

E-ALERT | White Collar

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UK BRIBERY AND CORRUPTION ENFORCEMENT UPDATE: PROSECUTION OF INDIVIDUALS

The UK Serious Fraud Office (the “SFO”) has recently announced two anti-corruption enforcement actions the significance of which should not be underestimated. These are vastly different enforcement actions, but both are equally important in the evolution of the UK’s anti-corruption enforcement landscape. The first builds on the SFO’s goal of seeking to secure a civil remedy against cooperating companies, and the second is a reaffirmation of the SFO’s focus on prosecuting senior officers of companies who are shown to have had involvement in Bribery and Corruption. In this article we will examine and comment upon the recent action taken against individuals. The Civil Order secured against the company, M.W. Kellogg Limited (MWKL) has been examined in a separate [article](#).

UK PROSECUTION OF SENIOR OFFICERS OF COMPANIES

On 10 February 2011 a jury at Southwark Crown Court found two former directors of engineering firm Mabey & Johnson Ltd guilty of inflating the contract price for the supply of 13 steel modular bridges in order to provide over £360,000 in bribes to the Iraqi government of Saddam Hussein. Mabey & Johnson Ltd had pleaded guilty to breaching United Nation (“UN”) sanctions (along with separate corruption offences committed in Jamaica and Ghana) and was sentenced in September 2009.

Charles Forsyth and David Mabey were found guilty of making illegal payments to Iraq during 2001 and 2002 in breach of UN sanctions. At the time of the offence, Charles Forsyth was the Managing Director of Mabey & Johnson Ltd, and David Mabey the Sales Director. Richard Gledhill who was Sales Manager for contracts in Iraq, pleaded guilty at an earlier hearing and gave evidence for the SFO.

On 23 February 2011, HHJ Rivlin QC sentenced the three defendants. Charles Forsyth, who was deemed to have been most at fault, was sentenced to 21 months imprisonment, disqualified from acting as a company director for 5 years and ordered to pay prosecution costs of £75,000. David Mabey was sentenced to 8 months imprisonment, disqualified from acting as a company director for 2 years and ordered to pay prosecution costs of £125,000. The 8 month sentence passed on Richard Gledhill was suspended for 2 years in recognition of his guilty plea and personal mitigation.

Background

Mabey & Johnson Ltd design and manufacture steel modular bridges. Iraq had been one of its markets until economic sanctions were imposed following the invasion of Kuwait in 1990. The introduction of the Oil-for-Food Program permitted Iraq to resume its export of crude oil in order to acquire humanitarian goods. The proceeds of the sale of crude oil were deposited into a UN-controlled escrow bank account. These monies were then utilised to meet the humanitarian needs of the Iraqi population by the importation of necessary, authorised products. This extended to certain infrastructure contracts which reopened the potentially lucrative Iraqi market to Mabey & Johnson Ltd.

Mabey & Johnson Ltd agreed with the Iraqi Government to pay a kickback amounting to 10% of the contract value for the supply of 13 bridges. This was disguised as "commission" payable to Mabey & Johnson Ltd's local representative and was paid for by increasing the contract price.

Richard Gledhill, as Sales Manager, negotiated the contract with the Iraqi Government and obtained approval from Charles Forsyth and David Mabey.

The SFO commenced an investigation in 2007 leading to Mabey & Johnson Ltd's guilty pleas and sentencing in September 2009. The company was fined £2 million in connection with Iraq and has paid over £600,000 to the Iraq Reconstruction Fund. It was also ordered to pay fines and reparation in relation to the corruption in Ghana and Jamaica of almost £2.3 million and had £1.1 million of assets confiscated. In addition, it was ordered to pay the prosecution costs and costs of a monitor amounting to some £600,000.

The SFO then issued summonses against the three above named defendants in December 2009 with the trial opening in January 2011.

Commentary

In 2009 Mabey & Johnson Ltd became the first company to be convicted, following a guilty plea, of bribery and corruption offences and of UN sanctions busting. Securing the conviction was a significant achievement for the SFO at the time but what is equally significant is the fact that the SFO then successfully pursued the individuals within the company who were responsible for the misconduct.

The conviction of the three defendants in this case follows hot on the heels of convictions that the SFO has secured against other high profile individuals in 2010 for their role in their companies' payment of bribes to secure business including Julian Messent and Robert Dougall.

In October 2010, Messent, a former CEO of PWS International Limited, was sentenced to 21 months imprisonment for his part in paying some \$2 million of bribes over a 3 year period to corrupt government officials in Costa Rica to secure reinsurance brokerage contracts for his company. He was also ordered to pay £100,000 by way of compensation to the Government of Costa Rica and was disqualified from being a company director for a period of five years. The sentencing judge made it clear that the plea agreement entered into and mitigation offered meant that he had been persuaded to reduce the sentence from an initial starting point of four to five years.

In April 2010, Dougall, a senior executive at DePuy International Limited - a subsidiary of Johnson & Johnson Inc. - was given a 12 month suspended sentence, on appeal, for his part in a scheme which paid some £4.5 million over a 4 year period to Greek health officials for the purpose of securing sales of his company's orthopaedic products into that market. Dougall engaged in a plea negotiation with the SFO at an early stage and provided full cooperation throughout the investigation and is committed to continued cooperation with both the SFO and the US authorities. The sentence reflected, in a meaningful way, his plea of guilty and his early and continued cooperation.

It is expected that the SFO or its successor will continue to view the pursuit of individuals who may have taken part in corruption offences as a valuable tool to deter corporate wrongdoing. In October 2010, the SFO charged a further 5 individuals with corruption offences. The allegations relate to engineering contracts in the energy sector valued at approximately £66 million.

It is clear that once the UK enacts its new Bribery Act, UK prosecutors will take a close look at the provisions contained in section 14 of the Bribery Act to deal with any Senior Officers of companies who can be said to have consented to or connived in the commission of bribery offences and that the courts will not shy away from imposing appropriate custodial sentences on

those found guilty. HHJ Rivlin QC has made it clear that in cases of corruption, "[w]hen a director of a major company plays even a small part, he can expect to receive a custodial sentence".

Senior Officers should therefore not only take the time to understand their companies' exposure to Bribery and Corruption risks but ensure that they fully understand their own personal exposure to the folly of others. A maximum jail sentence of 10 years and the prospect of unlimited fines for individuals under the Bribery Act should certainly act as an incentive to do so.

If you have any questions concerning the material discussed in this client alert, please contact the following members of our white collar practice group:

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