GUIDANCE ON CORPORATE PROSECUTIONS

Summary

1. This guidance sets out the common approach of the Director of Public Prosecutions, the Director of the Serious Fraud Office and the Director of the Revenue and Customs Prosecutions Office to the prosecution in England and Wales of corporate offending other than offences of corporate manslaughter. It has been agreed by the Attorney General. The guidance should be read in conjunction with, and is subordinate to, the Code for Crown Prosecutors.

2. Offences under the Corporate Manslaughter and Corporate Homicide Act 2007 are prosecuted by the CPS, which has issued separate guidance on those offences, see:

   http://www.cps.gov.uk/legal/a_to_c/corporate_manslaughter/.

3. There are specialist agencies that prosecute corporate offenders for specific offences under their designated statutory framework and this guidance is subordinate to those frameworks, for example the Health and Safety at Work Etc Act 1974.

Definition of Company

4. A company is a legal person, capable of being prosecuted, and should not be treated differently from an individual because of its artificial personality.

5. A company normally means a company registered under the current Companies Act 2006; or one or more of its predecessors cited in the Act; or equivalent legislation in another jurisdiction.

6. Unincorporated bodies (for example, partnerships, and clubs) may also be prosecuted where criminal liability can be established (see Archbold [2009] para 1-78 and 1-81b).

General Principles

7. A thorough enforcement of the criminal law against corporate offenders, where appropriate, will have a deterrent effect, protect the public and support ethical business practices. Prosecuting corporations, where appropriate, will capture the full range of criminality involved and thus lead to increased public confidence in the criminal justice system.

8. Prosecution of a company should not be seen as a substitute for the prosecution of criminally culpable individuals such as directors, officers, employees, or shareholders. Prosecuting such individuals provides a strong deterrent against future corporate wrongdoing. Equally, when considering prosecuting individuals, it is important to consider the possible liability of the company where the criminal conduct is for corporate gain.

9. It is usually best to have all connected offenders prosecuted together at the same time. However there are circumstances where the prosecution of a company will take place before the prosecution of connected individuals or vice versa. This may occur where there is going to be delay in initiating proceedings which could result in unfairness to one or more parties.

Establishing Company Liability

10. In the absence of legislation which expressly creates criminal liability for companies, corporate liability may be established by:

- **Vicarious Liability** for the acts of a company's employees / agents. This has some limited application at common law e.g. in relation to public nuisance. Statutes frequently impose liability on companies. This is quite common for

offences under the Road Traffic Act 1988. Many statutory / regulatory offences impose liability upon employers (corporate and human) to ensure compliance with the relevant regulatory legislation.

- **Non-vicarious liability** arising from the so-called 'identification principle'. The identification principle determines whether the offender was 'a directing mind and will' of the company. It applies to all types of offences, including those which require *mens rea*.

Limitations Governing Corporate Liability

11. The offence must be punishable with a fine (this excludes murder, treason, piracy).

12. A company cannot be criminally liable for offences which cannot be committed by an official of a company in the scope of their employment, for example rape.

13. A company can be party to a criminal conspiracy, but only with at least two other conspirators who are human beings - including at least one who is an appropriate officer of the company and acting within the scope of his authority.

Vicarious Liability

14. A corporate employer is vicariously liable for the acts of its employees and agents where a natural person would be similarly liable (Mousell Bros Ltd v London and North Western Railway Co [1917] 2 KB 836).

15. When determining if a company is vicariously liable, you must first consider the terms of the statute creating the offence. It may require *mens rea*, yet impose vicarious liability. Conversely, it may create strict liability without specifically imposing vicarious liability.

16. Normally vicarious liability will arise from offences of strict liability. These are offences which do not require intention, recklessness, or even negligence as to one or more elements in the *actus reus*. For example, all traffic offences carry strict liability unless they expressly require fault. If an offence of strict liability is committed by an employee of a company in the course of his employment, the company may

also be criminally liable. It is likely that any corporate prosecution will be linked to the prosecution of a controlling officer and/or other employees.

Corporate Liability- Offences Requiring Mens Rea- The Identification Principle

17. As noted at 2 above, companies are legal persons. They may also be criminally responsible for offences requiring *mens rea* by application of the identification principle. This is where 'the acts and state of mind' of those who represent the 'directing mind and will' will be imputed to the company – Lennards Carrying Co and Asiatic Petroleum [1915] AC 705, Bolton Engineering Co v Graham [1957] 1 QB 159 (per Denning LJ) and R v Andrews Weatherfoil 56 C App R 31 CA.

