DORSEY & WHITNEY LLP

ANTI-CORRUPTION DIGEST January 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

Petrobras Corruption Fallout Continues

Petrobras is Brazil's state-owned oil and gas giant. As the *Digest* has previously reported, it is under investigation in the U.S., Brazil, and Switzerland for a massive bribery and kickback scandal. Last month, Andre Esteves, one of the richest men in Brazil, was arrested in connection with the Petrobras graft probe. A Brazilian senator, Delcidio Amaral, was also detained. Both were placed under temporary arrest during the investigation. The ongoing corruption probe into Petrobras, known as Operation Car Wash, and the possibility of losses and fines tied to the investigation have continued to create fallout for the company and its customers and affiliates.

Moody's Investors Service recently downgraded Petrobras' debt rating, the second time in a year the company has seen its rating fall. Moody's doubled down on its junk rating for the state-owned oil giant and lowered Petrobras's rating from Ba2 to Ba3, with a negative outlook. Moody's cited depressed energy industry conditions, a "high execution risk" for the company's plan to divest \$15 billion in assets by the end of 2016, and a high level of debt maturities in the coming years coupled with the prospects of negative cash flow. The ongoing corruption probe into Petrobras and the possibility of losses and fines tied to the investigation also prompted the rating downgrade. Further, Moody's said it has put Petrobras on review for another potential downgrade.

Additionally, UK-based Ensco plc recently reported that Petrobras, Ensco's customer, has cancelled a contract for a drillship because of alleged payments to Petrobras employees.

The allegations relate to the drillship DS-5 that Ensco acquired when it bought Pride International Inc. in 2011. "The alleged irregularities purportedly involved a former third-party marketing consultant of Pride to provide services in connection with the DS-5 drilling services contract," Ensco said Tuesday. Esco said it has conducted regular compliance reviews related to its business with Petrobras, including a special review by independent counsel in June 2015. "To date, the Company has found no evidence that Pride, the Company or any current or former employees were aware of or involved in any wrongdoing," Ensco said Tuesday.

Petrobras told Ensco the DS-5 drilling services contract is void as of January 4. Ensco said "Without specifying any supporting facts or conduct, Petrobras' notice alleges that Pride had knowledge that the shipbuilder of DS-5 made improper payments to the former third-party marketing consultant who then shared the improper payments with former employees of Petrobras and that Pride may have assisted in or facilitated these improper payments." Ensco denied these allegations and said it has not been contacted by Brazil authorities.

Contrary to Petrobras's assertion, Enso reports that it has found no evidence that any current or former employee of Pride or Ensco was involved in any wrongdoing, had knowledge of any wrongdoing, or authorized the former third-party marketing consultant to engage in any wrongdoing on behalf of Pride or Ensco with respect to the shipbuilding contract for DS-5. Ensco said it intends to "assert its legal rights under the drilling services contract."

DOJ Arrests Two for Venezuelan Oil Company Bribes

The Justice Department announced that two men were arrested for an alleged bribery scheme to win work from Venezuela's state-owned energy company.

Roberto Rincon was arrested Wednesday in Houston. He is the president of Texas-based Tradequip Services & Marine, an oil and gas services company. Mr. Rincon, 55, was charged with Foreign Corrupt Practices Act and money laundering offenses. In Miami, Abraham Jose Shiera Bastidas, 52, of Coral Gables, Florida was arrested on the same charges.

"The charges relate to what the Justice Department called a fraudulent and corrupt scheme to secure energy contracts from Petroleos de Venezuela S.A. (PDVSA), Venezuela's state-owned energy company," the DOJ reported. The DOJ has not issued other public statements or made charging documents available.

The Wall Street Journal said Mr. Rincon had supplied PDVSA with $500 million (£350 million) in oil equipment a year, "becoming one of the state oil firm's most important contractors, according to former senior executives of the oil firm."

