

The Law And Libya

9 Mar 2015

In 2011, we predicted that bribery prosecutions could follow the collapse of the Gaddafi regime in Libya. That prediction has now come true...and is a stark reminder of how bribery anywhere in the world can be identified and acted upon.



When, in 2011, Libya overthrew the dictator Muammar Gaddafi, many people said the consequences could be wide ranging. Political stability in Libya, the effect on neighbouring states, the price of oil and the consequences for his relatives living abroad were all mentioned as issues to watch.

As Rahman Ravelli is a firm specialising in commercial fraud and business crime cases, we looked at what was happening in Libya from a different perspective. We took the view that one result of Gaddafi's overthrow would be the prosecution of companies from the UK and elsewhere and the confiscation of their assets for their use of bribery to woo business from figures within the hated Libyan regime.

London Office
36 Whitefriars Street
London
EC4Y 8BQ
+44 (0)203 947 1539
enquiries@rahmanravelli.co.uk

Midlands Office
3 Brindley Place
Birmingham, West Midlands
B1 2JB
+44 (0) 121 827 7985

Northern Office
Roma House, 59 Pellon Lane
Halifax, West Yorkshire
HX1 5BE
+44 (0)1422 346 666

Rapid Response Team
24 Hour Emergency Contact
0800 559 3500

Fax +44 (0)1422 430 526
DX16001 HX1

In 2011, few – if any - people seemed to be voicing the same opinion as we were. But it does now appear that events have unfolded in the way we believed they would. At the time of writing, there are no UK companies in the dock yet because of their relationships with Gaddafi. But the biggest criminal trial of Western corporate executives accused of bribing Gaddafi-era Libyan officials for contracts has begun. It is a fairly safe bet to say that business figures in the UK who did business with Libya prior to the revolution will be watching very closely as events unfold in the trial of senior figures who were working for Norwegian fertiliser company Yara International. In the years before the revolution and after the Tony Blair-led reconciliation with Libya, there was scope for doing business in Gaddafi's dictatorship. The issue now for Yara and many other companies is just how scrupulous western business figures were in securing deals.

Yara has already paid fines for its behaviour in Libya. Prosecutors have claimed that Yara executives turned a blind eye as large payments were made to officials, including the oil minister's son, and a company that was created in a tax haven. Four senior Yara figures have pleaded not guilty at an Oslo court in a case that is expected to last up to three months. The charges carry sentences of up to 10 years in prison and it is fair to say that it is not only Yara that is anxious about its dealings in Libya.

Two civil cases are being prepared in London against Goldman Sachs and Société Générale; with both banks being sued by the Libyan Investment Authority (LIA). The LIA accuses the banks of coercing Libyan officials into investing the financially impoverished country's wealth with them.

London Office
36 Whitefriars Street
London
EC4Y 8BQ
+44 (0)203 947 1539
enquiries@rahmanravelli.co.uk

Midlands Office
3 Brindley Place
Birmingham, West Midlands
B1 2JB
+44 (0) 121 827 7985

Northern Office
Roma House, 59 Pellon Lane
Halifax, West Yorkshire
HX1 5BE
+44 (0)1422 346 666

Rapid Response Team
24 Hour Emergency Contact
0800 559 3500
Fax +44 (0)1422 430 526
DX16001 HX1

In the Yara case, executives are accused of allowing or overlooking the large payments to Libyans to secure deals. It is alleged that they ignored claims of wrongdoing that were made by whistleblowers. Some of Norway's most senior business figures are to give evidence in the Yara case. But its importance is recognised far beyond Norway's borders. For example, US investigators are examining the actions of a London-based hedge fund that persuaded Libya to invest in it and the role of at least one middleman. The City of London Police is reported to be examining sleazy allegations relating to how London-based executives at a financial services company treated Libyan officials to lavish parties in Morocco.

Further afield, Canadian and Swiss investigations into a Canadian engineering company, ANC Lavalin, led to the conviction of its former head of global construction for bribing Gaddafi's son Saadi in order to gain major contracts.

The locations of the companies involved and the nature of their work may vary but one theme runs through the allegations: the bribing of people in Libya in order to do lucrative business in that country. Some of those accused have said they did not know what was going on, others have blamed it on rogue former employees. Their arguments follow a train of thought that says they cannot be held liable as they were not aware of the wrongdoing. In this day and age, such an argument is becoming less and less successful in court.

