

Financial Crime Update.

This month we report on a number of bribery and fraud cases which highlight the international nature of corruption. Of particular interest is the continued enforcement push in Asia, with significant investigations into conduct in the pharmaceutical sector in the PRC and the prosecution of Olympus in Japan. The US continues to reflect changes in commercial practice in its sanctions policies, while in the UK the issue of corporate accountability for employee fraud is again in the spotlight.

Global News

Transparency International publishes guide to effective bribery risk assessment

Transparency International has published a [guide to effective bribery risk assessment](#) giving specific, practical advice based on real-life experience. The guide includes a risk assessment process checklist, comprising 28 separate actions, and an example risk assessment template. The guide is intended to be global in application and concentrates on the inherent risks that may be associated with a particular activity or attribute of a business.

Policy and practice

UK: Director of SFO advocates corporate liability for failing to prevent fraud

David Green QC, director of the Serious Fraud Office (SFO), has stated that he would support the introduction of a new corporate offence of a company failing to prevent crimes of dishonesty or fraud by its servants or agents, akin to a section 7 Bribery Act 2010 offence. Prosecutions of corporates are rare in the UK because of the difficulties in proving that the controlling mind of the corporate was complicit in the relevant criminality. However, where a company has profited from the dishonest activity of its employees, Mr Green considered that the company should be marked with a prosecution and suggested that such an offence would sharpen corporate vigilance around

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compliance. *“If the public interest requires more corporate prosecutions, then such a change is high on my wish list”*, he said.

In a clear and succinct [speech at the 31st Cambridge Economic Crime Symposium](#) on 2 September 2013, Mr Green reviewed the progress made by the SFO since he took office in April 2012, outlining the funding the agency was receiving and commenting that on his watch, *“the SFO will never decline to investigate on grounds of cost.”* He disclosed that the SFO is currently investigating 68 cases, include eight Bribery Act matters and reiterated that the SFO *“are investigators and prosecutors of the topmost tier of serious and complex fraud, bribery and corruption ... not a regulator, a deal-maker or a confessor.”*

Mr Green’s speech has been seized upon by the press as an indication that a change in the law is on its way. However, beyond Mr Green’s speech, nothing has been published to indicate that there are, as yet, any concrete proposals under consideration.

Investigations and decisions

Hong Kong: China Resources Power directors accused in corruption case

Six purported shareholders of China Resources Power Holdings Company Limited (“China Resources Power”) have sought leave from the Hong Kong Court of First Instance to initiate a derivative action against the current and certain former directors of the company for alleged breaches of directors’ duties. The claim was initiated following corruption allegations which have been widely reported in the Hong Kong and PRC press. A former journalist turned activist investor and another reporter from a PRC state run news agency have alleged that an affiliate of China Resources Power paid US\$1.6billion to purchase three coal mines in Shanxi province, China, and certain related assets, at a vastly inflated price.

China Resources Power is a Hong Kong listed company with substantial power assets in mainland China and an affiliate of China Resources Holding Company Limited (“China Resources”), a PRC state-owned conglomerate which ranked 187th on the Fortune Global 500 this year. China Resources’ Chairman, Song Lin, was allegedly central to pushing through the Shanxi transaction. China Resources Power and Song Lin have issued statements defending the deal and reserving their rights to pursue legal action for libel.

The Chinese Communist Party’s top anti-corruption body, the Central Commission for Discipline Inspection, and the PRC National Audit Office are reportedly investigating the Shanxi transaction and the former journalist, Li Jianjun, is believed to have filed a complaint with Hong Kong’s Independent Commission against Corruption. The Hong Kong High Court action against China Resources Power’s current and former directors remains pending.

UK: Olympus and Gyrus Group to be prosecuted for accounting fraud

Following the sentencing of three former executives at the Japanese firm Olympus (as reported in our [July 2013 issue](#) of Financial Crime Update), the SFO has charged Olympus and Gyrus Group Ltd, a UK subsidiary of Olympus, with offences of making a statement to an auditor which was misleading, false or deceptive, contrary to section 501 Companies Act 2006. Gyrus faces four charges while Olympus faces one charge. The companies will appear on 24 September at Southwark Crown Court.

The charges relate to payments of \$687m in advisory fees made by Olympus to a US company and a Cayman Islands trust, on its acquisition of Gyrus for \$2.2bn in February 2008. Olympus has subsequently disclosed that it has been using transactions to hide losses on securities investments dating back two decades. In Japanese proceedings in July 2013 Olympus admitted that the Gyrus transaction was a fraud aimed at covering up investment losses made over the last ten years. It was fined 700m yen (£4.5m).

UK: Ex-JPMorgan supervisor of the “London Whale” arrested in Spain

Spanish-born Javier Martin-Artajo, the ex-JPMorgan supervisor of Bruno Iksil, accused by the US of covering up hundreds of millions of dollars in losses at the bank’s London Chief Investment Office, was arrested on Tuesday 27 August after he handed himself in to police in Madrid. Along with his junior, Julien Grout, Martin-Artajo was charged with four counts, including conspiracy to falsify books and records in relation to the “London Whale” scandal, the \$6.2bn loss on the derivatives market in which Bruno Iksil, Martin-Artajo’s supervisee, executed a series of oversized trades.

