



Anti-Corruption Committee Newsletter March 2010

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All opinions expressed are those of the author.

U.S. ENFORCEMENT ACTIONS

DAIMLER AG SETTLES CHARGES OF THE FCPA VIOLATIONS, AGREES TO PAY \$185 MILLION

On April 1, 2010, Daimler AG (Daimler), a German car and truck manufacturer, and three of its subsidiaries have resolved charges related to a Foreign Corrupt Practices Act (FCPA) investigation into the company's worldwide sales practices. The U.S. Department of Justice and the Securities and Exchange Commission (SEC) accused the company of engaging in a decade-long (1998-2008) practice of paying bribes to secure contracts in at least 22 countries including China, Egypt, Iraq, Nigeria, and Russia.

Daimler's Russian subsidiary DaimlerChrysler Automotive Russia SAO, now known as Mercedes-Benz Russia SAO, and its German subsidiary, Export and Trade Finance GmbH, each pleaded guilty to one count of conspiracy to violate the anti-bribery provisions of the FCPA and one count of violating those provisions. Daimler entered into a deferred prosecution agreement and agreed to the filing of a criminal information charging the company with one count of conspiracy to violate the books and records provisions of the FCPA and one count of violating those provisions. Daimler's Chinese subsidiary DaimlerChrysler China Ltd., now known as Daimler North East Asia Ltd., also entered into a deferred prosecution agreement and agreed to the filing of a criminal information charging it with one count of conspiracy to violate the anti-bribery provisions of the FCPA and one count of violating those provisions. Daimler and its subsidiaries will pay a total of \$93.6 million in criminal fines and penalties.

On the same day, the SEC also announced that it reached a settlement with Daimler. The SEC charged the company with violations of the record-keeping provisions of the FCPA. Daimler agreed to pay \$91.4 million in disgorgement of profits relating to those violations.

Daimler will pay a total of \$185 million in combined criminal and civil penalties.

Sources: <http://www.justice.gov/opa/pr/2010/April/10-crm-360.html>; <http://www.sec.gov/news/press/2010/2010-51.htm>

INNOSPEC INC. PLEADS GUILTY TO THE FCPA CHARGES AND DEFRAUDING THE UNITED NATIONS

On March 18, 2010, Innospec Inc., a Delaware corporation, pleaded guilty to defrauding the United Nations, violating the Foreign Corrupt Practices Act and violating the U.S. embargo against Cuba. In particular, Innospec was charged with paying kickbacks in the U.N.'s Oil for Food Program and bribing officials at the Iraqi Ministry of Oil to secure contracts and to keep competitors out. As part of the plea agreement with the Department of Justice, Innospec agreed to pay a \$14.1 million criminal fine, retain an independent compliance monitor for a minimum of three years to oversee the implementation of an anti-corruption and export control compliance program and report periodically to the Department of Justice. The case is part of the "global

settlement" reached with the company by the U.S. and the U.K. authorities (see [Innospec Ltd. Pleads Guilty to Foreign Bribery Charges in the U.K.](#), *infra* p. 4).

Sources: <http://www.justice.gov/opa/pr/2010/March/10-crm-278.html>; <http://www.sfo.gov.uk/press-room/latest-press-releases/press-releases-2010/innospec-limited-prosecuted-for-corruption-by-the-sfo.aspx>

NEXUS TECHNOLOGIES INC., EMPLOYEES PLEAD GUILTY TO BRIBING VIETNAMESE OFFICIALS

On March 16, 2010, Nexus Technologies Inc., a privately owned export company based in Philadelphia, and three of its employees pleaded guilty to charges arising out of a conspiracy to bribe officials of the Vietnamese government in exchange for contracts to supply various equipment and technology to Vietnamese government agencies. Nexus admitted paying bribes in excess of \$250,000. The charges, which were brought under the Foreign Corrupt Practices Act, leave Nexus facing a fine of up to \$27 million. The employees who pleaded guilty face 30 to 35 years in prison.

