



## ANTI-CORRUPTION DIGEST

July 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

#### **Analogic Pays \$14.9M to Settle Bribery Allegations with DOJ, SEC**

Medical device manufacturer Analogic Corp. and its wholly-owned Danish subsidiary, BK Medical ApS, have agreed to pay nearly \$15 million (£11.5 million) to settle parallel civil and criminal FCPA proceedings with the DOJ and SEC.

Analogic and BK Medical were accused of improperly funneling approximately \$20 million (£15.25 million) to third parties, including \$16 million (£12.2 million) to BK Medical's Russian distributor. The SEC noted these payments "posed a significant risk of bribery or other improper conduct," but did not formally allege that any bribes were in fact paid. Instead, the SEC charged Analogic with failure to keep accurate books and records and maintain adequate internal accounting controls. The SEC's order requires Analogic to cease and desist from committing any future FCPA violations and pay more than \$11 million (£8.4

million) in disgorgement and prejudgment interest.

In the parallel proceeding, BK Medical entered into a non-prosecution agreement ("NPA") with the DOJ. The NPA requires BK Medical to continue its cooperation with the DOJ and foreign authorities, enhance its compliance program, and periodically report to the DOJ on the implementation of the new compliance program. The agreement also includes payment of \$3.4 million (£2.6 million) in fines.

As noted in the NPA, BK Medical received credit for self-disclosure and remediation, including the termination of individuals responsible for the corrupt payments, resulting in a 30% discount off of the bottom of the U.S. Sentencing Guideline fine range. The cooperation credit was limited, however, due to the fact that BK Medical's initial disclosure intentionally omitted relevant information learned during the company's internal investigation.

Lars Frost, BK Medical's former Chief Financial Officer, was accused of knowingly circumventing internal controls in place at the

company and falsifying books and records. Mr. Frost, a Danish citizen, agreed to pay the SEC \$20,000 (£15,250) to settle the allegations.

### **Johnson Controls Pays SEC \$14.4M to Settle FCPA Allegations**

The SEC announced Johnson Controls, Inc. (“JCI”) agreed to pay more than \$14 million (£10.6 million) to settle charges it violated the books and records and internal accounting controls provisions of the FCPA.

The SEC’s investigation found that China Marine, a wholly-owned Chinese subsidiary of JCI, made improper payments totaling nearly \$5 million (£3.8 million). The money was distributed to a variety of individuals, including employees of state-owned and private enterprises, as well as employees of China Marine.

Knowing that JCI’s internal controls placed restrictions on the use of agents, China Marine made payments to sham vendors in order to build up a slush fund. The payments escaped detection during JCI’s audits of China Marine due to the low dollar value of the transactions, averaging only a few thousand dollars each. According to the SEC, pulling off this “multi-stepped arrangement...required the complicity of nearly the entire China Marine office.”

JCI learned of the conduct in December 2012, after receiving an anonymous hotline report describing the scheme. The company then initiated an internal investigation, and later self-reported the misconduct to the SEC in June 2013.

Under the terms of the settlement, JCI will cease-and-desist from committing future FCPA violations, and will report to the SEC for one year on the status of its remediation and compliance efforts.

### **Supreme Court Unanimously Vacates Domestic Bribery Convictions in *U.S. v. McDonnell***

A united Supreme Court vacated the convictions of former Virginia Governor Robert McDonnell and his wife, Maureen McDonnell. After a jury trial, the McDonnells were convicted of violating the Hobbs Act for accepting loans, gifts, and other benefits from businessmen Jonnie Williams.

A conviction for bribery under the Hobbs Act requires the government to prove that the defendant committed, or agreed to commit, an “official act” in exchange for loans and gifts. According to prosecutors, Mr. McDonnell’s “official acts” included, *inter alia*, arranging meetings for Mr. Williams with other Virginia officials, hosting events for Mr. Williams’ company at the Governor’s Mansion, contacting other government officials regarding Mr. Williams’ company’s product, and other similar acts.

In its instructions to the jury, the trial court adopted the government’s broad view of official acts. The Fourth Circuit affirmed the trial court’s decision, but the Supreme Court disagreed. The Court adopted a more bounded interpretation of “official act,” under which setting up a meeting, calling another public official, or hosting an event, standing alone, do not qualify.

Many legal commentators have predicted that this opinion will carry over into other areas of the law which touch on official acts, such as the FCPA.

