
DPA's Continue to Make the Headlines

JUNE 18, 2015

Deferred prosecution agreements (DPAs) continue to polarise opinion and garner critical attention in both the US and the UK.

Earlier this year, US Senator Elizabeth Warren labelled DPAs a mere "*slap on the wrist*" for companies found to have engaged in large scale financial wrongdoing. The UK's fledgling DPA framework has also come in for strong criticism.

Speaking at the GIR Live conference on 21 April 2015, Lord Macdonald QC (the former Director of Public Prosecutions for England and Wales) described the UK's process as presenting companies with "*an awful lot of risk and not very much promise*". This echoes the views of practitioners who have questioned whether the UK's framework offers companies an attractive alternative to the threat of litigation, particularly in view of the high threshold that exists for establishing corporate criminal liability.

Notwithstanding these criticisms, the SFO has made it abundantly clear in recent weeks that a number of companies are already currently engaged in the UK's DPA regime.

[Speaking on 20 May 2015](#), Ben Morgan (the Joint Head of Bribery and Corruption at the SFO) stated that the SFO had issued its "*first invitation letters giving corporates the opportunity to enter into DPA negotiations*." Mr Morgan's statement was supported by [comments made last week](#) by the Director of the SFO that he expects multiple DPAs to be concluded in the next six months.

DPAs were introduced into the UK legislative framework last year but the process for companies looking to benefit from such an arrangement differs markedly from the approach taken in the US, not least because of the central role afforded in the process to the UK's judiciary.

For more detail on the process through which DPAs will be offered, arranged and, if breached, terminated, see WilmerHale's practical guide, [Deferred Prosecution Agreements, A Practical Guide](#).

Authors



Lloyd Firth

COUNSEL

✉ lloyd.firth@wilmerhale.com

☎ +44 (0)20 7872 1014