



ANTI-CORRUPTION DIGEST

March 2014

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

Plaintiffs' Lawyer Found to Commit FCPA Violations in Obtaining Judgment Against Chevron

On March 4, 2014, federal judge Lewis Kaplan of the Southern District of New York (Case No. 11-civ-0691) found that New York lawyer Steven Donziger and others within his firm violated the FCPA in obtaining a record \$9.5 billion environmental judgment against oil giant Chevron in 2009.

Chevron brought an action against Donziger after an Ecuadorean court entered the \$9.5 billion judgment in favor of villagers from the Lago Agrio region of Ecuador who had allegedly experienced decades of pollution from oil exploration in the Amazon rain forest by Texaco, Inc. Chevron acquired Texaco in 2001.

The Court's 458 page opinion contains findings that Donziger and his colleagues often spoke through coded emails when:

describing their private interactions with and machinations directed at judges and a court appointed expert, their payments to a supposedly neutral expert out of a secret account, a lawyer who invited a film crew to innumerable private strategy meetings and even to *ex parte* meetings with judges, an Ecuadorean judge who claims to have written the multibillion dollar decision but who was so inexperienced and uncomfortable with civil cases that he had someone else (a former judge who had been removed from the bench) draft some decisions for him, an 18-year old typist who supposedly did Internet research in American, English, and French law for the same judge, who knew only Spanish, and much more. The evidence is voluminous.

Most notably for FCPA purposes, the Court determined that Donziger's transfers of money to a court-appointed expert satisfied the FCPA's "obtain or retain business" element. Judge Kaplan determined that "[h]ere, the payments increased the likelihood of Donziger's business – that of contingency

litigation – would benefit from a favorable judgment.”

Judge Kaplan also considered the court-appointed expert to be a “foreign official” under the FCPA, because “as an expert appointed by the Lago Agrio court, [he] was an officer or official of the Ecuadorian court.”

Mr. Donziger has made it clear that he intends to appeal the decision. It is unclear at this point whether the Department of Justice will pursue charges.

Frederic Cilins Pleads Guilty to Obstructing FCPA Investigation

On March 10, the Department of Justice announced that French citizen Frederic Cilins had pleaded to a one-count information for obstructing a federal criminal investigation into whether a mining company had paid bribes to win lucrative mining rights in the Republic of Guinea.

The information alleges that Mr. Cilins agreed to pay money to induce a witness to destroy documents sought by the FBI. Those documents allegedly related to allegations concerning the payment of bribes to obtain mining concerns in the Simandou region of the Republic of Guinea.

The documents Mr. Cilins allegedly sought to destroy include original copies of contracts between the mining company and its affiliates and the former wife of a deceased Guinean government official who, at the time of the alleged FCPA violations, controlled the award of mining contracts in Guinea. The matter reportedly included the payment of bribes amounting to millions of dollars to the wife of this Guinean official and other ministers or senior officials of Guinea’s government whose authority was needed to secure the mining contracts.

Mr. Cilins is reported to have a link to Guernsey-based BSG Resources Ltd. As reported recently, the Department of Justice has recently targeted billionaire Beny Steinmetz, the founder of BSG Resources, in an ongoing bribery investigation relating to an alleged “multinational corruption investigation involving some of the largest remaining untapped iron ore deposits in the world,” including the Republic of Guinea.

Cisco Announces Internal Investigation Regarding Potential Bribes in Russia

In its February 10-Q, Cisco Systems Inc. disclosed that it had begun an internal investigation into possible FCPA violations in Russia at the behest of the Department of Justice and Securities Exchange Commission.

The disclosure may not be news to some in light of a December blog post from Cisco’s Vice President of Compliance Systems, Roxane Marenberg. In Ms. Marenberg’s post, discreetly titled “The Importance of Ethics in Global Business,” she stated that an investigation had commenced, and that it had yet to reveal any “basis to believe that Cisco’s activities are in violation of any law, and indeed the information we were provided does not allege wrongdoing by any of Cisco’s executive management.”

Department of Justice Freezes \$458 Million in Corruption Proceeds

On March 5, the Department of Justice (the “DOJ”) filed the largest civil forfeiture complaint in United States history to freeze funds hidden in bank accounts of former Nigerian dictator Sani Abacha and his co-conspirators.

The DOJ’s released statement emphasized that “General Abacha was one of the most notorious kleptocrats in memory, who embezzled billions from the people of Nigeria

while millions lived in poverty.” Much of General Abacha’s ill-gotten money was laundered from Nigeria by purchasing U.S.-backed bonds, using United States financial institutions, and then moving the money overseas.

