



ANTI-CORRUPTION DIGEST

April 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

DOJ Announces One-Year FCPA Enforcement Pilot Program

In a memorandum released on April 5, the DOJ Criminal Division announced that its Fraud Section's FCPA Unit was commencing a one-year FCPA enforcement pilot program. Under the program, a company that discovers a violation of the FCPA and meets rigorous requirements related to voluntary disclosure, full cooperation, and appropriate remediation will be eligible to receive substantial mitigation credit or a possible declination of prosecution.

Companies receiving mitigation credit under the program would be eligible for applicable fine reductions and additional mitigation credit under the federal Sentencing Guidelines. Participation in the program does not impact the requirement that companies disgorge profits associated with the FCPA violation.

The memorandum explains the program "is intended to encourage companies to disclose

FCPA misconduct to permit the prosecution of individuals whose criminal wrongdoings might otherwise never be uncovered by or disclosed to law enforcement."

The announcement framed the program as one of three elements of the Fraud Section's broader FCPA enforcement plan. The first element, announced last year, is an increase in enforcement resources. The FCPA Unit has added 10 new prosecutors, an increase of 50%, and the FBI has added three new squads devoted to FCPA investigations and prosecutions. The third element is the increased coordination with foreign counterparts by sharing leads, documents, and witnesses across borders.

Head of Anti-Bribery & Corruption Governance at Wells Fargo Pens Open Letter to DOJ

The Harvard Business Review published an open letter from Jonathan Rusch to Hui Chen, the DOJ's recently appointed Compliance Counsel. Mr. Rusch, who is currently Head of Anti-Bribery & Corruption Governance at

Wells Fargo, formerly served as the Deputy Chief for Strategy and Policy for the Fraud Section of the DOJ's Criminal Division.

The letter's stated aim was to "provide an outline of how [Ms. Chen] and the Department could perform the *ex ante* function of benchmarking and guidance," suggesting "elaborating the obvious, along with the subtle, would be beneficial for both the Department and companies in setting clear expectations for corporate compliance programs."

Mr. Rusch used the DOJ and SEC's *FCPA Resource Guide* to frame his suggestions, addressing each of the ten "Hallmarks of an Effective Compliance Program" in turn. The strongest critique was applied to the "culture of compliance" hallmark, noting that without a meaningful definition, it is nothing more than "a casual buzz phrase."

The letter expresses frustration that guidance publicly offered by the DOJ after an investigation or prosecution often explains what went wrong, but does little to help companies understand what they can do to avoid a similar fate. Mr. Rusch argued the public speeches and writings of individual prosecutors exacerbate the situation, forcing companies and their lawyers to pore over a great volume of data in attempt to divine meaning from random and contradictory fragments of guidance. The letter concludes "the credibility and value" of any response depends on the DOJ publishing its "specific conclusions and exceptions ... in a single document."

Las Vegas Sands Settles SEC Allegations for \$9 Million

The SEC's investigation into the Las Vegas Sands' Chinese operations ended with an administrative order and the imposition of a \$9 million (£6.3 million) fine on April 7. Although

the investigation involved allegations of bribery, the enforcement action was limited to books and records and internal controls violations. Las Vegas Sands neither admitted to nor denied the SEC's findings. The order notes that the fine was limited due to the company's cooperation in the investigation and enforcement action.

Las Vegas Sands is the owner and operator of numerous casinos in Macau, including the Venetian Macau, the world's largest casino. Federal investigators began looking into Sands' Chinese operations in 2010, after a wrongful-termination lawsuit was brought against the company by the former president of Macau operations. The lawsuit included allegations of numerous improprieties, including payments to local politicians and improper pressuring of officials.

The SEC found that significant sums of money lacked proper documentation or were unaccounted for, including \$6.9 million (£4.8 million) of the \$14.8 million (£10.3 million) given to a consultant to buy a professional basketball team through a shell purchaser. According to an earlier report in the New York Times, a number of the company's subsidiaries had previously been investigated by Chinese regulators, leading to a fine of \$1.6 million (£1.1 million).

Novartis Faces New FCPA Scrutiny Days After Resolving Enforcement Action

According to a story published by Reuters, a whistleblower has accused Novartis of FCPA violations arising from the company's operations in Turkey.

