

Welcome to Dorsey & Whitney's monthly 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 and New York offices edit the digest and select the most important material so that you can use this digest as a single source of information.

If you have any questions, feel free to call either Nicholas Burkill in London or Nick Akerman in New York. Their contact information appears at the end of this digest.

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

## ■ THE USA

### Settlements/Plea Agreements

A number of companies have reserved or set aside funds to pay expected fines in connection with settlements relating to alleged violations of the Foreign Corrupt Practices Act (FCPA).

For example, Panalpina reported that it had set aside \$110.8 million to settle U.S. Department of Justice (DOJ) allegations that it had violated the FCPA through the activities of a former Nigerian subsidiary.

Italian multi-national Eni has reserved some \$300 million to deal with allegations of bribing Nigerian officials. Similarly, the engineering firm Technip reserved some \$300 million in connection with allegations that it bribed Nigerian officials.

### Alliance One International, Inc.

On April 28, 2010, the U.S. Securities and Exchange Commission (SEC) filed a complaint against four former employees of Dimon, Inc., now Alliance One International, Inc., alleging that they had violated the FCPA in connection with paying more than \$3 million in bribes to Kyrgyzstan government officials to purchase Kyrgyz tobacco and the payment of approximately \$542,590 to government officials of the Thailand

Tobacco Monopoly in exchange for obtaining sales contracts.

The defendants consented to the entry of final judgments permanently enjoining each of them from violating securities laws. Two defendants also agreed to pay civil monetary penalties of \$40,000 each.

### Investigations

#### Hewlett-Packard Co.

The DOJ is investigating whether Hewlett-Packard Co. (HP) employees made improper payments to foreign officials to win business, it has been reported. HP disclosed that it had engaged in discussions with the SEC after its Moscow offices were searched in a possible bribery investigation (for more details regarding this investigation, please see the entry for Russia below). The company said it was cooperating with authorities in the U.S., Russia and Germany.

The campaign for U.S. Senate candidate Carly Fiorina, former CEO of HP, has said she didn't know about any alleged kickback scheme in Russia when she ran the company.

#### Pride, Helmerich and Team Industrial

Three U.S. oil companies in Venezuela have been fined or are under investigation by the DOJ and SEC for paying bribes to obtain or extend

contracts with Venezuelan government entities. Houston-based Pride International, an offshore driller, will pay over \$50 million in fines. Further, two other drilling companies, Helmerich & Payne, and Team Industrial Services, are also under investigation. Evidently, Team Industrial concluded an internal investigation after FCPA violations were reported.

## Convictions and Sentences

On April 19, 2010, Charles Jumet, a former official of Ports Engineering Consultants Corporation, was sentenced to 87 months in prison for violations of the FCPA; reportedly this is the longest prison term ever imposed on an individual for FCPA crimes. Jumet had been convicted of secretly paying Panamanian officials for contracts to maintain lighthouses and buoys along Panamanian waterways. The payments amounted to over \$200,000. Jumet also made false statements to the U.S. government.

## Potential Legislation

Recent legislation proposed by both houses of Congress would change federal securities laws to allow employee whistleblowers to receive rewards of up to 30% of the fines collected by the SEC or DOJ in cases involving FCPA violations. The proposed legislation would pay whistleblowers a percentage of the sanctions for providing "original information" regarding violations of the securities laws, including the FCPA. Under the bill, "original information" would be limited to information independently known to the whistleblower and not already known by the government or derived from material uncovered in existing investigations.

In an environment of heightened interest in FCPA investigations (DOJ is reported to have 150 open FCPA investigations), the proposed whistleblower legislation, if passed, would increase the need for corporations to implement and/or upgrade their compliance programs and conduct investigations when allegations of misconduct arise. They also would raise the stakes when companies consider whether to report potential FCPA violations to the government.

The whistleblower provisions have already passed in the House and are likely to be passed in the Senate and become law.

## THE UK

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### Goldman Sachs Under Formal Investigation by FSA

On 20 April 2010 the Financial Services Authority (FSA) began a formal investigation into Goldman Sachs's London operations. The decision by the FSA follows a preliminary investigation after the SEC asserted claims against the Wall Street firm and one of its London based executives, Fabrice Tourre, alleging a \$1 billion (£650 million) fraud in the U.S. Goldman Sachs reacted to the complaint saying: "We believe the SEC's charges are completely unfounded in law and fact and look forward to co-operating with the FSA."

### British Airways Fuel Pricing-Fixing Trial

Four BA executives, Andrew Crawley, Martin George, Iain Burns and Alan Burnett, were accused of agreeing to fix fuel surcharge prices with Virgin Atlantic between 2004 and 2006. The charges related to a period of 18 months, when fuel surcharges rose from £5 to £60 for a typical long-haul return ticket. The court however, heard how the Office of Fair Trading (OFT) had failed to disclose key information to the defence. One e-mail that was recently discovered suggested that Virgin Atlantic had increased its fuel surcharge without consulting BA, undermining claims that the two had colluded on fixing their surcharges.

