

Two former directors of UK company convicted of breaching UN sanctions in connection with kickback payments to Iraq

Last week Charles Forsyth and David Mabey, two former directors of UK engineering firm Mabey & Johnson Ltd, were found guilty by a Southwark Crown Court jury of making illegal payments to Iraq during 2001-2002 in breach of United Nations sanctions. They are to be sentenced on 23 February.

At the time of the offence, Charles Forsyth was the Managing Director of Mabey & Johnson Ltd, and David Mabey the Sales Director. Another defendant, Richard Gledhill who was Sales Manager for contracts in Iraq, pleaded guilty to sanctions offences at an earlier hearing and gave evidence for the Prosecution.

Economic sanctions were imposed on Iraq following the invasion of Kuwait in 1990. Mabey & Johnson Ltd entered into a contract under the UN Oil-for Food Programme which was introduced to alleviate hardship for the Iraqi people. The company had agreed with the Iraqi Government to pay a kickback amounting to 10% of the contract value for the supply of 13 bridges. The kickback was disguised as “commission” payable to the company’s local representative and was factored into the contract price by increasing the price.

The Iraqi Government’s demands for kickbacks on humanitarian contracts came under UN scrutiny following the international action against Iraq in 2003. Following a referral by the UN Independent Inquiry Committee, the UK’s Serious Fraud Office (the “SFO”) commenced an investigation in 2007.

Mabey & Johnson Ltd self-referred to the SFO and subsequently pleaded guilty to breaching United Nations sanctions in September 2009. At the same time the company admitted corruption offences in relation to other overseas contracts - between 1994 and 2001 it bribed public officials over a bridge and road project in Ghana and another building contract in Jamaica.

Mabey & Johnson Ltd was ordered to pay a total of £6.55m in connection with these offences, including

£4.6m in fines and disgorgement of profits. The company was ordered to pay £2 million in connection with Iraq and has paid £618,000 to the Iraq Reconstruction Fund. In addition, Mabey & Johnson was ordered to pay the costs of an independent compliance monitor to ensure it had appropriate systems and controls in place going forward.

The court stressed that the fact that the company had self-reported the problem to the SFO and then cooperated fully in the investigation was the biggest mitigating factor in assessing the level of fine to be imposed. This did not, however, prevent criminal proceedings being pursued against individual senior managers.

New offences

The provisions of the Bribery Act 2010, which is expected to come into force later this year, will make it easier for criminal prosecutions to be brought against both corporates and their senior management who have obtained or attempted to obtain business through cash bribes or other improper inducements.

As well as general offences of offering/giving and soliciting/receiving bribes, the Bribery Act introduces a new specific offence of bribing a foreign public official in order to obtain business contracts, as well as an offence which can be committed by commercial organisations (an expression which includes companies and partnerships who have a business presence in the UK) who fail to prevent bribery by persons acting on their behalf in the course of business. In addition, if a commercial organisation has committed one of the general offences or bribed a foreign public official, then “Senior Officers” who have “consented or connived” in the commission of the offence can also be liable and are exposed to prosecution as if they had personally committed the bribery offence.

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For further information on financial crime, anti-corruption, sanctions, anti-money laundering and corporate investigations please contact:

Andrew Legg

Partner

Tel: +44 20 7782 8386

alegg@mayerbrown.com

Angela Hayes

Partner

Tel: +44 20 7782 8311

ahayes@mayerbrown.com

Marc Cohen

Partner

Tel: +44 20 3130 3494

mcohen@mayerbrown.com

Susan Rosser

Senior Associate

Tel: +44 20 3130 3358

srosser@mayerbrown.com

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