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SPECIALISTS IN
CORPORATE CRIMINAL LAWwww.svsadvocates.com

THE HAGUE / ROTTERDAM

PREVENTION BETTER THAN CURE

Q&A with Netherlands' largest business crime law firm

DUTCH firm, Sjöcrona Van Stigt Advocaten, specialises in advising on business crime matters and is the largest firm in the country solely dedicated to advice and litigation in this area. It has offices in The Hague and Rotterdam, and fields a team of 20 lawyers, including seven partners, who all deal exclusively with criminal defence work.

Environmental criminal law is a particular niche strength and the firm was recently involved in the high profile 'Probo Koala' case, where it was alleged that waste from that vessel caused multiple deaths in Côte d'Ivoire. The only criminal trial arising from the incident took place in the Netherlands, and Sjöcrona Van Stigt successfully represented Amsterdam Port Services. The prosecutor appealed against the ruling and the firm will also be involved in the Court of Appeals proceedings, which begin in June.

As corporate crime continues to rise in profile, partners Alexander de Swart and Enide Perez explain the main trends behind the headlines.

WHITE COLLAR CRIME HAS CLIMBED TO THE TOP OF THE CORPORATE AGENDA, WHAT ARE THE MAIN REASONS BEHIND THAT DEVELOPMENT?

There has been a growing awareness that white collar crime can happen everywhere and that negligence by the board may lead to criminal liability. I am sure that high profile cases in the US, such as Enron, has helped to create awareness elsewhere - and that includes the Netherlands. To some extent, this applies even more to American-owned Dutch subsidiaries.

Furthermore, several business scandals in the Netherlands led to large criminal cases and substantial coverage in the financial media. If it turns out that some sectors, such as real estate, are particularly sensitive to fraud, compliance to a certain threshold becomes mandatory.

Most of the companies in the Netherlands that have a high exposure to environmental law and/or labour safety laws will sooner or later face an investigation

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that could potentially lead to a fine, or even a criminal prosecution of the corporate entity or senior ranking executives. In particular, when accidents happen at work and employees get injured or even die, such an investigation can not be taken lightly.

Another relevant factor is that more and more companies face commercial consequences of criminal investigations, which often go hand in hand with the naming and shaming of the company. Even following a court ruling, the case is usually not over; the government can refuse to issue necessary permits later because of an alleged offence in the past, and a bank can terminate an account because it is concerned about its reputation when the client's name is in the newspaper.



Alexander de Swart

HAS THE CREDIT CRUNCH LED TO GREATER SCRUTINY IN THE AREA OF CORPORATE GOVERNANCE?

In the Netherlands, as in a lot of other countries, the credit crunch led companies to worry about their economic and financial position and their corporate governance strategy. We feel that this has led to tightened control, internally as well as externally, following criticism of the regulatory

authorities in the aftermath of the recession.

WHICH INDUSTRIES ARE ATTRACTING THE MOST ATTENTION FROM REGULATORS AT THE MOMENT?

The real estate industry is receiving a lot of attention at the moment. An interesting development is that following intense scrutiny in the real estate sector, the notarial profession has been subject to sharpened supervision. Also, high net worth individuals - and their advisors - are attracting increasing attention for undeclared assets abroad.

For many years, waste treatment companies have also been receiving a lot of scrutiny from several investigative bodies.

IS IT FAIR TO SUGGEST THAT ENFORCEMENT IS GETTING TOUGHER?

Absolutely. Not only have more cases have been brought forward, but also the prosecutors tend to ask for imprisonment in most cases concerning executives. A standard part of almost every investigation nowadays regards the so-called proceeds of crime. Prosecutors only want to settle if there is also an agreement regarding the proceeds of crime. Quite often, the fine is low compared to the sometimes astronomical amount of the calculated proceeds of crime. Just to illustrate how challenging this can be for clients: All the financial benefits of a company operating without the required license are considered proceeds of crime. It has come a long way from the early days in which proceeds of crime only applied to drugs cases.

Money laundering became a feature under Dutch criminal law in December 2001 and since then it has become almost standard as an alleged offence in every fraud case. Even if no underlying offence can be proven, the prosecutor might solely prosecute for money laundering. The same applies to participating in a criminal organisation.

Besides the legal aspects, great disadvantage is created by the enormous amount of interest in some corporate cases by the media. A 'conviction' in the media can take place before an acquittal by the court, which of course can have serious commercial consequences. Although, in general it is said that Europe has strict privacy laws, it is not uncommon that



Enide Perez

there is almost no privacy left for high profile suspects in an ongoing investigation.

IS THERE ANY LEGISLATION BEING PLANNED THAT CLIENTS NEED TO BE AWARE OF?

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important because the latter will be an act of prosecution and is considered to be an admission of guilt. Therefore, such an order can negatively influence a person's request for a certificate of good conduct.

In addition, we are preoccupied with the UK Bribery Act entering into force on July 1st 2011, because this law will also force Dutch companies to put additional compliance measures in place in the area of (foreign) anti bribery policies. ■

About the authors:

Alexander de Swart is a partner at Sjöcrona Van Stigt Advocaten, a leading criminal defence firm in the Netherlands. He mainly handles major fraud cases, proceeds of crime cases and environmental criminal cases. Most notably, he successfully represented clients in a construction fraud case, property fraud case and environmental case arising from the 'Probo Koala' toxic waste matter.

Mr. De Swart is a member of the Dutch Association of Defense Counsels, the International Bar Association and the European Criminal Bar Association.

Enide Perez is a partner at Sjöcrona Van Stigt Advocaten, where she started her career in 1997. She specialises in cases involving tax offences, fraud and economic offences, such as violations of environmental law and health and safety regulations (industrial accidents). She also advises companies, and their executives, on possible liability under criminal law and on how to prevent such liability. Mrs Perez is a Committee member of the Dutch association of Defense Counsels and a member of the International Bar Association.

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