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UK Serious Fraud Office Enters Deferred Prosecution Agreement with G4S

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On 17 July 2020, G4S Care and Justice Services (UK) Ltd ("G4S C&J"), a wholly owned subsidiary of the G4S plc group ("G4S"), entered into a Deferred Prosecution Agreement ("DPA") with the UK's Serious Fraud Office ("SFO") under which G4S C&J will pay a circa £38.5 million penalty plus the SFO's costs. In doing so, the SFO has now concluded its investigation into both G4S and Serco Group ("Serco") relating to invoicing practices with the UK Ministry of Justice ("MoJ"). It represents the SFO's eighth DPA to date and the second this year, following the record-breaking DPA with Airbus SE back in January. Under the terms of the DPA, G4S C&J has admitted to three offences of fraud. The DPA has seen prosecution immediately suspended as long as G4S C&J fulfils certain requirements.

Facts of the Case

In 2013, the SFO conducted an initial investigation into G4S C&J and rival Serco Geografix Limited ("SGL"), following a referral from the MoJ over concerns relating to G4S C&J's and SGL's invoicing practices in connection with the tagging of individuals that were either in jail, deceased or had left the country. While the SFO concluded there was insufficient evidence of dishonest practices, the MoJ raised further concerns with G4S in connection with its financial reporting obligations. Subsequently, in January 2014, G4S itself reported to the SFO that it had discovered evidence to indicate that it had failed to provide accurate financial reports to the MoJ.

Both Serco and G4S C&J entered into civil settlements with the MoJ in 2014. Further, SGL entered into a DPA in July 2019 (see our previous *Alert*). The DPA with G4S C&J concludes the SFO's investigation into the respective companies. As with the SGL DPA, the court has postponed the publication of the Statement of Facts that would usually

accompany a DPA and judgment, pending its investigation, and charging decisions, relating to potentially culpable individuals.

Cooperation

The financial penalty to be paid by G4S C&J reflected a 40% discount as a result of its self-report and cooperation. Notably, this discount can be compared with the 50% discount awarded in all but one of the previous seven DPAs. It appears that decision to only award a 40% discount reflects the level of cooperation afforded by G4S C&J with the judge finding that it was “less than full...until a relatively late stage” and was not “exemplary” until October 2019, over four years after reporting to the SFO, at which point “cooperation intensified very significantly”. While the court noted that the public interest may have been properly served by a prosecution of G4S C&J, the judge concluded that the overall level of cooperation was such that a DPA was ultimately appropriate.

In addition, and consistent with recent DPAs, G4S has agreed to cooperate with the SFO’s ongoing investigation into individuals.

Remediation and Oversight

One additional novel feature of this DPA is the extent of remedial measures taken by G4S. Firstly, G4S, as the parent company, has given an undertaking to maintain controls, policies and procedures to effectively prevent and detect fraud and bribery throughout its entire operations, not just limited to G4S C&J. Such an undertaking is similar to that provided by Serco in SGL’s DPA and continues what the court termed in that case to be “an important development in the use of DPAs”. As a subsidiary, G4S C&J is not in a position to provide undertakings as to the G4S group’s compliance programme. Thus, G4S doing so enabled the public interest of a DPA to be satisfied where it otherwise might not have been. Secondly, both G4S and G4S C&J have committed to work with an appointed external reviewer in relation to an ongoing programme of corporate renewal. This “reviewer”, which appears similar in substance to a U.S. style monitorship programme, will report on G4S’s compliance programme and remediation to the SFO at the end of this year and prior to the end of the DPA. In this regard, the court commented, “the intensity of the external scrutiny as set out in the DPA is greater than in any previous DPA. This is necessary and appropriate given the exposure of both G4S C&J and the parent company to government contracts.”

Key Takeaways

The outcome of this DPA suggests that, where a corporate has been slow or inconsistent in its cooperation with the SFO, in this case not providing full cooperation until, it appears, well over four years after the conduct was first reported to the SFO, this may have implications for the level of penalty discount. Precisely what level of discount will be afforded remains a fact-specific determination.

Secondly, with regards to remediation and consistent with the SGL DPA, this DPA indicates that, where a subsidiary enters into a DPA, the parent may be required to provide compliance-related undertakings to ensure remedial measures are effectively implemented across the entire group of companies. Notably in this regard, and unlike SGL, G4S C&J itself remains a trading entity.

Finally, this is the first DPA where an external “reviewer” has been appointed to report to the SFO on progress made by G4S to implement compliance remediation measures. This will no doubt impose a significant resource burden on G4S and it remains to be seen whether this will set a precedent for corporates generally or specifically for those with exposure to government contracts. Given the court’s comments linking the appointment to G4S’s involvement in government contracts, the latter seems more likely, especially in circumstances where the corporate has implemented appropriate compliance remediation measures prior to entering into the DPA.

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