

## Client Alert: Rolls-Royce case sends a strong signal

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[https://youtu.be/ut\\_zHRhEvTI](https://youtu.be/ut_zHRhEvTI)

### Introduction

Yesterday's Deferred Prosecution Agreement (DPA) with Rolls-Royce has a number of interesting aspects to it including:

### The rise of the internet

It seems according to the agreed Statement of Facts that the whole investigation started after some internet postings were discovered by the UK's Serious Fraud Office (SFO). In early 2012 the SFO raised these internet posts with Rolls-Royce and asked them to look into the matter. At that stage the allegations related only to Rolls-Royce's conduct in China and Indonesia.

### Cooperation

We have commented before on the cross-border nature of bribery enforcement. Almost all of the recent bribery cases brought by the SFO have involved some element of cross-border co-operation. That is certainly very evident here with the announcement that Rolls-Royce has simultaneously entered into agreements with prosecutors in the UK, US and Brazil. At the same time the prosecution team received assistance from authorities in Austria, Germany, the Netherlands, Singapore and Turkey.

In addition the countries involved in the conduct were wide ranging including Indonesia, Thailand, India, Russia, Nigeria, China, Kazakhstan, Brazil, Azerbaijan, Angola, Iraq and Malaysia.

### Size

The amount of the agreed payments is substantial – around £497m plus costs to the UK authorities; \$167m to the US (reduced from \$195m after credit) and just over \$25m to Brazil. The combined payments of around \$807m at today's exchange rates are almost the same as Siemens paid the US Government in 2008 in their initial settlement and make it one of the largest bribery settlement there has been.

In addition, Rolls-Royce told the court that they estimated that the costs of the enquiry as at the end of 2016 were just over £123 million.

### Use of agents

The use of agents is a key feature of the case. It sends a message that corporations need to supervise those who do business on their behalf. Rolls-Royce told the court that 88 intermediaries had been suspended as a result of the investigation.

### Individuals

In the UK corporate entities can enter into DPAs but individuals can not. Rolls-Royce's agreement with prosecutors includes an agreement to assist with the ongoing investigation into some of the individuals involved. These investigations are not limited to the UK. For example it has been reported that the Indonesian authorities are investigating individuals at Garuda Indonesia who allegedly received payments from Rolls-Royce.

Rolls-Royce told the court that it had started disciplinary proceedings against 38 employees and that 17 of those had now left the business.

We can also expect more news about investigations into other corporations including Airbus whose planes were involved in some of these deals and who are already under investigation for their part in alleged bribery schemes. Details of transactions with Gazprom also appear in the Statement of Facts.

### **'Education' will be looked at**

In our Bribery FAQs (<http://www.corderycompliance.com/uk-bribery-act-2010-faqs/>) we talked about the Guidance issued by the UK Ministry of Justice for business under the Bribery Act 2010. One key area of focus for that guidance was the use of educational opportunities as a way of giving someone an advantage. That seems to be another feature of this case with Chinese officials receiving trips to New York to study for an MBA. Whilst there Rolls-Royce paid for a stay in a 4-star hotel (the W in Times Square) and what the court hears were 'lavish extra-curricula activities'. The MBA program seems to have cost Rolls-Royce around \$3m. A Chinese travel agent received \$100,000 alone for evening venues, meals and transportation. Trips included meals at Peter Luger steakhouse and shopping trips to Woodbury Common. It is fair to say that the New York University which organized the trip for the Chinese officials does not seem to be beyond criticism and this may be another area where we will see additional investigations. Since this conduct took place after the Bribery Act 2010 came in it is troubling that this was not picked up as an issue by others especially since a senior director of the University was aware of the 'entire package'..

Similarly the case confirms that gifts are also in scope – for example the corrupt conduct here included the gift of Rolls-Royce branded watches to officials of a state-owned energy company.

### **Scope of the investigation**

It is clear that this was a large investigation. It involved 229 internal investigation interviews and, as is common in this type of investigation, regular reporting sessions with the UK and US authorities. 250 third party relationships were reviewed with 120 of them coming in for close analysis.

EDiscovery techniques were used heavily too. The complete email accounts of more than 100 current or former employees were made available to the SFO. This and other targeted enquiries led to a digital examination of more than 30 million documents. Last month we wrote about the SFO's increasing use of digital techniques and big data in investigations (see <http://www.corderycompliance.com/bribery-prosecutions-and-big-data/>). This case is a clear example of that, especially when combined with Rolls-Royce's commitment to keeping the data in the jurisdiction and available for further analysis.

### **Synonyms for bribes**

We have talked before in our alerts about the many synonyms use to describe corrupt behaviours. The Statement of Facts shows an awareness on behalf of some employees that their emails could be looked at. One employee for example says:

*"I told [the Rolls-Royce employee in Russia] on Monday I do not want to see any of this stuff appearing in an email in future. If he does it again, I'll bring him back to London so we can give him a face-to-face scrubbing."*

As a result various synonyms were used for bribes including:

- Insurance
- Deferred marketing cost
- Dispersal
- Success fee
- Marketing expenses

Anyone currently conducting an investigation would be wise to make sure that these and similar terms are included in initial key word searching. Those involved in the scheme also looked at other ways of communicating including BlackBerry Messenger presumably to try and avoid detection.

### **Offences under the old and new regime**

Given the length of time covered by the corrupt activity this case involved both the pre- and post- Bribery Act 2010 regime. Only offences after 2011 can be charged under the Bribery Act 2010 and so the UK's former legislation was used for the earlier offences. It shows however that the SFO are prepared to use the new s.7 failure to prevent offence in the Bribery Act 2010 when they can.

### **DPAs are here to stay**

We've looked at the DPA system in connection with two other cases ICBC Standard Bank (<http://www.corderycompliance.com/uks-first-dpa/>) and XYZ (<http://www.corderycompliance.com/recent-developments-in-bribery-and-corruption/>). Clearly this case is more significant and shows that, whilst unloved by some, DPAs are here to stay.

### **Lessons to be learned**

The case illustrates a number of points including:

1. Rumours of the death of the UK Bribery Act 2010 were premature – the Act does have teeth and the case shows the SFO's intention to play their role in investigating and prosecuting corrupt conduct;
2. Companies need to supervise those they do business with properly – this will include their sales channel. We think this will be a key trend in compliance for 2017 – you can find out more in our video predictions here - <http://www.corderycompliance.com/predictions-for-2017-the-rise-of-the-digital-world/>
3. Management is expected to help stamp out corruption too – if they do not there may be personal consequences;
4. Proper policies, procedures and training must be put in place; and
5. Companies must properly investigate bribery promptly – this will enable them to secure some resolution without the need for court proceedings if appropriate. Here Rolls-Royce did get some credit for their co-operation even though the case was not self-reported by them because they acted quickly and thoroughly to get to the bottom of what had gone on.

There is background on the DPA regime here – <http://www.corderycompliance.com/uks-first-dpa/>

There are details of Cordery's work in this area here <http://www.corderycompliance.com/bribery-corruption/> and here <http://www.corderycompliance.com/internal-investigations/>

We've updated this article since 18 January to reflect more recent developments.

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