

SERIOUS FRAUD OFFICE INVESTIGATIONS REGARDING THE EXTRACTIVE INDUSTRY

24 March 2017 | London

Legal Briefings - By **Daniel Hudson** and **David Knott**

The mining industry presents a high risk of corruption as operations are often located in high risk regions and it is often necessary to interact with government officials and agencies in order to obtain licenses and approvals for the exploration, development, construction and operation of a mine.

These factors, when combined with the general increase in enforcement of anti-bribery and anti-corruption laws, primarily by the United States and United Kingdom authorities, which has led to more investigations and prosecutions, higher monetary sanctions, and the imposition of monitors and other agents to oversee businesses, means that it critical that mining operators ensure that they have in place adequate procedures to prevent bribery from taking place.

In this article we set out a brief recap on the key features of the UK Bribery Act 2010 and provide examples of recent and ongoing bribery investigations by the UK authorities regarding mining companies and other companies within the extractive industries. There are a number of ongoing overseas investigations which are outside the scope of the article but which demonstrate the high levels of activity by enforcement bodies around the world regarding the mining industry (e.g. the cross-border investigation into BSG Resources Limited, which has seen charges brought in the US against Guinea's former minister of mines and the arrest and subsequent release without charge of Beny Steinmetz).

Overview of UK Bribery Act 2010

The UK's Bribery Act 2010 came into force in 2011 and updates the criminalisation of both public and private sector bribery. The Bribery Act applies to conduct within the UK and to the conduct of UK nationals or residents and UK-incorporated companies anywhere in the world. It creates criminal offences, punishable by imprisonment for individuals and fines for the giving or receiving of bribes. The Bribery Act applies to conduct which took place after July 2011; conduct before July 2011 is governed by the pre-Bribery Act legal framework.

The Bribery Act also created a new "corporate" offence whereby a company or a partnership can be held liable for failing to prevent bribery if:

- a person associated¹ with it bribes another person,
- intending to obtain or retain a business advantage for the commercial organization.

This corporate offence can be committed by a UK-incorporated company or an overseas company which carries on business or part of a business in the UK (i.e. with a demonstrable business presence in the UK). The only defence for companies within the scope of the corporate offence is to show that, notwithstanding the bribe, the company had in place "adequate procedures" designed to prevent associated persons from carrying out acts of bribery.

The UK Serious Fraud Office (the "SFO") is a specialist prosecuting authority which investigates and prosecutes "the top level of serious or complex fraud, bribery and corruption" and can prosecute offences under the Bribery Act.

Additional articles we have written on the Bribery Act can be found [here](#).

SFO INVESTIGATIONS - MINING INDUSTRY

ENRC

Following whistleblower reports, ENRC carried out internal investigations regarding alleged fraud in its Kazakh and African businesses. The SFO announced in April 2013 that it had launched a criminal investigation into the activities of ENRC and its subsidiaries in Africa and Kazakhstan. The SFO has said that "The investigation is focused on allegations of fraud, bribery and corruption around the acquisition of substantial mineral assets" and press reports indicate that the conduct under investigation includes:

- Payments made to a series of offshore accounts in connection with the company's

Kazakh operations

- Payments made to officials in connection with ENRC's purchase of a copper smelter in Zambia
- Three transactions in the Democratic Republic of Congo (the "DRC"): (a) ENRC's 2010 and 2012 purchase of the Kolwezi Tailings, Lonshi and Frontier projects; (b) ENRC's July 2011 purchase of DRC-based Dezita Investments SRL; and (c) ENRC's 2010 acquisition of 50 percent of a copper and cobalt project called Societe Miniere de Kabolelea & Kipese SPRL from Gecamines via a company controlled by Dan Gertler

According to recent press reports, the SFO recently sent a letter to the DRC Government to request banking and business records relating to:

- Dan Gertler, an Israeli billionaire, and two of his associates
- Four former ENRC executives
- Four DRC-registered companies

The inquiry is at an "evidence-gathering stage" and no charges have yet been brought.

