



ANTI-CORRUPTION DIGEST

February 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

Significant FCPA Default Judgment Entered Against Siemens Executives

Some of the most significant individual judgments in FCPA history have been levied recently in the Siemens enforcement action. In December 2011, the SEC filed a civil lawsuit against a number of former Siemens executives for the purported role in conduct forming the basis of the 2008 Siemens enforcement action (the largest in history). Of significance, the judgments were default judgments based on the individual defendants' failure to even appear.

On February 4, United States District Judge for the Southern District of New York, Shira Scheindlin granted the SEC's motion for default judgment against individual defendants Ulrich Bock and Stephan Signer. The judgment requires Bock to pay \$937,957 (\$316,452 in disgorgement, a civil penalty of \$524,000, and prejudgment interest of \$97,505); and Signer to

pay a \$524,000 civil penalty. The two judgments are larger than the first and third largest settlements for individuals in SEC FCPA enforcement history.

The judgments have already been the subject of significant critique amongst those in the FCPA community, including former SEC Assistant Director of Enforcement Russ Ryan (now in private practice). Ryan noted significant problems with the judgments in at least three critical respects. First, the penalty award exceeded the apparent statutory limit by a multiple of at least ten, because the SEC argued that each of four alleged bribes should be counted as a bribe, a books-and-records violation, and an internal-controls violation. Accordingly, each bribe was multiplied by twelve.

But the strangest element of the default judgment penalty demand was the fact that the statute of limitations had already run on the claims for penalties prior to the SEC's suit. SEC penalty demands are subject to a 5-year

statute of limitations under 28 U.S.C. § 2462. At least \$400,000 of each defendant's \$524,000 civil penalty was for violations that were at least five years old.

The case exemplifies the SEC's continued aggressiveness in pursuing maximum penalties in FCPA enforcement actions.

Notable FCPA Enforcement Statistics for 2013

With the end of 2013 now a month behind us, many interesting statistics about 2013 FCPA enforcement in the United States have surfaced. A few are listed below:

- In 2013, the SEC received approximately \$300 million in eight separate enforcement actions. Four of these actions were resolved through non-prosecution agreements or through administrative order, and therefore not subject to any judicial scrutiny. The SEC did not charge any individuals with FCPA violations.
- In 2013, the United States Department of Justice received approximately \$420 million in seven corporate FCPA enforcement actions. Every one of these enforcement actions involved use of a non-prosecution agreement or administrative order.
- The prevailing enforcement theory in the United States defines "foreign officials" as including employees of state-owned or controlled enterprises and foreign health care providers. Nearly 80% of corporate enforcement actions under the FCPA in 2013 were brought pursuant to this theory.

AlixPartners Publishes FCPA Business Survey

A new survey published earlier this month reveals a few interesting statistics regarding the role that FCPA concerns have in business. The survey polls inside counsel and compliance officers of varying companies within North America, Europe and Asia, and found that 30% of companies in those locales stopped doing business with another because of suspicions of corruption.

A few other interesting findings:

- Africa and Russia pose the greatest areas of risk;
- Due diligence persuaded 15% of those who responded to pull out of a possible acquisition because of suspicions of corruption at the target company;
- 22% of those who responded said that their company had received a tip through their company's bribery or corruption hotline during the past 12 calendar months.

The full survey can be found [here](#).

Head of SEC Updates 2014 Enforcement Priorities

In late January, SEC Chair Mary Jo White announced the SEC's enforcement priorities for 2014. Chief among them are actions resulting in more admissions, and more personal accountability among the individuals responsible for corporate bribery.

White said that admissions of wrongdoing "can achieve a greater measure of public accountability" and, in doing so, increase the public's confidence in the SEC and its enforcement capabilities. As a result of this increased priority, White recently announced that the SEC had modified the SEC's protocol

regarding admissions in enforcement settlements, including settlements brought under the FCPA.

Specifically, the SEC will be seeking admissions in cases: (1) involving egregious conduct harming large numbers of investors; (2) where the markets or investors were placed at significant risk; (3) where the wrongdoer poses a particular future threat to investors or the markets; or (4) where the defendant unlawfully obstructs the SEC's process or investigation.

As already discussed, it should not be difficult for the SEC to recognize at least some increase in these numbers as the agency almost exclusively relies on non-prosecution or deferred prosecution agreements in resolving FCPA disputes.

