

SFO - Serious Fraud Office

MW Kellogg Ltd to pay £7 million in SFO High Court action

16 February 2011

The Serious Fraud Office (SFO) has taken action in the High Court today which has resulted in an Order for the company, M.W. Kellogg Limited (MWKL), to pay just over £7 million in recognition of sums it is due to receive which were generated through the criminal activity of third parties. The High Court made the Order under Part 5 of the Proceeds of Crime Act 2002.

The SFO recognised that MWKL took no part in the criminal activity which generated the funds. The funds due to MWKL are share dividends payable from profits and revenues generated by contracts obtained by bribery and corruption undertaken by MWKL's parent company and others. The agreement will lead to the payment of £7,028,077 within fourteen days in full and final settlement of the case. This sum represents the share dividends due and the interest which has accrued on these sums.

The contracts were awarded to a company partly owned by MWKL on behalf of its US parent company. MWKL reported concerns to the SFO under the "self referral" scheme and fully co-operated with the subsequent investigation. The SFO, working in partnership with the US Department of Justice, reviewed the conduct of MWKL and decided that the most appropriate approach was to remove the funds which will become due to the company through the unlawful conduct. This reflects the finding that MWKL was used by the parent company and was not a willing participant in the corruption.

The US parent company was one of four corporate entities which formed a joint venture to bid for contracts on a liquefied natural gas project in Nigeria. The joint venture created three special purpose vehicles to bid for, and subsequently run, the contracts. Three of the four contracts won by the joint venture were obtained through promises to pay or payments of bribes. The US parent company, Kellogg Brown and Root LLC and its predecessors (KBR) has been subject to a criminal and civil investigation in the US. The criminal investigation, which was conducted by the Department of Justice (DOJ), into the Bonny Island Project related to KBR and a number of other corporate and individual parties being involved in bribery and corruption. KBR has acknowledged, in its plea agreement with the DoJ, that it owned the special purpose vehicle created for the Nigerian project, through MWKL in order to distance itself from the corruption and avoid the consequences of the Foreign Corrupt Practices Act 1977. KBR had resolved all matters with the US authorities, including a civil settlement with the Securities and Exchange Commission, by February 2009.

The agreement also ensured that MWKL overhauled its internal audit and control measures to enable it to satisfy the SFO that its compliance systems are in accordance with UK law. MWKL has also agreed to pay the costs of the investigation.

The Director of the Serious Fraud Office, Richard Alderman said: "The SFO will continue to encourage companies to engage with us over issues of bribery and corruption in the expectation of being treated fairly. In cases such as this a prosecution is not appropriate. Our goal is to prevent bribery and corruption or remove any of the benefits generated by such activities. This case demonstrates the range of tools we are prepared to use."

Notes for editors:

The Serious Fraud Office is a government department responsible for investigating and prosecuting serious and complex fraud. The SFO is headed by the Director (Richard Alderman) who exercises powers under the superintendence of the Attorney General. These powers are derived from the Criminal Justice Act (1987).

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