

white collar lawflash

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UK Government Steps Up Antibribery Enforcement

Recent actions by the Serious Fraud Office and Financial Conduct Authority indicate an increased focus on addressing allegations of bribery and corruption.

It is clear that, in the wake of the Bribery Act 2010, the UK authorities are taking an increasingly tough approach to allegations of bribery and corruption. We look at two recent developments that highlight this.

Serious Fraud Office Investigation

The Serious Fraud Office (SFO) announced on 23 December 2013 that it has launched a criminal investigation into allegations of bribery and corruption at Rolls-Royce in relation to Rolls-Royce's use of middle-men in obtaining lucrative contracts in Indonesia and China. The allegations stem from claims made by a whistleblowing former employee of Rolls-Royce and are said to relate to alleged activities dating back to the 1990s. The whistleblower's claims include an allegation that the airline engine maker gave a \$20 million bribe and a car to Tommy Suharto, the son of the former Indonesian dictator, in return for his help in persuading an Indonesian airline to purchase Rolls-Royce aircraft engines. Mr Suharto has denied this allegation via his lawyers.

Rolls-Royce approached the SFO in December 2012 and self-reported the alleged improprieties. It also cooperated with the SFO and provided information to them "relating to concerns about bribery and corruption involving intermediaries in overseas markets" following the SFO's request to Rolls-Royce for information in relation to "allegations of malpractice in Indonesia and China."¹ Rolls-Royce stated in December 2012 that its own investigations had "identified matters of concern," and that it was "too early to predict the outcomes, but these [outcomes] could include the prosecution of individuals and of the company."

Analysis

In October 2013, David Green, director of the SFO, stated that the agency has a number of cases in development and that the SFO would prosecute "the right cases at the time that is right for [the SFO]."²

Commentators have questioned the SFO's willingness and ability to carry out such complex investigations and to pursue prosecutions. In particular, there has been concern as to whether the SFO has sufficient resources to take on large-scale complex investigations. However, the indications are that the SFO is willing and able to do so. Recent indications are that the SFO has secured additional funding from the UK Treasury for the costs of the complex investigation of Rolls-Royce.

It is not clear at this early stage of the SFO's formal criminal investigation if the allegations against Rolls-Royce will be deemed to be one of the "right cases" that could ultimately result in prosecutions under the Bribery Act or the legislation predating the act.

What is clear is that the SFO will not shy away from commencing complex international corruption investigations into large corporations such as Rolls-Royce. The SFO is keen to show that it will investigate and, in the "right

1. View Rolls-Royce's press release at http://www.rolls-royce.com/news/press_releases/2012/121206_reports_sfo.jsp.

2. For more information on Director Green's remarks, see our 6 November 2013 LawFlash, "UK SFO Director Provides Guidance on the Bribery Act", available at http://www.morganlewis.com/pubs/LIT_LF_UKDirectorProvidesGuidanceonBriberyAct_06nov13.

case”, prosecute organisations and individuals that have breached the Bribery Act or the law predating the act. Corporations need to ensure that they comply with the Bribery Act because investigations by the SFO, and possible prosecutions, are time-consuming and expensive and may result in bad publicity. Corporations must have rigorous policies and procedures in place to minimise the risk of bribery offences by a company, its employees, or associated persons.

Financial Conduct Authority Sanctions

The UK Financial Conduct Authority (FCA) has also increased its enforcement actions, fining insurance broker JLT Specialty, a division of Jardine Lloyd Thompson, £1.8 million for failing to take adequate steps to guard against bribery and corruption risks when making payments to overseas third parties that introduced business to the firm.

This action underlines the FCA’s determination to sanction authorised firms in relation to their failure to guard against the risks of bribery and corruption. It is also an example of a sanction being imposed where a firm actually had the requisite procedures in place to manage the risks of bribery and corruption but did not use them effectively, and, accordingly, the procedures were not deemed to be adequate.

In its 19 December 2013 final notice,³ the FCA stated that JLT Specialty had failed to conduct adequate due diligence before entering into a relationship with introducers of overseas business and, in particular, had failed to assess whether the new introducers were connected with clients being introduced and/or any public officials. The FCA said that these failings “gave rise to an unacceptable risk that payments made by [JLT Specialty] to an Overseas Introducer could be used subsequently for corrupt purposes, including paying bribes to persons connected with the insured clients and/or public officials.” JLT Specialty was found by the FCA to have had an “unacceptable” approach to bribery in overseas markets during a three-year period up to May 2012. JLT Specialty accepted that its own systems to deal with potential bribery and corruption were inadequate during this period. The FCA’s final notice details how JLT Specialty’s conduct took place against a backdrop of three visits by the FCA—and its predecessor, the Financial Services Authority—to JLT, during which the regulators raised significant concerns with the broker in relation to its systems and controls surrounding payments to overseas introducers of business.

The FCA did not make any finding that JLT Specialty had permitted any illicit payments or inducements during the period in question or that it had any intention to do so.

Tracey McDermott, the FCA’s director of enforcement and financial crime, said that JLT’s “failings are unacceptable given that [JLT] actually has the checks in place to manage risk, but didn’t use them effectively, despite being warned by the FCA that they needed to up their game. . . . Firms cannot be complacent about their controls—when we take enforcement action we expect the industry to sit up and take notice.”⁴

Analysis

This action by the FCA reinforces the tough approach being taken by the authority. This decision is a warning to all firms to employ rigorous due diligence in dealing with third parties overseas to avoid risks of bribery and corruption. It is also a salutary reminder that all firms must not only have clear and adequate policies and procedures in place to prevent bribery and corruption but that they must also actively ensure that these policies and procedures are adhered to by the company, its employees, and associated persons. Appropriate and regular training should be a key element of this process.

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3. View the final notice at <http://www.fca.org.uk/your-fca/documents/final-notice/2013/jlt-specialty-limited>.

4. View the press release at <http://www.fca.org.uk/news/firm-fined-18million-for-unacceptable-approach-to-bribery-corruption-risks-from-overseas-payments>.

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