18. The leading case of Tesco Supermarkets Ltd v Nattrass [1972] AC 153 restricts the application of this principle to the actions of "the Board of Directors, the Managing Director and perhaps other superior officers who carry out functions of management and speak and act as the company".

19. This identification principle acknowledges the existence of corporate officers who are the embodiment of the company when acting in its business. Their acts and states of mind are deemed to be those of the company and they are deemed to be 'controlling officers' of the company. Criminal acts by such officers will not only be offences for which they can be prosecuted as individuals, but also offences for which the company can be prosecuted because of their status within the company. A company may be liable for the act of its servant even though that act was done in fraud of the company itself – Moore v I. Bressler Ltd [1944] 2 All ER 515.

20. In seeking to identify the "directing mind" of a company, prosecutors will need to consider the constitution of the company concerned (with the aid of memoranda/articles of association/actions of directors or the company in general meeting) and consider any reference in statutes to offences committed by officers of a company. Certain regulatory offences may require a more purposive interpretation in addition to the primary rules of attribution. In these types of offences, corporate liability may be determined by the construction of a particular statute, irrespective of the 'directing mind' principle. (See the approach of the Privy Council in Meridian Global Funds Management Asia Ltd v Securities Commission [1995] 2 AC 500 PC)

and in relation to offences under The Health and Safety at Work etc Act 1974 see R v British Steel plc [1995] 1 W.L.R 1356.

Further Evidential Considerations

21. The legal basis of any corporate prosecution must be fully considered at review and noted in detail on the file. Evidential difficulties may arise where the company concerned has a diffuse structure, because of the need to link the offence to a controlling officer. The smaller the corporation, the more likely it will be that guilty knowledge can be attributed to the controlling officer and therefore to the company itself.

22. In a corporate prosecution, prosecutors must identify the correct corporate entity from the outset. It is crucial that prosecutors ensure that the corporation is fully and accurately named in the summons/indictment. If necessary, a company search should be conducted. Later amendment of the name may not be possible (Marco (Croydon) Ltd trading as A&J Bull Containers v Metropolitan Police [1984] RTR 24.)

23. The evidence must set out relevant employer/employee relationships, in order that both corporate liability and the admissibility of any admissions by an employee against a defendant corporation may be established (Edwards v Brooks (Milk Ltd) [1963] 3 All ER 62.)

24. In offences requiring *mens rea*, the controlling officer(s) must be clearly identified and their status and functions established. The required *mens rea* of at least one controlling officer of the company must also be established.

25. Where a number of officers in a company have been concerned in the act or omission giving rise to a potential offence but none individually has the required *mens rea*, it is not permissible to aggregate all states of mind of the officers to prove a dishonest state of mind: Armstrong v Strain [1952] 1 All ER 139. See also R v P&O European Ferries (Dover) Ltd & others [1991] 93 Cr App R 72.

26. It is important to prosecute not only the corporation but those who are in control (see 15 to 18 above). Certain types of offences (for example false accounting and regulatory offences) committed by a body corporate with the consent or connivance

of a director/ manager/ secretary of a company make those officers criminally liable. When proceeding against company officers in these circumstances the offence by the body corporate must be proved, but it is not always possible to secure the conviction of the company, and this is not required (R v Dickson and Wright 94 Cr App 7). Prosecutors may consider proceedings against the company officers where the company has been dissolved, for example.

27. Dissolution of a company has the same effect as the death of a human defendant inasmuch as the company ceases to exist. It is possible, however, to apply for an order to declare the dissolution void or to restore the corporation to the register. Criminal proceedings can only be instituted by leave of the Court responsible for the winding up or liquidation.

Jurisdictional Issues

28. It is important that the different jurisdictional interests (Regulatory and Law Enforcement) are reconciled and coordinated. In respect of domestic investigations and prosecutions, agencies other than the police (for example HSE) are often involved in investigating and/or prosecuting offences involving corporate liability. Prosecutors should be mindful of the protocols set out in The Prosecutor's Convention and establish communication with any other relevant agency at an early stage to ensure effective liaison and co-operation.

29. In respect of overseas investigations and prosecutions both Eurojust and the Judicial Assistance Network play a crucial role in the coordination and facilitation of prosecutions. There is also the 'Guidance for Handling Criminal Cases with Concurrent Jurisdiction Between the United Kingdom and the United States of America' which has been issued by Attorneys General of the respective jurisdictions and the Lord Advocate.

