

## CORPORATE CRIME BULLETIN

JUNE 2014



Welcome to the thirteenth 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. REGULATIONS

#### a. HM Treasury Announces Its Fair And Effective Review Of The Financial Market Sector

On 12 June 2014, HM Treasury issued a statement regarding its Fair and Effective Review of the Financial Markets (the "Review") to be conducted with the Financial Conduct Authority (the "FCA") and the Bank of England (the "Bank"). The Review will be conducted over a 12 month period expected to be complete by June 2015. The purpose of the Review is to reinforce confidence in the fairness and effectiveness of wholesale financial market activity conducted in the UK and to influence the international debate on the trading practices where coordinated international action is necessary. The Review will cover the following:

- *Current trading practices.* The Review will consider trading practices in regulated and unregulated markets.

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#### RELATED LINKS

- ▶ Our Compliance and Enforcement Practice
- ▶ Recent Publications
- ▶ Corporate Crime Bulletin - October 2013
- ▶ Corporate Crime Bulletin - September 2013
- ▶ Corporate Crime Bulletin - March 2014

- *Scope of regulation.* The Review will consider which currently unregulated markets and benchmarks should be regulated.
- *The impact of recent and forthcoming regulation.* The Review will consider UK regulation including the Banking Reform Act 2013 and the LIBOR reforms. It will also consider EU level regulation, including the revision to the Markets in Financial Instruments Directive and the new Market Abuse Regulation.
- *Supervision.* The Review will consider the impact that supervision of firms and markets will have on regulatory power and resources.

The Review will deliver advice for the international financial market as well as providing more detailed guidance on reform in the UK. More details on the Review are available [here](#).

#### **b. The FCA Publishes Its Business Plan For 2014/2015**

On 31 March 2014, the FCA published its Business Plan for 2014/2015 (the “Plan”). The Plan includes thematic reviews covering:

- How investment banks reduce the risk of traders manipulating key benchmarks and whether they have adequate controls in place.
- Issues surrounding conflicts of interest at investment banks.
- Controls over the flow of confidential information between different parts of an investment bank’s business.
- Assessing whether or not trading activity at asset managers is consistent with expectations of market conduct.

The FCA also noted in the Plan that it will continue its policy of credible deterrence in actively pursuing enforcement activity and will continue to cooperate with foreign regulators on a cross border basis. Details of the Plan are available [here](#).

## **II. MARKET ABUSE**

#### **a. The FCA Amends Its “Financial Guide: A Guide For Firms”**

Further to the report in our [August 2013 E-Bulletin](#), the FCA has amended its “Financial Guide: a guide for firms (the “Guide”). The amendments followed a thematic review of 17 banks carried out by the FCA. The results of the Review were published in July 2013. The Review focused on how the banks managed the risks of financial crime. The Review found banks had adequate controls to ensure they were not dealing with sanctioned individuals, however, it also identified inadequate systems and controls for dual-use goods and weak anti-money laundering policies and procedures. The FCA published its response to the feedback received in the consultation stage of the amendments and a statement, including a summary of the amendments to be made in light of the feedback.

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The Guide is constructed of two parts. The first part provides more general guidance whilst the second part provides a set of examples of good and bad practices in order to assist firms in assessing the effectiveness and adequacy of their practices. The FCA's risk-based approach is a consistent theme throughout the Guide, the amendments took effect on 12 June 2014.

The areas that have been amended in light of the feedback include:

- *Governance and MI*
- *Risk assessment*
- *Policies and procedures*
- *Due diligence*
- *Training and awareness*
- *AML procedures*
- *Sanctions*
- *Dual-use goods*

The Guide is available [here](#).

The FCA's statement summarising the amendments is available [here](#).

The FCA's response to the feedback from the consultation is available [here](#).