### Oxford Publisher Admits Paying Bribes

One of the world's biggest English language publishers, Macmillan Group, has been blacklisted by the World Bank, preventing it from taking up any contracts financed by the World Bank for six years. This is after Macmillan admitted it paid bribes to secure a multimillion pound contract for printing textbooks that was funded by aid payments made by the World Bank for an education project in Sudan. The bribes were paid between 2008 and 2009 to a Sudanese public official for the contract, which ultimately Macmillan did not win. The original blacklisting was for eight years, but was reduced to six years because of Macmillan's acknowledgment of its misconduct. The World Bank has forced Macmillan to institute a "compliance monitoring programme" and co-operate with its efforts to fight fraud and corruption. If Macmillan continues to co-operate

with the compliance monitoring programme, then the ban may be reduced to 3 years.

### **FSA Fine Alpari (UK) Limited**

Alpari (UK) Limited, an online provider of foreign exchange services for speculative trading has been fined £140,000 by the FSA for failing to have in place adequate anti-money laundering systems and controls. The FSA has also imposed a financial penalty of £14,000 on Alpari (UK) Limited's former money laundering reporting officer, Sudipto Chattopadhyay.

### **Innospec Limited Bribe Fines and Plea Deals**

A senior judge, Lord Justice Thomas, recently reviewed the Serious Fraud Office's approach to corruption cases when sentencing Innospec Limited. Whilst Thomas LJ approved the agreement reached between the SFO and Innospec, he emphasised that it was for the court to sentence, not for the prosecutor to agree that with a defendant or another country's authorities. He also gave serious warnings for the future. First, following submissions of Innospec's inability to pay a higher penalty, he said that he would not have approved a fine or other penalty that allowed the continued survival of the company if he had not been satisfied that the new management of the company would not engage in similar conduct in the future. Secondly, he said that companies that committed corruption offences "should be treated no differently to others who commit serious crimes". Thirdly, he expressed the view that financial penalties should not be lower in one country than another, making it clear that he considered a fine of the level agreed in the US to be the starting point, in addition to an order depriving a defendant of the benefits it had obtained through its criminality. Fourthly, he said that it would rarely be appropriate for criminal conduct by a company to be dealt with by means of a civil recovery order rather than criminal penalty.

### **Briton Sent To Afghan Jail On Bribe Charge**

Bill Shaw, the manager of British security company G4S, which provides protection for the British Embassy in Kabul, has been sentenced to two years in an Afghan prison for corruption. He

was detained in Kabul and accused of paying \$20,000 (£13,000) bribe to Afghan officials for the return of two armoured vehicles belonging to G4S. Mr Shaw told the court that he believed he was paying a fine rather than a bribe for the release of the vehicles, which were impounded. G4S said that they will continue to support his assertions of innocence and believe that the arrest was as a result of a misunderstanding. His case is the most high profile of its kind to be brought before an anti-corruption tribunal by President Karzai's Government in an effort to address chronic corruption.

## **■ REST OF THE WORLD**

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### **Austria**

Austria agreed on new regulations for the prevention of money laundering and the financing of terrorist activities. The Organisation for Economic Co-operation and Development's international Financial Action Task Force said Austria's banking secrecy was a significant reason as to why Austria was an attractive place to invest money from criminal sources. Hence, the tougher regulations are aimed at offering more transparency for companies listed on the stock exchange and private foundations. Furthermore it will provide the Official Finance Control Authority as well as the Money Laundering Reporting Office with more privileges and will commit banks to inform the authorities about all asset transactions which could be part of criminal activities. Previously, it was only an offence to launder other people's profit. In the future laundering one's own money will also be punishable.

### **Cambodia**

The Cambodian Prime Minister denied that the mining giant, BHP Billiton, paid a bribe of over \$2.5 million for an exploration deal in Cambodia. The Cambodian leader Hun Sen said the money was for a "social fund" established in an agreement between Australia and Cambodia and was used to build a hydroelectric dam, schools and hospitals. Anti-corruption watchdog Global Witness stated that the Cambodian government accounts do not appear to reflect large amounts of money paid by BHP for mining concessions.

## China

China Mobile senior executive Shi Wanzhong has been taken into custody in connection with an investigation into bribery allegations involving European engineering conglomerate Siemens AG. Mr Wanzhong helped Siemens with its telecommunication business during his time as chairman of China Mobile's branch in Anhui, China. It is alleged that at about the same time, Siemens paid \$5 million to a consulting firm owned by Mr Wanzhong's wife for its service. It is reported that the Chinese authorities received information that Mr Wanzhong was suspected of accepting bribes from lawsuits. There were also tip-offs from China Mobile insiders suggesting Mr Wanzhong accepted 50 million Yuan (\$7.3 million) during his tenure in Anhui.