Novartis allegedly used a consulting company to funnel funds to Turkish officials. The money was exchanged for benefits such as getting Novartis' drugs approved for use in state-run hospitals and keeping drug prices

artificially high. Novartis severed its relationship with the consulting company after the Turkish Social Security Institution launched an investigation in 2014. The whistleblower said that the information would be passed along to the DOJ and SEC. Both agencies declined to comment. A spokesman for Novartis confirmed that the company was investigating the allegations. An investigation has also been launched by the chief prosecutor's office in Ankara.

The story was published just one week after Novartis agreed to pay the SEC over \$25 million (£17.5 million) to settle bribery allegations related to the company's business in China.

Key Energy Services Wins Motion to Dismiss FCPA-Related Shareholder Suit

The United States District Court for the Southern District of Texas granted Key Energy Services, Inc.'s motion to dismiss a putative class action shareholder lawsuit. In 2014, Key Energy disclosed that it was being investigated by the SEC for possible FCPA violations arising out of the company's Russian operations. The company later announced it was also investigating possible FCPA problems involving its operations in Mexico.

The court's opinion was critical of plaintiffs' decision to bring a shareholder suit at such an early stage, pointing out that "[a]n investigation is not a violation." The prematurity of the filing may also explain the plaintiffs' "fail[ure] to plead any facts showing that there were FCPA violations" as alleged in the complaint. Plaintiffs also argued that Key's Code of Business Conduct and FCPA Compliance Manual contained false representations and omissions because the company's actual compliance efforts were not carried out as prescribed by policy. The court was

unpersuaded, stating "such sources [are] aspirational and immaterial puffery."

Avon Reaches Proposed Settlement in FCPA-Related Shareholder Suit

As part of a proposed settlement, Avon has agreed to implement compliance reforms and pay \$4 million (£2.8 million) in legal fees to settle a shareholder derivative action.

In 2014, Avon and its Chinese subsidiary pleaded guilty to violating the FCPA by concealing more than \$8 million (£5.6 million) in gifts and benefits to public officials. One commentator noted that the compliance reforms outlined in the settlement are essentially identical to the changes required under the company's settlement with the DOJ, leaving the payment of legal fees as the only new benefit of the agreement. A court hearing for final approval of the deal is scheduled for June 30.

Former Executive Pleads Guilty to Bribery Charges

Felipe Oropesa, the former vice president of government relations for LAZ Parking, pleaded guilty in a federal court to taking bribes in exchange for steering a contract to supply parking meters to a specific bidder. The contract was part of a controversial privatization package in which the city of Chicago received \$1.15 billion (£800 million) in exchange for giving private companies the right to operate the city's parking meters for the next 75 years.

Mr. Oropesa agreed to forfeit the \$90,000 (£63,000) he received in bribes, and is facing an additional fine of up to \$250,000 (£175,000). The government agreed to recommend that the Mr. Oropesa be sentenced to the low end of the guideline range, and to make no recommendation as to the amount of the fine.

D.C. Circuit Overrules District Court's Rejection of Deferred Prosecution Agreement

In February 2015, a United States District Court refused to approve a deferred prosecution agreement ("DPA") reached by the DOJ and a defendant accused of unlawfully exporting goods and services to Iran, Sudan, and Burma.

The court asserted it would not "serve as a rubber stamp" and could not approve the agreement, stating the DPA "does not constitute an appropriate exercise of prosecutorial discretion." That decision was vacated by the D.C. Circuit, stating "[i]t has long been settled that the Judiciary generally lacks authority to second-guess those Executive determinations, much less to impose its own charging preferences."

THE UNITED KINGDOM

SFO Charges President of Alstom's U.K. Operations

It has been reported that the Serious Fraud Office (the "SFO") have charged Terence Stuart Watson, the President of Alstom's U.K. operations, with corruption regarding the supply of trains to the Budapest Metro. The alleged offenses are said to have taken place between 2003 and 2008.

Mr. Watson is the seventh individual to be charged following the SFO's investigation into Alstom and was due to appear at Westminster Magistrates' Court earlier this month. He was to be joined by Michael John Anderson and Jean-Daniel Lainé who were both charged last year in connection with the matter.

The trial of Mr. Anderson and Mr. Lainé has been fixed for May 2017.

