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The Bribery Act Bites: Convictions for Foreign Bribery as Government Publishes Anti-Corruption Plan

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In December 2014, the Serious Fraud Office (the SFO) secured landmark convictions in two separate cases: its first convictions against individuals under the Bribery Act 2010 (the Bribery Act)¹ and its first conviction against a corporation after a trial for offences under the Prevention of Corruption Act 1906 (PCA).² Previous convictions against corporations for bribery offences had been secured via guilty pleas (Mabey & Johnson in 2009³ and Innospec Limited in 2010⁴). The key points arising from these convictions are:

- The SFO will prosecute for bribery that has taken place overseas, and will (successfully) prosecute a corporation for a bribery offence.
- Interaction with public officials in regions with a high perception of corruption (here, Africa) presents significant risks.
- UK individuals and corporates are at risk for bribery involving third-party agents, despite the agent in one of these cases being acquitted.
- The conviction of corporates for agents' activities may be significantly easier under the failure to prevent bribery offence in Section 7 of the Bribery Act for activities post-dating 1 July 2011.

These convictions came as the UK Government published its 66-point UK Anti-Corruption Plan, setting out future steps to tackle corruption and calling for a coordinated approach to bribery prosecutions between the SFO (which leads on serious or complex and overseas cases) and the Crown Prosecution Service (which conducts all other investigations and prosecutions).⁵ The clear statement of intent found in the Plan is welcome, although many of the proposals are imprecise.

Bribery relating to investments in Cambodian biofuel (Sustainable Growth Group)

In 2012, the SFO launched an investigation into the mis-selling of investment products between April 2011 and February 2012 relating to biofuel Jatropha tree plantations in Cambodia by Sustainable Growth Group (SGG) and its subsidiary Sustainable AgroEnergy plc (SAE). The biofuel products were sold to UK investors, who were, according to the SFO, deliberately misled to believe that SAE owned land in Cambodia planted with Jatropha trees, with an insurance policy in place to protect investors if

the crops failed. According to the SFO, the total value of the fraud was approximately £23 million. The group of companies went into administration in March 2012.

In August 2013, the SFO brought charges for fraud, and bribery offences under the Bribery Act against four individuals connected with SAE: Gary Lloyd West (Chief Commercial Officer and Director), James Brunel Whale (Chief Executive Officer, Chairman and Director), Stuart John Stone (third-party sales agent) and Fung Fong Wong (Financial Controller). These were the first bribery charges the SFO brought under the Bribery Act. The SFO alleged that, in addition to making false representations to investors, Mr. Stone bribed Mr. West to produce false sales invoices of over £3 million, for which Mr. Stone — as a sales agent — received very high commission rates of 65 percent on investor's funds. The fraud was concealed using false e-mail addresses, Swiss bank accounts and companies registered in the Seychelles and British Virgin Islands.

On 5 December 2014, Mr. Stone and Mr. West were convicted of giving and receiving bribes (under Sections 1 and 2 of the Bribery Act), respectively. Along with Mr. Whale, they were also convicted of various fraud offences. Mr. Wong was acquitted of all charges.

A judge imposed custodial sentences of 13 years on Mr. West (including two years for receiving bribes), nine years on Mr. Whale and six years on Mr. Stone (one of Mr. Stone's three six-year concurrent sentences was for giving bribes). The SFO's legal proceedings to establish compensation and confiscation orders against the three individuals are ongoing.

These are the first sentences for bribery offences to be passed in accordance with the new sentencing guidelines effective from 1 October 2014.⁶ These guidelines set out how the courts should determine the category of offence (by assessing culpability and harm) and the sentencing starting points for each category. The guidelines also list aggravating factors (including attempts to conceal evidence, offences committed across borders and pressure exerted on another party) and mitigating factors (including remorse, voluntary reporting and cooperation with an investigation).

