

Financial Crime Update.

As if to answer its critics, the UK's SFO has announced developments in no fewer than three major investigations this month, including the commencement of proceedings against an Alstom subsidiary, arrests in the Airbus case and a new investigation into the Sweett Group. A UK Supreme Court ruling has clarified that bribes received by an agent will be treated as being held on trust for its principal. Regulators in both the UK and Hong Kong have been looking at the ability of financial institutions in their jurisdictions to counter the risks of money laundering and other financial crime. The different approaches taken by the US and other states to sanctions enforcement in Iran and Russia is notable, particularly as one country suspending sanctions over Iran is Russia itself.

Global News

International agencies identify jurisdictions at high risk of corruption

At its mid-year meeting in Paris on 25-27 June 2014, the Financial Action Task Force ("FATF"), an international money laundering watchdog, updated its list identifying jurisdictions with strategic anti-money laundering and countering the financing of terrorism ("AML/CFT") deficiencies.

Iran and the Democratic People's Republic of Korea remain at the top of FATF's list, which considers them to pose "on-going and substantial money laundering and terrorist financing ("ML/FT") risks". Algeria, Ecuador, Indonesia and Myanmar are considered to have strategic AML/CFT deficiencies, having failed to address deficiencies or to commit to a plan to address them.

However, Ethiopia, Pakistan, Syria, Turkey and Yemen are now identified as having made progress in substantially addressing the action plan agreed upon with FATF and have been removed from the watchlist. In addition, Kenya, Kyrgyzstan, Mongolia, Nepal and Tanzania are no longer subject to the FATF's on-going global AML/CFT compliance process. 22 further jurisdictions have agreed an action plan with FATF which FATF will continue to monitor.

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Following the publication by FATF of the revised list of high risk jurisdictions, a number of other agencies published their own lists of countries they consider to pose a particular risk of financial crime.

On 8 July 2014, HM Treasury ("HMT") published an advisory notice advising firms to consider certain specified jurisdictions as posing a high risk for the purposes of ML/TF issues and repeating the FAFT list. The Treasury recommends enhanced due diligence measures are undertaken in these jurisdictions.

Additionally, on 10 July 2014, the UK's Financial Conduct Authority ("FCA") published a list of the countries it considers to pose a high risk to its financial crime objectives, such as tackling money laundering, sanctions systems and controls, terrorist financing, and bribery and corruption. As well as the "usual suspects", the list includes two European Union member states, Bulgaria and Latvia.

For more information on FATF and its watchlist, click [here](#).

HMT's Advisory Notice is accessible [here](#).

The FCA's list is available [here](#).

Investigations and decisions

U.K.: Criminal proceedings brought against Alstom subsidiary by SFO

Following an investigation lasting five years, on 24 July 2014 the SFO commenced criminal proceedings against Alstom Network UK Ltd ("ANUK"), a UK subsidiary of Alstom, the French transport and power giant.

ANUK has been charged with three offences of corruption and three offences of conspiracy to corrupt in respect of alleged bribery, false accounting and money-laundering in respect of large transport projects in India, Poland and Tunisia, between June 2000 and November 2006.

In 2010 the SFO arrested three members of Alstom's board in the UK in connection with the allegations. The investigations into two of them - Robert Purcell and Stephen Burgin, were subsequently dropped while the third, Altan Cledwyn-Davies, died shortly after his arrest. However, the SFO continued its investigation into the company's activities.

In November 2011 Alstom was fined €31m by Switzerland's attorney-general for negligently failing to stop bribery by some employees in Latvia, Malaysia and Tunisia. However, the investigation did not find any criminal wrongdoing by the company and a Swiss affiliate, and the Swiss attorney-general stated that there was "no evidence of a systematic way with regard to criminal acts or of systematically accumulated 'slush funds'."

The first hearing in this case will take place on 9 September 2014, at Westminster Magistrates Court. David Green, director of the SFO, has said that charges against individuals may follow those against the company.

The SFO's press release is available [here](#).

U.K.: SFO opens investigation into Sweett Group

The SFO confirmed on 14 July 2014 that it has opened an investigation into allegations published in the Wall Street Journal that a former employee of Sweett Group, the global construction and property services company, paid bribes in 2009-11 to a United Arab Emirates official inside the personal foundation of the president Khalifa bin Zayed al Nahyan, to win a \$100m (£58.2m) hospital contract in Morocco being funded by the foundation. A former Sweett director is also alleged to have told architects bidding for the contract to design the hospital that they would have to pay a "service charge" of 3.5% of the contract price to UEA officials to win the project. The architects initially paid the money but later stopped the payment on legal advice. Sweett denies that any money was paid.

