



## **ANTI-CORRUPTION DIGEST**      **December 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**

#### **Analogic Security Filing Discloses Settlement Proposals from DOJ and SEC**

Analogic's most recent securities filing disclosed it was considering settlement proposals from the DOJ and SEC totaling approximately \$15 million (£9.85 million). The company makes imaging equipment used in a variety of applications, including airport security scanning and medical imaging. An investigation into the company's Danish subsidiary BK Medical ApS was announced in 2011.

After problems were discovered with some of BK Medical's distributor relationships, the company terminated relationships with those distributors as well as responsible BK Medical employees. Analogic acknowledged that distributors paid BK Medical amounts in excess of what was owed, and those amounts were later passed on to third parties, but that these transactions were properly accounted for. The company has stated that although it is currently unable to determine the nature of those

transactions, no accounting irregularities are associated with the payments.

The company had previously offered the SEC a \$1.6 million (£1 million) settlement, which the SEC rejected. The securities filing states the company is uncertain whether Danish authorities intend to seek sanctions against the company, noting that Danish law permits settlement amounts paid to U.S. authorities to be taken into account in determining penalties.

#### **Former Wall Street Broker-Dealer Executives Sentenced to Two Years in Prison**

A federal judge sentenced Ernesto Lujan, a former managing partner of Direct Access Partners, to forfeit \$18.5 million (£12 million) and serve two years in prison for conspiracy, money laundering, and FCPA violations. The order also requires Mr. Lujan to serve three years of supervised release after his prison term. The *Digest* previously reported on the charges against Direct Access Partners and its executives for the company's bribery of officials at a state-owned Venezuelan bank.

Days later, the same judge ordered the same jail term for Mr. Lujan's colleague, Tomas Clarke, who had pled guilty to the same charges. Mr. Clarke, a former senior vice president of Direct Access Partners, was also ordered to forfeit nearly \$5.8 million (£3.8 million).

Mr. Lujan and Mr. Clarke both requested sentences with no jail time, each citing his cooperation with the government. Judge Cote agreed that the men deserved some leniency, ordering sentencing only half as long as those given to Direct Access Partners' former CEO and managing director earlier this year. Judge Cote was unwilling to eliminate prison time for Mr. Lujan and Mr. Clarke, noting the need to send a "clear message" about the severity of the men's crime.

Jose Alejandro Hurtado, another Direct Access Partners employee, is still awaiting sentencing.

### **Shareholder Class Action Filed Against Vimpelcom Following FCPA Disclosure**

A class action lawsuit against Dutch telecommunications company Vimpelcom was filed in federal court on December 8th. Although the company had first announced that U.S. and European regulators were investigating the company more than a year ago, the company recently disclosed it had made a provision of \$900 million (£590 million) in its third quarter financial statements to account for potential liabilities. The investigations relate to allegations that the company offered bribes and committed other FCPA violations in connection with its conduct in Uzbekistan. Bloomberg reported that the company is in talks with the DOJ to settle the charges for \$775 million (£510 million).

The shareholder suit alleges that the company and its directors artificially boosted stock prices by issuing false or misleading statements in violation of the Securities Exchange Act by not disclosing the corrupt conduct in its earlier regulatory filings. Vimpelcom's stock price has

plummeted more than 60% since March 2014, when the investigations were announced. A similar class action lawsuit had already been filed against the company, seeking recovery for investors who purchased stock during a slightly different but largely overlapping timeframe.

### **DOJ Settlement Releases \$115 Million to Kazakh Foundation**

The DOJ has filed a motion to dismiss a forfeiture action after more than \$115 million (£75.5 million), marking the successful completion of a 2007 settlement. The program, which ran from 2009 through to 2014, was the result of an agreement between the DOJ's Asset Forfeiture and Money Laundering Section and officials from Kazakhstan and Switzerland. The agreement provided for the frozen assets to be released to the BOTA Foundation, an organization dedicated to assisting poor youth in Kazakhstan.