Corrupt payments to overseas officials for business contracts (Smith and Ouzman Ltd)

In 2010, the SFO launched an investigation into corrupt payments made to overseas officials to influence the award of business contracts to Smith and Ouzman Ltd, a printing firm based in England specialising in security documents such as ballot papers.

On 30 August 2013, the SFO brought charges against Smith and Ouzman Ltd, Christopher John Smith (Chairman), his son Nicholas Charles Smith (Sales and Marketing Director), Timothy Hamilton Forrester (sales manager) and Abdirahman Mohamed Omar (a sales agent) in respect of alleged corrupt payments made between November 2006 and December 2010 — relating to deals in Mauritania, Ghana, Somaliland and Kenya worth £2.25 million. Since the alleged acts pre-dated the coming into force of the Bribery Act, the charges were brought under Section 1 of the PCA. The SFO alleged that commission payments to overseas agents had been inflated in order to hide corrupt payments totalling £395,074 to public officials for business contacts in Kenya and Mauritania.

On 22 December 2014, Smith and Ouzman Ltd, Mr. C. Smith and Mr. N. Smith were convicted of three, two and three counts of corruptly agreeing to make payments contrary to PCA, respectively. Mr. Forrester and Mr Omar were acquitted of all charges. This case involved cooperation between the SFO and authorities in Kenya, Ghana and Switzerland, to which the SFO expressed its gratitude.

On 12 February 2015, Mr. C. Smith was sentenced to 18 months' imprisonment (suspended for two years), ordered to carry out 250 hours of unpaid work and given a three-month curfew. Mr. N. Smith was sentenced to three years' imprisonment. Smith and Ouzman Ltd will be sentenced at a later date and in the meantime may be excluded from participation in public tenders pursuant to Article 45(1) of

the European Union Public Sector Procurement Directive.⁷ A hearing has been scheduled on 19 October 2015 to deal with confiscation proceedings against the company and the individuals.

The UK Anti-Corruption Plan

On 18 December 2014, the Home Office and Department for Business, Innovation and Skills published the UK Anti-Corruption Plan setting out 66 actions with corresponding timescales to tackle corruption.⁸

One action is to establish a publicly accessible central register of UK company beneficial ownership information to tackle illicit financial flows linked to corruption. Companies will be required to obtain and hold information on their beneficial owners, and provide this information to Companies House with criminal penalties for companies or individuals who fail to provide information or provide false information. This action is due to be completed as soon as practicable after the necessary primary and secondary legislation is in place. Relevant companies and individuals, where applicable, must implement the relevant mechanisms to satisfy to such requirements.

The UK Anti-Corruption Plan contains strong messages recognising the need for joined-up intra-governmental activity and cooperation on international development. However, many of the Plan's proposals are imprecise, and to what extent it is implemented by the next UK Government following the general election on 7 May 2015 remains to be seen.

¹ <http://www.sfo.gov.uk/press-room/latest-press-releases/press-releases-2014/city-directors-convicted-in-23m-green-biofuel-trial.aspx> and <http://www.sfo.gov.uk/press-room/latest-press-releases/press-releases-2014/city-directors-sentenced-to-28-years-in-total-for-23m-green-biofuel-fraud.aspx>

² <http://sfo.gov.uk/press-room/latest-press-releases/press-releases-2014/uk-printing-company-and-two-men-found-guilty-in-corruption-trial.aspx>

³ <http://www.sfo.gov.uk/press-room/press-release-archive/press-releases-2009/mabey-johnson-ltd-sentencing-.aspx>

⁴ <http://www.sfo.gov.uk/press-room/press-release-archive/press-releases-2010/innospec-limited-prosecuted-for-corruption-by-the-sfo.aspx>

⁵ <https://www.gov.uk/government/publications/uk-anti-corruption-plan>

⁶ https://www.sentencingcouncil.org.uk/wp-content/uploads/Fraud_bribery_and_money_laundering_offences_-_Definitive_guideline.pdf

⁷ <http://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX:32004L0018&from=en>

⁸ <https://www.gov.uk/government/publications/uk-anti-corruption-plan>