Sweett Group launched its own internal investigation into the allegations and is now reported to be co-operating fully with the SFO. Sweett is one of the oldest UK construction surveying and services companies and is listed on the UK AIM.

The SFO's press release is available [here](#).

U.K.: Arrests in SFO's investigation into corruption by Airbus subsidiary GPT

It has been reported that the SFO questioned up to seven people over the weekend of 5-6 July 2014 in connection with alleged corruption in Saudi Arabia by a subsidiary of Airbus, the European aircraft and defence group. Four former and current staff of GPT Special Project Management Ltd ("GPT"), which supplies communications equipment, were arrested and released on bail after questioning. A number of other people, who do not work for Airbus, were also questioned but not arrested including, according to the Financial Times, two UK Ministry of Defence officials.

The SFO opened a criminal investigation into allegations concerning GPT and aspects of the conduct of their business in Saudi Arabia in August 2012, looking into allegations of bribery relating to a £2bn contract to provide communications and intranet services for the Saudi national guard, which protects the kingdom's royal family. Allegations of corrupt subcontractor payments and gifts to Saudi generals by GPT were made in 2011 to the SFO by Ian Foxley, a former employee of GPT based in Saudi. An internal audit by PwC commissioned by Airbus in 2012 to investigate whether improper payments had been made concluded that there was no evidence of any such payments. Initially the SFO had not intervened in the investigation but, following a review of all of the SFO's on-going cases by the then newly-appointed director, David Green, a formal criminal investigation was launched.

An SFO spokesman said: "We can confirm that a search warrant has been executed and a number of arrests have been made. Officers from the National Crime Agency assisted the SFO with its operation." However, no further details have been posted on the SFO website and its entry regarding the GPT investigation has not been updated.

Airbus has commented: "Airbus Group understands that four former and current employees were recently interviewed under caution as part of a wide-ranging SFO investigation into subsidiary GPT. At this stage we cannot add anything further to our previous statements on this matter."

U.K.: Former trader charged with insider dealing

A former Schroders equity trader has been charged with nine counts of insider dealing following an investigation brought by the FCA. Damian Clarke is accused of committing offences relating to share trading and spread betting between 2003 and 2012. Mr Clarke was dismissed by Schroders in early 2013 for gross misconduct. The bank, which has not been the subject of any investigation, released a statement underlining the fact that it does not tolerate behaviour which runs counter to its "core value of integrity".

The FCA is currently prosecuting seven other individuals for insider dealing, having secured 24 prosecutions to date. The majority of those waiting to stand trial have been charged in connection with Operation Tabernula, the regulator's largest insider dealing investigation. In its 2014/15 Business Plan, the FCA indicated that it intended to examine the steps firms are taking to ensure trading is conducted in a way which is consistent with the FCA's expectations as to market integrity.

UK: Former Alba boss jailed for bribery

Bruce Hall, the Australian former chief executive of Bahrain's state-owned aluminium producer Alba, has been sentenced to 16 months in prison after pleading guilty to conspiracy to corrupt. He has also been ordered to pay a confiscation order of nearly £3.1 million and a further £500,000 to Alba in compensation. Hall admitted receiving a series of corrupt payments from Sheikh Isa bin Ali al-Khalifa, a senior member of the Bahraini ruling family and the former chairman of Alba, as part of a larger conspiracy involving contracts worth \$3 billion (£1.8 billion) between 1998 and 2006. Sheikh Isa has denied the payments were corrupt as they had been approved by Alba's board.

Hall, who was sentenced at Southwark crown court by Judge Nicholas Loraine-Smith on 22 July 2014, is the only person so far to be convicted in respect of the alleged conspiracy. He was due to give evidence for the SFO in its prosecution of Victor Dahdahleh, who was accused of paying £38 million of bribes to Sheikh Isa in return for the Alba contracts. The case against Dahdahleh collapsed in spectacular fashion in December 2013 due in part to a change in Hall's evidence.

Hall will need to fulfil the confiscation order within seven days or face an additional term in prison. Judge Loraine-Smith noted that Hall had co-operated with the investigation and that this had been taken into account when passing sentence. Nonetheless, he told Hall that "[i]n any view, this was an extremely serious use of corruption. ... There was a reluctance by you to accept that what was done by you was as corrupt as it so obviously was."

The collapse of the case against Victor Dahdaleh is considered in our [December 2013 edition](#) of Financial Crime Update.