Charging Companies- Additional Public interest Factors to Be Considered

30. Where the evidence provides a realistic prospect of conviction, the prosecutor must consider whether or not a prosecution is in the public interest, in accordance with the Code for Crown Prosecutors. The more serious the offence, the more likely it is that

prosecution will be needed in the public interest. Indicators of seriousness include not just the value of any gain or loss, but also the risk of harm to the public, to unidentified victims, shareholders, employees and creditors and to the stability and integrity of financial markets and international trade. The impact of the offending in other countries, and not just the consequences in the UK, should be taken into account.

31. Prosecutors must balance factors for and against prosecution carefully and fairly. Public interest factors that can affect the decision to prosecute usually depend on the seriousness of the offence or the circumstances of the suspect. Some factors may increase the need to prosecute, but others may suggest that another course of action would be better. A prosecution will usually take place unless there are public interest factors against prosecution which clearly outweigh those tending in favour of prosecution.

32. In addition to the public interest factors set out in section 5 of the Code for Crown Prosecutors, the following factors may be of relevance in deciding whether the prosecution of a company is required in the public interest as the proper response to alleged corporate offending. This list of additional public interest factors is not intended to be exhaustive. The factors that will apply will depend on the facts of each case.

Additional public interest factors in favour of prosecution:

a. A history of similar conduct (including prior criminal, civil and regulatory enforcement actions against it); failing to prosecute in circumstances where there have been repeated and flagrant breaches of the law may not be a proportionate response and may not provide adequate deterrent effects;

b. The conduct alleged is part of the established business practices of the company;

c. The offence was committed at a time when the company had an ineffective corporate compliance programme;

d. The company had been previously subject to warning, sanctions or criminal charges and had nonetheless failed to take adequate action to prevent future unlawful conduct, or had continued to engage in the conduct;

e. Failure to report wrongdoing within reasonable time of the offending coming to light; (the prosecutor will also need to consider whether it is appropriate to charge the company officers responsible for the failures/ breaches);

f. Failure to report properly and fully the true extent of the wrongdoing.

Additional public interest factors against prosecution

a. A genuinely proactive approach adopted by the corporate management team when the offending is brought to their notice, involving self-reporting and remedial actions, including the compensation of victims:

In applying this factor the prosecutor needs to establish whether sufficient information about the operation of the company in its entirety has been supplied in order to assess whether the company has been proactively compliant. This will include making witnesses available and disclosure of the details of any internal investigation;

b. A lack of a history of similar conduct involving prior criminal, civil and regulatory enforcement actions against the company.; contact should be made with the relevant regulatory departments to ascertain whether investigations are being conducted in relation to the due diligence of the company;

c. The existence of a *genuinely* proactive and effective corporate compliance programme.

d. The availability of civil or regulatory remedies that are likely to be effective and more proportionate:

Appropriate alternatives to prosecution may include civil recovery orders combined with a range of agreed regulatory measures. However, the totality of the offending needs to have been identified. A fine after conviction may not be

the most effective and just outcome if the company cannot pay. The prosecutor should refer to the Attorney's Guidance on Civil Recovery (see 'Proceeds of Crime Act 2002: Section 2A [Contribution to the reduction of crime] Joint Guidance given by the Secretary of State and Her Majesty's Attorney General') and on the appropriate use of Serious Crime Prevention Orders.

e. The offending represents isolated actions by individuals, for example by a rogue director.

f. The offending is not recent in nature, and the company in its current form is effectively a different body to that which committed the offences – for example it has been taken over by another company, it no longer operates in the relevant industry or market, all of the culpable individuals have left or been dismissed, or corporate structures or processes have been changed in such a way as to make a repetition of the offending impossible.

g. A conviction is likely to have adverse consequences for the company under European Law, always bearing in mind the seriousness of the offence and any other relevant public interest factors.

Any candidate or tenderer (including company directors and any person having powers of representation, decision or control) who has been **convicted** of fraud relating to the protection of the financial interests of the European Communities, corruption, or a money laundering offence is excluded from participation in public contracts within the EU. (Article 45 of Directive 2004/18/EC of the European Parliament and of the Council on the coordination of procedures for the award of public works contracts, public supply contracts and public service contracts). The Directive is intended to be draconian in its effect, and companies can be assumed to have been aware of the potential consequences at the time when they embarked on the offending. Prosecutors should bear in mind that a decision not to prosecute because the Directive is engaged will tend to undermine its deterrent effect.

h. The company is in the process of being wound up.