The Independent Commission Against Corruption has charged senior manager Leung Sze-chit of KPMG for accepting a bribe "for preparing the accountant's report in the prospectus for the global offering" in connection with the Hontex International Holdings' initial public offering scandal, in which the Securities and Futures Commission (SFC) alleged that Hontex International Holdings had overstated its financial results and misled investors about its finances in the prospectus. In March, the SFC won a court order freezing the HK\$1 billion that Hontex International Holdings had raised in its initial public offering in December. As KPMG prepared the accounts for the initial public offering, they as the auditors were responsible for ensuring the accuracy of Hontex's prospectus. KPMG has emphasised that the alleged bribe was in fact reported through KPMG's internal investigation, that the senior manager was then suspended and a report was then made by KPMG to the authorities.

## France

It has been reported that the Court of Appeals of Paris has held that French shareholders may participate in and are rightfully part of a securities fraud class action lawsuit pending in the United States against Vivendi Universal S.A, in which Vivendi was found liable for damages resulting from false and misleading statements about its liquidity during the class period.

## Germany

It has been reported that in April a Munich court found two former Siemens executives guilty of breach of trust and for abetting bribes in Russia, Libya and Nigeria.

## India

The Chief of the Medical Council of India (MCI) was arrested by the Central Bureau of Investigation for allegedly seeking a bribe of 20,000,000 rupees (£302,750) to grant recognition to a private medical college in Punjab.

The Income tax department has extended its probe, which started with an inquiry of the Indian Premier League's (IPL) financial transactions and IPL boss Lalit Modi, to all those associated with the IPL Cricket tournament. Tax officials have reportedly found information on fund transfers by those involved in the IPL to overseas bank accounts through recognised banking channels.

Income tax officials raided the offices of Multi Screen Media (MSM) and World Sports Group (WSG) to probe the allegation that \$80 million was improperly paid for broadcast rights. MSM's parent body Sony World have stated that it is ready to co-operate with the investigation. The broadcast rights allegations revolve around the \$80 million MSM allegedly paid to WSG to re-acquire IPL TV rights.

## Nigeria

Nigerian authorities have dropped charges against the former head of the country's anti-corruption agency, Nuhu Ribadu, who had been accused of not declaring his assets while in office. There is speculation that Mr Ribadu will be appointed as a special advisor in fighting corruption to the new acting President Mr Goodluck Jonathan.

## Russia

Fifty-six leading German companies have signed a joint initiative of the Russian-German Chamber of Foreign Trade, the Association of European Businesses and the International Business Leaders Forum, vowing to comply with corporate ethics when doing business in Russia. The

companies, including Mercedes Benz Rus, Volkswagen Group Rus and Siemens LLC, will show intolerance to all manifestations of corruption, fight it in their companies and ensure that other parties to the initiative act similarly.

Russian President Dmitry Medvedev has signed a decree that approved the National Anti-Corruption Strategy and a new version of the National Anti-Corruption Plan 2010-2011. According to the decree, the heads of federal executive bodies and other government agencies have to take effective measures to prevent and resolve conflicts of interest in civil service and they will have to amend their anti-corruption plans by 1 June 2010. Government officials are also required to oversee anti-corruption measures, help with coverage in the press and summarise the results of consideration of corruption inquiries.

Hewlett Packard (HP) faces allegations that it secretly paid millions of euros to secure contracts in Russia between 2000 and 2003. German and Russian authorities are investigating whether HP paid bribes to win the contracts in Russia. The German authorities are following an international money trail that has reportedly taken in the US, the UK, the British Virgin Islands and Belize, among other places, after turning up suspicious transfers through a small company in the German state of Saxony. HP's executives are suspected of paying about \$10.9 million in bribes approximately seven years ago to win the multi-million dollar contracts. The investigation has centred on the company's selling computer equipment through a German subsidiary to the Prosecutor General's Office of the Russian Federation. The multi-year contract with the Prosecutor General's Office was signed in 2003 with a HP subsidiary based in Germany, but it remains unclear to whom the alleged bribes were paid. On 14 April Russian investigators searched HP's Moscow office on a request from Germany. Reportedly, the Russian Prosecutor General's Office has said that once the Russian prosecutors receive information from Germany, it will file suit in Russia.

## **Senegal**

Sudan's telecom company, Sudatel allegedly paid a \$40 million bribe to Senegalese and foreign lobbyists in 2007 in order to get a cell phone license in Senegal. In 2007, Senegal had decided

to issue a license to the country's third mobile network operator and called on international firms to come forward with offers detailing the technical and financial aspects of the proposal. Sudatel hired lobbyists, which included some unidentified US lobbyists, to help them win the contract. Sudatel won the reportedly \$200 million license from 11 other competitors.

## **Spain**

In 2003, businessman Francisco Correa allegedly offered the mayor of Las Rozas a bribe of 2.4 million Euros if he awarded SUFISA, one of the several companies that Mr Correa allegedly set up, a cleaning contract. According to reports, the mayor of Las Rozas rejected this offer. SUFISA was allegedly used as part of Mr Correa's multi-million euros kickback for contracts scheme and is now under investigation.

## **Switzerland**

It has been reported that the Swiss federal prosecutor's office has formally accused a Swiss private banker of money laundering and managing corruption money by carrying out transfers on behalf of the French engineering giant Alstom to third parties, including to holders of public office abroad. The investigations also allegedly reveal that the accused had transferred funds to set up slush funds.

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