Glasgow Based Firm Pays £2.2 Million Civil Settlement in Bribery Case

Braid Group (Holdings) Limited ("Braid Holdings"), the parent company of Braid Logistics (UK) Limited ("Braid UK") has reportedly agreed to pay £2.2 million (\$3.2 million) under an agreed civil settlement with the Crown Office and Procurator Fiscal Service's Civil Recovery Unit. Braid UK is a Glasgow based company specializing in freight and logistics.

According to reports, Braid Holdings became aware of potentially corrupt activities relating to two Braid UK freight forwarding contracts. In the first contract it is said that an agreement existed between an employee of Braid UK and an employee of a customer whereby an account was used to disguise unauthorized expenses, including holidays, gifts and cash payments, which were allegedly passed on to the customer by way of inflated invoices. The second matter reportedly concerned a profit sharing agreement involving a director of the customer company, where payments were made in return for orders to be placed with Braid UK.

Braid Holdings self-reported the incidents which were deemed suitable for civil recovery settlements. Braid Holdings reportedly stated that, notwithstanding the fact that the cases were confined to its U.K. subsidiary, it has taken steps to implement new policies and training throughout all of its subsidiaries to avoid such conduct in the future.

The head of the Civil Recovery Unit stated:

"It is vital to the health of the Scottish economy that any form of bribery or corruption is identified and stopped as soon as possible ... Braid is to be commended for self-reporting the unlawful conduct to Crown Office."

■ THE REST OF THE WORLD

Brazil

It has been alleged by prosecutors in Brazil that Joseph Safra, a banker who has an estimated fortune of \$18.3 billion (£12.8 billion), conspired to bribe tax officials in Brazil. According to reports, Mr. Safra allegedly attempted to reduce a corporation tax bill for Banco Safra, of which he is the majority stakeholder, with bribes of 15 million reais (\$4 million/£2.8 million).

Authorities in Brazil have noted that, although they believe that Mr. Safra was not directly involved with the alleged matter, they are acting on the basis of a number of wire-tapped conversations that imply an employee was acting on his instruction.

In response to the allegations, the Safra Group has stated that they are “unfounded” and that “there have not been any improprieties by any of the businesses of the Safra Group”.

China – Corruption Investigations

The continuing anti-corruption campaign in China has recently seen a number of high-ranking officials face prosecution for allegations of “severe disciplinary violations”. This phrase used by the Central Commission for Discipline Inspection has become synonymous with its corruption investigations.

- A former vice-governor of China’s Sichuan Province, Li Chengyun, is said to be under investigation for corruption. Mr. Li was party chief in the provincial city of Deyang when Zhou Yongkang, who was jailed for corruption in 2015, held power there.
- Han Xuejian, a former senior Party official in China’s Heilongjiang Province is reported to have been prosecuted for

allegedly accepting substantial bribes. Mr. Han was expelled from the Party and dismissed from public office in 2015.

- According to the Supreme People’s Procuratorate, the former deputy director of the Henan Provincial People’s Congress Standing Committee, Qin Yuhai, has been prosecuted for alleged bribery. Mr. Qin reportedly stands accused of illegally appropriating a vast amount of property while serving as Party chief of Jiaozuo City in the Henan Province.
- Liu Zhigeng, a former vice governor of the Province of Guangdong will reportedly be prosecuted for corruption following an investigation which allegedly found that he took bribes and abused his position.

China – Threshold for Death Penalty Set

Chinese authorities have announced that corruption cases involving ¥3 million (\$463,000/£322,000) or more may incur the death penalty. According to the Supreme People’s Court, bribes of that size are considered to be of “extraordinarily huge value” and offenders will reportedly be eligible for the death penalty if their actions resulted in “extremely significant losses to the state’s and the people’s interests”.

Under the previous 1997 Criminal Law, the death penalty could be imposed for crimes involving ¥100,000 (\$15,500/£10,800). This, however, was rarely implemented in China’s campaign against officials involved in economic crimes. It is not yet clear whether the new threshold will result in increased death sentences, however, according to a senior judge at the Supreme People’s Court, “those whose offenses meet the requirements of the death penalty, the courts will sentence them to death without hesitation”.

