

Investors in Corruption: SFO Action on Proceeds of Bribery - January 2012

Recovery of dividends paid by corrupt companies may lead to action against investors who do not undertake adequate due diligence.

This week, the Serious Fraud Office (SFO) won a civil recovery order against Mabey Engineering Holding allowing it to confiscate the GBP 131,201 dividend it received from Mabey & Johnson. The order was sought because, in 2009, Mabey & Johnson had admitted corruption and breaching UN Sanctions leading to the imprisonment of company executives following an SFO investigation.

In February 2011, two former Directors and a sales manager of Mabey & Johnson were sentenced to imprisonment for providing kickbacks to the former government of Saddam Hussein. They were convicted of having inflated the contract prices for the supply of steel bridges and disguised illegal payments. They were further convicted of having made illegal payments to Iraq, through Jordanian banks, from 2001 to 2003, in contravention of UN sanctions. Mabey & Johnson had previously pleaded guilty in 2009 to breaching UN sanctions in relation to its activities in Iraq and to committing corruption offences in Ghana, Angola, Madagascar, Mozambique, Bangladesh, and Jamaica.

The civil recovery order has been described as a landmark court action paving the way for the SFO to recover dividends paid in the UK by companies convicted of criminal offences. While the amount in this case is small, it demonstrates the growing confidence of the SFO in pursuing not only convictions for bribery and corruption but also the proceeds from these offences.

The targeting of dividend payments to recover proceeds of bribery and corruption offences has implications for third party investors in affected companies. While Mabey & Johnson is a privately held company, the SFO have stated that they will also use the civil recovery process to pursue listed companies and investors who have benefitted from illegal activity.

Richard Alderman, the Director of the SFO, has stated clearly that ignorance is not a defence and is quoted in the *Financial Times* as stating: "Where issues arise, we will be much less sympathetic to institutional investors whose due diligence has clearly been lax in this respect." This raises significant concerns for investors and highlights the need for investors to understand the operations, reputation and attitude to bribery and corruption at the companies in which they are considering investing.

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