

# Serious Fraud Office concludes deferred prosecution agreement with Tesco Stores Limited

On 10 April 2017, a deferred prosecution agreement ("DPA") agreed between the UK Serious Fraud Office ("SFO") and Tesco Stores Limited ("TSL") was approved by the Court. This is the fourth DPA to be concluded since their introduction in February 2014. At this stage, only a few details may be reported in order to avoid prejudicing ongoing proceedings against three individuals.

## The DPA

The total financial costs to Tesco PLC (of which TSL is a wholly owned subsidiary) will be £235 million, comprising £129 million in respect of the DPA, the expected costs of a separate compensation scheme agreed with the UK Financial Conduct Authority ("FCA") of £85 million and related costs.

Provided TSL complies with the terms of the DPA, an investigation by the SFO into it and Tesco PLC, commenced in October 2014, is now at an end.

The DPA follows a separate settlement between Tesco PLC and TSL and the FCA relating to a

statement made to the markets on 29 August 2014 based upon accounting inaccuracies (which was later corrected on 22 September

2014). Under that settlement, which involved the use by the FCA of its powers to require restitution in market abuse cases, redress will be paid to investors who incurred losses. For full details, see our separate **Clifford Chance briefing**.

## The Enforcement Landscape

The DPA has been concluded at a time when the SFO, whilst reiterating its commitment to

prosecuting corporate misconduct, continues to seek to encourage early self-reporting and proactive assistance from corporates by reminding them of the benefits of DPAs. When

### DPAs in the UK

DPAs provide for criminal charges to be laid but not proceeded with provided the corporate organisation concerned complies with a set of agreed conditions. Under the Crime and Courts Act 2013, in order for a DPA to be approved, a judge must be satisfied that it is in the interests of justice for the matter to be the subject of a DPA rather than an immediate prosecution and that the proposed terms are fair, reasonable and

details can eventually be reported, this case will provide further useful clarity to corporates as to the key ingredients of cooperation justifying DPAs.

For the time being though, it is necessary to look to the three previous concluded DPAs for guidance on issues such as whether self-reporting is necessary in all cases, who should take first accounts from witnesses and how much control the SFO expects to have over internal investigations. For more details, see our Clifford Chance briefings in relation to the DPAs agreed with **Standard Bank** and **Rolls-Royce PLC**.

The DPA has been approved at a time when the question of how best to approach corporate criminal liability is the subject of much continuing discussion in the UK and other jurisdictions.

The UK government has recently undertaken an exercise seeking views on ways in which the current law could be updated to counter some of the difficulties faced by prosecutors seeking to attribute the acts of individual employees to the corporate using the "identification principle". Prosecutors have pointed to the need to show that the individual committing the misconduct in question amounted to the "directing mind and will" of the organisation as an impediment to prosecution where cases cross borders and involve large and complex organisations. Responding to these concerns, the UK government has mooted options including the extension of the scope of the current offence of

failing to prevent bribery (under section 7 of the Bribery Act 2010) and the equivalent offence relating to the facilitation of tax evasion (soon to be brought onto the statute books by the Criminal Finances Bill). For more details of the proposals made, see our **Clifford Chance briefing**.

One of the reasons put forward as a justification for changes is that a more realistic prospect of prosecuting corporates for a range of economic offences may catalyse self-reporting. Corporates and their advisers, responding to the Call for Evidence paper, have questioned the basis for this suggestion, noting that it is still too early to reliably assess the impact of the UK DPA regime on standards of corporate behaviour. It is noteworthy though that the OECD's March 2017 evaluation of anti-bribery measures in the UK credited the introduction of DPAs with "bolstering incentives to self-report" and it is clear from concluded and ongoing investigations that DPAs are increasingly being considered by prosecutors and corporates as a realistic option at the start of investigations.

The use of DPAs as a means of resolving criminal investigations concerning corporate misconduct is also gaining traction outside the UK, with the Australian government recently setting out its plans for the introduction of a model enabling settlements without corporate convictions.

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