



ANTI-CORRUPTION DIGEST

February 2016

Welcome to Dorsey & Whitney’s monthly Anti-Corruption Digest. Anti-corruption enforcement crosses boundaries like no other, so keeping up to date is more important than ever. In this digest, we draw together news of enforcement activity throughout the world and aim to reduce your information overload. Our London, Minneapolis, New York and Washington DC offices edit the digest and select the most important material so that you can use this digest as a single source of information.

■ THE USA

SciClone Pharmaceuticals

California pharma company SciClone Pharmaceuticals has agreed to pay \$12.8 million (£8.9 million) to the Securities and Exchange Commission (“SEC”) in an administrative order, to settle charges that its China operations violated the anti-bribery, internal controls, and books and records provisions of the Foreign Corrupt Practices Act (“FCPA”).

The SEC alleges that SciClone paid for its VIP clients’ attendance at social events, their vacations, and even their routine family dinners, in exchange for contracts. The SEC also alleges that SciClone hired a “regulatory affairs specialist” who gave thousands of dollars in gifts to two government officials who oversaw new product approvals and licensed product renewals, at a time when SciClone had applications pending for new product approval and renewal. SciClone recorded the expenses as sponsorships, travel and entertainment, honoraria, conferences, and promotions.

SciClone derives over 90% of its revenue from its Chinese operations. The SEC noted that SciClone has “taken steps to improve its internal accounting controls and to create a dedicated compliance function,” and will submit status reports to the SEC in each of the next three years regarding its remediation efforts and compliance program enhancements.

The Department of Justice (“DOJ”) has investigated the allegations and declined to pursue any action against SciClone, according to the company.

LAN Airlines

The current CEO of South American airline LAN Airlines, Chilean citizen Ignacio Cueto Plaza, has consented to entry of a cease and desist proceeding by the SEC, related to alleged violations of the FCPA. According to the allegations, LAN paid \$1.15 million (£800,000) to a consultant, some of which was passed through to Argentinian union officials whose employees were in a dispute at the time with LAN airlines, allegedly in an effort to help settle

the dispute by accepting a lower wage increase than initially requested.

According to the SEC, Plaza knew about and authorized the sham consulting agreement, which indicated the consultant would study existing air routes in Argentina, while Plaza knew that the study would not be undertaken but instead that the payments to the consultant would be passed on to the union officials. Under the terms of the administrative order, Plaza did not admit or deny the allegations, and agreed to pay a \$75,000 (£52,000) penalty and certify compliance with LAN's compliance program on an ongoing basis.

SAP

German software manufacturer, SAP, has agreed to pay the SEC \$3.7 million (£2.6 million) to settle charges that it violated the internal controls provisions of the FCPA. The SEC alleged that SAP's deficient controls allowed a now-former SAP executive to bribe a Panamanian official with \$145,000 (£100,000) in exchange for government contracts. That executive, Vicente Garcia, resolved an SEC case last year and pled guilty to charges by DOJ related to the same conduct, and has been sentenced to 22 months in prison as a result.

In announcing the settled administrative proceeding, the SEC noted that SAP's controls were lacking in that Garcia was able easily to falsify internal approval forms and disguise his bribes as discounts, some of which were as high as 82% and yet were not subjected to heightened scrutiny.

PTC Inc.

Massachusetts business software company PTC Inc. has agreed to pay \$29 million (£20 million) in fines and disgorgement to the SEC and DOJ to settle allegations that it violated the FCPA when its subsidiaries provided Chinese officials

with vacations to Hawaii, Las Vegas, New York, and Los Angeles, while claiming that the officials were in training at its Massachusetts headquarters. According to the allegations, PTC was awarded \$11.8 million (£8.2 million) in contracts with Chinese state-owned entities in connection with these alleged bribes.

The SEC alleges that the Chinese officials' trips typically involved one day at PTC's headquarters, followed by several days visiting other U.S. cities for sightseeing and golfing. The subsidiaries allegedly reimbursed the officials through third party business partners, disguising the payments as legitimate business expenses or sales commissions. The SEC alleges that there were indications of potential corruption that PTC failed to recognize, which allowed the misconduct to continue for several years.

PTC's subsidiaries entered into a non-prosecution agreement with DOJ under which PTC agreed to pay fines and make improvements to its compliance program. In an administrative proceeding with the SEC, the subsidiaries agreed to disgorge \$11.8 million (£8.2 million) and \$1.8 million (£1.3 million) in interest.

