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CORPORATE CRIME BULLETIN

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Welcome to the tenth 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. Regulatory Updates

UK Business Secretary Vince Cable suggests legislative reforms targeting directors' accountability and greater transparency regarding company ownership structure

On 16 September 2013, UK Business Secretary Vince Cable announced his intention to put legislation before Parliament that will improve the accountability of directors in the UK. According to the UK government's latest press release, Vince Cable will table his proposals as soon as the Parliamentary timetable allows, before the end of the current Parliament in mid 2015.

The new measures will seek to toughen the law targeting "rogue directors" through:

- strengthening the rules to give investors and those who are owed money the confidence that rogue directors will be banned from running companies;

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- helping those who are owed money get compensation where they have suffered loss from a director's criminal or reckless behaviour;
- ensuring that directors banned from running companies abroad cannot come to the UK to run British companies;
- extending the investigation time granted for complex cases of director misconduct, to minimise the possibility of prosecutions being timed out; and
- raising standards of corporate behaviour by introducing special corporate behaviour training for banned directors who want to run a company again in the UK.

This is in addition to the implementation of changes regarding company transparency, which will take place with the transposition into national law of the European Union's 4th Anti-Money Laundering Directive and reforms to the Companies Act 2006, set out in more detail in our August E-Bulletin.

European Commission announces new measures to restore confidence in benchmarks following LIBOR and EURIBOR scandals

On 18 September 2013, the European Commission published its proposals for draft legislation for the regulation of indices used as benchmarks in financial instruments and financial contracts. This follows the recent scandals surrounding the manipulation of LIBOR and EURIBOR and the June 2013 agreement by the European Parliament and Council to implement the Commission's proposals to make the manipulation of benchmarks a market abuse offence subject to administrative fines.

In summary, the Commission proposals include:

- a requirement of prior authorisation and on-going supervision in the provision of benchmarks at a national and European level with an attempt to avoid conflicts of interest where possible;
- a requirement that sufficient and accurate data be used in the determination of benchmarks, so that they represent the actual market or economic reality that the benchmark is intended to measure, using transaction data when possible with verified estimates allowed when it is not;
- development of a code of conduct setting out the obligations and responsibilities of those that provide input data for a benchmark, including obligations regarding conflicts of interest;
- enhancing transparency of the data used to calculate benchmarks and of the way in which the benchmark is calculated; and
- critical benchmarks will be supervised by colleges of supervisors, led by the supervisor of the benchmark administrator and including the European Securities and Markets Authority (ESMA). Further, additional

requirements are imposed on critical benchmarks, including the power for the relevant competent authority to compel contributions.

Clarification on rules for reporting suspicious transactions

On 6 September 2013, the Financial Conduct Authority ("FCA") published the second of its consultation papers, Quarterly Consultation No. 2. Chapter 4 of the paper clarifies the FCA's rules on reporting suspicious transactions under the FCA's Supervision manual ("SUP"). The clarification focuses on a potential disparity between SUP 15.10.2R and 15.10.3R, identified during the FCA's discussions with industry.

SUP 15.10.2R requires:

> A firm which arranges or executes a transaction with or for a client in a qualifying investment admitted to trading on a prescribed market and which has reasonable grounds to suspect that the transaction might constitute market abuse must notify the FCA without delay.

SUP 15.10.3R requires:

> A firm, that is an investment firm or a credit institution, must decide on a case-by-case basis whether there are reasonable grounds for suspecting that a transaction involves market abuse, taking into account the elements constituting market abuse.

In effect, SUP 15.10.2R defines transactions as reportable where they are in "a qualifying investment admitted to trading on a prescribed market." In contrast, SUP 15.10.3R, by referring more broadly to the general definition of market abuse, also incorporates "investments which are related investments in relation to such qualifying investments", i.e. investments whose price or value depends on the price or value of the qualifying investment.

The FCA is proposing to remove the reference to "qualified investment admitted to trading on a prescribed market" in SUP 15.10.2R, thereby leading to SUP 15.10.2R applying to the broader group of investments to which SUP 15.10.3R already applies.