The funds were originally frozen in Swiss bank accounts in 1999 in connection with the DOJ's investigation of James F. Giffen and his company Mercator for FCPA violations. The government alleged the funds were the proceeds of oil transactions secured through the bribery of Kazakh officials and a money laundering scheme. Mr. Giffen eventually pled guilty to a misdemeanor tax charge, while Mercator pled guilty to one count of making an unlawful payment in violation of the FCPA.

### **PTC in Settlement Talks with DOJ and SEC**

Computer software firm Parametric Technology Corporation disclosed it is in the process of negotiating settlements with the DOJ and SEC to resolve potential FCPA violations. PTC's annual report, filed with the SEC on November 23, states the company has recorded liabilities of \$28 million (£18 million) as a result of agreements in principle with the two agencies. The filing notes that there is no assurance that the settlement amount will not

change, or even that final agreements will be reached between the parties.

PTC learned of the SEC's investigation last May. The alleged violations relate to the company's expenditures in China. PTC and its business partners paid for travel and entertainment expenses for employees of the company's customers, including businesses the government regards as state-owned enterprises.

### **Standard Bank Settles SEC Allegations for \$4.2 Million**

The SEC announced a settlement with Standard Bank on November 30. The announcement comes on the heels of the bank's Deferred Prosecution Agreement in the U.K. Both actions are based on conduct related to the bank's affiliation with Stanbic Bank Tanzania Limited. The SEC charges accused the bank of failing to disclose payments made in connection with a debt offering from the Tanzanian government. The SEC press release noted that it did not have jurisdiction to bring charges under the FCPA because the bank is not an issuer within the meaning of the Act.

## **THE UNITED KINGDOM**

### **First U.K. DPA Announced**

The Crown Court has approved the U.K.'s first Deferred Prosecution Agreement ("DPA"). Under the terms of the DPA, proceedings against ICBC Standard Bank Plc ("ICBC"), regarding its alleged failure to prevent the bribery of officials in Tanzania, will be suspended in return for compliance with a number of conditions imposed by the court.

Reports state that ICBC stood accused of failing to prevent bribery contrary to section 7 of the Bribery Act 2010. The bank is said to have admitted to failing to prevent the bribery by two senior officials of its Tanzanian

unit, Stanbic Bank Tanzania, regarding a £400 million (\$600 million) private placement for the government of Tanzania in 2012 which generated transaction fees of £5.6 million (\$8.4 million).

Under the terms of the DPA, ICBC agreed to pay £21 million (\$32 million) in penalties, compensation and legal costs for failing to prevent bribery by a former sister company in Tanzania. In addition to the financial sanctions, ICBC has agreed to continue to cooperate fully with the SFO and to be subject to an independent review of its existing anti-bribery and corruption controls, policies and procedures.

According to the Director of the SFO, David Green QC:

"This landmark DPA will serve as a template for future agreements. The judgment from Lord Justice Leveson provides very helpful guidance to those advising corporates. It also endorses the SFO's contention that the DPA in this case was in the interests of justice and its terms fair, reasonable and proportionate. I applaud Standard Bank for their frankness with the SFO and their prompt and early engagement with us."

An extended report into the test established for a DPA by the editor of the *Digest* can be found [here](#).

### **Sweett Group Admits to Bribery Offences**

It has been reported that the property surveyor, Sweett Group, has admitted that its staff paid bribes to win valuable contracts in the Middle East. The Serious Fraud Office (the "SFO") is said to have opened its investigation into Sweett Group in 2014 following allegations that a former employee had offered design work on a \$100 million (£65 million) hospital construction contract in Morocco to a New

York-based architecture firm, if it agreed to pay a bribe to a United Arab Emirates official.

The company is reported to have said that it is likely to pay a fine but did not know how much it would be, adding that the admission would mean that it would not get a mandatory debarment from public sector tendering under EU law. The Chief Executive of Sweett Group, Douglas McCormick, stated that:

“Today’s announcement brings closure on the Middle East legacy issues a step closer, allowing the group to progress unencumbered in the future. This is an important step in the strategic turnround of the business.”

According to the SFO, full details of the matter will be publicized when Sweett Group attends court, at a date that is yet to be determined.

