

TACKLING FOREIGN BRIBERY
MEMORANDUM OF UNDERSTANDING

1. Overview

1.1 This MoU has been agreed between all parties named in paragraph 8.1. It outlines the arrangements for fulfilling the international obligations of the United Kingdom as a party to the OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions (OECD Bribery Convention), the Council of Europe Criminal Law Convention against Corruption (and its Additional Protocol) and the United Nations Convention against Corruption with regard to the investigation and prosecution of foreign bribery, including Section 7 Bribery Act 2010.

1.2 It replaces the MoU agreed in January 2008 relating to the implementation of part 12 of the Anti-Terrorism, Crime and Security Act 2001.

1.3 It is intended to outline the relationships between the parties in dealing with allegations of foreign bribery affecting United Kingdom associated individuals, organisations and corporate bodies.

1.4 It is not intended to alter the legal position of any of the parties nor to limit or otherwise affect any discretion available to them in the performance of their duties.

2. Background

2.1 The United Kingdom signed the OECD Bribery Convention on 17 December 1997 and deposited its instrument of ratification on 14 December 1998.

2.2 The United Kingdom signed the Council of Europe Criminal Law Convention against 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.

2.3 The UK signed the UN Convention against Corruption on 9 December 2003 and deposited its instrument of ratification on 9 February 2006.

2.4 These Conventions establish legally binding standards to criminalise the bribery of foreign public officials and officials of public international organisations.

3. Scope

3.1 This MoU covers any alleged or reported case of foreign bribery with a link to the United Kingdom. This includes allegations that corporate bodies have failed to prevent bribery, contrary to section 7 of the Bribery Act 2010.

3.2 It includes the regulation and enforcement of the systems and processes to guard against bribery in the regulated financial sector.

4. Parties to the MoU

4.1 The National Crime Agency (NCA) is responsible for maintaining a register ('the Register') of all allegations or reports of bribery:

- Of foreign public officials;
- Other instances of foreign bribery.

It is imperative that any such allegation or report received by a party to this MoU is promptly reported to the NCA for inclusion in the Register (whether or not it has been possible to verify or substantiate the offence). The NCA will maintain the Register in such a way that it is possible to interrogate it for both types of reports listed above.

4.2 The NCA produces tactical intelligence on bribery in overseas countries (including through the DfID-funded International Corruption Intelligence Cell (ICIC) in respect of developing countries) by persons or companies based in or operating from the UK. It receives intelligence from domestic and international sources pertaining to possible foreign bribery offences. It may also investigate foreign bribery cases, or deploy other specialist resource where appropriate.

4.3 The Serious Fraud Office (SFO) is the lead agency for investigating serious or complex cases of corporate bribery and enforcing the Bribery Act in respect of foreign bribery by businesses in England, Wales and Northern Ireland.

4.4 The City of London Police (CoLP) investigates cases of domestic bribery and corruption, and its Overseas Anti-Corruption Unit, funded by DfID, investigates allegations or reports of UK citizens and companies involved in bribery and corruption in countries eligible for official development assistance and can assess and advise the holder of the register of such allegations received. When a case relevant to this MoU does not appear likely to meet the CoLP criteria for investigation, CoLP will, where appropriate, refer the case to SFO or to another police force or prosecution authority.

4.5 The Crown Office and Procurator Fiscal Service (COPFS) is the lead agency 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 party to this MoU.

4.6. The Financial Conduct Authority (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. This is additional to obligations imposed under the Bribery Act 2010, which the FCA does not enforce.

4.7 The Ministry of Defence Police (MDP) is responsible for investigating allegations of overseas bribery and corruption committed by MoD personnel. The MoD will maintain a reporting point for such allegations and will in turn refer cases to the MDP. Cases will be reported to the NCA for inclusion in the register.

5. Assessment

5.1 All the investigative bodies with a jurisdiction in England, Wales & Northern Ireland that are signatories to this MoU will meet on a monthly basis in a ‘Bribery Intelligence Clearing House’ (hereafter ‘Clearing House’) meeting, to be organised and chaired by the NCA. The purpose of this meeting will be to carry out a high-level assessment of all new leads, referrals

and intelligence with a view to agreeing which agency is best placed to take responsibility for subsequent action.