London Office
36 Whitefriars Street
London
EC4Y 8BQ
+44 (0)203 947 1539
enquiries@rahmanravelli.co.uk

Midlands Office
3 Brindley Place
Birmingham, West Midlands
B1 2JB
+44 (0) 121 827 7985

Northern Office
Roma House, 59 Pellon Lane
Halifax, West Yorkshire
HX1 5BE
+44 (0)1422 346 666

Rapid Response Team
24 Hour Emergency Contact
0800 559 3500
Fax +44 (0)1422 430 526
DX16001 HX1

In
the
UK,
the
Bribery
Act
2010
makes
it
an
offence
to
bribe
someone,
receive
a
bribe,
bribe
a
foreign
official
or
fail
to
prevent
bribery.
The
Act
applies
to

London Office
36 Whitefriars Street
London
EC4Y 8BQ
+44 (0)203 947 1539
enquiries@rahmanravelli.co.uk

Midlands Office
3 Brindley Place
Birmingham, West Midlands
B1 2JB
+44 (0) 121 827 7985

Northern Office
Roma House, 59 Pellon Lane
Halifax, West Yorkshire
HX1 5BE
+44 (0)1422 346 666

Rapid Response Team
24 Hour Emergency Contact
0800 559 3500
Fax +44 (0)1422 430 526
DX16001 HX1

all UK-based organisations and individuals and covers any activities carried out anywhere in the world by them, their staff, representatives or trading partners. As the Act only came into effect in July 2011 – by which time the Libyan uprising was already underway – it is unlikely it will lead to any prosecutions of UK-based companies because of their dealings with the Gaddafi regime. But the Act is part of a wider worldwide awareness of the need to investigate and prosecute bribery and corruption. The multinational flavour of the first generation of legal actions being brought against those alleged to have improperly curried favour with the Gaddafi regime indicates this.

Authorities around the globe are now looking closer than ever at how companies conduct business around the globe. UK companies could find themselves being prosecuted for activities carried out in far-flung parts of the world many years ago. Rolls-Royce is a clear example. Legal freezing orders could become a more common occurrence, as countries such as Libya, as well as aggrieved individuals and organisations, look to the law to put right previous wrongs.

There is now the distinct possibility that companies who have had unblemished reputations for decades will end up in court to answer for their actions. As international business crime specialists, we know that such cases can be long, drawn out and complex. Anyone who does become the subject of such an investigation must seek legal advice from solicitors who are both experts in dealing with the authorities concerned and capable of putting together a case that crosses international borders. And those under investigation must seek such advice at the earliest possible stage if they are to benefit from the best protection available under the law.

London Office
36 Whitefriars Street
London
EC4Y 8BQ
+44 (0)203 947 1539
enquiries@rahmanravelli.co.uk

Midlands Office
3 Brindley Place
Birmingham, West Midlands
B1 2JB
+44 (0) 121 827 7985

Northern Office
Roma House, 59 Pellon Lane
Halifax, West Yorkshire
HX1 5BE
+44 (0)1422 346 666

Rapid Response Team
24 Hour Emergency Contact
0800 559 3500
Fax +44 (0)1422 430 526
DX16001 HX1

As Libya is starting to show, it would be a mistake to believe that any business wrongdoing will never come to light, regardless of when or where it happened. While a strong, proactive legal defence may be the best remedy for anyone facing such problems it is well worth remembering that prevention is better than cure. Taking strong action to develop an anti-bribery culture in a company from the top down is the best possible way to prevent future problems. By assessing a company's risk of exposure to bribery and then devising, implementing and monitoring measures to "design it out" any organisation or individual can go a long way towards making sure that what happens now is done in a way that can cause no major legal headaches in the future.

London Office
36 Whitefriars Street
London
EC4Y 8BQ
+44 (0)203 947 1539
enquiries@rahmanravelli.co.uk

Midlands Office
3 Brindley Place
Birmingham, West Midlands
B1 2JB
+44 (0) 121 827 7985

Northern Office
Roma House, 59 Pellon Lane
Halifax, West Yorkshire
HX1 5BE
+44 (0)1422 346 666

Rapid Response Team
24 Hour Emergency Contact
0800 559 3500

Fax +44 (0)1422 430 526
DX16001 HX1