Martin-Artajo, who is accused of exaggerating the value of a portfolio he managed for his personal gain, is to be prevented from leaving Spain and will have to appear in front of a judge every 15 days. He also faces a custodial sentence if convicted, although he has said he expects his name to be cleared. Having refused to be sent to the US, it will become difficult for Martin-Artajo to be prosecuted there as Spain rarely extradites its citizens against their will.

Bruno Iksil himself has been given immunity by US prosecutors in return for his co-operation. This follows news that the Serious Fraud Office and the FCA have begun assisting US prosecutors with the case.

UK: SFO commences its first prosecution under Bribery Act 2010

The SFO has brought its first charges under the Bribery Act 2010. (The three previous prosecutions under the Act were brought by the Director of Public Prosecutions.) Three men have been charged with making and accepting a financial advantage contrary to sections 1(1) and 2(1) of the Act, in connection with the promotion and selling of “bio fuel” investment products to UK investors. The men, who are all British nationals, are the former director

and CCO of Sustainable AgroEnergy plc (the “company”), the former financial controller of the company and an independent financial advisor associated with the company. Together with a fourth man, the former CEO of the company, they have also been charged with conspiracy to commit fraud by false representation and conspiracy to furnish false information contrary to section 1 of the Criminal Law Act 1977.

Sustainable AgroEnergy plc is part of the Sustainable Growth Group group of companies, which was placed into administration in March 2012.

The four will appear before Westminster Magistrates Court on 23 September.

The SFO’s press release detailing the case is available [here](#).

Legislation

U.S. State Department Renews Sanctions Exception for Japan and 10 EU Countries

On 6 September 2013, the U.S. State Department announced that the United States had determined that Japan and 10 European Union countries had qualified for a renewed exception to certain Iran-related sanctions under the National Defense Authorization Act of 2012 (“NDAA”). The 10 European Union countries are Belgium, the Czech Republic, France, Germany, Greece, Italy, the Netherlands, Poland, Spain, and the United Kingdom. The exception renewal will permit non-US financial institutions based in these countries to continue to engage in transactions that would otherwise have subjected them to sanctions under the NDAA for an additional 180 day period.

In explaining its reasons for this determination, the State Department cited the fact that the “10 European Union countries ... have not purchased Iranian oil since July 1, 2012, pursuant to a decision made by the whole of the European Union in January 2012,” and noted that since the previous renewal of the exception, in March 2013, Japan has made “additional significant reductions in the volume of its crude oil purchases from Iran.”

The sanctions exception is a product of Section 1245 of the NDAA, which, among other things, makes it sanctionable for foreign financial institutions to conduct or facilitate a significant financial transaction with the Central Bank of Iran or any other designated Iranian financial institution that relates to the purchase of petroleum or petroleum-related products from Iran. The exception provides an exemption from such sanctions in cases where the U.S. Secretary of State determines and reports to Congress that the country with primary jurisdiction over the foreign financial institution has significantly reduced its volume of crude oil purchases from Iran. Exceptions under the NDAA run for periods of 180 days; in order for a country to receive a renewal of the exception for an additional 180 day period, the NDAA requires that the Secretary of State determine that the country at issue significantly reduced its volume of crude oil purchases from Iran during the 180-day period.

In addition to the 10 EU countries and Japan, the United States has continued to grant exception renewals to nine other countries -- China, India, Malaysia, South Korea, South Africa, Sri Lanka, Singapore, Turkey, and Taiwan – which last received a renewal in June 2013.

The full text of the State Department's announcement can be found here: <http://www.state.gov/secretary/remarks/2013/09/213890.htm>.

U.S. Treasury Department Issues General Licenses Related to Iran Sanctions Regulations

On 10 September 2013, the U.S. Treasury Department issued two general licenses that authorize certain humanitarian-related activities by non-governmental organizations in Iran and athletic exchanges involving Iran and the United States. General Licence E authorizes the exportation of services and funds transfers by nongovernmental organizations in support of certain not-for-profit humanitarian activities designed to benefit the people of Iran, including activities related to humanitarian projects to meet basic needs, non-commercial reconstruction projects in response to natural disasters, environmental and wildlife conservation projects, and human rights and democracy building projects. General License F authorizes the importation and exportation of certain services in support of professional and amateur sporting activities and exchanges involving the United States and Iran.

Both of the new General Licenses clarify that U.S. depository institutions and U.S. registered brokers or dealers in securities are authorized, pursuant to the General Licenses, to process transfers of funds in furtherance of activities authorized by the General Licenses, so long as the transfers are otherwise consistent with U.S. law.

The full text of General License E can be found here: http://www.treasury.gov/resource-center/sanctions/Programs/Documents/iran_gle.pdf; the full text of General License F can be found here: http://www.treasury.gov/resource-center/sanctions/Programs/Documents/iran_glf.pdf.

Further News

Tackling corruption: China's recent investigation into multinational pharmaceutical companies

Over recent months, several large multinational pharmaceutical companies have made the headlines in connection with the PRC authorities' high-profile investigation into alleged corruption and other misconduct in China. These investigations are perhaps indicative of a new approach to enforcement action in cases involving alleged bribery by senior executives of multinational companies. Our Asia practice has recently published a [client alert](#), which recaps the matters under investigation and explores how multinationals should respond to the increased enforcement environment.

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This publication is intended merely to highlight issues and not to be comprehensive, nor to provide legal advice. Should you have any questions on issues reported here or on other areas of law, please contact one of your regular contacts, or contact the editors.

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