5.2 The SFO will carry out preliminary enquiries in co-operation with investigative agencies, police forces or the NCA to ascertain whether there is sufficient evidence to prepare an intelligence file for the consideration of the Director of the SFO. SFO cases relevant to this MoU must meet their Statement of Principles for investigation. If the case relates to or includes Scottish jurisdiction, the SFO will liaise with COPFS (Head of Serious and Organised Crime Division) regarding the initial assessment.

5.3 When a case relevant to this MoU does not meet the SFO criteria for investigation, the SFO will, as appropriate, refer the case to CoLP (in accordance with the agreements between CoLP and DfID) or bring it back to the Clearing House for discussion as necessary.

5.4 In the event that a potential case is not suitable for either the SFO or CoLP, the NCA will take responsibility for exploring whether it can be taken forward by the NCA or another agency or police force.

5.5 In the event that the Clearing House, or a member of that group, encounters a case that appears to have a significant Scottish element, that case will be discussed with COPFS with a view to agreeing which agency is best placed to lead. Where such engagement with the COPFS is not initiated by the NCA, the NCA should be informed of the outcome.

5.6 In the event that the COPFS encounters a case that appears to have a significant English, Welsh or Northern Irish element, the COPFS will refer that case to the NCA for discussion by the Clearing House meeting with a view to agreeing which agency is best placed to lead. COPFS will be invited to contribute to any reports to be submitted to the Clearing House and to attend meetings as appropriate.

5.7 If the allegation concerns a case relevant to Scotland, the COPFS will undertake a development exercise to establish who is best placed to lead the investigation. Should an agency have established primacy inferred from this MoU and engaged on an investigation, any other party will defer any interest, activity or engagement in the case until the primacy issue has been reviewed and resolved as appropriate through negotiation.

5.8 For all other cases, which are not taken forward by SFO, CoLP, MoD or NCA, the relevant local police force will be identified as follows:

- where the allegation involves a corporate body, the force where its registered office is located;
- where the allegation is against a British national¹ (and no corporate

¹ In this context a "British national" is an individual falling within section 12(4) of the Bribery Act 2010 or section 109(4) of the ACSA 2001 (depending on which provision applies).

body is involved), the force for his or her last known address.

5.9 Where a local police force leads an investigation and requests assistance from the SFO or COLP, the SFO or CoLP will do what it reasonably can to assist by providing support, guidance and advice.

5.10 The FCA does not carry out enquiries to verify allegations or reports of bribery or corruption by FSMA-authorized financial institutions; where the FCA identifies a case that is relevant to this MoU, it will refer the case to the Clearing House. Where appropriate, it 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. In the event that the Clearing House encounters a case that involves a FSMA-authorized financial institution, it will inform the FCA.

5.11 The investigative agencies (SFO, CoLP, COPFS, MoD Police and the NCA) may request information and help from other parties to this MoU, and any party to whom the request is made will take all reasonable steps to comply with the request (to the extent permitted by law).

Timescales

5.12 Organisations will aim to meet the following timescales: (i) two weeks from receipt of a (written) report (in acceptable form) to advise the other organisation of its receipt and its initial view as to how it should be dealt with; (ii) two weeks for second organisation to reply, with intimation of its initial view; and (iii) four weeks for agreement to be reached if there is no initial consensus. During these periods of time the organisations will agree what level of investigation each will carry out pending a decision as to primacy.

6. Prosecution of Offences Covered by this MoU

6.1 In cases in which prosecution might be undertaken in more than one UK jurisdiction there will be a discussion as to which organisation should lead. In SFO cases this should be in accordance with the principles set out in the MoU between SFO and COPFS.

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. The Bribery Act 2010 applies to England, Wales, Northern Ireland and Scotland. If the person's last address or the incorporated/UK associated body's office is in Scotland, the case should be referred to the Head of the Serious and Organised Crime Division, Crown Office, who will oversee the investigation and prosecution of all such cases.

7. Distribution

7.1 This MoU will be circulated 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 Northern Ireland Office. A copy will also be sent to Police Scotland by the Crown Office and Procurator Fiscal Service.

8. Parties to this MoU

8.1 This MoU has been agreed by City of London Police, Crown Office Procurator Fiscal Service, Crown Prosecution Service, the Financial Conduct Authority, MoD Police, National Crime Agency, and the Serious Fraud Office.

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

8.3 This MoU will be placed on the websites of all signatories.

9. Additional

9.1 The parties to this MoU will note the bilateral Memorandum of Understanding agreed between the SFO and Crown Office and Procurator Fiscal Service on ... April 2014 (appended hereto as Annex 1).

Revised 25 April 2014