



GLOBAL INVESTIGATIONS AND WHITE-COLLAR DEFENCE | JANUARY 2024

# SFO HANDED EXPANDED POWERS TO COMPEL INFORMATION AND DOCUMENTS IN RELATION TO SUSPECTED FRAUD

## What's new?

The new Economic Crime and Corporate Transparency Act 2023 (**ECCTA**), expands the scope of the SFO's powers to compel individuals to provide documents and information before a formal investigation is launched. Previously, these powers were only available to investigators in cases of suspected international bribery but as of 15 January 2024, they are now available to the SFO for use in cases of suspected fraud.

This change is consistent with the increased public interest in and focus on fraud which has resulted in new laws being passed in ECCTA which make companies vicariously liable for the white-collar misconduct on the part of senior employees and the new failure to prevent fraud offence.

## What are Section 2A powers?

Pre-investigation powers are used by the SFO at the vetting stage. They assist the SFO to obtain information and potential evidence at an early stage so it can determine whether a crime had taken place and whether the case meets its acceptance criteria. This ensures that potential evidence is secured more quickly, instead of having to wait for a case team to become available. It should also ensure that fewer cases are shut down after formal acceptance.

As with the SFO's regular Section 2 Notices, failure to comply with a Section 2A Notice without a reasonable excuse can lead to prosecution.

## What does this mean?

The removal of the limitations of these powers means that the SFO can serve Section 2A notices in circumstances where fraud is suspected as well as bribery and corruption.

We anticipate that there will be an increase in the use of the SFO's pre-investigative powers, with companies and individuals likely receiving Section 2A notices from the SFO.

## What to do?

We have published a short guide<sup>1</sup> on what to do if your business receives a notice compelling the production of documents and information from law enforcement which sets out in detail what steps you should take. We routinely advise on complying with such notices and where they have been unlawfully sent have successfully challenged them up to and including the Supreme Court.

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<sup>1</sup> <https://www.hfw.com/How-To-Respond-To-A-Notice-Compelling-The-Provision-Of-Documents-And-Or-Information>

For more information, please contact the author(s) of this alert



**BARRY VITOU**  
Partner, London  
**T** +44 (0)20 7264 8050  
**E** [barry.vitou@hfw.com](mailto:barry.vitou@hfw.com)



**ANNE-MARIE OTTAWAY**  
Partner, London  
**T** +44 (0)20 7264 8054  
**E** [anne-maire.ottway@hfw.com](mailto:anne-maire.ottway@hfw.com)



**CINDY LAING**  
Associate, London  
**T** +44 (0)20 7264 8263  
**E** [cindy.laing@hfw.com](mailto:cindy.laing@hfw.com)

**hfw.com**

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