

**TACKLING FOREIGN BRIBERY**

**MEMORANDUM OF UNDERSTANDING (MoU)**

**1. Overview**

- 1.1. The UK is a signatory to Conventions that establish legally binding standards to criminalise bribery of foreign public officials and officials of public international organisations. For details of the Conventions refer to Annex 1.
- 1.2. This MoU is made against the background of the United Kingdom's international obligations to combat corruption and reflects the common interest of the Participants in the detection, investigation and prosecution of foreign bribery perpetrated by individuals or corporates with a link to the United Kingdom. It includes the regulation and enforcement of the requirement to have systems and processes to guard against bribery in the regulated financial sector.
- 1.3. The purpose of the MoU is to outline the foreign bribery remit and focus of each Participant, and set out the mechanisms by which the Participants will co-ordinate the UK's response to foreign bribery.
- 1.4. It replaces the Tackling Foreign Bribery MoU agreed in May 2014.

**2. Participants to the MoU**

2.1. The Participants to this MoU ("the Participants") are:

- Crown Office and Procurator Fiscal Service
- Crown Prosecution Service
- Financial Conduct Authority
- Her Majesty's Revenue and Customs
- Ministry of Defence Police
- National Crime Agency
- Serious Fraud Office

**3. Legal status and effect and information sharing**

3.1. Nothing in this MoU shall, or is intended to:

- a. create any legal or procedural right or obligation which is enforceable by any Participant against the other Participants; or
- b. create any legal or procedural right or obligation which is enforceable by any third Participant against any of the Participants, or against any other third Participant; or
- c. prevent either of the Participants from complying with any law which applies to them; or
- d. fetter or restrict in any way whatsoever the exercise of any discretion which the law requires or allows the Participants to exercise; or

- e. create any legitimate expectation on the part of any person that either of the Participants will do any act (either at all, or in any particular way, or at any particular time), or will refrain from doing any act.

3.2. The Participants will rely on section 7(1) of the Crime and Courts Act 2013 (CCA) and any other gateway available to them to disclose information to the NCA.

3.3. All UK Participants are legally obliged to handle personal information according to the requirements of the Data Protection Act 1998 and the Human Rights Act 1998.

#### **4. Remit of the Participants in relation to Foreign Bribery**

##### 4.1. Crown Office and Procurator Fiscal Service (“COPFS”)

The COPFS under the authority of the Lord Advocate is responsible for the prosecution of crime in Scotland.

The COPFS:

- Is the lead authority for receiving, investigating and prosecuting all allegations or reports of foreign bribery in or from Scotland, involving a UK national, partnership or corporate body or non-UK “relevant commercial organisation” (as defined by section 7(5) of the Bribery Act 2010). This includes allegations which come to the attention of any Participant to this MoU.
- Pursues criminals for the financial benefit they have made from crimes committed wholly or partly within the Scottish jurisdiction.
- Supports (including through Mutual Legal Assistance) overseas jurisdictions with their investigations into serious and complex fraud, bribery and corruption.

Where COPFS encounters a case that appears to have a significant English, Welsh or Northern Irish element, COPFS will refer that case to the Clearing House (see 5.2 below) for discussion with a view to agreeing which agency is best placed to lead.

##### 4.2. Crown Prosecution Service (“CPS”)

The CPS prosecutes entities subject to the jurisdiction of the Courts of England and Wales or of Northern Ireland who engage in commercial bribery and corruption (and related money laundering) which have been investigated by the NCA, the police or other government departments.

The CPS may also pursue criminals for the financial benefit they have made from their crimes.

The CPS has a duty to take over all cases investigated by the police, the NCA and other investigators with which it has a statutory relationship or whose work has been assigned to it by the Attorney General.

##### 4.3. Financial Conduct Authority (“FCA”)

The FCA requires firms authorised under the Financial Services and Markets Act 2000 (“FSMA”) to put in place and maintain policies and processes to prevent bribery and corruption both by the firms and by the firms’ clients. This is additional to obligations

imposed under the Bribery Act 2010, for which the FCA is not a lead prosecuting authority. Where appropriate, the FCA will consider whether there are grounds for regulatory action for failure to put in place adequate anti-bribery and corruption policies and processes to mitigate bribery and corruption risk.