THE UNITED KINGDOM

European Commission Publishes the First Anti-Corruption Report – UK Overview

The European Commission has estimated that corruption across Europe costs the economy about £99 billion (\$162 billion) a year, a figure which is reported to be equal to the EU's entire annual budget. The Report details the situation in each of the 27 Member States, explaining what anti-corruption measures are in place, which ones are working, what can and should be improved and how. Because corruption is defined broadly as "any abuse of power for private gain," the Report covers all types of corruption such as political corruption, bribery of public officials, and commercial corruption.

Public procurement was identified as the most affected area. Eight in ten construction companies have complained about corruption. 32% of EU companies that have participated in public tenders/public procurement complained that corruption prevented them from winning a contract. This view was mostly held amongst

construction (35%) and engineering sector (33%) companies.

The European Commission in its Report urged the UK to:

- Take further preventive measures to address risks of foreign bribery and provide sector-specific guidelines to companies in areas which may be at increased risk, such as defense, and ensure transparent and dissuasive sanctions in out-of-court settlements.
- Strengthen accountability in the governance of banks; adopt stricter enforcement and ensure that the beneficial owners of UK-registered companies are declared.
- Cap donations to political parties, impose limits on electoral campaign spending and ensure proactive monitoring and prosecution of potential violations.

The full report can be found [here](#).

SFO Seeks Wider Powers to Pursue Corporate Crime

David Green, Director of the Serious Fraud Office (the "SFO"), has proposed an amendment to the Bribery Act which, if implemented, would give the SFO more power to pursue and combat corporate crimes. Since the Act came into force, a commercial organization can be found responsible for a bribe paid in connection with its business unless it can show that it had "adequate procedures" in place designed to prevent such conduct. The amendment would reportedly widen the reach of the Act to include a failure to prevent all acts of financial crime.

Companies found guilty of an offence under the proposed amendment would face high

penalties and be blacklisted or barred from tendering in Europe for public contracts.

Mr. Green said that: "... the sanction would be a financial penalty and the stigma. But it's the stigma that is most important. Some say that certain banks had been rotten to the core. Why shouldn't that be marked? Why should a big powerful corporate be able to chuck a few people over the side and just sail blithely on, paying a fine as they go on ... if a company has a conviction for bribery it can't compete in Europe for public contracts"

The proposed amendment has reportedly been discussed with Dominic Grieve, the Attorney General, and Oliver Heald, the Solicitor General, as well as the Law Commission, the statutory body that recommends law reforms.

Two Arrested in Rolls-Royce Investigation

Mr. Sudhir Choudhrie, Liberal Democrat donor, and his son Bhanu have been arrested in London as part of the Serious Fraud Office's (the "SFO") investigation into alleged bribery in China and Indonesia by Rolls-Royce Holdings PLC. The men are not current or former Rolls-Royce employees. A spokesman for the two arrested men said that "the allegations made against Bhanu and Sudhir Choudhrie are strongly denied. Full cooperation is being given to the authorities."

Mr. Choudhrie is a British citizen who lives in London. Bhanu Choudhrie is the executive director of the family founded business C&C Alpha Group (CCAG), a holding company with interests in healthcare, hospitality, real estate, aviation and utilities businesses. It has been reported that since 2010, CCAG has donated approximately £500,000 (\$831,800) to the Liberal Democrats.

The SFO's investigations into corruption allegations relating to the aerospace and defense

company have been the focus of attention since December 2012. A former employee, Dick Taylor, has claimed that in the 1980s and 1990s the company won contracts in Indonesia by bribing the country's former president. Another whistleblower has alleged that the company bribed executives of two Chinese airlines in order to win engine orders in 2005 and 2010.

Sudhir and Bhanu Choudhrie have been granted unconditional bail and the SFO's investigation is still on-going.

New sentencing guidelines

The Sentencing Council has published new sentencing guidelines for courts to apply when fixing fines for corporates convicted of fraud, bribery and money laundering offences. After consideration of compensation and confiscation powers, the guidelines identify that courts should consider the level of fine in stages.

First, the court should determine the offence category with reference to culpability and harm. The guidelines provide examples of the 3 levels of culpability including, for high culpability:

- Wilful obstruction of the investigation by, for example, destroying evidence, misleading investigators and suborning employees
- Corruption of local or national government officials or ministers
- Culture of wilful disregard of commission of offences by employees or agents with no effort to put effective anti-bribery systems in place

Examples of low culpability include where some effort has been made to put bribery prevention measures in place although they are insufficient to amount to a defense for the purposes of the Bribery Act offence of failing

to have adequate anti-bribery procedures; and involvement through coercion or intimidation.