UK: Supreme Court rules that bribes and secret commissions are property of principal

Overturning long-existing authority, the Supreme Court has ruled that bribes and secret commissions received by an agent should be treated as the property of its principal, giving the principal a proprietary remedy against the agent and not merely a claim for equitable compensation. The Supreme Court also noted that there is currently considerable concern worldwide about the impact of bribery and corruption. It considered that there are good public policy reasons why the law should be particularly stringent when dealing with claims against agents for bribery or secret commission.

Upholding the Court of Appeal judgment, the Supreme Court held that a secret commission received by the defendant, Cedar Capital Partners LLC, when acting as agent for FHR European Ventures LLP ("FHR") in the purchase of the issued share capital in a hotel in Monte Carlo, was to be treated as the property of FHR, giving rise to a proprietary claim on behalf of the FHR and not merely a claim for equitable compensation. Prior to this decision there were two lines of authority stretching back over 200 years and giving rise to opposing principles: that money received by an agent as a secret commission or bribe would be held by the agent on trust for its principal (the "Proprietary Rule"); and the conflicting view that in such a case the principal would have merely a claim for equitable compensation but no proprietary interest in the bribe or secret commission. This latter strain was most recently approved by the Court of Appeal in *Sinclair Investments (UK) v Versailles Trading Finance Ltd* [2011].

However, the Supreme Court has now found that there are practical and policy considerations for holding that the Proprietary Rule applies to all unauthorised benefits acquired by an agent and not just those derived from assets which were, or should be, the property of the principal. In doing so it expressly overruled *Sinclair* and the line of cases preceding it, saying that the law had taken a "wrong turn" in the nineteenth century cases of *Tyrrell v Bank of London* (1862) and *Metropolitan Bank v Hieron* (1880).

This decision should make it easier for a principal to recover benefits obtained by agents in breach of fiduciary duty. The agent will be considered a constructive trustee for its principal and obliged personally to account for any benefits it receives. Furthermore, in the event of the agent's insolvency, the

principal will be able to claim priority over other creditors, and use trust principles to trace property that has passed into the hands of third parties.

Case: *FHR European Ventures LLP and others v Cedar Capital Partners LLC* [2014] UKSC 45 (15 July 2014)

The judgment is available from the Supreme Court website, [here](#).

Policy and Practice

Hong Kong: Regulators maintain focus on money laundering risks within the financial industry

It has been reported in the media recently that the Hong Kong regulators have been investigating a number of financial institutions over whether their internal controls comply with the customer due diligence and record keeping requirements under Hong Kong's anti-money laundering ("AML") legislation.

On 9 July 2014, the Securities and Futures Commission ("SFC") announced that it had taken enforcement action against a securities firm in relation to deficiencies in AML controls and, in particular, policies and procedures for dealing with suspicious client transactions which, under applicable legislation or regulations, must be reported to the SFC and the Joint Financial Intelligence Unit (a government body which receives, analyses and disseminates suspicious transaction reports to the appropriate investigative unit).

With the recent establishment of the Hong Kong Monetary Authority's new Anti-Money Laundering and Financial Crime Risk unit, which is tasked with conducting an increasing number of on-site inspections of financial institutions in 2014 and beyond, more enforcement actions regarding AML failing could be expected.

U.K.: FCA Annual Report and Anti-Money Laundering Annual Report 2013/14 released

On 10 July 2014, the FCA published its second [Anti-Money Laundering Annual Report](#) (the "AML Report"). This suggests that the regulator still has considerable concerns about the extent to which firms, in particular members of the larger banking groups, are able to counter the risk that their organisations will be used to facilitate financial crime. The FCA has now conducted six of its new "deep dive" strategic AML reviews ("SAMLP"), which are designed to test the robustness of firms' internal AML controls at every level of the organisation. It intends to conduct such assessments in respect of 14 of the major retail and investment banks operating in the UK. SAMLP, in conjunction with other thematic work, has revealed a number of common weaknesses in areas such as governance and oversight of AML risk, the management of high-risk customers, due diligence and decision-making, which have resulted in firms taking "unacceptable money-laundering risks".

Where inadequate systems have been identified, the FCA states that it has taken action to ensure that firms remedy the issues it has uncovered. This has included securing attestations from senior managers that the required work has been undertaken, in keeping with the FCA's view that addressing financial crime risk should be a board level concern.

In accordance with its desire to intervene earlier to prevent regulatory issues arising, the report states that in the past year, six banks have provided assurances that they would not enter into certain types of high-risk relationships until they resolved weaknesses within their AML systems. Although it acknowledges that senior management in the larger banks are now engaging more with AML issues, the AML Report concludes that *"large banks in particular still have a substantial amount of work to do"*, even where members of their groups had previously been subject to regulatory action and notwithstanding the FCA's clear focus on AML and anti-bribery controls in recent years. The FCA concludes that private banks and wealth management firms are now outperforming retail and wholesale banks in this area.