### **Florida Congresswoman Corrine Brown and Chief of Staff Indicted in Corruption Scheme**

The DOJ has hit Congresswoman Corrine Brown and her chief of staff, Elias Simmons, with a 24-count indictment, including multiple charges of mail and wire fraud. The indictment

alleges that the Congresswoman solicited over \$800,000 (£610,000) in donations for One Door for Education (“One Door”), which she is accused of having fraudulently held out as a properly registered 501(c)(3) non-profit organization. The duo is alleged to have used Congresswoman Brown’s position as a member of Congress to induce individuals and entities to make contributions to One Door. According to the indictment, One Door’s sole charitable output consisted of two scholarships totaling a mere \$1,200 (£915). Much of the remaining funds were allegedly used to pay for personal expenses, host events in the Congresswoman’s honor, or were simply transferred into personal bank accounts.

The charges carry stiff penalties: Congresswoman Brown faces a theoretical 357 years in prison and a \$4.8 million (£3.7 million) fine; Mr. Simmons’ maximum penalties are a shade lighter, totaling a maximum 355 years in prison and \$4.75 million (£3.7 million) in fines. Both pleaded not guilty to each charge of the indictment. Trial is currently set for September.

Carla Wiley, the former president of One Door, entered a guilty plea on one count of conspiracy to commit wire fraud in March 2016. Ms. Wiley’s sentencing is expected to occur in December.

### **Olympus Issues Statement Regarding Corruption Allegations**

Olympus issued a three-page press release detailing the company’s response to allegations that a Chinese subsidiary, Olympus (Shenzhen) Industrial Ltd. (“OSZ”), had made illegal payments to a consultant to handle a tax issue with the Shenzhen Customs Authority. After learning that the customs authorities were looking into possible errors in OSZ’s customs clearance books, OSZ hired a consulting company on a performance-based fee arrangement. Under this arrangement, if the fines levied by the customs authorities were

under RMB 30 million (\$4.5 million/£3.4 million), OSZ would pay the consultant 80% of the difference. Eventually, OSZ negotiated an agreement with the customs authorities that did not involve any fines or payments, resulting in a RMB 24 million payment to the consultant.

The company convened an investigation committee, consisting of outside directors and outside counsel. The investigation included the collection of approximately five million documents and interviews of 34 officers and employees. The investigations committee concluded that OSZ did not engage in any violations of Japanese, Chinese, or American anti-bribery laws, but did identify a number of problems with internal controls. Olympus stated it had taken disciplinary actions against the executives and employees involved in improper behavior, and has revised internal compliance-related rules and training.

### **Two Former Construction Executives Sentenced in Bribery Scheme**

Richard Hirsch and James McClung, former executives of Louis Berger International (“LBI”), were sentenced for their participation in FCPA violations. LBI, a construction management company, paid out nearly \$4 million (£3 million) in bribes to foreign officials in order to secure government contacts between 1998 and 2010. The company entered into a deferred prosecution agreement in 2015 after agreeing to pay the government more than \$17 million (£13 million) in fines and penalties. Last summer both men entered guilty pleas on one count of conspiracy to violate the FCPA and one substantive count of violating the FCPA.

Mr. Hirsch received two years of probation and a \$10,000 (£7,600) fine. Mr. McClung was sentenced to one year and one day in jail.

## **DOJ Announces Return of \$1.5M to Taiwan**

A DOJ press release announced the return of approximately \$1.5 million (£1.15 million) to Taiwan following the sale of a forfeited New York condominium and a Virginia residence.

The government alleged the properties were purchased with the proceeds of bribes paid to the wife of former Taiwanese President Chen Shui-Bian. The government's filings showed former First Lady Wu Shu-Jen accepted a bribe of nearly \$6 million (£4.5 million) from Yuanta Securities Co., Ltd. in exchange for supporting the company's bid to acquire a financial holding company. The money flowed through bank accounts in Hong Kong and Switzerland via shell corporations before being deposited in a trust in St. Kitts and Nevis. The former First Family then used the money in the trust accounts to purchase the properties through two limited liability companies. The forfeiture action was an international effort, with the DOJ receiving assistance from authorities in Hong Kong and Taiwan.

## **Federal Jury Finds Pennsylvania Congressman and Associates Guilty of RICO Conspiracy in Public Corruption Case**

A federal jury found Congressman Chaka Fattah Sr. guilty of numerous charges, including taking part in a racketeering conspiracy, conspiracy to commit bribery, bribery, money laundering, and wire, honest services, mail, and bank fraud. At the center of the case was a \$1 million (£76,000) loan from a wealthy supporter, which the Congressman had accepted in order to fund his mayoral campaign. After coming in fourth in the primaries, the Congressman turned to federal grant money to repay a portion of the loan, routing the proceeds through a campaign consultant.

