

Investigation Gali

the criminal investigation into Mammoet Salvage B.V.

Statement of Facts and Conclusions Netherlands Public
Prosecution Service

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National Office for Serious Fraud, Environmental Crime and Asset Confiscation
(Functioneel Parket)

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Part I: Statement of facts

1 Introduction

1.1 Purpose and contents

This statement of facts describes the grounds for and the findings of the criminal investigation into Mammoet Salvage B.V. (hereinafter referred to as Mammoet Salvage) by the Dutch Fiscal Information and Investigation Service (hereinafter referred to as FIOD), under the auspices of the Netherlands Public Prosecution Service (hereinafter referred to as NPPS).

Following a description of the affected legal entity, the findings that emerged from the investigation by the FIOD will be dealt with in more detail.

1.2 Description of the affected legal entity

Mammoet Salvage is a Dutch legal entity with its registered seat in Rotterdam. Its operational head office was based in Schiedam. Mammoet Salvage was specialized in the recovery and removal of wrecks from the sea and inland waterways.

Mammoet Salvage is an indirect subsidiary of Mammoet Holding B.V. (hereinafter referred to as Mammoet Holding). Mammoet Holding is in turn an indirect subsidiary of SHV Holdings N.V. (hereinafter referred to as SHV). On 1 February 2016, the activities of Mammoet Salvage were sold to KMS B.V., a subsidiary of Koole Holding B.V.

1.3 Grounds for the criminal investigation

In response to a series of indications relating to possible bribery by Mammoet Salvage, at the start of 2017, the FIOD launched a criminal investigation. This investigation revealed a reasonable suspicion that Mammoet Salvage was guilty of bribing a member of the Iraqi Parliament and of falsification of documents.

2 Investigative findings

2.1 Introduction

The criminal investigation revealed that in July 2015, Mammoet Salvage first made contact with a member of the Iraqi Parliament, and that in September 2015, Mammoet Salvage entered into a contract in which payments were promised to the company of this member of parliament. The purpose of the promised payment was to come into contact with the Iraqi Minister of Oil via the parliamentarian, in order to resolve a conflict with the Iraqi state oil company South Iraqi Oil Company (hereinafter referred to as SOC).

Further details are provided below of the investigative findings of the FIOD.

2.2 Summary of investigative findings

On 14 December 2013, Mammoet Salvage signed an agreement with the SOC for the salvage of an oil tanker named Amuriyah. The total contract fee for this project was approximately USD 95 million. After Mammoet Salvage had completed part of the agreed work, a conflict arose with the SOC in the spring of 2015 concerning the salvaging method and the fact that the SOC had not paid for the agreed work and the additional work by Mammoet Salvage.

To solve this conflict, Mammoet Holding established a Crisis Management Team (CMT). Because letters from Mammoet Salvage to the SOC about the above described issues remained unanswered, in the summer of 2015, the CMT considered suspending the salvage activities. At the end of June 2015, Mammoet sought legal advice on these matters. After various fruitless attempts by Mammoet Salvage to meet with the SOC to solve the conflict, Mammoet Salvage suspended the performance of its salvaging activities, from August 2015.

The attempts by Mammoet Salvage to arrive at a solution remained unsuccessful. In addition, the SOC had suggested that Mammoet Salvage should approach the Ministry of Oil itself. To resolve the problem, Mammoet Salvage wished to contact the Iraqi Minister of Oil, in the hope that he would be able to mediate in the conflict. For this purpose, contact was sought with a member of the Iraqi parliament.

The investigation revealed that in August 2015, Mammoet Salvage asked the member of parliament to sign a letter prepared by Mammoet Salvage, and to send it to the Minister of Oil, containing a request to organise a meeting during which the above described conflict could be discussed. Mammoet Salvage also shared details of the conflict and the current state of affairs with the Dutch ambassador in Iraq, in the hope that he could contribute to solving the conflict. None of these attempts resulted in the solution of the conflict.

Shortly afterwards the conflict escalated, because the SOC decided to seize the vessels of Mammoet Salvage. This led to an urgent and unsafe situation because at that time, Iraq was at war with ISIS, and in 2015 the security situation in Basra worsened.

On 15 September 2015, Mammoet Salvage informed the Dutch ambassador about the state of affairs, including the seizure of the ships, and asked him to discuss these matters with local authorities and the Ministry of Oil.

Shortly thereafter, on 17 September 2015, Mammoet Salvage signed a consultancy agreement with a Cypriot company. The member of parliament was the director and sole shareholder of this company. The agreement specified that over a period of one year, Mammoet Salvage would pay a fee of USD 10.000 per month. It was also agreed that the company of the member of parliament would receive a success fee of 2%, calculated over the total fee for the salvaging project that Mammoet Salvage was due to receive from the SOC, following the signing of the consultancy agreement.