Direct Access Partners "Principal Middleman" Sentenced in Ongoing Venezuelan Bribery Case

Jose Alejandro Hurtado, a Miami-based broker for New York-based Direct Access Partners, was sentenced to three years in prison for being the middleman in a scheme to bribe a Venezuela state bank official in exchange for bond trading work. Hurtado was also ordered to forfeit nearly $11.9 million (£8.3 million) by federal judge Denise Cote in Manhattan.

Mr. Hurtado pleaded guilty in 2013 to conspiracy and substantive violations of the Foreign Corrupt Practices Act, the Travel Act, and money laundering laws.

Mr. Hurtado is not the first from Direct Access Partners to be sentenced in relation to the FCPA violations. In December 2015, Tomas Clarke, 46, a former senior vice president at Direct Access Partners who worked in the firm's Miami office, was sentenced to two years in prison and ordered to forfeit nearly $5.8 million (£4 million). Ernesto Lujan, 52, a former managing partner of Direct Access

Partners in charge of its Miami office, was also sentenced to two years in prison and ordered to forfeit $18.5 million (£12.9 million).

In March 2015, DAP's former CEO and its managing director were each sentenced to four years in prison. Benito Chinea, 48, and Joseph DeMeneses, 45, pleaded guilty in December 2014 to one count of conspiracy to violate the Foreign Corrupt Practices Act and the Travel Act. Mr. Chinea forfeited $3.6 million (£2.5 million) and Mr. DeMeneses forfeited nearly $2.7 million (£1.9 million).

The defendants admitted in guilty pleas to paying at least $5 million (£3.5 million) in bribes to María de los Ángeles González de Hernandez, a vice president at state-owned Banco de Desarrollo Economico y Social de Venezuela (Bandes). In return for bribes from 2008 to 2012, Ms. González directed bond trading work to Direct Access Partners and approved fraudulent round-trip trades.

Ms. González pleaded guilty in late 2013 to conspiracy to violate the Travel Act and commit money laundering, as well as two substantive counts of the offenses. She is scheduled to be sentenced on January 15.

Mr. Hurtado introduced Ms. González to Direct Access Partners. According to the DOJ, he acted as the "principal middleman" and made bribe payments to her, directly and indirectly. He collected a share of the commissions from the Bandes trades. Direct Access Partners, an SEC registered broker-dealer, generated more than $60 million (£42 million) in revenue from the Bandes trading business.

Former SAP Executive Jailed For Panama Bribes

Vicente Eduardo Garcia, a former regional director of enterprise software firm SAP International Inc. was sentenced to prison for bribing officials in Panama to win government technology contracts.

Mr. Garcia, 65, of Miami, was ordered to serve twenty-two months when he appeared before federal judge Charles Breyer in Northern California. In August 2015, Mr. Garcia pleaded guilty to one count of conspiracy to violate the Foreign Corrupt Practices Act. He could have been jailed up to five years. In his criminal plea, Mr. Garcia admitted conspiring with others to bribe two Panama government officials directly and a third official through an agent.

In July, Mr. Garcia settled an enforcement action with the Securities and Exchange Commission. He paid about $92,000 (£64,000) in disgorgement and prejudgment interest. Mr. Garcia and the others used sham contracts and false invoices to disguise the bribes. The bribes helped SAP's Panama channel partner win a technology upgrade contract for $14.5 million (£10 million), including $2.1 million (£1.5 million) in software licenses for SAP. The Panama government then awarded the channel partner more contracts that included SAP products worth another $1.2 million (£840,000).

Mr. Garcia personally took over $85,000 (£59,000) in kickbacks for arranging the bribes. That amount was the basis for the disgorgement he paid to settle the SEC civil charges.

The DOJ said it knows the identity of Mr. Garcia's co-conspirators. It referred to them in the criminal information as Advisor, Consultant A, Consultant B, and Partner. Consultant A worked for SAP in Panama. He was a long-time acquaintance of one of the Panama officials and Mr. Garcia. He died in 2013. Consultant B also worked for SAP in Panama. Partner, the DOJ said, was a principal in a Mexico-based company that acted as an SAP channel partner and had operations in several countries.

