

Client Alert

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Sweett Sentence Provides Guidance for DPAs

By Tola Adeseye, Duncan Grieve, and Kevin Roberts

After its guilty plea to an offence under the UK Bribery Act, Sweett Group PLC was sentenced on February 19, 2016 at Southwark Crown Court, and ordered to pay a total £2.25 million penalty for the offence. The international construction and property consultancy had admitted failure to prevent bribery, an offence under section 7 of the Bribery Act, after its staff were found to have paid bribes in order to secure and retain a £1.6 million contract with Al Ain Ahlia Insurance Company (AAAI) to build a £63 million luxury hotel in Dubai.

INVESTIGATION

The Serious Fraud Office (SFO) investigation, launched in 2014, found that Cyril Sweett International Limited, a subsidiary of Sweett Group, had made illegal payments to the vice chairman of AAAI, Khaled Al Badie.

SWEETT'S CONDUCT

In sentencing Sweett Group, Judge Beddoe made mention of the company's attempts to mislead the SFO. It was discovered that while the SFO investigation was ongoing, Sweett Group representatives had attempted to secure a letter from AAAI stating that the sham sub-contract was in fact legitimate. Furthermore, rather than ceasing payments under the contract once it became evident that it was very likely to be a corrupt agreement, Sweett Group contemplated setting up an escrow account to hold the payments to the benefit of Mr. Al Badie. The judge described this as a "cynical commercial decision to hedge [Sweett Group's] bets". It was not until November 2015 that Sweett Group repudiated all of its contracts with Al Badie.

This conduct undoubtedly influenced the SFO's decision to refrain from offering Sweett Group the opportunity to enter into a deferred prosecution agreement (DPA) with the SFO. DPAs, available for use by the SFO since February 2014, allow for the suspension of prosecutorial action against a company where the defendant company agrees to comply with conditions set by the prosecutor. The SFO agreed to its first DPA at the end of 2015, after the defendant company ICBC Standard Bank was held to have self-reported at the earliest opportunity and cooperated fully in the subsequent SFO investigation.

Despite assertions throughout the investigation that it was fully cooperative, Sweett Group failed to satisfy the SFO that this was the case. In addition to the attempt to mislead, Sweett also made the decision to continue its independent investigation and exercise its privilege rights after the SFO had begun its formal investigation into the company. When sentencing the company, the judge specifically stated that Sweett Group had only been regarded as cooperative from July 2015. Although this provided some mitigation in terms of the level of sentence applied, the opportunity to finalize a DPA had been lost as a result of such actions.

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SENTENCE

The court fined Sweett Group £1.4 million, and assessed approximately £850,000 in confiscation. Sweett Group was also liable for the SFO's costs of around £95,000.

KEY TAKEAWAYS

- In securing its first Bribery Act conviction, the SFO has sent a strong message that companies must take full responsibility for the corrupt actions of their employees.
- Full cooperation is absolutely essential if a DPA is to be considered. Self-reporting alone may not suffice to show cooperation with the authorities, and continuing conduct under offending contracts will be scrutinized during SFO investigations.
- Companies may be found uncooperative by the SFO where they exercise their right to legal professional privilege and continue their own internal investigations.

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