Source: <http://www.justice.gov/opa/pr/2010/March/10-crm-270.html>

FORMER HAITIAN OFFICIAL PLEADS GUILTY TO BRIBERY-RELATED MONEY LAUNDERING CHARGES

On March 10, 2010, Robert Antoine, the former director of international affairs for Telecommunications D'Haiti (Haiti Teleco) from May 2001 to April 2003, pleaded guilty to a money laundering conspiracy in connection with a foreign bribery scheme. Antoine admitted that he accepted bribes from three U.S. telecommunications companies and thereby defrauded Haiti Teleco. To disguise the origin of these funds, Antoine admitted he laundered them through intermediary companies. In addition to an agreed forfeiture of \$1,580,771, Antoine faces a maximum of 20 years in prison and a fine of the greater of \$250,000 or twice the value of the property involved in the transaction.

Source: <http://www.justice.gov/opa/pr/2010/March/10-crm-260.html>

AFRICA

THE U.K. SWITCHES EDUCATION AID FUNDS AWAY FROM KENYAN GOVERNMENT

Due to misappropriation of over 100 million shillings of its foreign aid meant for the Kenyan education programs, the U.K. decided to terminate its current funding of the Ministry of Education's Kenya Education Sector Support Programme. The U.K. decided to fund the Free Primary Education program in Kenya through NGOs instead of the government.

Sources: <http://www.kbc.co.ke:80/story.asp?ID=62782>;
<http://www.nation.co.ke:80/News/Ministry%20appeals%20to%20UK%20over%20funds/-/1056/881688/-/lh70h0z/-/>

U.N. REPORT ON FOOD AID FOR SOMALIA ALLEGES WIDESPREAD CORRUPTION

The March 10, 2010 U.N. Security Council report on the status of food aid for Somalia alleges that as much as half the food sent to the region is diverted, thanks to widespread corruption, to contractors, Islamist militants and local U.N. employees. The report also claims officials are auctioning off diplomatic visas to Europe for \$10,000-\$15,000 each, with many of them going to pirates. In response, the U.N.'s World Food Program (WFP) has cut relations with contractors specified in the report, stating it has dealt with most of the other issues raised. The report has received a mixed reaction, many supporting the conclusions and others, most notably the President of Somalia and some U.N. officials, publicly dismissing the findings as exaggerated or unsubstantiated.

Sources: [http://www2.reliefweb.int/rw/RWFiles2010.nsf/FilesByRWDocUnidFilename/MUMA-83N2WN-full_report.pdf/\\$File/full_report.pdf](http://www2.reliefweb.int/rw/RWFiles2010.nsf/FilesByRWDocUnidFilename/MUMA-83N2WN-full_report.pdf/$File/full_report.pdf); <http://www.nytimes.com/2010/03/17/world/africa/17somalia.html>

ASIA

AFGHANISTAN'S ANTI-CORRUPTION BODY GETS MORE POWER

Amidst corruption investigations of up to 17 Afghan ministers, the High Office of Oversight and Anti-Corruption has been granted the authority to investigate allegations of corruption. In the past, the anti-corruption body has been viewed as ineffective, allegedly due to inadequate laws. With the new presidential decree it will possess greater legal authority, including acting as prosecutor in some cases.

Source: http://www.google.com:80/hostednews/afp/article/ALeqM5iLsQw8Lme-t544dqbtziR_1P166w

CAMBODIAN ANTI-CORRUPTION LAW PASSED AMIDST CRITICISM

An anti-graft law 15 years in the making was recently passed by the Cambodian parliament amidst domestic and international criticism. The new law punishes public officials accepting bribes with up to 15 years in prison. However, it also contains penalties for whistleblowers who make claims which cannot be proven. The law does not require government officials to declare their assets nor does it guarantee that members of the new Anti-Corruption National Council would be independent. Opposition parties and the United Nations have expressed concern that the law lacks transparency and would protect corruption instead of fighting it. In response, the Cambodia government accused the U.N. of "flagrantly interfering" in its affairs.