The agent who acted as an intermediary between Mr. Garcia and one of the Panama officials was a close relative of that official, according to the criminal information. The DOJ said it also knows the identity of the three Panama officials who took bribes. It described all three as "high level government officials" but didn't publicly name them.

Former Russia Nuclear Official Jailed for Laundering Bribe Money

Vadim Mikerin, a former director of a Russian nuclear energy firm was sentenced to 48 months in federal prison for taking $2 million (£1.4 million) in bribes to award uranium transportation contracts to an American company. Judge Theodore Chuang in the federal district of Maryland also ordered Mr. Mikerin to forfeit $2 million (£1.4 million).

Mr. Mikerin, 56, lives in Chevy Chase, Maryland. He pleaded guilty in August to a money laundering conspiracy. He was the director of the Pan American Department of JSC Techsnabexport, or Tenex. Tenex, based in Moscow, is a subsidiary of Russia's State Atomic Energy Corporation. It acts as the sole supplier and exporter of Russian uranium to nuclear power companies worldwide.

The DOJ said that from 2004 to 2014, Mr. Mikerin took $2 million in bribes (£1.4 million) to help a U.S. company win business from Tenex.

In his plea, Mr. Mikerin said he conspired with Daren Condrey, Boris Rubizhevsky, and others to move the bribe money from Maryland and other places in the United States to shell company bank accounts in Cyprus, Latvia, and Switzerland. They disguised the bribe payments by using phony consulting agreements and code words like "lucky figure," "LF," "cake," and "remuneration."

Mr. Mikerin further admitted in his plea that "the funds were transmitted with the intent to promote a corrupt payment scheme that violated the Foreign Corrupt Practices Act," according to the DOJ.

Mr. Condrey, 50, of Glenwood, Maryland, pleaded guilty in June 2015 to conspiracy to violate the FCPA and conspiracy to commit wire fraud. Mr. Rubizhevsky, 64, of Closter, New Jersey, pleaded guilty in June to conspiracy to commit money laundering. The FBI said he was "a consultant to Mr. Mikerin." Mr. Condrey and Mr. Rubizhevsky haven't been sentenced yet. Mr. Condrey and his wife Carol were principals of Transport Logistics International (TLI), based in Fulton, Maryland. From 1996 to 2013, Tenex paid TLI $33 million (£23 million) to transport uranium from Russia to the U.S. The uranium came from a program the U.S. started with Russia in 1993 to remove unsecured nuclear weapons from the former Soviet Union in exchange for cash. As much as 10 percent of the U.S. electricity supply came from Russian uranium at one point. The DOJ dropped Mr. Condrey's wife from the case as part of his plea deal.

The FBI began investigating Mr. Mikerin in 2007. The DOJ could not charge Mr. Mikerin with Foreign Corrupt Practices Act offenses because the FCPA targets those who bribe foreign officials but not the actual foreign officials who take the bribes.

The United Kingdom

SFO Makes Request for Blockbuster Funding

The SFO is said to have requested £21 million ($30.5 million) in additional funding to supplement its core budget of £34 million ($49.5 million) for 2015-2016. This "blockbuster funding" is a tool to support the SFO in carrying out major and complex investigations, as and when they arise. The agency has reportedly asked for such funding in four of the past five years.

Of the sum requested, £15.5 million is said to be "needed urgently". Attorney-General Robert Buckland told Parliament that approval for this additional sum was necessary for "significant investigations and the settlement of material liabilities".

The Shadow Attorney-General, Catherine McKinnell, has been critical of the current method of funding:

"This sticking plaster approach is neither sustainable nor transparent and it simply cannot be right that George Osborne [the Chancellor] gets to decide which major cases should be investigated."

Despite there being no specific allegation of government interference, a spokesperson for the SFO stated that:

"It is completely untrue to suggest that the SFO's choice of case is subject to Treasury or any other external approval."

LIBOR Conviction Upheld

Tom Hayes, the former trader who was found guilty and subsequently jailed for conspiracy to fix the rate of LIBOR, has had his conviction upheld by the Court of Appeal. His sentence has, however, been reduced from 14 to 11 years in prison.