The Congressman is also facing additional counts for his acceptance of bribes from Herbert Vederman in exchange for his agreement to recommend Mr. Vederman for an ambassadorship. Sentencing is scheduled for October.

## **THE UNITED KINGDOM**

### **Second U.K. DPA Announced**

The SFO's second application for a deferred prosecution agreement ("DPA") has been approved. The counterparty to the DPA cannot be named due to ongoing legal proceedings, but has been reported to be a U.K. SME (the "SME").

Under the terms of the DPA, proceedings against the SME, regarding its employees' and agents' alleged involvement in the payment of bribes to secure contracts in foreign jurisdictions between 2004 and 2012, will be suspended. The SME will also pay a £6.2 million (\$8.3 million) disgorgement of gross profits, a £352,000 (\$468,000) financial penalty and cooperate fully with the SFO's investigation.

Reports state that the SME was the subject of an indictment alleging conspiracy to corrupt, contrary to section 1 of the Criminal Law Act 1977, conspiracy to bribe, contrary to section 1 of the same Act, and failure to prevent bribery, contrary to section 7 of the Bribery Act 2010 in relation to supply contracts in a number of foreign jurisdictions.

Lord Justice Leveson, who approved the DPA, stated that:

"[This conclusion] provides an example of the value of self-report and co-operation along with the introduction of appropriate compliance mechanisms, all of which can only improve corporate attitudes to bribery and corruption."



## **F.H. Bertling Charged with Bribery**

The SFO has charged F.H. Bertling Ltd. (“Bertling”), a logistics and freight operations company, and seven individuals, comprised of executives and former executives of the company (the “Executives”), with corruption.

According to the SFO, Bertling and the Executives conspired to bribe an agent of the Angolan state oil company, Sonangol, to further Bertling’s business operations in that country. It is alleged that the payments took place between January 2006 and December 2006.

Bertling and the Executives have been summonsed to appear at Westminster Magistrates’ Court on 4 August 2016.

## **SFO Investigation into Unaoil**

The SFO has announced that it is conducting a criminal investigation into Unaoil in connection with suspected offences of bribery, corruption and money laundering. According to the SFO’s report, the company’s officers, employees and agents are also under investigation.

It is said that the SFO’s investigation commenced in March, following reports that Unaoil allegedly bribed officials in numerous countries, including Angola, Iran and Kazakhstan, on behalf of large oil and gas companies.

Unaoil had previously denied these allegations and has made no comment regarding the SFO’s recent statement.

## **SFO Granted Blockbuster Funding**

The SFO has been granted additional funds regarding its investigation into Eurasian Natural Resources Corporation (“ENRC”). This so-called blockbuster funding, can be requested to

support the SFO in carrying out major and complex investigations, as and when they arise. The amount of additional funding that has been granted to the SFO for this investigation has not been disclosed.

The SFO’s investigation into ENRC was initially opened in 2013 following allegations that the mining company paid bribes to gain contracts in Kazakhstan and Africa. The company has since delisted from the FTSE 100 and changed its name to Eurasian Resources Group (“ERG”).

The SFO and ERG have declined to comment on the matter, however it has been reported that the SFO’s request for funding came after suspects were called for interviews in the spring of this year.

## **Anti-Corruption Innovation Hub**

The inaugural Anti-Corruption Summit (the “Summit”), which was hosted in London earlier this year, brought together heads of state and representatives of over 40 countries with the aim of “galvaniz[ing] a global response to tackle corruption”. One of the measures to combat corruption that was unveiled at the Summit was the Anti-Corruption Innovation Hub, with the aim of linking experts from a number of countries to share methods of tackling corruption.

It has been reported that only one member of staff will work on the project in the U.K., despite it being one of the leading initiatives of the Summit. According to Jonathan Ashworth, a member of the Shadow Cabinet, “the Government needs to show more steel in this area”. The Executive Director of Transparency International U.K., Robert Barrington, added that the positive steps taken in the Summit will fail “if the commitments are not properly resourced”.

## ■ THE REST OF THE WORLD

### Argentina

The police in Argentina have reportedly searched 11 properties belonging to the country's former President, Cristina Fernandez, amid allegations of corruption. It is said that the authorities were searching for documents regarding a case that accuses Ms. Fernandez of illegal enrichment via a family real estate company.

Ms. Fernandez responded to the searches via Twitter stating:

“It has been a while, decades I would say, since we’ve seen such an abuse of power and political persecution.”

Separately, Ms. Fernandez was indicted in May on charges that she was responsible for central bank irregularities in the futures market.

