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VOLUNTARY DISCLOSURE OF INFORMATION REGARDING THE FACTS OF CORRUPTION AND FRAUD (FOREIGN EXPERIENCE)

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On the example of the British Serious Fraud Office (SFO) are considered problems that prevent companies to start active co-operation with law enforcement authorities at the time of committing economic crimes. The author notes inability to guarantee a positive result for the companies that voluntarily disclose information on corruption and fraud.

Keywords: corruption, fraud, countering corruption, information about corruption, voluntary cooperation with law enforcement authorities, voluntary disclosing of information.

Nowadays, such a practice as cooperation with state agencies to combat corruption is quite widespread among companies in Western Europe and North America.

So, Rupp J. P. and Melia A. point to cases where companies are either involved in corrupt, fraudulent activities, or have a suspicion that some of their units are involved in such facts, and when these companies are willing to disclose all the information about the fraudulent transactions with their participate and do their utmost to promote law enforcement authorities in the investigation of such cases. It is noted that the companies that voluntarily have come to such co-operation, subject to a certain number of conditions have the opportunity to avoid qualification of such acts as criminal ones, and will be prosecuted in civil proceedings. This procedure appeared in the United States and in Britain, where there is already some success [1].

Britain's Serious Fraud Office (SFO) took the first steps to putting into practice a concept that would provide greater revealing of corruption cases. Foreign Corrupt Practices Act (FCPA) was the catalyst for this initiative in the United States.

Serious Fraud Office (SFO) was established in 1988 to identify individuals and legal persons that earn revenue by fraud, in order to protect individual persons and companies affected by financial fraud; to promote good corporate governance; of strengthening the reputation of London (the capital city of financial honesty and transparency) and ensuring the position of the UK as an outstanding international financial and business center. SFO was established to deal with serious economic crimes and help British business practices. Such assistance includes any person, organization or government both in the UK and abroad, which have undergone direct monetary losses from serious and complex fraud or corruption [2].

SFO is responsible to the Attorney General, and has jurisdiction over England, Wales and Northern Ireland, works in close collaboration with the City Police of London (Metropolitan Police), in addition also helps to conduct overseas investigations through obtaining and transmitting information necessary to investigate cases of fraud. So, according to Section 2 of the Law of the UK from 1987 on Criminal Court Proceedings, SFO has special binding powers to require any person (or business / Bank) to provide all the relevant documents (including confidential ones) and answer any relevant issues, including confidential ones. In 2010-2011 SFO has helped on such problems to more than thirty different jurisdictions [3].

In August 2009 SFO in its document "SFO's Approach to Investigation Cases of Foreign Corruption" in addition to describing the obvious advantages of this concept disclosed the basic requirements for companies that are focused on

co-operation in this field. These requirements are intended to substantiate the sincerity of companies in an effort to assist in investigation and desire to correct an arisen situation. Important is the firm intention of companies to bring qualitative changes in its structure in order to avoid a repetition of incidents. The main principle offered by the SFO is a comparison of the costs of a company, which it will incur in connection with the voluntary disclosure of corruption, with the implications for it and for its leadership that will come as a result of revealing corruption by the SFO not on a voluntary basis. Referring such cases to the category of civil, the public authority greatly facilitates the fate of a company suspected of corruption, when the latter will have to shame its own name and pay a certain amount of fine, but will avoid imprisonment of its leaders. In recent years, this form of cooperation has gained great popularity with stricter regulation of corporations' activities.

However, the evolution of approaches to the voluntary disclosure of information and cooperation is as follows. The first question, which is to be faced by a company after detecting potential criminal actions, – is it worth it or not, and if it is, then – when to disclose this information? Despite the fact that the voluntary disclosure and cooperation primarily affects on the judgment regarding an offense, the cost of this disclosure can be quite substantial. In general, in this situation, the best approach is to conduct an internal investigation to gather the necessary information to make a reasonable assessment of the need for disclosure of information about a potential problem. However, ultimately, the decision about the necessity of disclosure must be carefully considered after consulting with an attorney.

Thus, such a system has both obvious advantages and distinct disadvantages. One of these drawbacks is the fact that the SFO does not guarantee that the outcome of investigation will be considered in civil proceedings, and not in criminal one, and that the company can really lay claim to the mitigation of punishment in the course of investigation. The SFO does not enter into any agreements with companies, which would clearly mean positive consequence resulting from the collaboration, but on the contrary, the actions of the SFO in some aspects may be contrary to the independence of court, which must make a final decision. This drawback is also aggravated by the fact that even if a company receives the mitigation in the form of exception the criminal aspect of the case, those fines, which as a result will be imposed, can be extremely high, and the company will have to suspend its operations due to bankruptcy.

An example is the case of the company Innospec Ltd, which is a manufacturer of fuel additives based on lead (lead tetraethyl), with the parent company Innospec Inc. in the U.S.A. In this case, the parent and affiliate company, had been involved

in systematic violation of the UN sanctions in respect of Iraq in the period from 2000 to 2003, and they were affecting the persons who took decisions on state procurement of lead tetraethyl in Indonesia from 1999 to 2006. In the course of investigation, the British SFO and the U.S. Department of Justice and the Securities and Exchange Commission agreed that the company had to pay a substantial amount of fine, but its size must not exceed the amount, after payment of which the company could go bankrupt. As a result, the judge who conducted the case determined the fine, which was required by the SFO, inadequate and unequal to the offense committed. The judge harshly criticized the actions of these bodies, pointing out that there is no indication on such cases, moreover on the amount of fines and even their limits in the law. The judge also recommended to do not ever enter into such agreements with companies, expressing the idea that only the court ultimately determines the punishment. Thus, was created a precedent where the company had faced a risk of "revealing" itself, without getting anything in return, which showed the shortcoming of the concept.

According to the law, the SFO has no right to impose any sanctions on companies, or to enter into agreements of this kind. Eventually, it remains unclear how popular such a measure will be in the next few years and how its popularity will be affected by the failure to guarantee a positive result in the end of proceedings. However, British and American law enforcement systems are working hard to create new incentives for companies in order to disclose information on the evidence of their involvement in corruption and fraudulence.

References:

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