The monthly payments of USD 10.000 were transferred by Mammoet Salvage to a Swiss bank account. At a certain point, Mammoet Salvage was informed that the member of parliament was the beneficiary of the Swiss bank account. The reason given was that the consultancy activities were considered as advisory services performed by the director, the member of parliament, in his personal capacity. Nonetheless, Mammoet Salvage subsequently transferred further funds to the bank account in question.

In December 2015, a member of the Board of Mammoet Salvage paid a visit to Iraq, where he met with officials of the Ministry of Oil. Although following this visit the SOC had promised to release the vessels of Mammoet Salvage, the SOC failed to keep its promise. Eventually, the vessels were released six months after the discussions referred to above, after Mammoet Salvage had promised to restart its recovery work without any guarantee of payment.

The investigation revealed that in the framework of the consultancy agreement with the Cypriot company, Mammoet Salvage transferred a total of USD 130.000 to the bank account of the member of parliament.

The investigation further revealed that to make the monthly payments, invoices in the name of this company were entered in the administrative records of Mammoet Salvage, with a description of services that did not correspond with reality and which were therefore false.

Finally, it emerged that the remaining payments to the member of parliament were halted immediately after Mammoet Holding became aware of the above as a result of an investigation by its own Ethics & Compliance Officer (on this matter see also section 5.2.2).

Part II: Conclusions of the Netherlands Public Prosecution Service (NPPS)

3 Offences

3.1 Offences

On the basis of the investigative findings of the FIOD, the NPPS concludes that Mammoet Salvage is guilty of the following criminal offences:

1) ***Bribery of a public official***

in the period from 1 July 2015 up to and including 30 November 2016, in the Netherlands and Iraq, made punishable by Article 177 in conjunction with 178a of the Dutch Criminal Code;

2) ***Falsification of documents***

on 17 September 2015 and 17 February 2017 in the Netherlands, made punishable by Article 225(1 and 2) of the Dutch Criminal Code, committed repeatedly.

3.2 Attribution of offences to legal entity

The NPPS concludes that the criminal behaviour as referred to in 3.1, was effectively committed by members of the Board of Mammoet Salvage, on behalf of Mammoet Salvage. The promise and payments were made or approved at Board level by Mammoet Salvage. The management of Mammoet Salvage was actively involved in the bribery.

The criminal offences were therefore committed in the sphere of the legal entity and can be attributed to Mammoet Salvage.

4 Serious nature of the facts

4.1 Introduction

On the basis of the findings of the FIOD, the NPPS concludes that Mammoet Salvage is guilty of bribery of a public official and falsification of documents. The NPPS views this behaviour as particularly objectionable, for a number of reasons.

4.2 Internationally operating company

Mammoet Salvage was a large internationally operating company responsible for carrying out extensive and complex salvage and recovery operations all over the world. The business activities were carried out in a sector and in countries susceptible to corruption. Mammoet Salvage could be expected to be aware of and comply with (international) legislation and regulations, including anticorruption laws.

4.3 Bribery of a senior Iraqi official

In total, Mammoet Salvage transferred USD 130.000 to a Swiss bank account held by an Iraqi official and in that connection produced various falsified documents. The NPPS blames Mammoet Salvage, as a large player in the salvage and recovery sector, for paying bribes to a senior official in order to solve a conflict with an Iraqi state oil company. Bribery results in unfair competition and undermines the confidence in the rule of law. By using falsified documents, Mammoet Salvage was also guilty of damaging the confidence placed according to generally accepted standards in the accuracy of such documents.

At the time of the conflict between Mammoet Salvage and the SOC, Iraq found itself in an urgent and unsafe situation because of the war with ISIS, whereby the safety of the employees of Mammoet Salvage was threatened. The eventual outcome was that the salvage project was completed, without Mammoet Salvage receiving (additional) payment.

Although these circumstances have a mitigating effect on the seriousness of the facts, they do not justify the payment of bribes to a foreign person in political authority. The payment of bribes to officials has a corrupting influence on the political system. The fact

that it was not determined that the bribery had any effect does not detract from the seriousness of this fact.

5 Considerations for offering a settlement

5.1 Legal framework

Criminal cases can be settled in various ways. One of the options is for the public prosecutor to offer the suspect a settlement, to avoid criminal prosecution. The public prosecutor may set out one or more conditions as described in Article 74(2) of the Dutch Criminal Code. If these conditions are met, the right to criminal prosecution is waived. The settlement is an option provided for by law to settle criminal cases outside the courts.

In this case, given the size of the settlement amount, it is considered a high settlement. Such a settlement is subject to the 'Designation Order for High Settlements (*Aanwijzing hoge transacties*) (hereinafter referred to as the Designation Order).¹ The Designation Order includes the basic principle not to settle unless there is a very good reason for doing so.

First of all, the factual behaviour that forms the basis for the high settlement must be (publicly) acknowledged by the suspect.

In a decision to settle a criminal case with a high settlement, in accordance with the Designation Order, the following elements must be considered:

- the role of the suspect in revealing the criminal offences;
- the attitude of the suspect throughout the process and the way in which the suspect cooperated with the investigation;
- measures taken by the suspect (of its own volition) or which it has promised to take in order to prevent new criminal behaviour.