In calculating the harm category, the guidelines identify that the norm will be the gross profit from a corruptly obtained or retained contract or from a contract sought by corruption, or the costs avoided by not having adequate anti-bribery procedures in place. Courts may identify a higher level where in a large case of bribery or fraud the true harm is to commerce or markets generally; and where there is insufficient evidence of the amount likely to be obtained, the guidance suggests a figure representing 10-20% of worldwide revenues derived from the product or business area may be appropriate.

Having determined the culpability level and harm, the guidance then identifies the standard multiplier to be applied, from 100% for low culpability, to 300% for high culpability. However, the guidance also identifies a range for each level of culpability, from 20% at the lowest end of the low culpability level, to 400% at the highest end of the high culpability level. At this stage, the court is to consider factors increasing or decreasing seriousness. The guidance provides a non-exhaustive list. Factors increasing seriousness include an offence committed across borders or jurisdictions and attempts made to conceal misconduct. Factors reducing seriousness include co-operation, voluntary reporting and early admissions and offences committed by previous directors or officers.

The guidelines finally provide for the court to review the level of fine that it has reached and consider whether there are any further factors which indicate an adjustment of the fine to ensure that the combination of compensation, confiscation orders and fine achieve the removal of all gain, appropriate additional punishment and deterrence. Whether the fine will have the effect of putting the offender out

of business will be relevant, but “in some bad cases this may be an acceptable consequence”.

Finally, the guidance provides for further review of the fine under consideration for factors such as assistance by defendants to the prosecutor or investigator; guilty pleas; and the totality when taken with sentences for other offences.

The guidelines can be found [here](#).

■ THE REST OF THE WORLD

Austria

Wolfgang Duchatzek, former vice-governor of the National Bank of Austria, and eight other people, went on trial for allegedly bribing officials in Azerbaijan and Syria to win contracts for making banknotes and coins. It is reported that the Austrian authorities became suspicious when auditors, in 2011, discovered that payments were made to offshore companies for which no services were rendered.

It is alleged that the nine defendants have established a criminal organization around the bank's banknote and security paper printing subsidiary, the OeBS, and that between 2005 and 2011, they paid about £11 million (\$19 million) to secure such contracts. Besides Mr. Duchatzek, the other defendants are Michael Wolf, former managing director of OeBS, two lawyers and other OeBS managers and staff.

One of the defendants has reportedly made a partial admission of guilt, while the others pleaded not guilty. Prosecutor Volkert Sackmann said that the two lawyers helped set up a company in Panama to launder the money and transfer it to Azerbaijan and Syria. If found guilty, they face 10 years in jail.

The trial is scheduled to run until August.

China

Avon Products

Avon Products Inc. estimates a payment of up to \$132 million to settle an ongoing corruption investigation. The US Department of Justice (“DOJ”) and the Securities and Exchange Commission (“SEC”) alleged that Avon has paid bribes in China and other countries in exchange for permits to sell its products.

It has been reported that following an internal investigation in 2008, Avon discovered that questionable payments and gifts of millions of dollars have been made to officials in China, Brazil, Mexico, Argentina, India and Japan. In 2011, Avon fired four executives, including the general manager and the finance chief of the company’s China unit.

Since 2008, the company has reportedly spent about \$340 million in legal and other costs.

The investigation is ongoing.

JPMorgan

It has been alleged that a top Chinese regulator, Xiang Junbo, with interests in the insurance sector, asked Jamie Dimon, the chief executive of JPMorgan, for a favor to hire a young job applicant.

JPMorgan reportedly secured a number of business deals with Chinese insurance companies following Mr. Dimon’s meeting with Mr. Xiang.

US authorities are investigating whether hiring at JPMorgan and other banks was done for the purposes of securing contracts with Chinese companies.

Former Minister of Public Security

It is reported that Mr. Zhou Yongkang, former member of the Politburo Standing Committee and Minister of the Public Security, is being investigated for alleged corruption.

The investigation is reportedly part of a wider national anti-corruption campaign particularly targeted at current and former executives of the China National Petroleum Corporation.

It has been reported that Mr. Yongkang is under house arrest.

Investigations are still pending.

Colombia

Mr. Knut Hammarkjold, PetroTiger’s former co-Chief Executive Officer (“CEO”), has pleaded guilty before the New Jersey Camden court for bribing foreign government officials and defrauding PetroTiger.

The US Department of Justice (“DOJ”) has brought corruption, fraud and money laundering charges also against PetroTiger’s former general counsel, Mr. Gregory Weisman and the company’s other former co-CEO, Joseph Sigelman.