Sources: http://www.dnaindia.com:80/world/report_cambodia-passes-controversial-anti-graft-law_1357928;
http://www.google.com:80/hostednews/afp/article/ALeqM5hX_Vs9Syo_6nMrJQ-YkWnx1FDvBQ

EUROPE

NEW SLOVAKIAN LAW TARGETS ILLEGAL INCOME

The Slovakian parliament agreed to change the constitution to pave the way for a new anticorruption law. The law will allow any Slovak to question the legitimacy of anyone else's assets over €460,000 (\$629,200). Once a claim has been filed, a prosecutor will be able to order the person to disclose the origin of the funds and courts can order the confiscation of assets of unclear origin.

Source: http://www.worldbulletin.net/news_detail.php?id=55013

U.K. COURT DECLINED TO REVIEW THE BAE SETTLEMENT

On March 26, 2010, a U.K. court refused to order a judicial review of the Serious Fraud Office's settlement with BAE Systems Plc. The £30 million (\$45 million) settlement was announced by the SFO on February 5, 2010 simultaneously with the announcement of the Department of Justice and the SEC \$400 million agreement to settle the U.S. charges against BAE. The agreement with the SFO has been challenged in court by two NGOs, Campaign Against Arms Trade and The Corner House, which claimed that the settlement was unlawful, did not follow the guidelines on plea bargains and did not reflect the seriousness of BAE's offenses. In early March, the court granted an injunction but subsequently refused to allow a review of the settlement though the court did extend the injunction for eight days to allow the NGOs time for an appeal.

Sources: http://www.bloomberg.com:80/apps/news?pid=20601102&sid=a0W_pkgqQosU;
<http://www.mainjustice.com/2010/03/24/uk-court-denies-review-of-bae-settlement/>

INNOSPEC LTD. PLEADS GUILTY TO FOREIGN BRIBERY CHARGES IN THE U.K.

On March 18, 2010, Innospec Limited, a subsidiary of the U.S.-based Innospec Inc., pleaded guilty to bribing government officials in Indonesia in order to secure sales of a fuel additive TEL. The case is part of the "global settlement" reached with the company in the U.S. and the U.K. (see [Innospec Inc. Pleads Guilty to the FCPA Charges and Defrauding the United Nations](#), *supra* p. 1). The judge indicated that the company will be sentenced to pay a fine in the amount of the sterling equivalent of \$12.7 million. For the first time both the SFO and the U.S. Department of Justice have agreed to the appointment of a joint monitor, to be acceptable in both the U.S. and the U.K. Innospec has agreed to pay the costs of a monitor for up to three years.

Source: <http://www.sfo.gov.uk/press-room/latest-press-releases/press-releases-2010/innospec-limited-prosecuted-for-corruption-by-the-sfo.aspx>

U.K. COURT APPROVES EXTRADITION OF CORRUPTION SUSPECT TO THE U.S.

On March 26, 2010, a court in the U.K. approved extradition to the United States of Jeffrey Tesler, a solicitor accused of acting as an intermediary in channeling \$132 million in bribes from an international consortium, which included a subsidiary of Halliburton, to government officials

in Nigeria. If extradited and convicted, Mr. Tesler would face up to 55 years in prison. The extradition order, however, must first be approved by the U.K. Home Secretary.

Source: <http://business.timesonline.co.uk:80/tol/business/law/article7075975.ece>

THE AMERICAS

CORRUPTION THREATENS HAITI'S RECONSTRUCTION EFFORTS

*Tyler W. Brown
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The devastating January 12 earthquake in Haiti left more than 220,000 people dead, even more injured and 1.3 million homeless. The total value of losses is estimated at \$7 billion, more than 120% of the country's gross domestic product in 2009.

Multilateral agencies and foreign governments have pledged more than 9 billion to help fund Haiti's reconstruction. Of this amount, \$5.3 billion will be spent during the next 18 month, as announced at the high-level donors' conference, "Towards a New Future in Haiti," held at the United Nations headquarters in New York on March 31, 2010.

