

Bribery and corruption—looking ahead to 2016

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Corporate Crime analysis: Neil Swift, partner in the business crime team at Peters & Peters, looks ahead to the likely developments in 2016 in the area of bribery and corruption.

Legal developments and practical impact

How is 2016 shaping up in terms of important cases and legislative developments?

This year saw the first contested case of bribery against a corporate, Smith & Ouzman Limited, successfully prosecuted by the Serious Fraud Office (SFO). Clear evidence of senior executives' direct involvement in the wrongdoing, who themselves were successfully prosecuted, meant that the 'identification principle' was easily satisfied. Others will not be so straightforward.

In May 2016 we expect the trial of Alstom Network UK Limited to commence at Southwark Crown Court. The trial will be the first of three following an SFO investigation into alleged corruption and bribery at the Alstom group involving a number of jurisdictions. The case will be a real test of the SFO's ability to prosecute corporate wrongdoing. Alstom is a large multinational group of companies with a highly complex governance structure. It remains to be seen whether the SFO will find the 'identification principle' fit for purpose in a contested case involving a complex corporate structure.

We also expect to see at least one further DPA. We understand that there are a number at various stages of negotiation with the SFO.

How will these developments affect your cases and working life?

The SFO's prosecution of Alstom will be watched very closely. If the identification principle can be successfully applied in the prosecution of a modern multinational, then corporates might have more of an incentive to report their own wrongdoing. As it stands, the attraction of a DPA is somewhat diluted by the difficulty and hence relatively low risk of discovery and criminal enforcement.

What would you like to see in 2016?

The justification expressed by the government in shelving expansion of the 'failure to prevent' model was that there was little evidence of corporate economic wrongdoing going unpunished. This is at best naïve, and at worst disingenuous--if we accept that as a matter of public policy corporates should be held criminally liable for criminal offences which have, as one of their effects, economic benefit to the corporate, then there should be a mechanism to hold them to account before a criminal court. What we have at the moment is either limited to specific offences, difficult to enforce, or involves 'softer' regulatory rather than criminal enforcement. This area of the law has been crying out for reform for many years.

Of course, unless and until we have a more effective mechanism for holding corporates to account for crime, the only way for prosecuting agencies and governments to demonstrate that they take corporate wrongdoing seriously is to devote appropriate resources to investigating and prosecuting as best they can under our existing laws.

Clients and business developments

How might the expected developments in 2016 affect your business and clients?

Clients tend to seek our advice when they are contacted by law enforcement or perceive a risk that they will be. Any increase in enforcement activity will have a dual effect--on those in the SFO's sights, and on those who think they might have a problem.

Corporate clients will also start to see how DPAs work in practice. We have one example, with more anticipated in the near future. One of the main considerations for all clients is certainty about the sort of outcome they can expect to

achieve. To date it has been difficult to advise corporates on the issue of self-reporting given the lack of concluded DPAs. The more we see, and the more the SFO decide instead to prosecute, the more certainty we will have.

Interviewed by Kate Beaumont.

The views expressed by our Legal Analysis interviewees are not necessarily those of the proprietor



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