### **British American Tobacco**

An investigation has reportedly uncovered bribery at British American Tobacco (“BAT”), one of the U.K.’s biggest companies. It is alleged that BAT illegally paid government officials and civil servants in countries in East Africa in order to undermine a UN anti-smoking treaty.

Whistleblower, Paul Hopkins, who worked at BAT in Kenya for 13 years, is reported to have said that he had begun paying bribes after being told it was the cost of doing business in Africa. He is reported to have disclosed hundreds of secret documents supporting these allegations and has planned to meet with the Serious Fraud Office in the near future.

BAT reportedly denied the accusations regarding business dealings in Africa, stating that: “We will not tolerate corruption in our business, no matter where it takes place.”

## **THE REST OF THE WORLD**

### **Argentina**

According to reports, Carlos Saul Menem, the Argentine president in the 1990s, has been sentenced to four and a half years in prison for allegedly overseeing the embezzlement of public monies during his presidency, which were used to fund bonuses to government officials.

The court reportedly found that Mr. Menem, who is now a senator, was behind a matter in which funds totaling \$466 million (£309 million) that were assigned to an intelligence agency were in fact used to pay ministers and other government workers on top of their salaries. Mr. Menem was not accused of taking any of the funds for himself.

The lawyer acting for the former president is reported to have said that his client will appeal the conviction, which is to be finalized at a hearing in 2016. Mr. Menem is also said to have the benefit of congressional immunity in the Senate until December 2017.

### **China: Setback in the Anti-Corruption Campaign**

It has been reported that President Xi Jinping’s ongoing anti-corruption campaign has suffered a setback after a prominent official of the inspection team in charge of the government’s anti-corruption efforts, Liu Xiangdong, was removed from his post after allegedly being in possession of more than \$31 million (£20 million) in cash.

Mr. Liu was accused of “violating inspection rules and leaking related secrets” and accepting large bribes. He was also stripped of his Communist Party membership and removed from his position, the Central Commission for Discipline Inspection, the party’s top anti-

corruption committee, said in a statement on its website.

### **China: Corruption in the Education Sector**

China's anti-corruption campaign has already touched many of the country's sectors and has now extended to the education sector with a number of officials at the Communication University of China being targeted.

The president of the university, Su Wuzhi, was reportedly removed from his post for having an office that was "severely beyond the official standards, using university funds to hold banquets in public venues and putting gifts sent to the university on display in his own office without registering them." Lv Zhisheng, the vice president of the university, was also removed from office for allegedly failing to enforce frugality rules, leading to "chaos in financial management" of the institution, such as expenditures in "fancy cars" which exceeded budgets.

An official announcement from the Education Ministry is said to have called for increased monitoring of the education sector to ensure that "the high aims" of the party were upheld.

### **Ghana**

Twenty judges and magistrates have reportedly been dismissed after having been found guilty of bribery. As reported in September's edition of the *Digest*, the matter was instigated following allegations made by a local investigative journalist who claimed to have caught 180 officials on camera taking bribes and extorting money from litigants.

The Chief Justice is reported as saying that she wanted to assure the Ghanaian public that the regulatory body for judges, would take prompt and resolute action to "redeem" the image of the judiciary. However, according to Ghanaian

journalists, many people feel that the judges were dealt with too leniently and are demanding that they be prosecuted. Reports indicate that some judges involved in the matter, who had shown remorse and had apologized profusely for bringing the judiciary into disrepute, have not been stripped of their benefits.

A second inquiry, focusing on similar allegations against 12 High Court judges, has not yet been concluded.

### **Indonesia**

Indonesian authorities have announced the conviction and sentencing of an individual for bribery offences in relation to an investigation into Innospec Ltd. It is said that the bribes were intended to secure contracts from the Government of Indonesia for the supply of Innospec products.

Suroso Atmomartoyo, a former director of the state-owned petroleum refinery, Pertamina, was found guilty of receiving bribes from PT Soegih Interjaya, which acted for Innospec. The District Court of Central Jakarta found that Mr. Atmomartoyo received \$190,000 (£125,000) in bribes as well as hospitality benefits while on a visit to London, England. The Court sentenced him to five years in prison and ordered him to pay a fine of 200 million Indonesian Rupiah (\$14,500/£9,600).

