Litigation

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Investors Beware: UK's Serious Fraud Office Will Seek Crime Proceeds From Shareholders

by Raymond L. Sweigart

In a recent announcement regarding a company whose employees were convicted of breaching UN sanctions on Iraq through company contracts, the director of the United Kingdom's Serious Fraud Office emphasised that shareholders who receive the proceeds of crime can expect civil action against them to recover the money—even if, as in this case, the shareholder was totally unaware of any illegal behaviour. Shareholders and investors are obligated to satisfy themselves as to the business practices of the companies they invest in.

In a 13 January 2012 press release,[1] Richard Alderman, the director of the Serious Fraud Office (SFO), announced that an order has been made in the English High Court requiring Mabey Engineering (Holdings) Ltd to pay £131,201 under Part 5 of the Proceeds of Crime Act 2002, in recognition of gains it derived from contracts won through unlawful conduct. Mabey Engineering (Holdings) Ltd is the parent company of bridge manufacturers Mabey & Johnson Ltd and part of the Mabey Holdings Group. The sum represents the dividends which the parent company collected from the contracts at the centre of the successful prosecution in February 2011 of two former Mabey & Johnson Ltd company officers, and the earlier conviction of another employee, for their part in breaching United Nations sanctions on Iraq. The company will also pay costs of £2,440.

In his announcement, Mr. Alderman emphasised that shareholders who receive the proceeds of crime can expect civil action against them to recover the money, even if, as in this case, the shareholder was totally unaware of any illegal behaviour. Shareholders and investors in companies are obligated to satisfy themselves as to the business practices of the companies they invest in. The SFO regards this "as very important and we cannot emphasise it enough." The SFO "will pursue this approach vigorously."

Although the sum ordered forfeited may appear relatively small, the order for the parent company as a shareholder to pay more than £130,000 of share dividends it had received clearly has potentially serious consequences for all investors. Indeed, the warning to institutional investors in particular is quite harsh, with Mr. Alderman stating that where "issues arise, we will be much less sympathetic to institutional

[1] http://www.sfo.gov.uk/press-room/latest-press-releases/press-releases-2012/shareholder-agrees-civil-recovery-by-sfo-in-mabey--johnson.aspx

investors whose due diligence has clearly been lax in this respect." Mr. Alderman and the SFO unquestionably perceive sophisticated investors as having the knowledge and expertise to make relevant enquiries, and now the obligation to do so.

The announcement also makes clear that the company's decision to self-report and cooperate went a long way to rehabilitating it in the SFO's eyes, and enabled it to bring the matter to a complete and final conclusion with a relatively light sanction. This approach is one that the SFO is encouraging, and that other companies in a similarly unfortunate position might well wish to consider in order to potentially avoid more severe sanctions. However, the most important lesson learned may well be the underlying message to all institutional and other sophisticated investors in UK companies as to the heightened level of due diligence that may now be required to avoid the SFO's pursuit of funds in their hands.

If you have questions, please contact the Pillsbury attorney with whom you regularly work, or the author:

Raymond L. Sweigart (bio)
London
+ 44.20.7847.9607
raymond.sweigart@pillsburylaw.com