The SEC announced that it entered into a deferred prosecution agreement with Yu Kai Yuan, a former employee of one of the PTC subsidiaries who assisted with the SEC's investigation. PTC's investigation was first disclosed by PTC in an August 2011 quarterly filing.

Cooperation Requirement Credit: Certification

For a Dorsey update regarding the DOJ's requirement for businesses to share all relevant facts about individuals when disclosing misconduct to be entitled to cooperation credit, click [here](#).

■ THE UNITED KINGDOM

Acquittals in LIBOR Trial

Following a four month trial, six brokers have been cleared of conspiring with Tom Hayes to manipulate the LIBOR, a benchmark which helps determine borrowing costs for about £314 trillion (\$450 trillion) of contracts and consumer loans worldwide. Mr. Hayes was sentenced in 2015 to 11 years in prison regarding the matter.

Prosecutors alleged that the brokers acted as intermediaries, passing requests between traders regarding the level at which the benchmark should be set, in return for extra commission. The jury returned a majority verdict of not guilty. Speaking after the hearing, one of those acquitted stated that, “there was no evidence, there was nothing ... I think it [the trial] was a sham”. Another told the press that, “realistically, we should never have been here ... they have gone to the bottom of the food chain – to the brokers”.

The acquittals have been described as a “serious setback” for the SFO, especially in light of its recent request for “blockbuster funding” to aid its investigations into such matters. The importance of its investigation into LIBOR is highlighted by reports that nearly a fifth of its staff is dedicated solely to the matter.

In a statement, the Director of the SFO, David Green, defended the decision for the organization to pursue the allegations:

“The key issue in this trial was whether these defendants were party to a dishonest agreement with Tom Hayes. Nobody could sensibly suggest that these charges should not have been brought and considered by a jury.”

The SFO is said to have confirmed that the agency will not appeal the verdicts.

Investigation into the Acceptance of Gifts and Hospitality

According to a report by the National Audit Office into the receipt of gifts and hospitality by government officials (the “Report”), departments should be “more stringent” in their application of the Cabinet Office Rules (the “Rules”). Acceptance of “perks” is permitted under the Rules although these must be in the interests of the government, be proportional and not cause a conflict of interest. It is for each department to set its own policies based on this wider guidance but some, but according to the Report, some “fell short of good practice”.

The Report examines how the rules have been applied across a number of departments between 2012 and 2015. Key findings include:-

- Cases of hospitality that were not in line with the interests of the departments and government objectives included tickets to the Wimbledon Tennis Championships, movie premiers and musical concerts. In some cases the invitations to various events included the spouses and or children of the officials.
- Gifts that were deemed disproportionate included a hamper from a luxury department store, a £300 piece of artwork and a Mont Blanc pen.
- Perceived conflicts of interest were highlighted by senior officials accepting hospitality from organizations involved in contracting with, or being investigated by the government.

A copy of the Report can be found [here](#).

Sweett Group Fined Following Guilty Plea

The international building and infrastructure professional services company, Sweett Group, has been fined 1.4 million (\$2 million) and imposed with an £851,000 (\$1.2 million) confiscation order, having admitted that its staff paid bribes to win valuable contracts in the Middle East.

In December 2015, following an investigation by the SFO, the company pleaded guilty to the offense of failing to prevent bribery. The investigation focused on alleged bribes of £680,000 (\$960,000) in order to secure and retain a contract related to a £65 million (\$100 million) construction contract.

When sentencing the company, the Judge noted that he was taking into account that the “corrupt payments were made ... for no less than 18 months”.

In response to the sentencing, the Director of the SFO stated that:

“Acts of bribery by UK companies significantly damage this country’s commercial reputation. UK companies must take full responsibility for the actions of their employees and in their commercial activities act in accordance with the law.”

The Chief Executive of Sweett Group, Douglas McCormick said of the company, “we have strengthened our internal systems, controls and risk procedures,” and noted that it could now “look forward to the future with confidence”.

Director of SFO has Contract Extended

It has been announced that David Green, who was appointed as Director of the SFO in 2012, has had his contract extended by two years. The SFO is responsible for investigations

regarding “top end” fraud and bribery investigations.