### **International**

As part of the ongoing investigations into FIFA, the governing body of world soccer, it has been reported that the FBI is investigating FIFA president Sepp Blatter's involvement in the bribery matter.

The alleged bribes, said to have totaled \$100 million (£66 million), were reportedly paid by the sports marketing company, ISL, to various FIFA officials throughout the 1990s in return

for lucrative television and marketing rights. Mr. Blatter has denied all knowledge of the bribes. However, reports in the U.K. allege that a letter sent by the Swiss authorities to the FBI implicates Mr. Blatter. The letter is reported to have been written by former FIFA president Joao Havelange and allegedly states that Mr. Blatter had “full knowledge of all activities and was always apprised of them” despite his repeated denials.

Mr. Blatter has declined to respond to the recent allegations. He is currently serving a 90 day provisional suspension from FIFA.

It has been further reported that the U.S. DOJ unsealed a 92-count superseding indictment in early December, bringing charges against 16 additional individuals. The indictment also included new charges against seven individuals who were already charged. The Department also announced the guilty pleas of eight defendants.

Defendants who have pled guilty since charges were first announced last May have reportedly agreed to pay a total of more than \$190 million in forfeitures and an additional \$100 million in assets with alleged connections to the matter have been frozen across the globe.

### **New Zealand**

It has been reported that, following the introduction of new anti-corruption laws and increased funding, four companies are under investigation by New Zealand’s Serious Fraud Office (the “NZSFO”). The director of the NZSFO, Julie Read, confirmed that the investigations were underway, but did not give further details. She did, however, state that such investigations were important in upholding the country’s reputation as one of the least corrupt in the world.

Following the enactment of the Organized Crime and Anti-Corruption Bill, key amendments to the law include the following:

- Financial penalties for foreign bribery of up to NZ\$5 million (\$3.35 million/£2.2 million) or 3 times the commercial gain.
- Introducing corporate liability for the corrupt acts of their employees or agents unless reasonable steps have been taken to prevent it.
- Removing the defense that an offence committed outside of New Zealand was not an offence under the laws of the foreign country where the person is situated.

### **Singapore**

Gursharan Kaur, a Singaporean national who was employed by the U.S. navy as a contract specialist, has reportedly been charged by authorities in Singapore with seven counts of corruption. The matter is related to the previously reported U.S. investigation into Glenn Defense Marine (Asia) (“GDMA”) regarding allegation that the company paid bribes in connection with U.S. Navy contracts worth over \$20 million (£13 million).

The bribes given to Ms. Kaur are said to have come from Leonard Glenn Francis, the CEO of GDMA, in return for providing him with non-public U.S. Navy information and showing favoritism to the company. It is alleged that she received in the region of S\$130,000 (\$92,000/£61,000) in bribes, made up of cash payments and accommodation in luxury hotels, including a S\$50,000 (\$35,500/£23,500) cash sum which was used as a down payment for real estate in Singapore.

If found guilty, Ms. Kaur faces up to five years in jail and a fine of up to S\$100,000 (\$70,000/£47,000) per charge.

## South Africa

The African Development Bank (the “AfDB”) is reported to have reached a settlement with Hitachi Ltd following a three year investigation into the company following allegations of corruption regarding a 2007 boiler works contract for the Medupi Power Station. The settlement follows a Foreign Corrupt Practices Act charge against Hitachi by the U.S. Securities and Exchange Commission for inaccurately recording “improper payments to South Africa’s ruling political party in connection with contracts to build two multibillion-dollar power plants.”

The terms of the settlement include a one-year conditional debarment, meaning that along with a “substantial financial contribution” to the AfDB, which will reportedly be used to fund worthy anti-corruption causes in Africa.

The director of the AfDB's Integrity and Anti-Corruption Department said that “Hitachi has shown by its actions that it is committed to doing business in an ethical manner and the IACD believes in giving credit for such dedication.”

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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.secactions.com](http://www.secactions.com).

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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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