Victor Dahdaleh and Bruce Hall

The SFO charged Mr Dahdaleh with corruption offences in October 2011, alleging that he had been involved in the making of payments to Bahraini officials in connection with alumina supply contracts entered into with Alcoa (see above). The Dahdaleh trial collapsed in December 2013 after Alba's US lawyers (who had provided information to the SFO during their investigation) refused to attend court to be cross-examined and the SFO claimed that Bruce Hall (the former CEO of Alba and a key prosecution witness) changed his evidence. Mr Dahdaleh was acquitted of all charges. Mr Hall, who had been extradited to the UK from Australia and was also charged with corruption offences, pleaded guilty to conspiracy to corrupt in related proceedings, admitting to having accepted bribes in relation to Alba contracts. Mr Hall was sentenced to 16 months in prison and was also subject to a confiscation order for over £3 million and paid compensation of £500,000 to Alba.

Separately, Alcoa settled parallel US Department of Justice and SEC proceedings in January 2014, paying a total of \$384m in penalties (penalties were paid by the parent, Alcoa Inc., and a majority-owned subsidiary, Alcoa World Alumina LLC). The conduct at issue in Alcoa's case did not involve extraction operations; rather the authorities alleged that Alcoa was involved in a scheme involving the payment of more than \$100m to Bahraini officials with influence over contract negotiations relating to Alcoa's supply of alumina (refined from bauxite extracted in the company's global mining operations) to Aluminium Bahrain ("Alba"), a state-owned aluminum producer. The scheme dated back to 1989 and purportedly involved a London-based "consultant" with close relationships to the Bahraini royal family acting as a middleman to facilitate the bribes. The bribes were paid in the guise of the consultant's "commission" payments and by markups on the price of the alumina. Funds were routed offshore, through accounts in Guernsey, Liechtenstein, Luxembourg and Switzerland. The middleman was not named in the US Department of Justice and SEC settlements.

Celtic Energy

In January 2013 the SFO charged six people, including two former Directors of Celtic Energy Ltd, alleging that they conspired to defraud three Welsh local councils and The Coal Authority by deliberately prejudicing their ability effectively to enforce obligations to restore four open cast mining sites to open countryside and/or for agricultural use. The alleged conspiracy involved a scheme to transfer the freehold title in the four sites to BVI companies, thus releasing provisions made in Celtic Energy's annual accounts in respect of financial liability to restore the sites and that this was done for the benefit of the alleged conspirators. The charges were dismissed in February 2014 after the defendants successfully argued that the public authorities and the Coal Authority had no duties, rights, or obligations that were capable of being prejudiced by the scheme operated by the defendants. The SFO tried to restart the prosecution, by way of a voluntary bill of indictment, but the High Court refused its application.

SFO INVESTIGATIONS - OTHER EXTRACTIVE INDUSTRIES

Unaoil

The SFO is "conducting a criminal investigation into the activities of Unaoil, its officers, its employees and its agents in connection with suspected offences of bribery, corruption and money laundering." The allegations relate to alleged bribery by Unaoil regarding contracts in several countries for various multinationals, including Rolls-Royce (which recently entered into a Deferred Prosecution Agreement ("DPA") regarding bribery involving six countries, pursuant to which it made payments of £497,252,645. Our briefing on the Rolls Royce DPA can be found [here](#)).

Soma Oil & Gas

In July 2015 the SFO announced an investigation into Soma Oil & Gas Holdings Ltd, Soma Oil & Gas Exploration Limited, Soma Management Limited and others, in relation to allegations of corruption in Somalia. It was reported that the allegations concerned possible illegal payments to Somali officials under a capacity-building program with the country's Petroleum Ministry. In December 2016 the SFO closed its investigation as it concluded, based on the information and material it had obtained, that there was insufficient evidence to provide a realistic prospect of conviction.

Chad Oil

The SFO obtained a property freezing order against Ikram Mahamat Saleh in respect of £4.4m plus interest, the proceeds from the sale of 800,000 shares in a Canadian oil and gas company Caracal Energy Inc, formerly Griffiths Energy International Inc. The SFO's case was that Mrs Saleh's acquisition of the shares was part of a series of corrupt transactions, which involved personnel and companies connected to the diplomatic staff at the Chadian Embassy in Washington DC in order to promote and secure its commercial interests in Chad. Griffiths Energy International Inc pleaded guilty in 2013 to corruption charges in Canada and was fined CAD\$10.35 million. There are ongoing proceedings in the US.

ENDNOTES

1. The definition of "associated persons" is very broad and reaches those performing a service for or on behalf of the company, such as employees, agents, or third party contractors etc.

KEY CONTACTS

If you have any questions, or would like to know how this might affect your business, phone, or email these key contacts.



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