33. Prosecutors dealing with bribery cases are reminded of the UK's commitment to abide by Article 5 of the OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions: investigation and prosecution of the bribery of a foreign public official shall not be influenced by considerations of national economic interest, the potential effect upon relations with another State or the identity of the natural or legal persons involved.

34. A prosecutor should take into account the commercial consequences of a relevant conviction under European law, particularly for self-referring companies, in ensuring that any outcome is proportionate.

Suitable Charges

35. Annex A contains a list of possible offences under the Companies Act 2006 for consideration when you are reviewing a case against a company.

APPROACH OF THE SERIOUS FRAUD OFFICE TO DEALING WITH OVERSEAS CORRUPTION

INTRODUCTION

The SFO is the lead agency in England, Wales and Northern Ireland for investigating and prosecuting cases of overseas corruption. We are responsible for enforcing the current law and will be responsible for enforcing the provisions of the Bribery Act (2010) when it comes into force.

We have set up a separate work area, the Anti-Corruption Domain, and the Head of this is now Robert Amaee who reports to our Chief Investigator, Keith McCarthy (previously Head of the Anti-Corruption Domain) We are moving significant skills into this area (both from within the SFO and recruited externally) and are investing heavily in training. Ultimately, we intend to have 100 staff working in this area.

So far the SFO has convicted one UK lawyer in respect of overseas corruption. Pleas from a corporate to overseas corruption have also recently been obtained. More will follow. We shall be using all of the tools at our disposal in identifying and prosecuting cases of corruption that we find.

Discussions with business and professional advisers have revealed a lot of interest in a system of self reporting cases of overseas corruption to us. We have been asked for any additional guidance we can give with respect to our policies on this and in particular on the benefits to be obtained from self reporting. As will be seen from this Guide, the benefit to the corporate will be the prospect (in appropriate cases) of a civil rather than a criminal outcome as well as the opportunity to manage, with us, the issues and any publicity proactively. The corporate will be seen to have acted responsibly by the wider community in taking action to remedy what has happened in the past and to have moved on to a new and better corporate culture. Furthermore, a negotiated settlement rather than a criminal prosecution means that the mandatory debarment provisions under Article 45 of the EU Public Sector Procurement Directive in 2004 will not apply.

For the SFO, such a system would have the effect of crafting effective and proportionate sanctions for this type of case and of helping to produce a new corporate culture. This will bring about behavioural change within businesses themselves and will create corporate cultures in which no form of corruption is tolerated (see Jack Straw's speech to the 5th European Forum on Anti-Corruption on 23 June 2009). This is the key to the outcome we are set on achieving. Self referral under this guide leading to a civil outcome in appropriate cases is one tool for this: criminal prosecution and confiscation in other cases is another vital tool we shall be using. We expect to conduct more

criminal investigations and prosecutions in the future (particularly in light of the Bribery Act (2010) no having become law). This tough approach is needed as part of the SFO toolkit to ensure that appropriate cases are brought before the Criminal Courts.

Many corporates have welcomed what they have heard about self reporting at conferences. They have asked for a document setting out the issues covered in speeches and the approach we are likely to take. This Guide is a first attempt to set this out. It will be revised following feedback and in the light of experience.
We welcome comments that corporates and their advisers may have on this Guide. Meanwhile the Guide can be used as the basis of approaches to us.

The term 'corporate' is used in this Guide for convenience. As the context requires, it can refer to the group, a UK company or an overseas subsidiary. It is not to be construed restrictively.

APPROACHING THE SFO

1. We appreciate that a decision to approach us is not easy for a corporate when it discovers a problem concerning overseas corruption. Professional advisers accustomed to this area of work will be in the best position to offer advice on the merits of this decision. Our preferred approach is set out in the following paragraphs.

2. A key question for the corporate and its advisers will be the timing of an approach to us. We appreciate that a corporate will not want to approach us unless it had decided, following advice and a degree of investigation by its professional advisers, that there is a real issue and that remedial action is necessary. There may also be earlier engagement between the advisers and us in order to obtain an early indication where appropriate (and subject to a detailed review of the facts) of our approach. We would find that helpful but we appreciate that this is for the corporate and its advisers to consider. We would also take the view that the timing of an approach to the US Department of Justice is also relevant. If the case is also within our jurisdiction we would expect to be notified at the same time as the Department of Justice.

