



ANTI-CORRUPTION DIGEST **November 2015**

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

DOJ, SEC Change "Cooperation Credit" Process, Add Resources to Fight Corruption

During recent speeches Deputy Attorney General Sally Yates and SEC Enforcement Division head Andrew Ceresney announced changes to the processes the DOJ and the SEC will be used to decide if a company will receive "cooperation credit." Both agencies have indicated that any decision regarding cooperation credit will hinge on whether the company has self-disclosed the violation and helped the government identify and hold accountable individual wrongdoers at the company.

The DOJ's new process, set out in revisions to the United States Attorney's Manual (the "USAM"), raises the standard to receive cooperation credit. Reemphasizing the DOJ's renewed focus on prosecuting individuals, Deputy Attorney General Yates announced updates to the "Filip factors," formally known

as the "principles of federal prosecution of business organizations." The revised factors "emphasize the primacy in any corporate case of holding individual wrongdoers accountable." Deputy Yates said that the DOJ expects companies to conduct "timely, appropriately thorough, and independent" investigations. To receive *any* cooperation credit, a corporation must also disclose "all non-privileged information about individual wrongdoing" to the DOJ. Partial cooperation credit will no longer be available to companies that withhold information on individuals.

A day after her speech, the head of enforcement at the SEC, Andrew Ceresney, announced a cooperation policy that mirrors DOJ's. He said that "a company must self-report misconduct in order to be eligible for the [Enforcement] Division to recommend a [deferred prosecution agreement or non-prosecution agreement] to the Commission in an FCPA case." Mr. Ceresney said the goal of the new policy is to incentivize firms to "promptly report FCPA misconduct." Mr. Ceresney believes that companies who fail to self-disclose are "gambling," because their

violations may be disclosed to the SEC by whistleblowers or through the Commission's independent investigation.

The speeches from Deputy Yates and Mr. Ceresney follow previous announcements that the DOJ is putting additional resources behind its effort to hold individuals accountable for corporate wrongdoing. The Federal Bureau of Investigation plans to establish three new "international corruption squads" with dozens of special agents in New York, Washington, and Los Angeles, and the DOJ has announced plans to increase the size of its FCPA unit 50% by adding approximately a dozen prosecutors.

The changes to the USAM that Deputy Yates announced may lead to longer investigations with more individuals demanding their own counsel paid for by the company. Following Delaware law, most companies' bylaws reimburse corporate officers for legal fees incurred representing them in investigations or civil litigation.

A copy of the Deputy Attorney General's speech can be found [here](#); and a copy of Andrew Ceresney's speech can be found [here](#).

DOJ Retains Anti-Bribery Expert as Compliance Consultant

The DOJ's Fraud Section recently hired Hui Chen as a full time "compliance consultant." Ms. Chen will work under Andrew Weissmann, and Assistant Attorney General Leslie Caldwell, both of whom are her former colleagues at the U.S. Attorney's Office for the Eastern District of New York. In addition to her work as a federal prosecutor, Ms. Chen has held compliance positions at Standard Chartered Bank, Pfizer, and Microsoft. In her new role, she will advise DOJ officials on the existence and effectiveness of compliance programs when corporate misconduct occurred, and she will also assess remedial actions and whether

corporations are "keeping with the terms and purposes of Fraud Section resolutions."

Assistant Attorney General Leslie Caldwell commented on Ms. Chen's hiring, describing it as part of a larger effort to better assess compliance programs. Recognizing that most of the DOJ's employees "are prosecutors, not compliance professionals," Ms. Caldwell said the Department's goal "is to have someone who can provide what I'll call a reality check." She said Ms. Chen will test whether companies' compliance programs are "thoughtfully designed and sufficiently resourced to address the company's compliance risks, or essentially window dressing." In her speech, Ms. Caldwell voiced a desire to avoid imposition of "unrealistic, unnecessary or unduly burdensome requirements on companies." Responding to Ms. Chen's hiring, commentators have observed that "there is significant benefit for companies to invest in a strong and comprehensive compliance program for helping to avoid FCPA charges and, should charges be brought, limiting the penalties."

