

Directors and Officers and Financial Institutions - Autumn 2018

Published 11 October 2018

DAC Beachcroft's D&O and FI newsletter features topical issues for our global clients and contacts

INSIGHTS

<u>Senior managers must prepare for individual accountability</u>	<u>Corruption in the sales chain: Amazon faces the risk of criminal liability in the UK for bribery offences</u>
<u>FCA fines Canara Bank for serious AML failings relating to its trade finance activities in the UK</u>	<u>Insolvency and Corporate Governance Consultation - the implications for directors and professional advisers</u>
<u>New Data Protection Law in Brazil</u>	<u>SFO v ENRC appeal - implications for directors and SFO/FCA investigations</u>

NEWS

- **Directors to be made personally liable for nuisance calls**

The government has been consulting on proposals which will give new powers to the Information Commissioner's Office (ICO) to impose civil penalties of up to £500,000 on the directors of companies which breach the nuisance call rules. Currently, the ICO can only fine the companies (not the directors personally) and the effectiveness of its powers are often undermined where companies dissolve, re-emerge under a new name and thereby avoid paying the fine.

The consultation closed on 21 August 2018 and further announcements on the proposal are awaited.

Meanwhile, the government has shown its commitment to stopping those behind nuisance call companies by imposing directorship bans in the most serious cases. In June 2018, the Secretary of State imposed a 6 year ban on the director of a call company that had made around 16 million automated calls after the court ordered the company to close. The company was dissolved because it failed to pay a £260,000 fine issued by the ICO. <https://www.gov.uk/government/news/nuisance-marketing-calls-lands-company-director-6-year-ban>

- **Consultation on Competition Director Disqualification Orders**

The Competition Markets Authority (CMA) has been consulting on revisions to its current guidance on director disqualification orders in competition cases. The draft guidelines would replace the current five-step process with general principles and factors that the CMA may take into account when determining whether to apply for the disqualification of a director for infringements of competition law; streamline the pre-action procedure; and allow greater leniency and reductions in the length of disqualification in cases where there has been assistance and cooperation by the director.

The consultation closed in September 2018. Many commentators are forecasting that, if approved, we should expect to see more investigations by the CMA into possible anti-competitive conduct by directors and more disqualifications.

- **New Director of the Serious Fraud Office**

Lisa Osofsky, the new Director of the Serious Fraud Office (SFO), began her five year term of office on 28 August 2018. She has pledged to work closely with other law-enforcement agencies and regulators to fight crime and make the UK a "high risk place" for sophisticated criminals. Deferred Prosecution Agreements are part of her core strategy but she may also seek to incorporate other enforcement measures used by the US authorities.

Her keynote address to the *Cambridge International Symposium on Economic Crime 2018* is available [here](#):

○ **New legislation in Colombia will impact D&O insurance**

<https://www.dacbeachcroft.com/en/gb/articles/2018/august/do-liability-regime-reform/>

○ **DAC Beachcroft launched its Insurance Market Conditions & Trends 2018/2019 report**

[<https://www.dacbeachcroft.com/media/1242979/dac-beachcroft-insurance-market-conditions-and-trends-report-2018-interactive.pdf>] last month with predictions from our [D&O and Financial Institutions' service line](#). The key theme through this year's report is the changing nature of risk and how insurance must change with it and our thought leadership pieces include insight and commentary by our international partners and our Legalign Global colleagues.

○ **DAC Beachcroft wins Thought Leader award for Financial services - Central and South America**

Edward Costelloe, managing director of Lexology said:

"Being one of the first winners of the Lexology Awards is a great achievement. They have been carefully designed to recognise those authors and firms who consistently provide our subscribers with useful, insightful legal updates and we are delighted to recognise excellence in legal content today."

Authors



William Allison

London - Walbrook
wallison@dacbeachcroft.com



Graham Ludlam

London - Walbrook
gludlam@dacbeachcroft.com



Francesca Muscutt

London - Walbrook
fmuscutt@dacbeachcroft.com