The Attorney General, Jeremy Wright QC, stated that:

“In his time as Director of the SFO David Green led a change in the organization’s approach to prosecuting cases and delivered the first UK Deferred Prosecution Agreement and the first convictions under the Bribery Act 2010.”

With there being speculation about the viability of the organization, commentators have stated that, “the decision appears to lay to rest uncertainty about the future of the SFO, at least for the time being”.

■ THE REST OF THE WORLD

Algeria

It has been reported that six individuals have been sentenced by the Algiers’ Criminal Court having been found guilty of corruption, money laundering and awarding contracts contrary to the law regarding the operations of the state owned oil company, Sonatrach.

The case, which is known as Sonatrach 1, centers on a number of allegedly corrupt contracts between Sonatrach and an Algerian unit of the German company Funkwerk. The matter was linked to the supply of reading monitoring equipment and electronic protection services to Sonatrach.

Those sentenced reportedly include Belkacem Boumediene, a former vice-president for upstream contracts at Sonatrach and the former Chief Executive of the company, Mohamed Meziane. It is said that most of those who received jail sentences will likely be released soon because they have served pre-trial detention terms.

Brazil

SBM Offshore has reportedly reached an out of court settlement with the Ministerio Publico Federal, Brazil's Public Prosecutor's Office, regarding the ongoing investigation into alleged corruption at the state run oil company, Petrobras. It is said that SBM Offshore agreed to pay R\$500,000 (\$125,000/£85,000) to settle accusations that board members bribed Directors of Petrobras in order to obtain contracts between 1997 and 2012.

The Chief Executive of SBM Offshore, Bruno Chabas, along with the company's Chief Compliance Officer, Sietze Hepkema, are reported to have been included on a list of executives who may be prosecuted regarding allegations of corruption involving the oil company. It is said that they faced charges of alleged "personal favoritism" in order to win contracts.

Mr. Chabas and Mr. Hepkema reportedly joined SBM Offshore in 2012, after the period when the bribery is said to have taken place. The company said the decision to settle the charges "does not involve an admission of guilt and (the company) remains of the opinion that the accusations are without merit".

China

China's army has not been immune from President Xi Jinping's anti-corruption drive and has seen a number of its officers investigated, including two former vice chairmen of the Central Military Commission.

To continue this drive, it has been reported that the military's anti-corruption discipline inspection committee has established a hotline as a means for reports to be made regarding allegations of corruption in the People's Liberation Army. It is said that the hotline will "fully utilize supervision by the masses" and

complaints will be addressed in a "timely and earnest" fashion.

Czech Republic

According to reports, Marek Dalik, the "closest advisor" of the country's former Prime Minister, Mirek Topolánek, has been convicted and sentenced to five years in prison and has been handed a 5 million crown fine (\$210,000/£145,000) by the Prague Municipal Court having been charged with corruption.

The police investigation is said to have been based on the testimony of Stephan Szcuecs, a former employee of the Austrian unit of the U.S. firm General Dynamics. Mr. Szcuecs reportedly claimed that in 2007 Mr. Dalik requested a €18 million (\$20 million/£14 million) bribe from the company in connection with a 14.4 billion crown (\$600 million/£415 million) contract for the purchase of military vehicles. Reports state that the transaction never completed and that Mr. Dalik did not receive any funds.

Mr. Dalik is said to be appealing the sentence.

Indonesia

It has been reported that investigators from the Corruption Eradication Commission (the "KPK") have arrested Andri Trisianto Sutrisna, an official responsible for handling civil suits and appeals in the Supreme Court, for alleged bribery offences.

Mr. Andri is suspected of receiving a InRp400 million (\$30,000/£20,500) payment from Ichsan Suaidi, the Director of Citra Gading Astritama, to postpone a Supreme Court ruling, which allegedly held Mr. Ichsan to be guilty of corruption. As part of their investigation into the matter, the KPK is said to have searched Supreme Court offices:

“Our focus is on the alleged corruption case involving the court official ... the search was aimed at finding any related evidence that could strengthen our investigation into the case.”

Reports state that several documents along with electronic equipment were seized. The investigation is ongoing.

Italy

The Court of Cassation has reportedly acquitted an individual in a matter involving an attempt to bribe a police officer. It is said that the Court ruled that the €100 (\$110/£80) that was offered to the official to avoid being convicted of driving while intoxicated was too small and not sufficiently substantial to be deemed corruption.