Chief of SEC Enforcement Division Emphasizes Importance of Compliance

During a November 4 speech, the Director of the SEC's Enforcement Division, Andrew Ceresney, told the audience of compliance professionals that "you must be provided with the resources and support necessary to succeed." Mr. Ceresney repeatedly emphasized the importance of empowering compliance professionals, saying, "I have found that you can predict a lot about the likelihood of an enforcement action by asking a few simple questions about the role of the company's compliance department in the firm." To reduce risk, the speech suggests companies should include compliance personnel in critical meetings, give them adequate resources, seek and follow their views, give them visibility to the CEO and board, and treat them as

important partners in the business, as opposed to cost centers.

Mobile TeleSystems

Mobile TeleSystems (“MTS”), a leading telecommunications provider in Russia and Eastern Europe, announced that it is under investigation by the DOJ and the SEC, and is also subject to a civil forfeiture complaint filed by the DOJ. MTS disclosed that “the complaint alleges that MTS made corrupt payments to gain access to the Uzbek telecommunications market.”

For a report on investigations into VimpelCom in respect of allegations that it bribed the daughter of the Uzbek President, see the entry for Norway in the Rest of the Word section.

Millicom Reports Self-Disclosure

Millicom, an international telecommunications and media company, announced that it self-disclosed possible FCPA violations to law enforcement in the U.S. and Sweden. The possible violations arose from payments made in Guatemala by the company’s joint venture, Comunicaciones Celulares SA, which sells mobile services and is building a 4G mobile network in Guatemala.

A Special Committee of the Board of Directors disclosed the potential violations after an internal investigation conducted with the assistance of outside counsel. After the announcement, Millicom’s share value dropped 11 per cent., the company’s largest daily drop since 2009. Analysts noted that the disclosure “overshadowed the company’s forecast-beating third-quarter core profit,” and an FCPA fine “could put Millicom’s leverage and dividend at risk.”

In an interview, the company’s Chief Financial Officer, Tim Pennington, emphasized that the

company uncovered the misconduct itself and proactively reported it to law enforcement. The company’s CEO likewise said “cooperating with the authorities is positively looked upon by authorities, and certainly helps the final outcome, whatever it may be.” Millicom’s internal compliance program appeared to reassure some investors. Mathias Leijon, an outside investment analyst at a fund with a five percent stake in Millicom said that, “Even if it’s very unfortunate that these things have happened, Millicom has demonstrated that they do have a robust process in place to internally detect and then escalate the matter all the way to the board.”

The DOJ Joins Investigation into Alexion Pharmaceuticals

In May, Alexion Pharmaceuticals received a subpoena from the SEC related to possible FCPA violations, drug recalls, and its grant-making activities. The subpoena specifically sought information related to the company’s activities in Japan, Brazil, Turkey, and Russia. Now, the DOJ has joined the investigation. The DOJ issued the company a request for “voluntary production of documents,” and the company says it is cooperating with the investigation. The filing lists failure to comply with the FCPA and other anti-bribery statutes as a “risk related to our products,” and describes the broad array of penalties that can affect companies which run afoul of the FCPA. Alexion produces drugs including Soliris, which is used to treat a rare blood disorder.

Claims Management Company Crawford Discovers, Reports Possible FCPA Violations to the DOJ and SEC

In a quarterly regulatory filing, Crawford & Company, a claims management company, self-disclosed a possible FCPA violation to the DOJ and the SEC. The company explained that it discovered the potential violation during a

regular internal audit. The company says it has started an internal investigation, and is now cooperating with the government. At the time of filing, the company had incurred \$3.35 million (£2.2 million) in legal and professional fees related to the ongoing investigation.

Following Settlement with SEC, Bristol-Myers Squibb Announces DOJ Declination

Last month's *Digest* highlighted Bristol-Myers Squibb's agreement with the SEC to settle charges that a joint venture in China made cash payments and provided other benefits to health care providers at state-owned and state-controlled hospitals in exchange for prescription sales. The SEC found that the company lacked appropriate internal controls, and as a result the company agreed to pay a \$14 million (£9.2 million) settlement and agreed to report to the SEC for two years on the status of its remediation implementation. In the wake of the settlement with the SEC, the DOJ reportedly informed the company it will drop its investigation.