### Brazil

Investigations into Operation Car Wash continued as police arrested 19 people this month as part of an inquiry into a corruption matter at a nuclear power plant owned by state-led utility company Eletrobras. Operation Car Wash initially started as an investigation for price-fixing, bribery and political kickbacks in state-led oil company Petrobras but has now expanded to include other state-led companies.

It is alleged that more than 200 million reais (\$60 million/£45 million) was paid out in bribes to senior executives at Eletrobras in return for their approval to inflate the costs of construction companies, such as Andrade Gutierrez, kicking back part of their take to politicians and political parties.

Of the 19 arrested, seven were put in preventative custody, three were jailed on temporary warrants and nine were picked up

for questioning. Both companies have said they are aware of the investigation and Andrade Gutierrez said it was cooperating with authorities.

### Canada

The Ontario Securities Commission (the “OSC”) has launched the first paid whistleblower program (the “Program”) by a securities regulator in Canada. The OSC will be led by Kelly Gorman, an OSC executive with “significant experience in securities law enforcement”.

The Program will pay up to CA\$5 million (\$3.87 million/£2.91 million) for information that leads to successful enforcement action carrying sanctions of at least CA\$1 million (\$770,000/£580,000). The Program contains important whistleblower protections such as confidentiality and anti-retaliation provisions.

The OSC first considered the introduction of a paid whistleblower program in 2010 following the success of a similar program by the U.S.’s SEC. It has faced resistance from corporates who fear that the Program will create an incentive for employees to circumvent internal compliance regimes in order to provide “original” information to the OSC.

### Chile

A former high-ranking cabinet official is reportedly being investigated by Chile’s public prosecutor for bribery.

It is alleged that Jorge Insunza provided advice to a mining company via his company, Virtus Consultores, between 2007 and 2014, during which he presided over the Lower House’s Mining Commission. According to the Public Prosecutor for Chile’s Santiago Eastern District:

“[The] investigation has been opened by us based on records we have ... which we have analyzed that show that monies were paid for counsel on issues related to mining by the former Congressman.”

## **China**

Ling Jihua, once a powerful senior official and a top aide of the now-retired President Hu Jintao, has been sentenced to life in prison for corruption. According to reports from state media, Mr. Ling was convicted on charges of taking bribes, illegally obtaining state secrets and abuse of power.

The Tianjin No.1 Intermediate People’s Court issued the life sentence to Mr. Ling on the grounds that he accepted more than 77 million yuan (\$11.5 million/£8.6 million) in bribes. When sentencing Mr. Ling, the court stated that he abused his official position to provide benefits, which included job promotions and property purchases, to benefit a number of his family members and political and business associates.

## **Hong Kong**

Leung Kwok-Hung, a lawyer for the League of Social Democrats’ Party, has reportedly indicated to the District Court that he intends to plead not guilty to the charge of misconduct in public office.

The Independent Commission Against Corruption ordered the arrest of Mr. Kwok-Hung on allegations that he willfully and intentionally committed misconduct by failing to declare a HK\$250,000 (\$32,200/£24,500) payment that he received from the media tycoon, Jimmy Lai Chee-Ying via a third party in 2012.

Court documents reportedly reveal that the prosecution plan to call six witnesses and

submit more than 2,000 pages of evidence and six DVDs. As a result, the judge has agreed to the prosecutors’ request to adjourn the case until September.

Mr. Kwok-Hung claims to be facing political persecution, stating that, “if someone wants to find fault with you, there is always something they can come up with”.

## **International**

Transparency International has published a new report labelled “Transparency in Corporate Reporting: Assessing Emerging Market Multinationals” (the “Report”). The Report highlights that the majority of the world’s biggest emerging market companies have failed when it comes to transparency.

According to the survey, 100 companies based in 15 emerging markets and operating in 185 countries around the world scored an average of 3.4 out of 10, with 0 being the least transparent and 10 being the most transparent.

José Ugaz, the Chair of Transparency International stated:

“Pathetic levels of transparency in big emerging market companies raises the question of just how much the private sector cares about stopping corruption, stopping poverty where they do business and reducing inequality. Time and again we see huge corruption scandals involving multinationals, such as Odebrecht Group or China Communications Construction Company, doing immense damage to local economies. Through adequate transparency and anti-corruption measures and will from the top this could have been prevented. Although many companies say they want to fight corruption, this is not enough. Action speaks louder than words.”

The Report was clear in stating that more measures need to be taken to prevent corruption from taking place in the emerging

market companies, such as implementing new policies in the companies as well as each country's government implementing additional anti-corruption and anti-bribery legislation.