The FCA assesses allegations or reports of bribery and/or corruption by FSMA-authorized firms and will carry out enquiries as appropriate based on our assessment. Where the FCA identifies a case that is relevant to this MoU, it will refer the case to the Clearing House and/or directly to other agencies (see 5.2 below).

#### 4.4. Her Majesty's Revenue and Customs (HMRC)

HMRC, where finding a payment that may be considered an offence under the Bribery Act 2010 in respect of the offer, the giving or accepting bribes in the UK or overseas, will seek to disallow such payments from the Computation of the Profits of any UK Business. HMRC will only raise the possible disallowance of an expense on the grounds that it is a criminal payment where they find clear evidence that it may be such a payment.

HMRC would work within the scope of the Anti-Terrorism, Crime and Security Act 2001 ("ATCSA"); the Crime and Courts Act 2013 ("CCA") and other applicable legislation to share the information with regards to such payments. The ATCSA 2001 permits the disclosure of information which will be used for the purposes of a criminal investigation or proceedings, or for the initiation or termination of an investigation or proceedings.

HMRC will also consider whether information relating to payments made to foreign residents will be of assistance to overseas Revenue Agencies, given the receipt may be taxable in the hands of the recipient. The UK is obliged under the treaty to consider spontaneously providing such information to a treaty partner, and HMRC will work to facilitate such disclosures, subject to any considerations under the Commissioners for Revenue and Customs Act 2005 ("CRCA"). HMRC would only make such a disclosure where consideration is given under the terms of this MoU to the wider UK law enforcement position.

HMRC has specific legislation within the CRCA 2005 which covers the confidentiality of information held by the department, when it is lawful to disclose that information and details the legal sanctions for wrongful disclosure. For HMRC, disclosure of information can only be made in certain limited circumstances (broadly, for the purposes of its functions, where there is a legislative gateway or with customer consent). Unlawful disclosure relating to an identifiable person constitutes a criminal offence. The criminal sanction for unlawful disclosure is detailed at section 19 of the CRCA 2005.

As specified in the CRCA 2005, the Participants will not disclose data supplied by HMRC to any outside organisation unless permitted or required by law and will not disclose without prior approval by HMRC.

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#### 4.5. Ministry of Defence Police ("MDP")

The MDP is responsible for investigating allegations of overseas bribery and corruption committed by MoD personnel.

#### 4.6. National Crime Agency (“NCA”)

The focus of the NCA International Corruption Unit (“ICU”) is to:

- Investigate money laundering in the UK resulting from grand corruption overseas.
- Trace and recover the proceeds of international corruption.
- Support foreign law enforcement agencies with international anti-corruption investigations.
- Investigate cases of bribery involving UK-based entities which have an international element and other cross-border bribery with a UK nexus where the predominant operational requirement is the NCA’s specialist capabilities.

#### 4.7. Serious Fraud Office (“SFO”)

In relation to foreign bribery, the focus of the SFO is to:

- Investigate (and prosecute, if appropriate) entities subject to the jurisdiction of the Courts of England and Wales or of Northern Ireland who engage in commercial bribery and corruption (and related money laundering) where the predominant capability requirement is the multi-disciplinary approach and legislative powers available to the SFO (i.e. the Roskill model).
- Pursue criminals for the financial benefit they have made from their crimes.
- Support (including through Mutual Legal Assistance) overseas jurisdictions with their investigations into serious and complex fraud, bribery and corruption.

The Director of the SFO may investigate any suspected offence which appears to him on reasonable grounds to involve serious or complex fraud. In considering whether to take on an investigation, the Director of the SFO considers:

- whether the matter undermines UK commercial / financial plc in general and in the City of London in particular;
- whether the actual or potential loss involved is high;
- whether actual or potential harm is significant;
- whether there is a very significant public interest element and
- whether there is a new species of fraud.

### 5. **Mechanisms for co-ordination**

#### 5.1 Foreign Bribery Register

- a. The NCA will continue to maintain the Foreign Bribery Register (‘the Register’) which records all credible factual allegations of foreign bribery, including bribery of foreign public officials, received by the Participants. The register also records details of the Participants’ active investigations and prosecutions concerning foreign bribery.