THE UNITED KINGDOM

ICBC

The High Court is expected to rule on the first Deferred Prosecution Agreement in the UK in a judgment expected imminently. In view of its importance, this will be the subject of a separate report when judgment is delivered.

U.K. Defense Company Subject of International Investigation

A defense company based in the U.K. is reportedly at the center of an international investigation amid allegations that bribes were paid to secure a multimillion dollar contract with the U.S. government.

Court documents are said to testify that an unnamed U.K. company paid nearly \$200,000 (£130,000) to the director of a U.S. company in return for being granted a \$6 million (£4 million) contract to supply equipment to U.S. and British armed forces in Afghanistan. The details reportedly came to light following U.S. proceedings in which Robert Gannon pleaded guilty to soliciting and receiving \$193,665 (£126,540) in bribes in return for aiding a U.K. company to win U.S. government subcontracts.

According to the City of London Police, "there have been no charges and the investigation is ongoing." The Crown Prosecution Service is said to have received a full file regarding the matter upon which a charging decision is to be considered.

SFO Gives Insight into Deferred Prosecution Agreements

The Joint Head of Bribery and Corruption at the Serious Fraud Office (the "SFO"), Ben Morgan, recently spoke at the Annual Anti-Bribery and Corruption Forum, which was held in London. The crux of his speech was that early engagement and co-operation is key to the SFO's deliberation when considering the possibility of entering into a Deferred Prosecution Agreement (a "DPA").

The SFO is yet to conclude a DPA and pending judgment of the first DPA, which is expected shortly, Mr. Morgan's speech delivered an insight into what the SFO is looking for when companies self-report:

- Early engagement is advised, however the SFO is stated to take a pragmatic approach: "We don't want to hear from you every five minutes and we accept you need enough time and space to have an initial look at an allegation that comes to your attention."

- Mr. Morgan noted that the SFO is seeking engagement regarding how the investigation of what has happened takes place and responses to the SFOs interests in doing so.
- Pro-active assistance is required, as this distinguishes co-operation from simply being investigated in the traditional way.

A copy of Mr. Morgan’s speech can be found [here](#).

U.K. Leading the Way in Global Drive for Increased Transparency

According to a report by the corruption watchdog Transparency International (“TI”), the U.K. has made good progress in relation to making information regarding beneficial ownership more accessible. According to Cobus de Swardt, the Managing Director of TI, ownership transparency is an issue because secrecy often facilitates corruption: “Pick any major corruption scandal in recent history ... and you will find a secret company was used to pay a bribe, shift and hide stolen money, or buy luxury real estate.”

The report notes that the U.K. scored highly on principles that require good access to beneficial ownership information, highlighting the “recently adopted legislation to establish a central registry containing relevant [beneficial] information that will be made public.”

The assessment of the U.K in the report does not take into account British Overseas Territories and Crown Dependencies, such as the British Virgin Islands and the Cayman Islands. According to TI, a number of the U.K.’s Overseas Territories operate a legal system that creates a veil of secrecy to obscure the identity of those establishing companies. The use of such anonymous companies constitutes is stated to be a serious obstacle to investigating corruption.

A copy of TI’s report can be found [here](#).

First Charges Announced Regarding the Manipulation of EURIBOR

It has been reported that the Serious Fraud Office (the “SFO”) is prosecuting six former employees of Deutsche Bank and four former employees of Barclays Bank regarding allegations that they conspired to fix the Euro Interbank Offered Rate (“EURIBOR”), an interest rate that is used to price euro loans and credit.

The matter has seen European regulators accuse a number of banks of manipulating the interest rate benchmark in an attempt to influence the prices of various financial instruments. In a press release, the SFO stated that the individuals will be charged with conspiracy to defraud in connection with an ongoing investigation into the manipulation of EURIBOR.

The defendants have reportedly been summonsed to appear before Westminster Magistrates’ Court in January 2016, where the case is expected to be referred to the Crown Court. Of the defendants, only one is said to reside in the U.K., however according to the SFO, all are expected to appear in court voluntarily without the need for extradition.