The DOJ is making these efforts through the Kleptocracy Asset Recovery Initiative, an initiative whereby DOJ attorneys identify and return assets stolen by corrupt foreign officials.

DOJ Publishes FCPA Opinion

The Department of Justice (the “DOJ”) has published its first Foreign Corrupt Practices Act (FCPA) advisory opinion of 2014. The procedure gives those who have compliance concerns the opportunity to get an opinion from the Attorney General on whether certain conduct is in line with the statute’s anti-bribery provisions. An important feature of such opinions is that they can only be relied on by the requestor and have no binding application to others.

In the present case, the requestor, a US financial services company and investment bank, wanted to know whether a commitment to buy-out the former CEO of a subsidiary company, who had now been appointed to “a senior government position in a foreign country”, violated the FCPA. The contentious issue was that the unnamed firm was being asked to buy out the “foreign official” at a better price than that stated in the original agreement between the parties.

The DOJ decided that “because the facts, representations and warranties described in the request demonstrate at present that the only purpose of the payment to the foreign shareholder is consideration for the shares, the Department does not presently intend to take any enforcement action.” In reaching its opinion, the DOJ looked at the former CEO’s

role as a “passive shareholder” along with the hiring of a “leading, highly regarded, global accounting firm to determine the shares’ value.” It is important to note that the opinion does not bar a future enforcement action should corrupt intent later arise. A copy of the opinion can be found [here](#).

THE UNITED KINGDOM

Deferred Prosecution Agreements

The Crime and Courts Act 2013 (Commencement No. 8) Order 2014 has brought into force Deferred Prosecution Agreements (“DPAs”) in the UK. The new law enables prosecutors, namely the Serious Fraud Office (the “SFO”) and the Crown Prosecution Service (the “CPS”), to enter into agreements with corporate entities (but not individuals) facing allegations of corruption and other economic crimes.

DPAs are voluntary agreements, subject to the approval of the judiciary, which will suspend a criminal charge without prosecution, and not necessarily any formal admission of guilt, on the grounds that the corporation complies with specified conditions. Such conditions may, for example, include the payment of a fine, compensating victims and disgorging of profits which, if complied with, will not result in a conviction for the company concerned.

Throughout the consultation period, the stance of the SFO and CPS has been clear, the authorities want increased transparency and self-reporting, and although DPAs are a “welcome addition to the prosecutor’s toolkit” it was stressed they are not a “mechanism for a corporate offender to buy itself out of trouble”. Although “prosecution remains the preferred option for corporate criminality”, the rationale behind the introduction of DPAs is to give the prosecuting authorities an option besides that

of imposing on a company “a fine or put[ting] it out of business by winding it up”, both of which “can cause collateral damage to employees and shareholders who may be blameless”.

A Code of Practice (“CoP”) on the use of DPAs has been published, setting out the suitability of a DPA in a given situation. It should be noted that it is for the SFO or CPS to initiate discussions with a corporation regarding a potential DPA; while this does not mean that a company cannot self-report, DPAs will not be the default position and are at the discretion of the prosecuting authorities. Factors that are likely to be taken into account, for example, include whether the corporation had a history of misconduct, whether it had in place an effective compliance program and any failure of it to notify the wrongdoing within a reasonable period.

A copy of the CoP can be found [here](#) and will be used in conjunction with guidelines published by the Sentencing Council, as reported and discussed in last month’s Digest, in order to determine the appropriate level of any financial penalty imposed.

Progress by SFO in Alstom Investigation

Reports state that, following a five year investigation, Alstom SA (“Alstom”), the French manufacturer of trains and power equipment, will be charged by the Serious Fraud Office (the “SFO”) over allegations of violating UK bribery laws. It is said that, the SFO is to likely seek the Attorney General’s approval, a requirement for the prosecution of some offences by the agency, in the “coming weeks”.

Key events in the investigation included a raid on the offices and residences of company directors in 2010, resulting in the arrest of three board members on suspicion of bribery and

corruption, and 2011 court papers in which the SFO allegedly said it suspected that, between 2004 to 2010, Alstom had given money to companies which operated as “bogus consultants” to bribe overseas officials in return for contracts.

The SFO is yet to make an official statement on the progress of the investigation, but the Director of the SFO, David Green QC, indicated that charges may be likely in the future, reportedly stating, “I anticipate significant developments in due course.”

A spokesperson for Alstom declined to comment.