3. Corporates wishing to contact us about these issues should contact Anne-Marie Ottaway on +44(0)20 7239 7061or at Anne-Marie.Ottaway@sfo.gsi.gov.uk, and she will be happy to help. They will assume that the corporates professional advisers are familiar with this Guide and our approach.

4. Very soon after the self report and the acknowledgement of a problem we will want to establish the following:

- is the Board of the corporate genuinely committed to resolving the issue and moving to a better corporate culture?
- is the corporate prepared to work with us on the scope and handling of any additional investigation we consider to be necessary?
- at the end of the investigation (and assuming acknowledgement of a problem) will the corporate be prepared to discuss resolution of the issue on the basis, for example, of restitution through civil recovery, a programme of training and culture change, appropriate action where necessary against individuals and at least in some cases external monitoring in a proportionate manner?
- does the corporate understand that any resolution must satisfy the public interest and must be transparent? This will almost invariably involve a public statement although the terms of this will be discussed and agreed by the corporate and us.
- will the corporate want us, where possible, to work with regulators and criminal enforcement authorities, both in the UK and abroad, in order to reach a global settlement?

5. A very important issue for the corporate will be whether the SFO would be looking for a criminal or a civil outcome. Without knowing the facts, no prosecutor can ever give an unconditional guarantee that there will not be a prosecution of the corporate. Nevertheless, we want to settle self referral cases that satisfy paragraph 4 civilly wherever possible. An exception to this would be if Board members of the corporate had engaged personally in the corrupt activities, particularly if they had derived personal benefit from this. In those cases we would, in fact, be likely to commence our own criminal investigation. Professional advisers will have a key role here because of their knowledge of our approach. We shall look at the public interest in each case. We would in those circumstances be looking for co-operation from the corporate and would be prepared to enter into plea negotiation discussions within the context of the Attorney General's Framework for Plea Negotiations.

6. Corporates may also want to know about criminal investigations of individuals. There are no guarantees here. We would assess the position of individuals on their merits. Examples of the questions we would ask are:
   - how involved were the individuals in the corruption (whether actively or through failure of oversight)?
   - what action has the company taken?
   - did the individuals benefit financially and, if so, do they still enjoy the benefit?
   - if they are professionals should we be working with the appropriate Disciplinary Bodies?
   - should we be looking for Directors' Disqualification Orders?

- should we think about a Serious Crime Prevention Order?

7. The interaction between the corporate investigation and any investigation of individuals gives rise to many issues. There are potentially many different sets of proceedings whether in the UK or elsewhere. We can discuss these issues with the corporate and its advisers so far as it is appropriate for us to do so.

8. Self reporting to the SFO does not remove the liability of a corporate or a professional adviser to make any report required by law whether within the UK or in another jurisdiction and whether at the time of self referral or later. 9. The SFO will want to work with the corporate on any statements that need to be made. If we decide that we need to make a statement, we shall want to discuss and agree this in advance.

10. Subject to what has been said in paragraphs 8 and 9, the discussions with the SFO will be confidential. Any information received by us will be regarded as information acquired for the purposes of our powers under the Criminal Justice Act 1987 and therefore only to be used in accordance with that Act.

THE INVESTIGATION

11. If both sides are satisfied with the answers to the issues in paragraph 4 above, then we will discuss the scope of any further investigation needed. Wherever possible, this investigation will be carried out by the corporate's professional advisers. This will be at the expense of the corporate. We undertake to look at this in a proportionate manner and to have regard, where appropriate, to the cost to the corporate and the impact on the corporate's business.

12. We appreciate that document recovery and analysis will be a very significant issue in any investigation. Electronic searches will be needed. We are able to discuss the methodology for this with the corporate and its advisers to ensure that the cost is proportionate to the amount and seriousness of the issues reported. We shall also be prepared to discuss the steps taken by the corporate and its advisers to ensure that material (and, in particular, electronic material) is preserved.

13. We will also want to be involved in regular update discussions concerning the progress of any further investigation.

SETTLEMENT DISCUSSIONS

14. We will expect to discuss the results of the investigation with the corporate and its professional advisers. In discussing settlement terms, once we are satisfied with the conclusion of the investigation, we shall be looking at the following:

- restitution by way of civil recovery to include the amount of the unlawful property, interest and our costs
- in some cases monitoring by an independent, well qualified individual nominated by the corporate and accepted by us. The scope of the monitoring will be agreed with us. We undertake that if monitoring is going to be needed, it will be proportionate to the issues involved.
- a programme of culture change and training agreed with us.
- discussion, where necessary, and to the extent appropriate, about individuals.