THE REST OF THE WORLD

Brazil

A parliamentary commission report investigating corruption at Petrobras, Brazil’s state run oil company, has held suppliers and employees responsible for the graft, clearing politicians from any blame. Notably, the report does not criticize those closely associated with the company, such as President Dilma Rousseff who chaired the company during the period

when the majority of the corruption is said to have occurred.

The report was approved by a vote of 17 to 9 (with one abstention) and denies that “institutional corruption” existed at Petrobras. Rather, it states that Petrobras was a “victim of a cartel” of construction companies and declared that the offences were for personal gain and were not politically motivated. The report also criticizes an “excess” use of plea bargains, which has seen reduced sentences being received in return for confessions.

The matter is still under investigation by the Brazilian federal police.

China

Reports that President Xi Jinping’s anti-corruption campaign was slowing down have been contradicted by the arrests of executives from the aviation and auto-manufacturing sectors.

China Southern Airlines

The Chairman of China Southern Airlines, Si Xianmin, is said to be under investigation for “serious discipline violations”, a synonym for corruption. China Southern Airlines is the country’s largest carrier by fleet size. According to reports, Mr. Si could not be reached for comment.

Dongfeng Motor Corp.

China’s Central Commission for Discipline Inspection (the “CCDI”) is reportedly carrying out a corruption investigation into Zhu Fushou, the President of Dongfeng Motors (“Dongfeng”). An official from Dongfeng’s publicity department is said to have confirmed that the investigation is taking place, but declined to give further details. A statement

from the CCDI did not give further information regarding the suspected violations.

France

The former President of the International Association of Athletics Federations (the “IAAF”), Lamine Diack, is reportedly under investigation amid allegations of corruption that are linked to a claimed cover-up of failed drugs tests by Russian athletes. Mr. Diack and the IAAF’s former doping chief Gabriel Dolle are alleged to have accepted “massive bribes” to cover up positive doping tests.

Reports state that at least six athletes, made up mostly of Russians, are alleged to have been told that their suspected doping could be kept quiet, allowing them to continue competing, if they paid out sums of money. According to reports, France’s national financial prosecutor has said that investigators believe that Mr. Diack, who presided for over 15 years at world athletics’ governing body, received more than €1 million (\$1,073,000/£706,000) from the Russian athletics federation in the alleged “cash-for-silence” matter.

One of the prosecutors, Elaine Houlette, gave further insight into the allegations, noting that:

“Because the investigations have just started, we cannot affirm that all this money came from payments from Russian athletes. What is certain is that Mr Cissé, the legal adviser to Mr Diack, travelled to Russia and gave to the Russian federation the list of Russian athletes suspected of doping and, in exchange for sums of money, these athletes weren’t sanctioned.”

Mr. Diack is reported to have been released on bail, one of the conditions being that he is not allowed to have any contact with his son, Papa Massata Diack, who worked under his father as an IAAF marketing consultant and who is

thought to have played a “very active” role in the alleged corruption matter.

Norway

It has been reported that the police in Norway have arrested Jo Lunder, the former CEO of VimpelCom Limited (“VimpelCom”), regarding the company’s business dealings in Uzbekistan. According to the National Authority for Investigation and Prosecution of Economic and Environmental Crime (the “IPEEC”), Mr. Lunder is “under investigation for suspicions relating to corruption.”

VimpelCom is currently under investigation regarding allegations connected to contracts in Uzbekistan for mobile telephone frequencies along with licenses to enter Uzbekistan’s telecom market. The IPEEC is said to be trying to establish the role that Mr. Lunder is alleged to have held in the VimpelCom matter in Uzbekistan.

Marianne Djupesland of the IPEEC noted that, “I want to underline the fact that this is only a suspicion at this stage, so of course it’s far too early to say whether there’s actually any criminal liability here.”

In connection with the investigation, Telenor ASA (“Telenor”), who control VimpelCom, has reportedly suspended its finance director, general counsel and two other senior officers. According to the CEO of Telenor:

“The company has no reason to believe that these [four individuals] have been involved in the alleged corruption in VimpelCom. They are trusted managers with a solid track record in Telenor,”

He stated further that an independent probe by Deloitte, which was ordered by Telenor’s board, had led to their suspension “until the facts have been established”.

