Law enforcers are pursuing corporate crimes with growing vigour these days and increasingly their reach is global. The US Foreign Corrupt Practices Act is being enforced with far greater zeal than at any time in its 30-year history, and the UK’s new Bribery Act has given regulators and the criminal authorities specific power to take action on events that happen way outside their own jurisdictions.

Now they are also regularly using other tools like extradition and airline passenger information to pursue white-collar crimes, such as bribery, fraud and insider dealing. “The corruption agenda is hot across the world,” says Peter Watson, a litigation partner based in London. He points out that law enforcers are increasingly working together to pursue corporate corruption cases and more countries are agreeing Mutual Legal Assistance Treaties to speed up the process.

Many of these new powers were brought in as a direct response to 9/11, with law enforcers realising they needed greater co-operation and better tools to deal with this global threat.

Take the European Arrest Warrant (EAW), for example. By replacing the old political and administrative phases of European extradition with a new judicial mechanism, the time it takes to gain an extradition order has been reduced from around 18 months to just 50 days. In some cases that is a welcome efficiency. The trouble is these new powers are increasingly being wielded to combat often far less serious crimes than perhaps was originally intended. That’s led to growing worries that the new

Measures to speed up the extradition of terrorists are increasingly being used by law enforcers to bring white-collar criminals to book. Our criminal litigation and defence lawyers are now regularly working across borders to make sure these powers are not abused.

A banker, passing through the US on a family holiday, is arrested on an Interpol Red Notice. He works in Hong Kong for a European bank and is one of three colleagues facing dubious charges of fraud levelled by a client from the Philippines who has suffered heavy, but entirely normal, trading losses on foreign exchange deals.

In an attempt to gain compensation, the client has used a local law firm to exploit criminal investigation powers to pursue the case rather than conventional civil proceedings.

After being held for eight hours and following an intervention by A&O criminal litigation and defence lawyers, the Red Notice – an immensely powerful device that can be deployed with relative ease – is removed and he is released.

Law enforcers are pursuing corporate crimes with growing vigour these days and increasingly their reach is global.

The US Foreign Corrupt Practices Act is being enforced with far greater zeal than at any time in its 30-year history, and the UK’s new Bribery Act has given regulators and the criminal authorities specific power to take action on events that happen way outside their own jurisdictions.

Now they are also regularly using other tools like extradition and airline passenger information to pursue white-collar crimes, such as bribery, fraud and insider dealing.

“The corruption agenda is hot across the world,” says Peter Watson, a litigation partner based in London.

He points out that law enforcers are increasingly working together to pursue corporate corruption cases and more countries are agreeing Mutual Legal Assistance Treaties to speed up the process.

Many of these new powers were brought in as a direct response to 9/11, with law enforcers realising they needed greater co-operation and better tools to deal with this global threat.

Take the European Arrest Warrant (EAW), for example. By replacing the old political and administrative phases of European extradition with a new judicial mechanism, the time it takes to gain an extradition order has been reduced from around 18 months to just 50 days.

In some cases that is a welcome efficiency. The trouble is these new powers are increasingly being wielded to combat often far less serious crimes than perhaps was originally intended. That’s led to growing worries that the new
powers can be disproportionate and unfair.

That’s also the case being made by Fair Trials International (FTI) in the non-corporate sphere.

This year lawyers from our offices across nine European countries carried out pro bono research for FTI to review how the EAW regime was being implemented in different countries.

It showed the use of EAWs is far from consistent. Despite having a much smaller population, Poland, for example, issued four times as many arrest warrants than France in 2009, and 22 times more than the UK.

FTI is now using this work to press for changes in the EAW regime, and recently put the case for reform to the European Commission Vice-president for Justice, Viviane Reding.

Sergio Ung, the A&O lawyer who co-ordinated our research for FTI, explains the concerns:

“Fair Trials International is not suggesting the system should be taken down, because it recognises the need for an efficient extradition system and for effective co-operation in cross-border cases.

“Instead it argues that there are inadequacies in the system that are leading to injustices. It’s clear that warrants are being issued, often for very minor offences, without proper consideration of whether extradition is proportionate.”

Major concerns include the fact that:

• Rights to legal representation apply only in the executing but not the issuing state
• Warrants can remain live in other European jurisdictions after another state has refused to execute
• The European Convention of Human Rights is frequently breached. Between 2007 and 2010, there were 181 Article 3 rulings on torture and degrading treatment, and 1,696 Article 6 rulings on the right to a fair trial against EU countries.

Arno Chakrabarti, a Hong Kong partner, says, as the arm of anti-corruption and securities laws stretches across frontiers, the Hong Kong regulator is working much more closely with the US and UK authorities.

“There’s been a very definite increase in cross-border activity,” he says. “It’s very much on our clients’ radars and we’re increasingly providing them advice on compliance.”

Regulated banks and financial institutions tend to have fairly robust systems in place, he says. But small and medium-sized businesses operating in the region may not and can therefore struggle to understand how vulnerable they are when operating in countries where “hospitality and gifts” are part of the local business culture.

Peter sees it as part of a wider trend. “More and more things you do as a company director expose you to liability and prosecution. Companies must understand the new environment and get their houses in order.”

Arno agrees: “I think this trend will only continue especially as more and more countries set up treaties on co-operation and as prosecutors spend more time talking to each other. It’s just the way things are going to be in future.”

Contributors

Arno CHAKRABARTI
London

Simon CLARKE
Hong Kong

Sergio UNG
London

Peter WATSON
London