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BDO GLOBAL FORENSICS:

A Q&A WITH GERVASE MACGREGOR, BDO U.K. PARTNER AND GLOBAL FORENSICS PRACTICE LEADER

How is the U.K. stepping up its regulatory efforts against corruption and money laundering?

The U.K.'s Serious Fraud Office (SFO) is more aggressively pursuing high-profile corporate fraud cases following David Green's appointment as director in 2012. Since then, the SFO's legal authority has increased, as have conviction rates. In May 2014, the Sentencing Council introduced a new sentencing guideline for bribery under the Bribery Act 2010. The first convictions under the new guideline were announced at the end of 2014, reflecting a shift to a more severe sentencing regime for corporate wrongdoing. In mid-2015, the regulator issued one of the harshest penalties for a financial crime against a bank trader in the LIBOR-rigging scandal, and later in the year approved its first-ever deferred prosecution agreement (DPA) with a bank charged with failing to prevent bribery of foreign officials.

Anti-money laundering will be another key area for regulatory scrutiny, given the U.K.'s prominence as a global financial center. G20 leaders have vowed to step up intelligence sharing and work together to cut off sources financing terrorism. The U.K. issued its first National Risk Assessment of money laundering and terrorist financing risks in 2015, highlighting existing and planned initiatives to strengthen collaboration among various agencies and its enforcement actions.

How are low oil prices and global market volatility playing into financial regulatory concerns?

Oil price volatility has put the energy industry under the spotlight, with U.K. regulators placing heightened scrutiny on transactions with oil exporters and sovereign wealth funds in particular. Sovereign wealth funds—especially those in oil-rich countries—are rapidly depleting their assets in order to fund their own struggling economies as they reel from low oil prices. There have been a number of high-profile cases recently involving fraudulent activity tied to investments with sovereign wealth funds. Barclays, for example, faces accusations of questionable cash-raising practices with a subsidiary of a sovereign wealth fund during the global financial crisis.

U.K. regulators have implemented tougher anti-corruption rules for the oil, gas and mining industries and are closely examining transactions with oil exporters for evidence of bribery. In January 2015, the U.K. became the first country to introduce reporting requirements for extractive industries. In addition, the Office of Gas and Electricity Markets (OFGEM), the U.K.'s national regulatory authority on wholesale energy markets, has increased its scrutiny of behavior that may constitute market manipulation. In September 2015, OFGEM published an open letter clarifying the Regulation on Wholesale Energy Market Integrity and Transparency (REMIT) of 2011, enumerating specific practices that constitute market manipulation.

What regulatory actions are being taken in regards to cybersecurity and data privacy?

Cybercrime is top of mind for U.K. businesses and regulators alike as hackers become more sophisticated and the costs of cyber attacks increase by double digits. Financial institutions are a prime target for cyberattacks, but the reality is that every industry sector is facing greater risks.

The U.K. is ramping up cybersecurity regulations in response. Strict new data protection rules are under final review, set to replace the 20-year-old Data Protection Directive and update these policies for the 21st century. Privacy breaches will result not only in direct business losses, but potentially hefty regulatory fines, as

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well. Businesses must hold themselves to a higher standard to prevent and mitigate attacks, diligently evaluating vulnerabilities and developing sound strategies and infrastructure support.

Also of note, the U.S.-EU Safe Harbor provision allowing American companies to process Europeans' personal data was struck down by the European Court of Justice last October. In early February of this year, an agreement on a new legal framework for transatlantic data flows to replace Safe Harbor was reached: the EU-U.S. Privacy Shield. Under the new arrangement, access to personal data transferred from the EU, for national security purposes or otherwise, will occur only within clear restrictions and under close monitoring and enforcement. However, the Privacy Shield must first be approved by the European Commission in an adequacy decision before it can be promulgated, which will likely take some time. In the meantime, organizations will need to consider alternative data transfer mechanisms.

How does the U.K. view tax avoidance?

Tax avoidance reform efforts in the U.K. have been focused on deterring the most egregious tax abuse, acknowledging that taxpayers have the right to tax efficiency. In 2013, the U.K. passed the General Anti-Abuse Rule (GAAR) as part of the Finance Bill 2013 to increase the ability of HM Revenue & Customs (HMRC) to tackle individual and corporate abuse of the tax code through tax avoidance schemes. The U.K. describes GAAR as only part of its approach to anti-tax avoidance, as the legislation is narrowly defined to cover specific types of tax abuse. It's worth noting that the HRMC has yet to bring a case of avoidance abuse to the GAAR advisory panel. However, the government has strengthened GAAR in the last year, releasing extensive guidance to clarify to which taxes GAAR applies, as well as what constitutes abuse and implementation. As recently as this past November, the U.K. introduced steeper penalties for violations of GAAR and broadened its anti-avoidance measures. We may see our first GAAR case in 2016, especially in light of recommendations from the OECD Base Erosion and Profit Shifting (BEPS) program.

There has been talk of reforming international investment disputes. What's happening?

Arbitration panels for disputes between foreign investors and governments have become increasingly commonplace in recent years, and a number of controversial trade agreements have put international dispute resolution mechanisms in the spotlight. The Trans-Pacific Partnership (TPP)—between the U.S. and Asia-Pac — and the Transatlantic Trade and Investment Partnership (TTIP)—between the U.S. and Europe—include Investor-State Dispute Settlement provisions (ISDS), allowing private investors to use dispute settlement mechanisms against a foreign government for alleged violations of international public law. While the TPP has been signed, the agreement still needs to be ratified by the individual state parties. The TTIP is still under negotiation and remains hotly contested.

Further complicating the TTIP negotiations, the EU has proposed reforms to make its system more transparent, sharing the details of its Investment Court System (ICS) proposal in September 2015. ICS would replace ISDS as the EU's primary form of dispute resolution—including in the TTIP.

How can BDO help organizations facing these issues?

BDO has deep experience in virtually every facet of global forensic accounting and investigations work. Our integrated international network spans more than 150 countries, offering low bureaucracy and highly personalized relationships with senior professionals who can rapidly identify and respond to issues. We are one of only a few forensic accounting organizations with a truly global footprint, providing direct access to resources and key relationships. We look at every engagement through an industry lens—a fundamental aspect of our approach that enables us to deliver intelligence on emerging trends, regulatory changes and best practices.