Allegations of Forex Manipulation

The Bank of England has authorized an independent review into allegations that it allowed manipulation of the foreign exchange (“Forex”) market. According to Mark Carney, the Bank’s Governor, the matter has the potential to be bigger than the manipulation of the London Interbank Offered Rate (the “Libor”) benchmark, which saw a number of banks receiving collective fines in the billions of pounds. He is reported as stating, “this is as serious as Libor, if not more so because this goes to the heart of integrity of markets.”

The focus of the review is said to be on the benchmark which is used to set daily prices on a large number of currencies. This follows the allegations that traders shared information about the position of their clients, influencing the price of the rate at the set time, and further, that the Bank of England was aware of such practises. It is reported that a senior trader has allegedly informed the Financial Conduct Authority that officials at the Bank of England were aware of the market corruption but made no attempt to stop it. To date, it is said that the Bank of England’s review has not found any evidence of collusion, but a member of staff

has reportedly been suspended over compliance concerns.

Labour MP and member of the Treasury Select Committee, Pat McFadden, is reported as stating that “We can’t have a situation where the BoE [Bank of England] can be the judge and jury on its own role in this. This investigation has to be conducted by someone independent of the Bank who can look at this with no vested interest.” The Serious Fraud Office (the “SFO”), which was criticized for its delay in investigating the manipulation of Libor, is yet to open a formal inquiry into the matter regarding the £3 trillion a day market, and a spokesperson for the SFO declined to comment on the possibility.

THE REST OF THE WORLD

Germany

It has been reported that two former employees of Sanofi-Aventis (“Sanofi”), the French pharmaceutical company, have been convicted of bribery charges by a court in Germany. News of the suspended sentences has recently come to light despite being imposed 10 months ago in the Winsen court, which is also said to have fined the company \$39 million. This comes as a result of the sentences being passed under a German law permitting a simplified legal process for courts to try some cases in the absence of a courtroom trial.

According to the prosecutors involved, an investigation of the two former employees allegedly found that they had made “illicit payments” to a consultancy advising one of Sanofi’s clients, a pharmaceutical dealer, between 2007 and 2010 in order to win additional contracts from them. Adding that, as a consequence, “Sanofi was unfairly given preference because of this”.

A spokesperson for Sanofi’s German subsidiary reportedly confirmed the sum paid by Sanofi in connection with the convictions, while also stating that the company had co-operated with authorities during the investigation and tightened its compliance system as a result. The spokesperson for the prosecutors is said to have indicated that further investigations are ongoing, without indicating whether they relate to Sanofi. However the message from the French company was clear; “for Sanofi, the matter is now closed”.

Hong Kong

Hong-Kong property developer, Joseph Lau, and businessman, Steven Lo, have been found guilty of bribery and money laundering by a Macau court. Their jail sentences, both of which are reportedly just over 5 years, relate to a land deal in the lucrative gambling district of Macau.

The two individuals are reported to have been convicted of the offences having allegedly offered Macau’s former chief of public works a \$2.5 million bribe in 2005 to win a government tender for five plots of land near to the city’s airport. The site was being developed into a luxury housing complex by Chinese Estates Holdings, a company headed by Mr. Lau until he stepped down as chairman following the court’s decision. It is said that, following the court’s decision, the Macau government has already revoked some of the land rights it had granted in relation to the project.

Mr. Lau’s lawyer is quoted as saying that he was “not able to completely understand the factual and legal grounds for the decision” and that an appeal against the judgment had already been lodged. Given the absence of an extradition treaty between Hong Kong and Macau, however, it is unclear how the Macau court could enforce its judgment in any event.

The conviction has been suspended until a final ruling takes place.

India

The Minister of Defence, AK Anthony, is reported to have ordered a bribery investigation into a deal for the purchase of jet engines, said to be in the region of \$1.6 billion, by Hindustan Aeronautics Limited (“HAL”) from the engine maker, Rolls-Royce Holdings. The deal, which reportedly relates to the supply of aircraft engines between 2007 and 2011, will be investigated by the Central Bureau of Investigation (the “CBI”).

The allegations were said to be prompted after a letter sent to HAL allegedly claimed that bribes were paid to its officials in order to gain the contracts in question. In turn, this led to an internal investigation carried out by HAL, which reportedly highlighted the possibility of “discrepancies in the deal”. Other reports have further suggested that the inquiry, conducted by HAL’s Chief Vigilance Officer, has “prima facie found that the company [Rolls-Royce] allegedly violated several of the contractual obligations with HAL ... when these bribes were allegedly paid.” The “violations” in question reportedly relate to disclosures made by Rolls-Royce that it had used outside consultants, who received percentage commissions, as part of a 2011 deal. Such provisions potentially violate India’s public procurement rules as they could be used as a means to channel corrupt payments to secure contracts.

