

Client Alert.

10 December 2012

UK Serious Fraud Office Focuses on Overseas Corruption with Rolls Royce Investigation

By Kevin Roberts and Duncan Grieve

Aerospace and defence companies, foreign intermediaries and anti-corruption legislation are back in the spotlight. On December 6th, Rolls Royce Holdings plc, the world's second-largest manufacturer of aircraft engines, announced that it had passed information to the UK Serious Fraud Office (SFO) relating to concerns about bribery and corruption. Rolls Royce stated that its disclosure may lead to the prosecution of individuals and the company itself.

The allegations relate to past conduct (therefore likely not covered by the Bribery Act 2010) involving intermediaries in China, Indonesia and elsewhere and were brought to the attention of the SFO by a whistleblower earlier this year. At the request of the SFO, Rolls Royce conducted an internal investigation with the assistance of an external law firm and has now passed on areas of concern, identified by the investigation, to the SFO.

These developments represent another high-profile investigation in the aerospace and defence sectors. This year the SFO has announced several active investigations in these areas. In August 2012, the SFO launched a criminal investigation into the European Aeronautic Defence & Space Co. (EADS) in relation to contracts in Saudi Arabia. EADS has also stated that it is cooperating with an investigation into the sale of fighter jets to the Austrian air force. The £280-million fines imposed on BAE Systems by the UK and U.S. authorities in February 2010 serve as a reminder of the potentially severe consequences for companies who are prosecuted.

The UK authorities are focusing intently on overseas corruption, and the pace of activity seems to be increasing. The coming into force of the Bribery Act 2010 in July 2011 represented just the start of that process, as emphasized by revised policy statements published by the SFO and the UK Director of Public Prosecutions on 9 October 2012. The statements and their accompanying press releases make clear that the SFO intends to operate as an investigator/prosecutor and not in a collaborative, quasi-regulatory role. The new Director of the SFO has stated that *"corporates cannot be seen to be allowed some special kid glove treatment"* and that *"there will be no presumption in favour of civil settlement in any circumstances"*.

In focusing on the aerospace and defence sectors, the UK authorities seem to be following a path forged by their U.S. counterparts. When the U.S. authorities started mounting cases against corporates under the Foreign Corrupt Practices Act 1977 in the late '70s and '80s several of the first targets were companies in the aerospace and defence industries (Page Airways and W.S. Kirkpatrick being high-profile examples). In their efforts to mount more high-profile corruption investigations, the SFO seems to be following the same route.

These industries are seen as vulnerable to corruption because secretive deals with government officials are often viewed as a necessary part of the business. In locations where they do not have an established presence, aerospace and defence companies also rely heavily on intermediary companies. Problems can arise when the conduct of these intermediaries is not scrutinised. All companies with foreign operations need to exercise vigilance over the conduct of their intermediaries, especially in high risk regions, and be proactive if problems are encountered.

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