Chapter 4 of the Consultation is open for comments until 6 November 2013. For the full text of the Consultation and details of how to respond, click here.

FCA Thematic Review – Mobile Banking and Payments

On 27 August 2013, the FCA published an interim report as part of its Thematic Review into mobile banking and payments. The interim report summarised the FCA's findings from its initial work and outlined its plans for future work in this area. The FCA noted that it will provide a further update on its findings in the first half of 2014.

The potential risks highlighted by the FCA include fraud, security and anti-money laundering systems and controls. Regarding anti-money laundering the FCA noted that it will, "consider the extent to which firms should carry out

additional checks [for mobile banking services] to verify the identity of the payee and recipient." The FCA also noted that mobile banking may make it more challenging for firms to identify and report suspicious transactions.

II. Fraud

Gyrus Group Ltd and Olympus Corporation charged with fraud allegations

On 4 September 2013, the Serious Fraud Office (the "SFO") issued a notice of the charges against Gyrus Group Ltd, a UK subsidiary of Olympus Corporation, and Olympus for making a statement to an auditor which was misleading, false or deceptive, contrary to Section 501 of the Companies Act 2006. The SFO accepted the investigation in November 2011 after Olympus was prosecuted in a global fraud case in Japan which saw three former executives sentenced in July 2013. The offences are alleged to have taken place between April 2010 and March 2011. The first hearing took place in Westminster Magistrates Court on 10 September 2013.

III. Sanctions

Successful challenges to application of EU Iran sanctions

In a series of judgments, the General Court of the European Council has annulled the application of European Sanctions against Iran to a number of companies and individuals.

Importantly, victory for the applicants in these cases does not automatically remove them from the EU sanctions list. The orders for annulment of the restrictive measures against them will not take effect until the expiry of the period for bringing an appeal (within two months of the notification of the decision). If the European Council elects to appeal the decisions, the removal from the sanctions list of those individuals or entities to which any appeal relates will be put on hold pending its conclusion.

6 September Judgment

On 6 September 2013, the General Court found that the Council had failed to establish that **Post Bank Iran, Iran Insurance Company, Good Luck Shipping and Export Development Bank of Iran** had provided support for nuclear proliferation.

In addition, the General Court found that the Council "made an error of assessment inasmuch as the facts and evidence on which it relied" and that these, "do not by themselves justify the adoption and/or maintenance of the restrictive measures" in the cases of **Mr Bateni, Persia International Bank and The Iranian Offshore Engineering & Construction Co.**

The General Court found the Council to have breached its obligation to state the reasons and the obligation to disclose the evidence used against the **Bank Refah Kagaran**.

The General Court therefore ordered the annulment of the Council's decision imposing restrictions against all of the above.

Two further appeals brought by **Europäish-Iranische Handelsbank** and **Bank Meli Iran** were unsuccessful and these entities, therefore, remain subject to the measures imposed by the Council. The judgments can be found on the Europa website.

16 September Judgment

On 16 September 2013, the General Court issued an order annulling the application of restrictive measures against **Islamic Republic of Iran Shipping Lines and the 17 other applicants (16 IRISL subsidiaries plus Khazar Shipping Lines)**. The General Court found "that the evidence put forward by the Council does not justify the adoption and maintenance of restrictive measures against IRISL."

Central to the General Court's decision was its rejection of the assertion that IRISL could be said to have provided support for nuclear proliferation by transporting military material in breach of Resolution 1747 (2007), a separate resolution to the resolution covering nuclear proliferation. Furthermore, the General Court rejected the Council's assertion that the restrictive measures could be upheld on the basis that the incidents involving IRISL's breach of the prohibition on transporting military materials showed that there was a serious risk of IRISL transporting material linked to nuclear proliferation.

The General Court noted in its judgment that "the wording used by the legislature implies that the adoption of restrictive measures against a person or entity on account of the support which that person or entity has allegedly given to nuclear proliferation presupposes that the person or entity has actually done so. By contrast, the mere risk that the person or entity concerned may in the future provide support for nuclear proliferation is not sufficient." The full text of the judgment is available here.