**b. The Serious Fraud Office (the "SFO") Commences Proceedings Against A Further Six Individuals As Part Of Its LIBOR Investigation**

On 28 April 2014, the SFO issued criminal proceedings against three individuals for conspiracy to defraud as part of its investigation into the manipulation of LIBOR. Separately, on 28 March 2014, the SFO announced that it had commenced criminal proceedings against three former brokers as part of its criminal investigation into LIBOR manipulation. The allegations against the accused include offences of conspiracy to defraud between 8 August 2006 and 7 September 2010. The total number of individuals facing charges in relation to the SFO's investigation into LIBOR has now reached 12. Please see our previous report on the SFO's investigation in our [March 2014 E-Bulletin](#).

The most recent SFO statement is available [here](#).

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**c. The SFO Launches An Investigation Into Possible Money Laundering In Connection With Corruption In Ukraine**

On 28 April 2014, the SFO announced it had opened an investigation into possible money laundering arising from corruption in Ukraine. Under the Proceeds of Crime Act 2002, the SFO has obtained a restraint order freezing \$23 million of assets in the UK in relation to this investigation. The statement by the SFO is available [here](#).

**d. The International Monetary Fund (the "IMF") Reviews Its Anti-Money Laundering and Combating The Financing Of Terrorism ("AML/CFT") Program**

On 11 April 2014, the IMF issued a statement outlining the review of its current AML/CFT program and the proposal for its future strategy. The IMF compared its internal program that includes the Reports on the Observance of Standards and Codes ("ROSCs") and the Financial Sector Assessment Program ("FSAP") to the international developments of the Financial Action Task Force (the "FATF") AML/CFT program.

The FATF revised the standard for AML/CFT programmes in 2012 and adopted new assessment methodologies and procedures in 2013. The FATF also set comparative assessments to be adopted by FATF Style Regional Bodies ("FATF/FSRB"). The IMF statement described the changes to give "greater attention to risks and country context", and further, that they would produce "more focused and meaningful assessments". The IMF has compared its own program with the FATF/FSRB standard and confirms that the IMF staff will continue to convert all FATF/FSRB assessments into ROSCs to ensure satisfactory quality and consistency. The assessments will be reviewed two to three times a year. The next IMF review of its AML/CFT program is to be expected within the next four years.

The IMF statement is available [here](#).

**e. The FCA Bans Trader And Imposes A Fine Of £662,700 For Deliberately Manipulating Gilt Price**

On 20 March 2014, the FCA published its final notice imposing a fine of £662,700 on a bond trader and banning him from performing any function in relation to any regulated activity in the UK. The FCA took action against the bond trader for deliberately manipulating the price of a UK government gilt under the UK Government's Quantitative Easing programme in 2011.

The FCA press release and the final notice is available [here](#).

**III. SANCTIONS**

**a. Financial**

**HM Treasury Delivers Its Quarterly Report On The Operation Of The Terrorist And Asset Freezing Regime**

On 12 June 2014, HM Treasury published a ministerial statement on the Operation of the UK's Counter-Terrorist Asset Freezing Regime for 1 January 2014 to 31 March 2014. The Terrorist and Asset Freezing etc. Act 2010

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("Tafa 2010") mandated by UN Security Council Resolution 1373 imposes an obligation on HM Treasury to publish a report each quarter.

The report concerns the implementation of the following:

- The UN Al-Qaida asset freezing regime in the UK by the Al Qaida Asset Freezing Regulation 2011.
- The EU asset freezing regime in the UK under EU Regulation (EC) 2580/2001, which implements UNSCR 1372 against external terrorist threats to the EU.

The Treasury is responsible for licensing and compliance for both regimes in the UK under the respective UK implementing legislation.

In particular, the report lists the designations under the regime in the UK and the existing legal proceedings as they were on 31 March 2014. The HM Treasury report is available [here](#).

## Ukraine

On 13 May 2014, the European Union further expanded its criteria for listing individuals and entities in its sanctions relating to the situation in Ukraine (the "Ukraine Sanctions"). This led to an additional 13 individuals and two entities being added to the list of Ukraine Sanctions imposing asset freezes and travel bans, and could lead to further additions in the future.

