



Dispute Resolution Group Regulatory Update

May 2010

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Litigation team'

Chambers Directory 2009

'Drawing on the firm's
market-leading expertise in
the insurance field, this
team is favoured for its
contentious regulatory
advice to clients in this
sector'

Chambers Directory 2009



Introduction

Since our last newsletter, there have been significant developments in the regulatory arena. Key legislation has been published and has come into force. The Financial Services Authority (FSA) has now been added to the list of agencies which have the power to grant immunity from prosecution as a result of the Coroners and Justice Act 2009 coming into force on 6 April 2010. This provides statutory backing for the FSA's existing leniency policy for co-operating witnesses in market abuse cases and will encourage more whistleblowers to come forward so the FSA can prosecute more cases.

For example, the FSA may seek to rely on this legislation in its large-scale operation against insider dealing which hit the headlines recently after dawn raids were carried out at numerous residential and business addresses. We have included a link to some practical guidance on FSA dawn raids – see further below.

The Bribery Bill has now been published as the Bribery Act 2010 and it is anticipated that it will come into force later this year. Some practical guidance is set out below.

Bribery Act 2010

Although the Conservatives proposed a number of amendments to the Bribery Bill following pressure from business organisation, the CBI, that greater clarity was needed to ensure the Bill achieved its aim without hindering competitiveness, in the event most of these were dropped.

Practical guidance

The Secretary of State will publish guidance about the procedures commercial organisations can put in place to prevent bribery and therefore avoid prosecution (it is a defence under the Bribery Act 2010 if the organisation can demonstrate that it had adequate procedures in place).

In the meantime, we have prepared some practical guidance which you may wish to consider when reviewing your anti-bribery procedures. Adequate procedures may include:

- Having a clear ethical policy statement which is disseminated throughout the organisation and to any intermediaries;
- Ensuring payments made to third parties are fully accounted for;
- Ensuring any introduction fees that are paid are proportionate and justifiable;
- Regularly auditing accountancy processes;
- Recording the decision making processes which lead to each payment and the justification for the amount paid; and
- Clear corporate hospitality policies and a review of whether the commercial entity is spending appropriate amounts hosting clients and/or influential public figures.

FSA Dawn Raids

16 residential and business addresses were searched recently in the first operation carried out jointly between the Financial Services Authority (FSA) and the Serious Organised Crime Agency (SOCA) and the FSA's largest ever operation against insider dealing.

Guidance

We have prepared some general guidance on FSA Dawn Raids which you can find via the following link. We have included a general checklist in the event of a raid as well as specific checklists for receptionists and also for Senior Management / In-house Counsel.

http://www.clydeco.com/attachments/published/10932/Dispute%20Guidance%20on%20Dawn%20Raids_Layout%201.pdf

Financial Supervision - European Community legislative proposals

Following the recent financial crisis, the European Community has proposed legislation to strengthen financial supervision in Europe. Our overview of the proposals can be found via the following link.

<http://www.clydeco.com/attachments/unpublished/12474/Financial%20Supervision.pdf>

Team profiles



Julian Connerty
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Julian is a partner in the Dispute Resolution Group. He handles litigation, arbitration and mediation of commercial and regulatory disputes. In the area of financial regulation he has acted for regulated firms and individuals, and for and against the regulators, including the FSA and the LME. Cases handled include breaches of the FSA principles, market abuse, perimeter breaches, fit and proper persons investigations, and disciplinary and authorisation cases, both before the High Court and the FSA's regulatory decisions committee.



Rachel Cropper-Mawer
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Rachel is a senior associate in the Dispute Resolution Group, where she concentrates on general commercial litigation, with a focus on regulatory, insurance and financial matters. She is an experienced insurance and reinsurance litigator. Rachel has spent four months on secondment with the litigation department of Hannover Re, Germany, and one year in the Enforcement Division of the FSA, where she worked on finite reinsurance and market abuse cases.



Maeve Sanderson
Associate

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Maeve is an associate in the Dispute Resolution Group. She has been at Clyde & Co since 2003. Her main areas of practice are dispute resolution, including regulatory disputes, financial services and insurance. She spent six months on secondment in the FSA's Enforcement Division.

The team is currently assisted by trainee solicitor, Amy Nash.

Dispute Resolution Group

Our group has experience in handling advice and disputes across a wide range of sectors and legal disciplines, including regulatory issues, banking, insurance and financial services, communications, media and technology, and public and administrative law. The firm also handles around 500 arbitrations at any given time.

For more information on our firm, please visit our website: www.clydeco.com, which provides details of our services, forthcoming events and links to articles and publications, including this Regulatory Update.

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Further information

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