The CBI inquiry adds to other corruption investigations into the activities of Rolls-Royce, the world’s second largest maker of aircraft engines, in recent months. Regarding the deal with HAL, a spokesperson for the company reportedly said, “we have made clear that we will cooperate with the regulators and have been explicit that we will not tolerate misconduct of any sort.” Mr. Anthony

remained cautious, stating that, “at this stage they’re just allegations ... we’ll know in the course of time”.

Japan

The Japanese trading company, Marubeni Corporation, has reportedly pleaded guilty to charges brought by the US Department of Justice (the “DOJ”) under the Foreign Corrupt Practices Act, agreeing to pay an \$88 million fine to the authorities.

The charges are said to relate to bribes allegedly paid to high-ranking government officials in Indonesia along with officials at the Indonesian state owned electricity company, Perusahaan Listrik Negara. It is reported that the alleged payments secured a \$118 million power project contract for the company, who were said to be acting as part of a consortium with another company that the DOJ declined to name. Reports suggest that the other party is Alstom SA, of whom four executives have already been charged in the case, two of which have pleaded guilty.

The DOJ said that the bribes were disguised to look like legitimate consulting payments, however correspondence between employees highlighted their true nature. It is reported that emails between Marubeni and Alstom employees said that officials needed to be given adequate “rewards” not simply “pocket money.”

Acting Assistant Attorney General Mythili Raman said that the “company refused to play by the rules, then refused to cooperate with the government’s investigation ... [and now] faces the consequences for its crooked business practices in Indonesia.”

Marubeni is reported to have said that it “has undertaken extensive efforts to enhance its anti-corruption compliance program, and believes

that its current program is robust.” The company is said to have added that the resolution, which is yet to be approved by a federal judge, should not have a material effect on its recent business forecast.

Liberia

The Liberia Anti-Corruption Commission (the “LACC”) is reportedly investigating claims that the country’s state oil company, the National Oil Company of Liberia (the “NOCL”), bribed lawmakers in order to induce the passage of legislation granting favorable concessions to the oil sector. The allegations seemingly relate to the passing of two new laws last year by Liberia’s Senate, but which later stalled in the House of Representatives due to complaints regarding their lack of public consultation.

According to reports, the Chairman of the LACC, James Verdier, claimed that the investigation began after the testimony of a former board member of the NOCL. It is said that the former executive, Clemenceau Urey, disclosed at a hearing that the company paid \$118,000 in “lobby fees” to lawmakers prior to elections held in 2011.

Mr. Verdier has stated frankly that the payments, if confirmed, constitute bribery. The investigation is ongoing.

Norway

The Norwegian defense company Kongsberg Gruppen ASA (“Kongsberg”), along with one of its employees, has been charged by the country’s anti-corruption agency following an investigation for alleged corruption in relation to its dealings in Romania. The investigation, led by the Norwegian National Authority for Investigation and Prosecution of Economic and Environmental Crime (“ØKOKRIM”), is said to relate to contracts for communications

equipment with Romania between 1999 and 2008, worth a combined value of \$233 million.

Company leadership are said not to have acted on suspicions of “undesirable business practices” following a prior internal investigation. Kongsberg, which is 50% owned by the Norwegian government, with the assistance of PricewaterhouseCoopers (“PwC”) had undertaken an investigation into “potential irregularities” in the company’s dealings with Romania in 2012 to 2013. According to Walter Qvam, the company’s Chief Executive, Kongsberg “worked with the PwC investigation unit for more than a year ... [on a] very complex and complicated task ... [on matters] relatively far back in time”, reportedly concluding that it did not have sufficient information to take further action or notify external authorities.

In a statement, the company has said that it will “cooperate closely with ØKOKRIM and other relevant authorities to clarify all the facts in relation to the charges”, adding that it has a “zero-tolerance for corruption among its employees, consultants and business associates.” ØKOKRIM declined to comment “in the interests of the investigation and those involved”.

Oman

In the latest of a series of corruption trials that began last year, the CEO of the state-owned Oman Oil Company (“OOC”) has been jailed for 23 years and fined \$10 million having been found guilty of accepting bribes along with other related offences. The bulk of Ahmad al-Wahaibi’s sentence relates to an alleged \$8 million bribe received by a company owned by him in the Caribbean.

Two other individuals implicated in the matter were Myung Jao Yoo, a senior official at the South-Korean based LGI, and Adel al-Raisi, a

former adviser to the minister of the now disbanded Economy Ministry. Mr. Myung was said to have paid the \$8 million sum to Mr. al-Wahaibi's company following the award of a multi-billion dollar petrochemical project in Sohar Port region of Oman, while Mr. al-Raisi is alleged to have organized the transaction.