In the appeal it was argued by the defense that the High Court judge had made legal errors in how he handled the case while also claiming that the sentence was wrong and excessive. The Court of Appeal held that the "culpability was high and the harm serious" and maintained that a "deterrent element was plainly required". The court went on to state that it "must make clear to all … that conduct of this type, involving fraudulent manipulation of the markets, will result in severs sentences of considerable length."

Mr. Hayes is reported to have been "immensely disappointed" with the outcome of the appeal, despite being "relieved and grateful that the extremely long sentence imposed … had been reduced".

Convicted Company Ordered to Pay Fine for Corruption Offenses

Smith and Ouzman Ltd have been ordered to pay a total of £2.2 million ($3.2 million) in a sentencing hearing at Southwark Crown Court, having been found guilty of corruption under the Prevention of Corruption Act 1906.

In December 2014, Smith and Ouzman Ltd along with two of its senior executives were convicted of making payments totalling £400,000 ($615,000) to officials in Kenya and Mauritania in return for contracts to produce ballot papers, worth £2.25 million ($3.5 million). The two employees involved in the matter were sentenced in 2015; Marketing Director, Nicholas Smith, received a three year prison term while the 72 year old Chairman of the company, Christopher Smith, received an 18 month suspended sentence.

When sentencing Smith and Ouzman, Andrew Mitchell QC stated that:

"Corruption of foreign officials is damaging to the country in which the corruption occurs, is damaging to the reputation of UK business and of course, in the market in which a business operates, it is anti-competitive."

SFO Requests "U.S. Style Powers"

David Green, the Director of the SFO, has recently stated that:

"The public look at the perceived American performance against corporates and they understandably think, "Why can't this country do that?" The answer is that American prosecutors have far more powers than we do."

Mr. Green is pressing for legal reforms in line with the U.S. system of vicarious liability as this would make it easier to hold corporations responsible for wrongdoing carried out by its members of staff. As the law stands in the U.K., to convict a company it must be shown that the controlling mind, usually the board of directors, was complicit in the offense.

The Shadow Attorney-General, Catherine McKinnell, is supportive of looking into the possibility of such an amendment, stating that a "full and transparent" review of corporate criminal liability is required.

The Rest of the World

China

Wang Qishan, the Secretary of the Central Commission for Discipline Inspection has given assurances that China's anti-corruption efforts will continue in 2016. In a recent speech, Mr. Wang stressed that, "the strength of our anti-corruption efforts will not be lessened".

This sentiment was echoed by the recent sentencing of two former officials:

According to state media, Li Dongsheng, China's former deputy national police chief, has been sentenced to 15 years in prison for corruption. Reports state that Mr. Li stood accused of taking bribes totally ¥22 million ($3.3 million/£2.3 million) and abusing his power.

It is said that Mr. Li will not appeal the verdict.

A former top official in the city of Guangzhou has reportedly admitted to taking ¥111 million ($17 million/£11.5 million) in bribes between 2000 and 2014. Wan Qingliang's alleged corruption is said to have included taking bribes of more than ¥50 million ($7.6 million/£5.2 million) from a company that he had helped to win a government development project.

In a written statement the Nanning Intermediate People's Court said that Mr. Wan raised no objection to the charge of corruption and that he showed remorse during the trial. It is said that Mr. Wan told the court that, "I have hurt the Party, the people and my family and I hope that the court can give me another chance."

Greece

It has been reported that the Greek tennis player, Alexandros Jakupovic, has received a life ban from sport having been found guilty of committing offenses under the Tennis Anti-Corruption Program. The decision means that Mr. Jakupovic is ineligible to compete in or attend any tournament or event organised or sanctioned by the governing bodies of the sport.

Details regarding Mr. Jakupovic's hearing have not been given, however according to the Tennis Integrity Unit, he was charged with various offenses, which effectively amounted to match-fixing.

Indonesia

Lawyer Otto Cornelis Kaligis is reported to have been sentenced to five and a half years in prison for corruption offenses by a panel of judges at the Jakarta Corruption Court. He was found guilty of bribing a clerk and three judges at the Medan State Administrative Court. According to reports, the bribes were paid in return for the annulment of a letter of investigation which had been issued against his client by the North Sumatra prosecutor's office.