The two entities that have been listed are:

- PJSC Chernomorneftegaz
- Feodosia

Both of these entities were appropriated by the newly formed 'Republic of Crimea'. They are the first entities to be listed under the Ukraine Sanctions, which have so far focused only on individuals.

The criteria for listing individuals and entities under the Ukraine Sanctions have been amended to lower the threshold for listing. These are the criteria that the Council of the European Union will use to assess whether or not an individual or entity should be listed as subject to the Ukraine Sanctions. They provide the framework by which further individuals or entities may become subject to these sanctions. Only individuals or entities that have been expressly designated as subject to sanctions by the European Council, or are owned or controlled by a sanctioned individual or entity, are subject to the sanctions.

The new criteria for listing includes:

- natural persons responsible for actively supporting or implementing actions or policies:
  - that undermines or threatens the territorial integrity, sovereignty and independence of Ukraine, or stability or security in Ukraine, or

- that obstructs the work of international organisations in Ukraine, and
- natural or legal persons, entities or bodies associated with them.
- legal persons, entities or bodies in Crimea or Sevastopol:
  - whose ownership has been transferred contrary to Ukrainian law, or
  - legal persons, entities or bodies that have benefited from such a transfer.

Under the previous regime the listing criteria specified that only natural persons identified as being *responsible for actions* that undermines or threatens Ukraine's territorial integrity, sovereignty and independence could be listed. The threshold now is merely being *responsible for actively supporting or implementing actions or policies* that undermines or threatens Ukraine's territorial integrity, sovereignty and independence. Further, obstructing the work of international organisations and the transfer of ownership of legal persons, entities or bodies contrary to Ukrainian law are new criteria. The latter are in line with the policy of non-recognition by the EU of the illegal annexation of Crimea by the Russian Federation.

A list of the individuals and entities subject to the Ukraine Sanctions can be found [here](#). In addition, the 22 individuals listed under the separate 'Misappropriation and Human Rights' category of sanctions relating to the situation in Ukraine can be found [here](#).

In addition, on 24 June 2014 the EU imposed further restrictions on Russia by prohibiting the import of goods into the EU that originate in Crimea or Sevastopol. The provision, directly or indirectly, of financing or financial assistance, as well as insurance and reinsurance, related to the import of such goods is also prohibited.

Goods that have been made available for examination to, and have been controlled by, the Ukrainian authorities and which have been granted a certificate of origin by the Government of Ukraine are not covered by the prohibition. There is also a grace period for contracts concluded before 25 June 2014, which can allow for the continued import of goods under such contracts until 26 September 2014.

### Republic of Guinea

On 14 April 2014, the Council of the European Union adopted Council Regulation (EU) No 380/2014 which implemented Council Decision 2014/213/CFSP. In light of the developments in the Republic of Guinea, Council Decision 2014/213/CFSP effectively lifted the arms embargo and the embargo on equipment that might be used for internal repression which was previously in place under Regulation (EU) 1284/2009. Council Regulation (EU) 380/2014 has also amended Regulation (EU) 1284/2009 to reflect the lifting of those measures.

Council Regulation (EU) 380/2014 is available [here](#).

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## Iran

On 14 April 2014, HM Treasury issued a notice detailing amendments that had been made to 15 entries on the consolidated list of sanction targets in accordance with Council Implementing Regulation (EU) No 371/2014 ("Regulation (EU) 371/2014"). These amendments do not add any new persons to the list but rather provide additional details regarding the reasons for the listing of those already listed. The Amending Regulation incorporates the European Union Decision 2014/205/CFSP which extended the restrictive measures directed against certain persons and entities responsible for serious human rights violations in Iran. The measures, which are distinct from the sanctions linked to nuclear proliferation, have also been extended until 13 April 2015.

The Amending Regulation is available [here](#).

The HM Treasury notice is available [here](#).

## Burma/Myanmar

On 14 April 2014, the Council of the European Union published Decision 2014/214/CFSP extending the restrictive measures imposed by Council Decision 2013/184/CFSP on Burma/Myanmar to 30 April 2015.