The rules also raise the minimum level of corruption at which criminal charges can be initiated from ¥5,000 (\$770/£535) to ¥30,000 (\$4,600/£3200). According to reports, this is in order to “keep pace with economic development”. However, “corruption” has also been given a more broad definition, so as to include items such as club memberships and trips abroad.

Egypt

It has been reported that Egypt's former agriculture minister, Salah El Din Mahmoud Helal, and his chief-of-staff, Muhyidin Said, have been sentenced to 10 years in prison by a Cairo Criminal Court having been found guilty of corruption. The matter relates to accusations that both men took bribes in return for selling land belonging to the state at discounted prices.

Mr. Helal resigned from his post in September of last year upon the order of President Abdul Fattah al-Sisi and was arrested soon after on accusations of corruption. In a court session last December the prosecution alleged that Mr. Helal and Mr. Said had accepted bribes which included a luxury home, membership of an exclusive sports club and clothing from high-end fashion stores in return for granting discounted licenses for land in the Natroun Valley. Both officials denied any wrongdoing, however, the individual who allegedly paid the bribe and an intermediary who had been charged with facilitating the deal are both said to have confessed to the scheme.

According to their lawyer, both Mr. Helal and Mr. Said will lodge an appeal.

International

Ernst & Young has published its 14th Global Fraud Survey. The survey details the opinion of nearly 3,000 senior executives from 62

countries around the globe regarding matters such as bribery and corruption.

The survey identifies bribery and corruption as an “ongoing challenge”, with some of the key statistics as follows:

- 91% of respondents recognized the importance of establishing the ultimate beneficial ownership of entities with whom they do business.
- 39% of respondents believe that bribery and corruption are widespread in their country, however only 11% stated that it happened in their sector.
- 42% of respondents stated that they could justify unethical behavior in order to meet financial targets. The report queried whether certain compensation arrangements could be encouraging such behavior.

According to David Stulb, Global Leader of Ernst & Young’s Fraud Investigation and Dispute Services:

“Increased levels of global cooperation between law enforcement agencies are making it harder for fraudsters and bribe-payers to evade prosecution. However, with respondents indicating that such misconduct is showing no sign of abating, companies continue to be exposed to major risks driven by the illegal actions of a small minority of employees.”

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

Kuwait

The U.K. oil-services company, Petrofac Plc, has reportedly initiated an internal investigation regarding allegations of bribery related to its operations in Kuwait. It is alleged that “confidential payments” were ordered by an

executive at Petrofac to help the company to win an oil contract in Kuwait.

In response to the allegations, the company has stated that:

“Petrofac takes any suggestion of improper conduct very seriously and we are looking into the allegations made. Petrofac does not condone any activities that contravene our code of conduct, which includes strict anti-bribery and corruption standards.”

According to reports Petrofac has appointed a law firm and auditors to assist with conducting a full investigation.

Papua New Guinea

It has been reported that Supreme Court Judge Bernard Sakora has been arrested on charges of corruption following the alleged receipt of illicit payments from Paul Paraka Lawyers, a law firm accused of defrauding the Papua New Guinea’s government.

According to police reports, Mr. Sakora accepted a 100,000 kina (\$45,000/£31,000) payment in 2009 from a company associated with Paul Paraka Lawyers. In return, Mr. Sakora is said to have ruled in favor of the law firm in a number of cases related to the payment of inflated legal bills invoiced to the government. Further to this, in 2010 Mr. Sakora is reported to have issued an injunction in favor of Paul Paraka which banned the publication of a report regarding an inquiry into fraudulent legal bills charged to the government.

Mr. Sakora denies receiving the money. The investigation is ongoing.

Serbia

Police in Serbia have reportedly detained 49 individuals, said to include officials from government ministries and state-owned firms, on suspicion of corruption. Of those, 25 are reported to have been charged while two suspects are still wanted for questioning.

It is alleged that those involved in the matter are responsible for corruption offenses resulting in a loss of “around €7.6 million (\$8.6 million/£6 million)” for the country since 2007.

The operation is said to be a demonstration by the country’s government that it is committed to tackling corruption. In a statement Serbia’s Interior Minister stated that:

“This is yet another demonstration that the police will not stop ... together with prosecutors, we will show Serbia can be a completely serious, honest and fair country.”

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.

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