With billions of dollars in foreign aid flowing into Haiti, there are fears that much of it will be lost to corruption. In a country that ranks 168th out of 180 in Transparency International's (TI) Corruption Perceptions Index, the government has admittedly been overwhelmed while trying to organize and distribute relief. Local journalists have accused international agencies of failing to limit corruption while distributing aid, leading to growth in the black market for aid supplies. Transparency International has warned conditions in Haiti provide a perfect opportunity for graft. According to Roslyn Hees, Senior Advisor for TI's Humanitarian Assistance program, "The combined effect of a fragile government, a huge influx of resources and bad coordination creates a 'perfect storm.'"

As bids for more assistance continue and more money is poured into the Haitian relief effort, fears abound that widespread corruption will continue to hinder the rebuilding process. The March 31 donors' conference emphasized the role of the Haiti government in the development and implementation of reconstruction projects and programs and endorsed the establishment of the Interim Haitian Reconstruction Commission (IHRC), which will give way to the Haitian Development Authority (HDA). The Government of Haiti and the participants of the conference agreed to greater accountability and transparency than were typical in prior relief efforts. Donors declared their pledges of assistance in greater detail and agreed to a robust internet-based tracking system to report on the delivery of their assistance and an emphasis on measuring performance and results. And, in the interest of transparency and accountability, the IHRC/HDA will have a monitoring and transparency unit that will be accountable to the people of Haiti and the international public.

At the same time, a survey of 1,700 Haitians funded by the charity group Oxfam found that the people of Haiti have little confidence in the capacity of their government to unilaterally lead the reconstruction efforts. Instead, they believe a combination of the central government and Haitian civil society or a foreign government would be best placed to implement the reconstruction plan.

Transparency International emphasizes that the key role in aid monitoring ought to be played by civil society organizations. "It is the people on the ground, trusted persons working in local communities, who can report back on whether the donated food is sold for profit, who gets the new houses and whether these are built up to standard, if contracts are given to friends rather than competent companies and whether the rich are privileged over the poor."

Sources: http://english.eluniversal.com/2010/02/12/en_ing_esp_chaos-and-corruption_12A3425773.shtml;
http://english.eluniversal.com/2010/02/12/en_ing_esp_chaos-and-corruption_12A3425773.shtml;
http://www.transparency.org:80/news_room/in_focus/2010/re_starting_with_integrity;
<http://www.thenational.ae/apps/pbcs.dll/article?AID=/20100210/FOREIGN/702099947/1135>
<http://content.undp.org/go/newsroom/2010/march/reconstruction-of-a-new-transformed-haiti-begins.en?categoryID=349435&lang=en>; <http://content.undp.org/go/newsroom/2010/march/statement-by-the-co-hosts-and-co-chairs-at-the-international-donors-conference.en?categoryID=349435&lang=en>;
<http://www.oxfam.org/en/pressroom/pressrelease/2010-03-30/haitians-say-jobs-key-recovery>

U.S. ARMY CONTRACTING CORRUPTION CASES

*By Tristin Kilgallon
Philadelphia, PA*

As the United States continues to maintain a significant presence in the Middle East, billions of dollars are being awarded in the form of government contracts. These contracts range from providing basic provisions to military personnel, such as bottled water and housing, to the construction of schools, roads and medical facilities. Given the vast amount of money potentially available to contractors, some companies have resorted to providing kickbacks or bribes to contracting officers responsible for the acquisition of provisions or services.

In December 2009, former Army Major John Cockerham was sentenced to a 210 month prison term and ordered to pay \$9.6 million in restitution for his role in a bribery and money-laundering scheme. As an Army contracting officer stationed at Camp Arifjan in Kuwait, Cockerham accepted \$9 million in bribes in exchange for ensuring that contracts, many of which were for bottled water, were awarded to favored suppliers. Cockerham's wife, sister and niece were also implicated in the scheme. In related investigations two other officers, Major James Momon and Major Christopher Murray, have also been indicted for their role in the Camp Arifjan corruption scheme. Both pleaded guilty to charges of bribery and are currently awaiting sentencing.