- b. The NCA will maintain the Register in such a way that the data may be analysed and interrogated to identify commonalities, trends and other thematic information.
- c. The Participants will promptly record all credible factual allegations of foreign bribery on the Register and provide updates on recorded matters on a monthly basis so that they may be considered by the Bribery Intelligence Clearing House.

## 5.2 Bribery Intelligence Clearing House

- a. The Participants will convene monthly, or when required, to hold a meeting of the Bribery Intelligence Clearing House.
- b. The purpose of the Clearing House is to:
  - i. discuss and co-ordinate intelligence development for all new foreign bribery allegations;
  - ii. agree the appropriate lead agency for new foreign bribery allegations;
  - iii. on a quarterly basis, review the OECD Working Group on Bribery Matrix of Foreign Bribery Allegations for the UK and initiate further enquiries in line with the terms of this MoU and remit of the Participants' or provide the UK OECD secretariat with updates or recommendations for deletions;
  - iv. identify those matters that may require a multi-agency response; and
  - v. provide the Bribery, Corruption and Sanctions Evasion Threat Group with an overview of the operational response to foreign bribery.
- c. The NCA will act as Chair of the Clearing House and be responsible for the administration of the Clearing House.
- d. Each Participant in attendance will be represented by an individual who has authority to agree primacy and make initial acceptance decisions on behalf of their organisation.
- e. Other agencies may be invited to contribute to and attend the Clearing House meeting as appropriate.
- f. The Clearing House is not a formal tasking mechanism.

5.3 In deciding the appropriate lead agency, the Participants will be guided by the remit and focus of each agency as set out in Section 4 above.

5.4 Where the Participants are unable to identify or agree on the appropriate lead agency, the matter will either be escalated to the Economic Crime Threat Group or fed into NCA tasking mechanisms as appropriate.

5.5 Should an agency have agreed primacy in line with this MoU, all other agencies will defer any interest, activity or engagement in the matter unless otherwise agreed with the relevant agency.

## **6 Prosecution of Offences Covered by this MoU**

6.1 In cases in which prosecution might be undertaken in more than one UK jurisdiction a decision will be made, wherever possible, in line with the responsibilities outlined in Section 4 above, earlier Clearing House discussions and any other MoUs that apply

(such as the MoU between the SFO and the COPFS regarding the prosecution of bribery, corruption or fraud offences).

6.2 Part 12 of the *Anti-Terrorism, Crime and Security Act 2001* applies only to England and Wales and Northern Ireland. Similar provision was made for Scotland by sections 68 and 69 of the *Criminal Justice (Scotland) Act 2003*, which were commenced on 28 June 2003. For offences occurring before 1 July 2011 the jurisdictional rules under this legislation will apply.

6.3 The *Bribery Act 2010* applies to England, Wales, Northern Ireland and Scotland.

## **7 Administration**

7.1 This MoU will be reviewed annually and updated as necessary.

7.2 This MoU will be made available to all police forces in England and Wales by the Director General of the NCA and distributed to the Police Service of Northern Ireland by the NCA Northern Ireland Office. A copy will also be sent to Police Scotland by the Crown Office and Procurator Fiscal Service.

7.3 This MoU may be placed on the websites of all Participants.

7.4 All Participants to the MoU will nominate a contact point to the NCA to facilitate arrangements under the MoU.

**AGREED BY THE PARTICIPANTS ON 08 MAY 2017**

**Annex 1: Relevant Conventions**

1. The United Kingdom signed the OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions on 17 December 1997 and deposited its instrument of ratification on 14 December 1998.
2. The United Kingdom signed the Council of Europe Criminal Law Convention on Corruption on 27 January 1999. The United Kingdom deposited its instrument of ratification on 9 December 2003 and the Convention came into force for the United Kingdom on 1 April 2004. The United Kingdom signed the Additional Protocol to the Convention on 15 May 2003. The United Kingdom's instrument of ratification was deposited on 9 December 2003 and the Additional Protocol came into force on 1 February 2005.
3. The United Kingdom signed the UN Convention against Corruption on 9 December 2003 and deposited its instrument of ratification on 9 February 2006.
4. These Conventions establish legally binding standards to criminalise bribery of foreign public officials and officials of public international organisations.