Mr. Wahaibi is said to have admitted to the court that he received money from Mr. Myung, but allegedly claimed that he "didn't know why LGI transferred \$8 million" to company. Mr. Myung was equally vague in his defense, admitting that he in turn received a share of the illicit funds from Mr. Wahaibi, although could not recall why, "maybe it was a birthday gift ... I don't remember". Mr. Myung and Mr. al-Raisi both received 10 year sentences for their roles in the matter, along with fines said to be in the region of \$10 million each.

In a statement, OOC said that it is committed to "enforcing a stringent code of ethics and corporate governance practices across all levels of the organization." LGI was not available for comment.

Philippines

The Asian Development Bank (the "ADB"), headquartered in the Philippines but whose operations span the Asia-Pacific region, has published its annual report on corruption and fraud. It is estimated that each year 30% of development financing is lost to corruption and fraud.

The report, compiled by the bank's Office of Anti-Corruption and Integrity (the "OAI"), highlights a record number of complaints received during 2013, with sanctions ultimately being imposed on 30 individuals and 31 firms. The head of the OAI, Clare Wee, stated that the figures are "representative of the fact that we have probably been doing a better job at making others aware that we exist."

Discussing the report and the progress of the OAI, Ms. Wee noted "quite a substantial number of allegations of corruption" but admitted that it "is a terribly difficult thing to prove". Following a disclosure on an alleged incident on bribery, Ms. Wee admitted that it may be the case that "we don't get any facts or we don't get any detailed information we can actually follow up on." The report does highlight the ADB's Whistleblower and Witness Protection Policy, affording anonymity to witnesses acting in good faith, which may help to ease such issues.

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

Qatar

A senior FIFA official and two of his sons allegedly received payments nearing \$2 million from a Qatari firm with links to the country's successful bid to host the 2022 football World Cup.

Reports suggest that Jack Warner, now former vice-president of football's governing body, was paid \$1.2 million by Kemko, a company controlled by Mohamed Bin Hammam, himself a former member of Qatar's FIFA committee, shortly after the tournament was awarded to Qatar. The bulk of the payments were said to allegedly "offset legal and other expenses", however separate claims indicate they were to cover "professional services provided over the period 2005 to 2010."

A spokesperson for Qatar's World Cup organizing committee has responded that "the 2022 bid committee strictly adhered to FIFA's bidding regulations in compliance with their code of ethics." Mr. Warner was definite on the matter, "I have no interest in joining in the foolishness that is now passing as news ... and do consider this as my final comment on this matter."

The FBI is reportedly investigating the payments due to them being processed via a bank in New York.

South Africa

According to a report compiled by the Organisation for Economic Co-operation and Development (the “OECD”), South Africa “must take urgent steps to proactively investigate and prosecute foreign bribery”. OECD’s stance is likely influenced by the perceived lack of enforcement in South Africa: no foreign bribery cases have been prosecuted since they joined the Convention in 2007. Four investigations are on-going but are said to be some way off from prosecution.

The report highlights a number of recommendations to strengthen South Africa’s foreign bribery controls, including:

- Increasing the financial resources available to the relevant law enforcement authorities.
- Establishing greater controls to ensure that national economic interests and the identities of persons involved do not influence the prosecution of such cases.
- Ensuring the relevant safeguards are in place, and raising awareness of their existence, to afford those who report suspected instances of foreign bribery the necessary protections guaranteed by law.

The report does note the solid foundation South Africa has in place. It comments positively on legislation which allows for the broad use of freezing orders and confiscation measures along with steps that have been taken to encourage public companies and state-owned enterprises to “strengthen internal controls, ethics and compliance measures”.

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

Turkmenistan

A draft law “On Combatting Corruption” has been approved and unanimously adopted by the Parliament of Turkmenistan. The document reportedly “sets out the main principles of combatting corruption, [the] legal and institutional framework to identification, warning of corruption and combat against it as well as elimination of the consequences of corruption offences.”

The country holds a key position in relation to the supply of natural gas to the surrounding region, a sector that is often troubled by issues of corruption. In a visit to the country late last year, the International Monetary Fund noted that, “encouraging the growth of private enterprise requires improvements to the business environment and reducing opportunities for corruption.” Parliament appears to be committed to tackling the issue, as noted in a speech by the country’s President, Gurbanguly Berdimuhamedov, where he said that “the negative impact of corruption in Turkmenistan will be eradicated”.

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.seactions.com.

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