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

## **Iraq**

Following a six month investigation for bribery and embezzlement, Iraq's parliamentary Integrity Commission has requested that the central government issue the arrest of 2165 individuals, including many state employees, six ministers and dozens of top ranking government managers, who were all officially charged.

Hasan Yassiri, head of the Integrity Commission explained that over 13,000 cases had come to their attention after they "were reported to us by private and government sources".

Iraq has continuously been in the top 15 of the list of least transparent nations in the past decade, topping the list in 2007 according to the Corruption Perception Index. Earlier this year, protestors and supporters of Shiite cleric Muqtada Al-Sadr, took to the streets and threatened to take matters into their own hands if "corrupted officials" went unpunished.

## **Kosovo**

Kosovo's Environmental Minister, Ferid Agani, has resigned following corruption charges being filed against him. Mr. Agani stands accused of abusing his official position of authority, under the Criminal Code of the Republic of Kosovo.

The alleged offences are said to have occurred while Mr. Agani was serving as Health Minister under the previous government. It is said that he signed documents which channeled illegal payments of €4.5 million (\$5 million/£3.8 million) to two private medical clinics.

64 individuals, 44 of which are doctors, have also been charged in connection with the matter. Of these, a number stand accused of taking bribes to refer patients, some of whom were already deceased, to the clinics. The doctors were allegedly paid up to €500 (\$555/£420) per referral.

Mr. Agani is reported as saying that he will cooperate fully with the authorities.

## **Russia: Governor of the Kirov Region Accused of Bribery**

According to reports, the Governor of the Kirov region, Nikita Belykh, has been arrested on charges of corruption after the Investigative Committee allegedly caught him in the act of accepting a bribe in a Moscow restaurant.

Mr. Belykh stands accused of taking a €400,000 (\$445,000/£330,000) payment in exchange for protecting the interests of the Novovyatsky ski factory and the Forestry Management Company, two companies based in the Kirov region. The Investigative Committee has released a photograph purportedly showing the bribe exchanging hands.

Mr. Belykh is a known critic of the Kremlin and, according to the Moscow Times, a number of politicians have claimed not to believe in the photographs. A spokesman for the Investigative Committee has stated that there is no political background to the arrest.

Mr. Belykh has claimed his arrest to be a set up and has pleaded innocent in court.

## **Russia: New Law Regarding Corruption in Sports**

President Vladimir Putin has made amendments to the Russian Criminal Code to address corruption in sports. The bill that has been signed into law imposes prison terms of



up to 15 years for individuals who have taken bribes of over 1 million rubles (\$15,800/£12,000) in relation to sports.

The move has seemingly been prompted by the proposed ban on Russian track and field athletes competing at the Rio Olympics imposed by the International Association of Athletics Federations.

### **South Korea**

The corruption investigation into the Lotte Group deepened this month as Shin Young Ja, a director of Hotel Lotte and a sister of the Lotte Group's chairman was arrested after a Seoul Central District Court judge issued a warrant against her on charges of bribery and embezzlement.

According to company filings last month, Ms. Young Ja is accused of accepting bribes from Nature Republic in place of providing the cosmetic maker preferential treatment in the Lotte duty free stores. Whilst the Lotte Group has denied these allegations, Ms. Young Ja has not yet commented on this.

This comes a month after the Lotte Group scrapped what was meant to be the largest IPO of this year for its hotel unit following bribery allegations.

In related news, Republican Choi Kyung-hwan, the de-facto leader of the Saenuri Party faction also filed a defamation suit against Asia Today, a local newspaper, over its recent report that he accepted a bribe from the Lotte Group. In a press release Mr. Kyung-hwan stated:

“The report is not true. It is totally groundless. I have not received a penny from Lotte Group even in the form of a donation. The newspaper and the reporter who wrote the article should be held responsible.”

### **Ukraine**

Ukraine's deputy health minister, Roman Vasylyshyn, has reportedly been arrested regarding bribery allegations. He is the first high ranking official to be accused of corruption since the election of a new cabinet in April 2015.

Mr. Vasylyshyn is accused of receiving money from “sick patients for operations” according to Vasyl Gritsak, the chief of Ukraine's State Security Service, who added:

“We were shocked by what the deputy health minister was doing. During his detention and as a result of searches, we confiscated more than \$50,000 and 320,000 hryvnias (\$12,900/£9,730).”

Mr. Vasylyshyn denies the accusations and has stated that no evidence has been found against him. According to reports he has pledged to return to office to prove his innocence.

He has been placed in custody for two months, with a bail of \$112,700 (£85,000) posted. Under Ukrainian law, if he is found guilty he faces a prison sentence of up to 12 years.

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

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