5.2 Statement of reasons

The NPPS considers a high transaction to be an appropriate settlement in the criminal investigation Gali, for the following reasons:

- 1) Mammoet Holding and Mammoet Salvage cooperated in the criminal investigation, had the matter thoroughly investigated and provided relevant information to the FIOD and the NPPS;
- 2) Mammoet Salvage has discontinued its business activities and sold these in February 2016, so that repetition of similar facts by Mammoet Salvage is excluded;
- 3) Both Mammoet Holding and Mammoet Salvage took remediation measures and compliance measures to prevent the committing of criminal offences in the future;
- 4) Mammoet Salvage acknowledged the facts;
- 5) Mammoet Salvage has not been previously convicted for criminal offences (first offender).

5.2.1 Cooperation with the investigation

After being informed of the criminal investigation by the NPPS and the FIOD, Mammoet Salvage cooperated fully with this investigation. For example, the company supplied all documents requested by the FIOD. An extensive investigation was also carried out on behalf of SHV, the relevant findings of which were shared with the NPPS. Finally, (former) employees were made available for issuing a statement to the FIOD.

5.2.2 Remediation and compliance measures

In response to the findings of the investigation carried out on behalf of SHV with regard to the Vanguard investigation, a number of measures were taken by SHV, including an investigation into the worldwide bribery risks of the Mammoet group (for a detailed explanation of the measures taken by SHV, see section 6.2.2 and the statement of facts

¹ Aanwijzing hoge transacties (2020A005), <https://wetten.overheid.nl/BWBR0044047/2020-09-04>

in the matter of the Vanguard investigation). When Mammoet Holding was informed of the fact that the director and sole shareholder of the counterparty was a member of parliament and that the bank accounts were held in the name of this member of parliament, following further investigation by its own Ethics & Compliance Officer, payments to this party were halted immediately. The instruction was then issued to thoroughly investigate the matter. Mammoet Holding subsequently took a series of remediation measures, including disciplinary measures against the employees involved.

Furthermore, supported by SHV, over the past few years, Mammoet Holding has implemented a robust compliance policy that is executed and monitored throughout the entire group. Part of this policy includes a compulsory periodic validation of an action plan with improvement points in respect of compliance, and the relevant reporting to the Board of Directors of Mammoet Holding and SHV. Within Mammoet Holding, an Ethics & Compliance Committee was also appointed, that has introduced strict internal compliance schemes within Mammoet Holding and its subsidiary companies, including the screening of clients and suppliers, and that is responsible for monitoring compliance.

5.2.3 Acknowledgement of facts

Mammoet Salvage acknowledged the facts as outlined in part I to the NPPS, and expressed its regret.

6 Settlement agreement

6.1 Fine and unlawfully obtained gains

As part of this settlement, Mammoet Salvage paid a fine of EUR 975.000 to the Dutch State. The NPPS sees no grounds for the confiscation of unlawfully obtained gains.

6.1.1 Fine

Given all the facts and circumstances, the NPPS considers a fine of EUR 975.000 to be appropriate. In determining the amount of the fine, the number of criminal offences, the serious nature of the facts and the involvement of the management of Mammoet Salvage were taken into account by the NPPS.

In calculating the fine, the NPPS sees grounds to deviate from the fine category applicable to the criminal offences in question, namely fine category 5, since this category does not allow an appropriate punishment. The reason for this is the senior position held by the bribed foreign public official and the active involvement by the management of Mammoet Salvage in the bribery. Although in the end it was not determined that the bribery had any effect, only a significant fine does justice to the seriousness of the criminal behaviour in the event of such conduct. In calculating the amount of the fine, the NPPS therefore sought alignment with the fine amount for the next higher category of fine, a category 6 fine, as contained in the law at the moment when the criminal offences were committed.

In calculating the amount of the fine, the NPPS assesses whether, and if yes to what extent the suspect cooperated in the criminal investigation. The extent of cooperation is assessed according to a variety of aspects, including the scope, quantity, quality and timing of the cooperation in the given circumstances. One important relevant aspect is whether the defence cooperated proactively or reactively. Also relevant is the extent to which the FIOD and the NPPS are able to use the documents and information provided to verify the information.

Mammoet Salvage cooperated fully with the investigation by the FIOD (see section 5.2.1). For this reason, in determining the amount of the fine, the NPPS applied a discount of 25%.

6.1.2 No unlawfully obtained gains

There are no indications that the intended consequence of the bribery has materialized, namely that involving the member of parliament contributed to resolving the conflict with the SOC. Since it cannot be determined that the criminal facts resulted in obtaining any unlawfully obtained gains, there are no grounds for confiscating such gains.

6.2 Publication of settlement agreement

The settlement agreement between the NPPS and Mammoet Salvage has been published in its entirety on the website of the NPPS.