

A “Pivotal Time” for the UK Serious Fraud Office: SFO Secures First Convictions Against Individuals and a Corporation for Bribery Offenses

In December 2014, the U.K. Serious Fraud Office (“SFO”) secured its first criminal convictions against a number of individuals for offenses under the Bribery Act 2010 (the “Act”) and, in a separate case, a corporation for offenses under the Prevention of Corruption Act 1906 (a predecessor to the Act). The convictions mark a significant turning point for an agency which has arguably been hindered by the principles of English law in establishing corporate criminal liability and has also faced heavy criticism for apparent failings in its conduct of investigations, as well as its ability to lead effective prosecutions. As the Director of the SFO, David Green, stated in a speech in November 2014, “*This is an important, if not pivotal time for the SFO.*”¹

The convictions secured against three individuals on December 5, 2014, the first achieved by the SFO since the Act came into force in July 2011, followed an investigation by the SFO into the sale and promotion of investments in the U.K. by Sustainable AgroEnergy plc (“SAE”). Investors were sold investment products based on “green biofuel” tree plantations in Cambodia and were deliberately misled to believe the company owned land in the country. In addition to convictions for fraud imposed against all three individuals, two of the defendants, one a former director of SAE and the other a third party agent engaged by SAE, were found guilty of bribing another person and receiving a bribe (under sections 1 and 2 of the Act respectively). The pair conspired to produce false sales invoices valued at £3million. This allowed SAE’s sales agent to obtain a 65 percent commission rate on investors’ funds, while the SAE director received bribes for assisting in the production of the false invoices.² All three were sentenced to a total of 28 years imprisonment.

In a statement after the convictions were announced, David Green highlighted that the SFO’s success in this case “*demonstrates...the SFO’s ability and determination to bring criminals to justice.*”³ The agency has faced mounting pressure to deliver on its promise to proactively and effectively tackle complex bribery cases. Until now, only the Crown Prosecution Service (the “CPS”) has managed to secure convictions under the Act. The CPS is, however, responsible for only low-level, non-complex bribery offenses.

The SFO’s successful criminal prosecution of a U.K. company for pre- Bribery Act offenses, the first corporate conviction achieved by U.K. prosecutors for bribery offenses of foreign officials, is perhaps even more significant. The SFO announced in late December 2014 that a U.K. printing company, Smith and Ouzman Ltd, and two of its employees had been convicted for paying bribes totaling £395,074 to public officials for business contracts in Kenya and Mauritania.⁴ The difficulty in establishing corporate criminal liability under English law, the so-called “directing mind and will” test, has often been cited by commentators as one of the fundamental challenges facing the SFO and other U.K. prosecutors when pursuing corporate defendants. Significantly, the SFO has initiated proposals to expand the corporate offense under the Act to include a company’s failure to prevent “acts of financial crime” (including bribery, fraud and money laundering offenses) by its associated persons.⁵ If implemented, this would remove the need to meet the “directing mind and will” test and further enable the SFO to take action against companies, rather than just the individuals who commit these offenses.

¹ [Speech by David Green](#), Director of the SFO, to Pinsent Masons Regulatory Conference (October 23, 2014)

² [SFO Press Release](#) (December 5, 2014)

³ [SFO Press Release](#) (December 5, 2014)

⁴ [SFO Press Release](#) (December 22, 2014)

⁵ [Speech by David Green](#), Director of the SFO (September 2, 2014)

The sentences imposed also mark another first for U.K. prosecutors. The individuals in the SAE case were sentenced under the U.K.'s new Sentencing Guidelines, recently implemented in October 2014.⁶ These introduced a formulaic approach to sentencing, similar to that already followed in the U.S.

Comparisons with the U.S.' approach and robust track record on enforcement are inevitable; nonetheless, the convictions in the U.K. are an important step in building public confidence in the SFO's ability to enforce the Act. The agency has been widely criticized for its apparent mismanagement of investigations (particularly in relation to the Tchenguiz case) and, until the Smith and Ouzman case, its failure to secure the criminal conviction of a company for bribery offenses.

These comparisons are not entirely justified – it took several years after the introduction of the U.S. Foreign Corrupt Practices Act (“FCPA”) in 1977 before the number of prosecutions reached current levels. Further, under the Act a senior officer of a company cannot be held liable for the corporate offense of failing to prevent bribery, unlike the FCPA which can impose liability on a senior officer for a company's failure to devise and maintain adequate anti-corruption controls and ignoring of red flags.

As another point of difference between U.S. and U.K. enforcement, Deferred Prosecution Agreements (“DPA”) widely relied upon in the U.S. were only recently introduced in the U.K. in February 2014, and the SFO has yet to enter into its first DPA.

In light of these challenges, these first convictions are significant for the SFO and undoubtedly evidence the beginning of a more proactive phase of enforcement.

For further information concerning this development, please contact your usual Ropes & Gray attorney.

⁶ Sentencing of the individuals and company in the Smith and Ouzman case is scheduled for February 12, 2015.