It is reported that under Italian law, “it is necessary that the offer is made with appropriate seriousness [and] the attempt is able to psychologically unsettle the public official” for it to be deemed as corruption. In light of the man's inebriated state, and the small sum being offered, the court stated that the case did not constitute corruption.

Despite not being convicted of bribery, the individual was convicted of driving under the influence of alcohol.

Japan

Japan's Economic Revitalization Minister has announced his resignation following allegations that he received cash from a construction company in return for favors. Akira Amari, has, however, denied taking bribes, claiming that various envelopes of cash, allegedly containing at least ¥12 million (\$100,000/£70,000) were listed as political donations.

It is alleged that in return for the payments, Mr. Amari's office assisted the firm in gaining compensation from the Government regarding disputes over land ownership and waste removal at a building site. Mr. Amari is reported to have admitted that the construction firm executive had visited him at the cabinet office with “gifts”, however he denied that he had taken any of the cash, and had instead instructed his aide to record it as political donations.

Mr. Amari told a news conference that he was resigning to prevent the matter from distracting the government's efforts to move the country away from a period of deflation. Following reports that the country's Prime Minister requested Mr. Amari to remain in office, some commentators believe that further revelations are likely to be published.

Kenya

Two Kenyan athletes, Joy Sakari and Francisca Koki Manunga, who received four year suspensions having tested positive for banned substances at last year's World Championships in Beijing, have alleged that Isaac Mwangi, the Chief Executive of Athletics Kenya, offered to have their suspensions reduced in return for a bribe of around \$24,000 (£16,500).

Ms. Sakari and Ms. Manunga apparently met with Mr. Mwangi in his private office when he demanded the payment. Ms. Manunga claimed that, “we left, kept quiet and later that's when our names came out and we were told that we've been banned because we did not deliver that money”. Ms. Sakari reportedly confirmed these events, noting that, “he asked for money”.

Mr. Mwangi is said to have dismissed the allegations, labelling them “a joke”. Further reports state that he denies ever meeting the two athletes in private:

“We have heard stories, athletes coming and saying, ‘Oh, you know, I was asked for money’. But can you really substantiate that?”

Both athletes are said to be willing to testify in front of the IAAF ethics commission, which is already looking into claims of doping and corruption in Kenya.

The Netherlands

One of the world’s largest telecommunications companies, VimpelCom Limited, has reportedly entered into resolutions with both U.S. and Dutch authorities totaling nearly \$795 million (£556 million) to settle an alleged bribery matter in Uzbekistan.

The matter is centered on allegations that, between 2006 and 2012, VimpelCom paid bribes exceeding \$114 million (£80 million) in order to gain contracts in Uzbekistan for mobile telephone frequencies along with licenses to enter Uzbekistan’s telecom market.

The U.S. penalties are said to amount to \$397 million (£278 million) and include a deferred prosecution agreement. The terms of the agreement reportedly require the company to implement “rigorous internal controls” and also to retain a compliance officer. The company’s settlement with the Public Prosecution Service of the Netherlands also included a \$397 million (£278 million) penalty.

In response to the settlement, the CEO of VimpelCom, Jean Yves Charlier, said:

“Resolving this has been a top priority for VimpelCom. While this has been a very challenging experience for our business and our employees, we are pleased to have now reached settlements with the authorities. The wrongdoing, which we deeply regret, is unacceptable.”

Venezuela

Venezuelan authorities have reportedly arrested 55 suspects with regards to a corruption matter within the state food sector. According to the country’s Interior Minister, Gustavo Gonzalez, “this operation sought to dismantle networks of corruption that threaten the power of the people”.

The suspects are reportedly linked to an alleged corruption matter regarding Abastos Bicentenario, the state owned supermarket chain which sells basic food products at discounted rates. The suspects stand accused of being involved in transferring products intended for sale at Abastos Bicentenario into the black market to be sold at inflated prices. For example, in Miranda state, investigators are said to have found eight metric tons of contraband meat.

The suspects are reportedly awaiting trial.

Corruption issues are also addressed in the Anti-Fraud Network’s newsletters: see www.antifraudnetwork.com for current and archived material; see also the Computer Fraud website at <http://computerfraud.us> and www.secactions.com.

This update is provided for general informational purposes and is not intended to constitute advice. If you require advice on any of the matters raised in this update, please let us know and we will be delighted to assist.

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