Camp Arifjan was also the focal point of the investigation into the conduct of William Rondell Collins. Collins was employed by the U.S. Army Area Support Group-Kuwait as a housing specialist. He supervised private contractors and procured off-post housing for military personnel and government employees. In February 2010, Collins was charged with two counts of bribery and two counts of unlawful salary supplementation for his role in a scheme to solicit bribes from an Egyptian businessman in exchange for favorable and preferential treatment regarding the

performance and renewal of a housing maintenance contract the businessman had been awarded. Additionally, Collins allegedly solicited money in exchange for drafting and submitting an inflated off-post lease for approval.

Corruption has not been limited to Camp Arifjan, as a number of individuals have been indicted in connection with the activities at the Bagram Airfield in Afghanistan. In July 2009, First Lieutenant Robert Moore (Ret.) pleaded guilty to conspiracy and bribery charges for his role in a scheme that saw officers receive cash payments in exchange for Department of Defense (DOD) contracts at the Bagram Airfield. Moore also admitted to falsifying the number of bunkers and barriers delivered to the Bagram Airfield as well as falsifying damage reports for leased vehicles, both resulting in the DOD paying contractors for services or goods it never received.

Similarly, in June 2009, Army Major Christopher P. West pleaded guilty to bribery for accepting \$90,000 from contractors in exchange for DOD contracts at the Bagram Airfield. He further pleaded guilty to conspiracy charges related to the submission of invoices that inflated the number of bunkers and barriers delivered to the Bagram Airfield. Also implicated was United States Air Force Master Sergeant Patrick W. Boyd who pleaded guilty in June 2009 to bribery and conspiracy charges in connection with the practice of awarding DOD contracts in exchange for cash payments.

Though the crimes described above had been committed abroad, these are considered U.S. domestic bribery cases. The investigations were carried out by the National Procurement Fraud Task Force (NPFTF). The NPFTF was created in October 2006 to "promote the prevention, early detection, and prosecution of procurement and grant fraud." The NPFTF is a joint initiative of the Federal Bureau of Investigation, the Department of Justice and the Department of Defense.

Sources: The U.S. Department of Justice press releases of February 18, 2010, December 2, 2009, July 1, 2009, and June 19, 2009, available at http://www.justice.gov/criminal/npftf/pr/press_releases/

UPCOMING COMMITTEE EVENTS



Join us at the **ABA Section of International Law 2010 Spring Meeting**, one of the world's most important gatherings of international lawyers, in **New York City** on **April 13-17, 2010**. Get a year's worth of CLE credit (choose from over 70 cutting edge CLE programs) and enjoy unparalleled opportunities to network. To find out more and to register for the Spring Meeting, visit <http://www.abanet.org/intlaw/spring2010/home.html>

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Please send draft articles, casenotes, other information or suggestions for articles for the newsletter to e-helmer@onu.edu. The deadline is the **25th of the month**.

ABOUT THE ANTI-CORRUPTION COMMITTEE

The Anti-Corruption Initiatives Committee facilitates efforts to deter corrupt practices in international business and promotes efforts to combat corruption, both in the United States and abroad. It provides a vehicle for constructive change by serving as a clearinghouse for information about anti-corruption laws, treaties, policies, initiatives, and programs and by promoting interaction between individuals and organizations -- domestic and international and government and non-governmental. In addition, by encouraging the development and dissemination of new ideas, initiatives and "best practices," this committee promotes discussion amongst all stakeholders of practical steps that can be taken to reduce corruption.

To join the ABA Section of International Law, go to www.abanet.org/join/ and select "Add a Section, Division, or Forum." To join the Committee or our listserve, go to www.abanet.org/dch/committee.cfm?com=IC700600. If you would like to be more involved in Committee activities, please contact Alexandra Wrage (wrage@traceinternational.org) or Kathleen Hamann (kmhamann@starpower.net).