Peru

According to reports, a lieutenant in the Peruvian army has been arrested following allegations that he collected bribes from drug traffickers. Peru’s chief organized crime prosecutor has claimed that Lieutenant Wilmer Eudardo Delgado Ruiz “was charging a sum of money for every flight that left the [region].” It is alleged that Lt. Delgado Ruiz received up to \$1,000 (£660) each time he turned a blind eye and let small aircrafts leave from the region to export cocaine out of Peru.

It is widely reported that Peru has surpassed Columbia as the world’s number one cocaine producing nation. The arrest is reportedly related to an investigation based in Lima which is backed by U.S. Drug Enforcement Administration agents. According to a senior narcotics police official, Lt. Delgado Ruiz had been under investigation since early 2015, which included an examination of Lt. Delgado Ruiz’s bank accounts.

Lt. Delgado Ruiz is said to face up to 35 years in prison if convicted of aggravated drug trafficking.

South Korea

Prosecutors in South Korea have reportedly indicted 32 individuals in an alleged corruption matter involving the nation’s biggest steelmaking company, Posco. Those indicted are said to include the Chairman of Posco, Chung Joon-Yang. The indictments by the Seoul Central District Prosecutors’ Office reportedly followed an eight-month investigation of Posco following a tip-off that the company had entered into dubious deals with subcontractors, affiliates and politicians.

During his term as Chairman of the company from 2009 to 2014, Mr. Chung is alleged to have overseen a number of mergers and

acquisitions that are said to have lost the company 159 billion won (\$137.5 million/£90 million). Reports state that one such acquisition was for a stake in a company owned by a close associate and which was well over market value.

Others indicted in the matter include the former Vice-Chairman of Posco, Dong-Hwa, who allegedly created a \$5 million (£3.3 million) slush fund alongside embezzling a 1 billion won (\$855,000/£560,000). He is alleged to have taken bribes, made up of cash and golf trips, from sub-contractors in return for granting business deals to them. Further to this, he is said to have given an executive position at Posco to the school friend of a high ranking government official.

Vanuatu

It has been reported that fourteen politicians, including the Parliamentary Speaker, were found guilty of corruption, but, in what has been described as a “very, very confusing” turn of events, were pardoned the following day by the Parliamentary Speaker himself.

The convictions were handed down while President Baldwin Lonsdale was abroad and the Parliamentary Speaker, Marcellino Pipite, was at the time acting president for the South Pacific Island. Mr. Pipite is reported to have stated that he signed the pardons out of concern for the stability of the nation, claiming that “I decided to make such orders to maintain the peace and unity in this country.” Those convicted comprised a number of cabinet ministers, including the Foreign Minister and the Finance Minister.

On his return to the country, President Lonsdale is reported to have overturned the pardons, stating that, “Vanuatu’s credibility has been tarnished throughout the world and as head of state, I am deeply sorry to see this.”

The Supreme Court is said to have ruled the pardons to be unconstitutional, with Justice Mary Sey noting that individuals in “a position of trust or authority can expect to be treated severely by the criminal law.”

Vietnam

The Deputy Director of the Railways Management Unit within Vietnam Railways Corporation (“VR Corp.”), Pham Hai Bang, has reportedly been convicted of corruption regarding a railway project funded by Japan. Five other executives of VR Corp. were also found guilty of corruption at the two day trial. The individuals, who had all been charged with abusing power and authority while carrying out official duty”, received sentences ranging from 5 to 12 years in prison.

The charges relate to the defendants allegedly forcing a consulting joint venture, led by Japanese Transportation Consultants (“JTC”), to pay 11 billion Vietnamese Dong (\$495,000/£300,000) from 2009 to 2014. The case was unearthed last year when executives of JTC admitted to prosecutors in Japan that they had paid bribes totaling ¥130 million (\$1,055,000/£700,000) to executives in Vietnam, Indonesia and Uzbekistan in return for consulting contracts.

Lawyers for the defendants argued that JTC voluntarily gave the money to them in order to facilitate the project, however it was held by the Judge that JTC was coerced into giving the money. When announcing the sentences, the Judge stated that: “The acts of abusing power and authority of the defendants ... have affected Vietnam’s prestige and affected the cooperation between Vietnam and Japan in using the official development assistance.”

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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.