Both previous fines (even in unrelated business areas) and a failure to address issues to which the FCA has given clear and repeated public attention are considered to be aggravating factors when applying the FCA's new fining policy. The risks to firms whose AML systems and controls are found wanting of incurring a substantial fine are, therefore, considerable. Ensuring that firms guard against financial crime risks remains firmly at the top of the FCA's supervisory and enforcement agenda.

Legislation

U.S.: The U.S. and others extend temporary sanctions relief for Iran

On July 19, 2014, the United States, the United Kingdom, Germany, France, Russia and China ("the P5+1") renewed the Joint Plan of Action ("JPOA") temporarily suspending certain Iran-related sanctions during ongoing negotiations related to Iran's nuclear program. As a result of the renewal, the temporary sanctions relief period, originally created on November 24, 2013, was extended to cover the period beginning July 21, 2014, and ending November 24, 2014.

On November 24, 2013, the P5+1, together with the Islamic Republic of Iran ("Iran"), reached an initial understanding as outlined in the JPOA. The goal of the JPOA is to reach an agreement with Iran that ensures that Iran's nuclear program will be for peaceful purposes and will be rolled back in certain respects. The JPOA can be accessed [here](#).

In connection with the JPOA, the U.S. Department of State and the U.S. Department of the Treasury's Office of Foreign Assets Control ("OFAC") implemented temporary sanctions relief in respect of certain activities and associated services taking place exclusively within the six month relief period, which began on January 20, 2014.

The renewal of the JPOA will extend the terms of the initial sanctions until November 24, to allow for continued negotiations around Iran's nuclear program. Under the extension, the United States Government ("the USG") retains its authority to revoke the temporary sanctions relief at any time. In addition, none of the sanctions relief outlined in the JPOA may involve a U.S. person, or, as applicable, a foreign entity owned or controlled by a U.S. person, if the activity engaged in is otherwise prohibited under U.S. sanctions.

Broadly summarized, and subject to certain exceptions, the sanctions relief essentially provides for:

- the temporary suspension of U.S. sanctions on Iran's petrochemical exports, as well as on any associated services;
- the temporary suspension of U.S. sanctions on Iran's auto industry, as well as associated services;
- the temporary suspension of U.S. sanctions on gold and precious metals, as well as associated services;
- the temporary licensing of the supply and installation in Iran of spare parts for Iranian civil aviation and associated services; and
- certain sanctions relief related to Iran's crude oil sales.

Guidance relating to the provision of the temporary sanctions relief can be accessed [here](#).

It should be noted that the sanctions relief authorized by the JPOA is limited, and the rules governing it are complicated. As such, the advice of counsel should be sought before engaging in activity encompassed by the JPOA.

U.S.: Obama administration extends sanctions against Russia

On July 16, 2014, President Barack Obama announced the imposition of a new round of US sanctions against Russia. The new sanctions target major sectors of Russia's financial, energy and defense industries.

The new sanctions, issued pursuant to Executive Order 13662, are aimed at altering Russia's global financial relationships and will restrict access to US capital markets for Russian enterprises such as state-owned Rosneft, Russia's largest oil producer, and state-controlled Gazprombank, the financial arm of gas giant Gazprom. Other targets of the sanctions included Vnesheconombank or VEB, the State Economic Development Bank and Novatek.

The Office of Foreign Assets Control's ("OFAC") Sectoral Sanctions Identifications ("SSI") list sets out further businesses and individuals who are impacted by the new sanctions. The SSI list is available [here](#).

In summary, the measures will prohibit transactions by U.S. persons or persons within the United States, in respect of the persons listed in the SSI,

which amount to transacting in, providing financing for, or otherwise dealing in new debt of longer than 90 days maturity or new equity of these persons, their property, or their interests in property.

The extension of U.S. sanctions against Russia come as the European Council in Brussels unveiled its own list of measures cutting European investment in Russia and specifically instructing the European Investment Bank to suspend the financing of new projects in Russia.

Earlier U.S. sanctions were primarily targeted at individuals through a series of Executive Orders issued by President Obama in March of this year. Our earlier publication outlining the details of this Executive Order can be accessed [here](#). Additional information regarding OFAC's Ukraine-related sanctions can be accessed [here](#).

Other news

Financial Crime Update will take a break over the summer. The next edition will be published in September 2014.

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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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