15. In addition, a public statement agreed by the corporate and the SFO will be needed so as to provide transparency so far as possible for the public.

GLOBAL SETTLEMENT

16. There will be many occasions when the corruption issue discovered gives rise to potential liability in other jurisdictions as well. We appreciate that corporates in these circumstances want finality at the international as well as domestic level. We shall discuss with the corporate whether they want our assistance and involvement in a settlement with other authorities.

OTHER GUIDANCE

17. A number of corporates and professional advisers have told us that it would be very helpful to them if we were able to offer an opinion procedure concerning future enforcement activity along the lines offered by the US Department of Justice. We are sympathetic to this.

18. The circumstances in which this procedure will be appropriate will need to be discussed but we are ready to offer assistance in one type of case which corporates have mentioned to us. This is where a group (A) is proposing to take over another group (B) and, during due diligence, discovers overseas corruption issues in (B). (A) is committed to a modern ethical corporate culture and, if the transaction goes ahead, would take the necessary remedial action in respect of what has happened. (A) wishes to know what our approach would be.

19. We appreciate the need for help in the circumstances and will give (A) assurances about our action. These assurances could be that no action will take place provided that (A) takes the remedial action it has told us that it will take if the takeover goes ahead. Alternatively, if we find that the corruption is long lasting and systemic, we might say that we would consider a criminal investigation whether at the corporate or individual level.

20. We appreciate that these issues are often likely to be very confidential and price sensitive. We would anticipate that professional advisers would want to discuss a possible approach with the SFO before it was actually made.

21. Corporates have also asked for guidance on how we would apply the offence in the Bribery Act of negligently failing to prevent bribery. We welcome the opportunity to discuss our approach with corporates. We can discuss our general approach which is to focus very much on changes of behaviour so far as possible in order to promote a modern corporate culture. Our emphasis is on helping corporates to develop this culture and to use enforcement action only where this is necessary and proportionate.

22. In any discussions about procedures within the corporate we shall be looking to find evidence of adequate procedures to assess how successful the corporate has been in mitigating risk. We shall also be looking closely at the culture within the corporate to see how well the processes really reflect what is happening in the corporate. For example, we shall look for the following:

- a clear statement of an anti-corruption culture fully and visibly supported at the highest levels in the corporate.
- a Code of Ethics.
- principles that are applicable regardless of local laws or culture.
- individual accountability.
- a policy on gifts and hospitality and facilitation payments.
- a policy on outside advisers/third parties including vetting and due diligence and appropriate risk assessments.
- a policy concerning political contributions and lobbying activities.
- training to ensure dissemination of the anti-corruption culture to all staff at all levels within the corporate.
- regular checks and auditing in a proportionate manner.
- a helpline within the corporate which enables employees to report concerns.
- a commitment to making it explicit that the anti-bribery code applies to business partners.
- appropriate and consistent disciplinary processes.
- whether there have been previous cases of corruption within the corporate and, if so, the effect of any remedial action.

23. We appreciate as well that guidance and standards will also be given and set by other organisations. We shall take account of this.

What happens if there is no self referral?

24. Self referral together with action by the corporate to remedy the problem of corruption will reduce the likelihood that we may discover the corruption ourselves through other means. If this happens we would regard the failure to self report as a negative factor. The prospects of a criminal investigation followed by prosecution and a confiscation order are much greater, particularly if the corporate was aware of the problem and had decided not to self report.

25. Corporates will need to be aware of the length and expense of an investigation by the SFO. There will inevitably be considerable publicity and disruption to the business of the corporate. We will be making use of all tools at our disposal such as those under the Regulation of Investigatory Powers Act. Professional advisers will need to advise their corporate clients about the impact of these investigations. There is also a serious prospect that we will learn about the corruption issue from another agency in the UK or elsewhere, a whistleblower or a statutory report such as a Suspicious Activity Report. We will assume in those circumstances that the corporate has chosen not to self report. The chances of a criminal investigation leading to prosecution are therefore high.

General

26. This guidance should deal with the majority of cases where the corporate should self report. We accept however that some cases will present special circumstances. These will need to be discussed on a case by case basis.

27. We welcome feedback on this approach and expect to revise the approach where necessary in the light of experience and feedback. We are also considering setting up a Users' Forum to assist with this and will be interested in feedback on whether this would be helpful.

Serious Fraud Office Dated 21 July, 2009