Council Decision 2014/214/CFSP is available [here](#).

## b. Trade Sanctions

### A Suspension Is Placed On All Licences And Licence Applications For Export To The Russian Military That Could Be Used Against Ukraine

On 11 June 2014, The Department for Business, Innovation and Skills (The "BIS") issued Notice to Exporters 2014/15 extending the suspension announced by the Foreign Secretary on 18 March 2014. The suspension included extant licenses and licence applications for direct export to Russia, or export to third countries for incorporation into equipment for export to Russia, of military and dual use items designed for units of the Russian armed forces or other Russian state agencies and which could be deployed against Ukraine. This is in addition to the restrictions on the import of goods from Crimea and Sevastopol, discussed above.

The Open General Export Licence (Export After Exhibition or Demonstration: Military Goods) has been added to the list of suspended licences. Effective immediately, a Standard Individual Export Licence ("SIEL") is required to return military exhibits to Russia. Applications for SIELs will be assessed against the terms announced on 18 March 2014 and the Consolidated EU and National Export Licensing Criteria.

Notice to Exporters 2014/15 is available [here](#).

Details of the 18 March 2014 announcement are available [here](#).

The Consolidated EU and National Export Licensing Criteria are available on [here](#).

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### **UK Government Opens A Consultation To Consider A Pre-Licensing Register Of Arms Brokers**

On 28 May 2014, the BIS published Notice to Exporters 2014/14 regarding its proposal for a pre-licensing register for arms brokering. The BIS is proposing to require all parties interested in arms brokering to be added to a register and only those on the register will be eligible to apply for a licence.

The BIS published, on 17 April 2014, its “Call for Evidence”, which invited feedback on the proposal from any parties with an interest in trading military goods. The consultation closed on 30 May 2014. A report will be issued in September 2014 detailing the response to the consultation and will be followed by an Impact Assessment if the proposal is pursued. Further details are available [here](#).

### **Notice To Exporters: 2014/07: Amendment To Export Control Order 2008 (the “ECO”) Concerning Category B Goods**

On 9 April 2014, the Export Control Organisation amended the list of Category B Goods in the Export Control Order. Category B Goods are those subject to stricter export and trade controls. The Amendment extends the list of items that comes under the scope of Category B to include all conventional arms that have been specified in the Arms Trade Treaty adopted by the United Nations General Assembly on 2 April 2013. The new items now classified as Category B include certain:

- Battle tanks and armoured combat vehicles
- Large-calibre artillery systems
- Combat aircraft and attack helicopters
- Warships
- Other missiles and missile launchers

Further guidance on the amendment and existing controls is contained in BIS Notice 2014/07, available [here](#).

## **IV. BRIBERY AND CORRUPTION**

### **a. Transparency International Asks European Parliament Candidates To Sign Its Anti-Corruption Pledge (the “Pledge”)**

Transparency International asked European Parliament candidates to sign its Anti-Corruption Pledge. This ensures that each candidate that signs the Pledge commits to three key objectives in the event that they are elected. The objectives include the following:

- The governance and law-making of EU institutions will become a global model of transparency, accountability and integrity, thereby establishing the highest standards.
- The EU will promote greater integrity and transparency in public spending.

- The EU will promote initiatives and legislation that will provide effective protection to whistleblowers in the public, private and non-profit sectors.

Further details of the Pledge are on the Transparency International website, available [here](#).

**b. The FCA Fines Insurance Broker, Besso Limited (“Besso”) £315,000 For System And Control Failures**

On 17 March 2014, the FCA fined Besso £315,000 for failing to take reasonable care to organise and control its affairs responsibly and effectively, with adequate risk management systems, in breach of FCA Principle 3. In summary, the FCA found that Besso, a general insurance broker, operated a weak control environment in relation to sharing commissions with third parties. This gave rise to an unacceptable risk that those commissions could be used for corrupt purposes.