Despite denials from Mr. Kaligis, the panel of judges held that he had played a role in the bribery matter following evidence from witnesses and recorded conversations. The panel noted that Mr. Kaligis had violated the advocate code of conduct and that he had breached his position of trust.

Mr. Kaligis stated that, "whatever it takes, I will challenge the sentence" and will reportedly file an appeal with the Jakarta High Court.

International

It has been reported that following an internal ethics investigation by the governing body of world soccer, FIFA President, Sepp Blatter, and the President of the governing body of soccer in Europe, Michel Platini, have both been banned from all soccer related activities for eight years.

Mr. Blatter and Mr. Platini were found guilty by the ethics committee of allegedly abusing their position in relation to an alleged payment of 2 million Swiss francs ($1.9 million/£1.3 million) made to Mr. Platini in 2011. The payment is reported to have coincided with Mr. Platini's decision to not challenge Mr. Blatter for the Presidency. Both are said to claim that the payment was made for work carried out between 1998 and 2002 by Mr. Platini for FIFA but which was not paid at the time because of the organization's financial situation. The Ethics Committee deemed this reasoning to be "not convincing" and that the payment violated FIFA's code of conduct. Mr. Blatter and Mr. Platini are said to have denied any wrongdoing and will reportedly be appealing against their suspensions to the Court of Arbitration in Sport.

The payment is also subject to an inquiry being carried out by Swiss investigators alongside a U.S. probe into allegations of corruption into FIFA, which has recently seen the dismissal of Jerome Valcke, the Secretary General, who was suspended in 2015 from all footballing activities for his alleged role in a scheme to profit from the sale of World Cup tickets.

Malaysia

Reports state that four government officials have been arrested on suspicion of taking bribes in relation to bauxite mining activities in the state of Pahang. The extraction of bauxite is said to cause environmental pollution.

According to the Malaysian Anti-Corruption Commission (the "MACC"), it has detained officials who allegedly took bribes from unlicensed miners in return for offering them protection from enforcement action. The move is said to have followed "many complaints on environmental pollution from uncontrolled bauxite mining activities". The MACC has said that it will not hesitate to "take action against those found involved in corruption or misuse of power".

Serbia

In what has been described as the country's biggest anti-corruption investigation in decades, police in Serbia are said to have arrested 80 individuals. It is reported that among those arrested are the former head of the anti-corruption agency, ex-governmental officials, both current and former mayors and executives of state owned companies. According to the Interior Minister, Nebojsa Stefanovic, the charges for those arrested include financial crime, abuse of office and money laundering. The alleged offences, which reportedly date back to 2004, are said to involve the embezzlement of 7.8 billion dinars ($70 million/£48 million).

Many of those arrested are said to be members of the opposition Democratic Party. The leader of the Democratic Party, Bojan Pajtic, is reported to have claimed that the arrests are politically motivated.

South Korea

The former Chairman of the Joint Chiefs of Staff, a body made up of the Chiefs from each major branch of the armed services in South Korea, has reportedly been indicted without detention regarding allegations of bribery and forging public documents.

Choi Yoon-hee stands accused of ordering his subordinates to forge documents regarding the operational capabilities of a search and rescue helicopter that the navy adopted in 2013. It is alleged that Mr. Choi had corrupt arrangements in place with the arms dealer who brokered the deal between the government and the manufacturer of the helicopter.

Investigators are said to believe that the broker, Ham Tae-heon, allegedly offered jobs at his restaurant to Mr. Choi's former subordinates from the Naval Academy and free meals to Mr. Choi's wife. Further to this Mr. Ham is suspected of making a payment of ₩20 million ($16,500/£11,400) to a business owned by Mr. Choi's son, said to represent the first installment of a ₩200 million ($165,000/£114,000) sum. South Korean investigators allege that, in reality, the payment represented a bribe to Mr. Choi.

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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.

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