sanctioned trade with Iran, including for humanitarian purposes, to allow more financial transfers to and from Iran to be processed without authorisation requirements and therefore facilitate non-sanctioned transactions. Updated guidance on whether a transfer of funds involving Iranian financial or credit institutions or Iranian persons, entities or bodies is required is available here.
- Suspends the prohibition on the provision of insurance and transport in relation to Iranian crude oil. This suspension allows the provision of transportation and insurance services to third states importing Iranian oil.

The full text of the Amending Regulation is available here.

The full text of the Joint Action Plan is available here.

The full text of the EU implementation of the Joint Action Plan is available here.

Catherine Ashton's statement regarding implementation is available here.

The White House's initial understanding on Iran's Nuclear Programme is available here.

Syria

On 10 February 2014, the Council of the European Union (the "Council") introduced Council Regulation (EU) No 124/2012 to amend Article 16 of Council Regulation (EU) No 36/2012 concerning asset-freezing measures against Syria. The amendment provides a new licensing ground. The amendment allows for the release of funds or economic resources used exclusively to make payments, on behalf of the Syrian Arab Republic to the Organisation for the Prohibition of Chemical Weapons, relating to the verification and destruction of Syrian chemical weapons.

The HM Treasury Notice is available here.

This followed on from changes in December 2013, when the EU amended the sanctions applicable to Syria:

- allowing competent authorities to authorise payments due in connection with specific trade contracts for medical supplies, food, shelter, sanitation or hygiene for civilian use;
- allowing competent authorities to authorise the release of certain frozen funds or economic resources necessary for evacuations from Syria or other humanitarian purposes;
- providing specific exemptions on restrictions relating to the import or transport of chemical weapons or related material for the purposes of the Organization for the Prohibition of Chemical Weapons operations in Syria; and
- prohibiting the import, export, transfer or brokerage of Syrian cultural artefacts and other goods of archaeological, historical, cultural, rare scientific or religious importance.

COUNCIL DECISION 2013/760/CFSP

COUNCIL REGULATION (EU) No 1332/2013

b. Trade Sanctions

Notice to Exporters 2014/05: Requirement For MOD Form 680 Approval

On 28 February 2014, the Export Control Organisation issued its Notice to Exporters 2014/05, which included information about the new Government Security Classification ("GSC") policy which will replace the Government Protective Marking Scheme from 2 April 2014. The new GSC policy requires all companies to have MOD Form 680 approval prior to the release of materials or information of material classified as 'official-sensitive' or above. The GSC policy includes four classifications which are summarised below.

- **Top Secret**
- **Secret** (MOD Form 680 Application valid for 2 years)
- **Official-Sensitive** (MOD Form 680 Application valid for 4 years); and
- **Official** (No MOD Form 680 Application required)

Notice 2014/05 includes information on the application of old licenses, private venture material and MOD Form 680 requirements under the terms and conditions of open general export licenses. The Notice to Exporters 2014/05 is available here. Further information and guidance on the new GSC policy can be found on the HM Treasury website.

c. EU Imposes Arms Embargo On Central African Republic

On 23 December 2013, the EU implemented UN Resolution 2127 imposing an arms embargo on the Central African Republic. The full text of the UN Resolution is available here and the full text of EU Decision 2013/798 is available here.

V. BRIBERY AND CORRUPTION

Anti-Money Laundering And Bribery And Corruption Systems And Controls In Asset Management And Platform Firms

The Financial Conduct Authority ("FCA") published its findings of a review of 22 wealth and asset management firms, fund administrators and platform firms, (the "firms") Anti-Money Laundering and Anti-Bribery and Corruption systems and controls.

As part of its findings, the FCA identified certain areas where improvements could be made. The FCA concluded that in some areas firms were either inconsistent with their internal recording or could not show that they had adequate controls in place to assess, classify and record risks posed by new customers, and as a result firms had failed to carry out the necessary enhanced due diligence and ongoing monitoring for high-risk customers. The FCA also identified consistent weakness in how most firms acted on the outcome of risk assessments, and in particular how any issues were dealt with by the firms going forward. The FCA also found that some firms wrongly considered that the long-standing nature of client relationships was sufficient to satisfy due diligence requirements. Further findings can be found in the full review on the FCA's website.

VI. FRAUD

SFO Investigation Sees John Fitzpatrick Sentenced For Six Years

On 27 February 2014, John Fitzpatrick ("Fitzpatrick") was sentenced to six years' imprisonment on theft and fraud offences. He pleaded guilty on 11 November 2013 to two charges of obtaining money transfers by deception and seven charges of theft. The offences were committed between 1997 and 2001, and Fitzpatrick was struck off the Roll of Solicitors in 2002 as a result of breaching the trust that his clients had placed in him in his capacity as their solicitor.

Fitzpatrick had fled to South Africa in an attempt to evade justice but was arrested in May 2013 and held in custody in South Africa for 76 days pending extradition.

The seven counts of theft totalled £1,157,000 of clients' money. Three counts involved theft of funds entrusted to him in relation to clients buying or selling a home, and the remaining four counts involved theft of clients' investment on the false promise of high returns funds, which he instead appropriated for his own purposes.

The two charges of obtaining money transfers by deception related to the facilitation of mortgage fraud. Such fraud formed part of two previous SFO investigations which took place in November 2004 against five individuals and in July 2009 against one individual. Fitzpatrick would have previously been tried in connection with these earlier investigations had he not fled the country in an attempt to evade justice.