The FCA highlighted, in particular, that Besso:

- Had limited or inadequate bribery policies and procedures in place during the relevant period.
- Did not conduct adequate risk assessment of its third party business relationships, including adequate due diligence and the establishment of a commercial rationale for payments to those third parties.
- Did not review its third party relationships in sufficient detail and regularly enough to ensure they remained appropriate.
- Did not effectively monitor employees’ rationale for engagement of third parties and what due diligence and anti-bribery and corruption measures were taken in relation to those third parties.

The FCA Decision Notice is available [here](#).

**c. Three Convicted As Part Of The National Crime Agency (the “NCA”) Investigation Into Football Match Fixing**

On 17 June 2014, in Birmingham Crown Court, three men were convicted of conspiracy to commit bribery. A Singaporean national and a UK national from Sri Lanka were sentenced to five years imprisonment each as the central conspirators of a plot to fix football matches. In addition, they recruited a player from Conference South team, Whitehawk FC, to help. The player received a 16 months sentence for his role in the plot. The NCA investigation lasted seven days in November 2013 after the Daily Telegraph presented evidence it had found during its own investigation. A statement by the NCA expressed that it had “no doubt the men were at the very beginning of a concerted attempt to build a network of corrupt players in the UK”. Furthermore, that “this is not sports as a football-loving nation recognises it. It is corruption and bribery linked to serious organised crime, and the NCA is determined to stop criminals benefitting from it”. The NCA were able to intervene at an early stage and secure the evidence to get convictions.

The investigation continues and further details are available [here](#).

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## V. FRAUD

### a. The SFO Publish Its Findings In “Operation Steamroller”

On 4 June 2014, the SFO delivered a report on the outcome of “Operation Steamroller”, which has been described as the “largest boiler room fraud ever pursued by a UK regulator”. An estimated £70.2 million is said to have been obtained in the fraud.

Jeffrey Revell-Reade and Anthony May were convicted for their involvement in the boiler room fraud which occurred between 2003 and 2007. The fraudulent scheme was set up by Revell-Reade. Investors were sold shares in U.S. companies through entities operating in Madrid. The schemers imposed a 12 month restriction on the sale of investors’ shares. When investors attempted to sell them, they found them to be worthless or that the shares were in shell companies or companies that were not in operation. Revell-Reade served the equivalent of one year in prison overseas whilst contesting extradition and was sentenced in the UK on 6 June 2014 to a further eight years and six months in prison and disqualified from being a director of a company for 12 years for conspiracy to defraud. May was sentenced to seven years and four months in prison and disqualified from being a director of a company for 10 years for conspiracy to defraud.

Seven other individuals were charged in 2010 for their involvement in the boiler room fraud. Their sentences are detailed in the SFO report available [here](#).

## VI. OTHER

### Supreme Court Ruling In Favour Of The SFO

In the case of *R v O’Brien* (Appellant) [2014] UKSC, the Supreme Court ruled on two points of law put forward by the SFO. The decisions included that disobedience of a pre-trial criminal restraint order is a civil contempt of court and not a crime and that civil contempt is not extraditable even though it attracts a two-year sentence. The impact of the Supreme Court’s decisions in this case were significant to the SFO. Restraint orders are enforceable in the same way as freezing, search and disclosure orders. A decision in the alternative would require parties to civil and commercial claims to seek the extradition of the other parties who refused or failed to comply with such orders.

The background of the case involved Mr. Brian O’Brien, a U.S. national, who was subjected to an investigation into his involvement in a boiler room fraud in 2009. He was subjected, on 24 September 2009, to a restraint order which he failed to comply. He subsequently left the UK in October 2009. He was committed to 15 months imprisonment for the contempt. In addition, on conclusion of the investigation, he was convicted of conspiracy to defraud, contravening the general prohibition to carry on a regulated activity, attempting to obtain a money transfer by deception, transferring criminal property and hampering an investigation. On 23 April 2012, he was sentenced to eight years imprisonment.

The SFO statement is available [here](#).

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