

**RECORD DEFERRED PROSECUTION AGREEMENT FOR ROLLS-ROYCE  
APPROVED BY ENGLISH COURT**

*Serious Fraud Office v (1) Rolls-Royce plc; (2) Rolls-Royce Energy Systems Inc*, Case No:  
U20170036

**Introduction**

By a decision handed down on 17 January 2017 in *Serious Fraud Office v (1) Rolls-Royce plc; (2) Rolls-Royce Energy Systems Inc*, Case No: U20170036, Sir Brian Leveson (President of the Queen’s Bench Division of the English High Court) approved a Deferred Prosecution Agreement concluded between the Serious Fraud Office (“the SFO”) and two entities within the Rolls-Royce group of companies (“Rolls-Royce”) in settlement of an investigation into bribery, corruption and fraud.

**Background**

Under the Bribery Act 2010, a commercial organisation will have committed a criminal offence if it fails to prevent those acting on its behalf from committing bribery offences.

The SFO is the body responsible for the investigation and prosecution of complex fraud and corruption in the United Kingdom.

Following postings on the internet in 2012 raising concerns regarding Rolls-Royce’s business operations in several countries the SFO began investigating Rolls-Royce. Rolls-Royce also began its own internal investigation (the results of which were provided to the SFO). The SFO’s investigation (thought to be one of the largest ever conducted by the SFO) lasted for four years. The investigation gave rise to an SFO prosecution for 12 counts of bribery, corruption and fraud – including the making of corrupt payments in India and Russia and failing to prevent bribery in Nigeria and Indonesia.

**The Law on Deferred Prosecution Agreements**

Deferred Prosecution Agreements (“DPAs”) were introduced in the United Kingdom by the Crime and Courts Act 2013. The SFO can potentially enter into a DPA with body corporates, partnerships and unincorporated associations in relation to financial offences that only carry financial penalties.

However, the English courts still play a role because, in the event that a DPA is agreed as between the SFO and a company, that DPA must be brought before a judge for a declaration that the DPA is “in the interests of justice” and that its proposed terms are “fair, reasonable and proportionate”.

Once the English courts have made such a declaration, the SFO prefer an indictment, which is immediately suspended for the term of the DPA and will eventually be dropped provided that its terms are complied with.

## **Previous Use of DPAs in the United Kingdom**

The UK's Bribery Act 2010 (which entered into force in July 2011 and which only applies to conduct committed after it entered into force) was, at the time of its arrival, trumpeted as representing an example of the world's most robust anti-corruption legislation. However, there were no prosecutions under the Bribery Act 2010 until December 2014. Prior to the Rolls-Royce DPA, two DPAs had been successfully concluded by the SFO. The other two were:

- (1) SFO and Standard Bank (November 2015) – whereby Standard Bank was required to pay financial orders of US\$25,200,000, to pay US\$6,000,000 (plus interest) to the Tanzanian Government and to pay the SFO's costs of £330,000; and
- (2) SFO and an unnamed company (July 2016) – whereby the company was required to pay disgorgement of profits of approximately £6,200,000 and a £352,000 fine. However, the company was not required to pay any of the SFO's costs due to its financial position.

## **The Rolls-Royce Decision**

Sir Brian Leveson P, sitting in the Southwark Crown Court, has approved a proposed DPA reached between the SFO and Rolls-Royce. The terms of the DPA provide that:

- (a) Rolls-Royce agrees to pay:
  - (i) £258,170,000 to reflect the profits that Rolls-Royce made as a result of criminal conduct;
  - (ii) £239,082,645 as an additional penalty; and
  - (iii) £13,000,000 towards the SFO's costs of its investigation;
- (b) Rolls-Royce, by virtue of the payments under the DPA, is protected from prosecution in relation to the 12 counts of bribery, fraud and corruption offences alleged against it by the SFO (provided that the terms of the DPA are complied with);
- (c) Rolls-Royce makes various undertakings to the SFO as regards Rolls-Royce's retainer of an independent lawyer (Lord Gold) to review Rolls-Royce's internal procedures for complying with the requirements of the UK's bribery and corruption law.

Importantly, however, the DPA does not inhibit prosecution by the SFO of the individuals responsible for the bribery, fraud and corruption in question. The SFO investigation into those individuals (including former employees of Rolls-Royce) is ongoing and the SFO's powers as regards the investigation and prosecution of those individuals are not curtailed in any form by the DPA. On the contrary, the DPA includes terms securing Rolls-Royce's compliance with the SFO as regards such investigation/prosecution.

## **Concluding Remarks**

The Rolls Royce DPA is an order of magnitude greater than the SFO's previous prosecutions and DPAs, both in terms of the financial penalties and the contribution towards the costs of the SFO's investigation. It is possible that this will enhance the global reputation of the SFO as an anti-bribery and anti-corruption body.

Sir Brian Leveson P noted that, notwithstanding the massive financial penalties that the DPA imposes on Rolls-Royce, the situation could have been much worse had it not been for Rolls-Royce's "extraordinary" cooperation with the SFO and the extent of its own internal investigations.

Separately, Rolls-Royce has also agreed to pay penalties of approximately £155,000,000 to the authorities in Brazil and the United States of America in relation to the bribery and corruption-related offences in those countries.

29<sup>th</sup> January 2017