Mr. Hammarkjold, together with Mr. Weisman and Mr. Sigelman, allegedly bribed a Colombian official at the state-controlled Ecopetrol SA, to secure a service contract worth about \$39 million. The defendants allegedly took kickbacks for the acquisition of another company by PetroTiger. The DOJ stated that to secure a higher purchase price, two of the target company’s owners offered the defendants a portion of the increased purchase price.

Mr. Weisman pleaded guilty to bribery and fraud, while Mr. Sigelman has reportedly been charged with conspiracy to violate the Foreign

Corruption Practices Act (FCPA), conspiracy to commit wire fraud, conspiracy to launder money and various other FCPA violations. The charges against Mr. Sigelman's are still pending.

Mr. Hammarskjöld is scheduled for sentencing in May and faces, besides fines, 5 years in jail for FCPA violations and 20 years in jail for the fraud charge.

Czech Republic

Czech authorities filed corruption charges against the former Prime Minister, Petr Necas, for allegedly offering jobs, in state-owned companies, to three former Members of Parliament ("MP") while still in office. In exchange, the MPs undertook to give up their mandates and vote in favor of Mr. Necas's tax bill. Corruption charges were initially filed against the MPs. However, it has been reported that the Czech Supreme Court dismissed all charges because the MPs had parliamentary immunity.

Mr. Necas resigned last year after his chief of staff, Jana Nagyova, was accused of misusing the National Intelligence Service to monitor Mr. Necas' former wife. The Unit for Combating Organized Crime and the Chief Public Prosecutor's Office in Olomouc also filed charges against seven other people, including military intelligence officers, lobbyists and state officials, for alleged corruption and abuse of power.

Petr Fiala, Chairman of the Civic Democrat party, stated in an interview that "offering posts is part of a democratic system, whether we like it or not. ... It happened in the past and will happen again. We don't have to like it in every individual case but it's right."

Mr. Necas stated in an interview that the investigation against him is politically motivated "[t]here has never been an agreement on the resignation of the three former deputies in

exchange for posts in state-run companies and police do not and cannot have evidence that proves it."

If found guilty, the former Prime Minister faces 6 years in jail.

Georgia

Vano Merabishvili, Georgia's former Prime Minister, has been charged with embezzlement and abuse of office and sentenced to five years in prison. The charges stemmed from a vote-buying scheme reportedly employed by the former Prime Minister before the 2012 elections.

Mr. Merabishvili's lawyer stated that he would appeal the ruling: "the Kutaisi court succumbed to the pressure from the authorities and passed an illegal judgment."

It has been reported that Mr. Merabishvili might face additional charges in relation to a 2011 protest where excessive force was used to break up protesters.

Israel

Maj. Gen. Manashe Arviv, director of the national crime and corruption investigation unit known as Lahav 433, resigned from office criticizing the way in which the legal system has handled the bribery allegations brought against him.

Maj. Gen. Arviv is alleged to have received bribes from Yoshiyahu Pinto, a New York-based Rabbi, during his time as a police envoy in the US. The allegations were made by Rabbi Pinto's lawyers in Israel in the course of seeking to secure immunity from other corruption charges brought against him. Rabbi Pinto manages a number of charities and Torah study institutions in Israel and the US and since 2011,

is reported to have been the subject of Israeli and FBI investigations.

The Justice Ministry, at a press conference, said that “at this time we have no intention of addressing [Maj. Gen. Arviv’s resignation], nor will we address questions regarding our handling of his case or the allegations relating to Rabbi Pinto.”

Slovenia

Zoran Thaler, former Member of the European Parliament (“MEP”), was found guilty of accepting a bribe and sentenced to two and a half years in jail and ordered to pay a €32,250 fine. He was also barred from holding public office for five years. Judge Irena Skulj Gradisar allowed Mr. Thaler to serve his sentence during weekends.

British reporters, posing as businessmen, secretly filmed Mr. Thaler and MEPs from other countries agreeing to influence legislation in their favor in exchange for bribes. It has been reported that the other two MEPs involved were Ernst Stasser, from Austria and Adrian Severin, from Romania. After the allegations were made public in 2011, only Mr. Thaler and Mr. Stasser resigned from office.

Thailand

Thailand’s National Anti-Corruption Commission (the “NACC”) has filed charges against Prime Minister and chair of the National Rice Policy Committee, Yingluck Shinawatra, for alleged negligence of duty in her financial management of the Thai rice subsidy program. The NACC stated that Ms. Shinawatra’s scheme encourages corruption and causes financial losses. The NAAC also brought corruption charges against 15 other people, two of whom are former ministers of Ms. Shinawatra, for their alleged involvement in fraudulent rice arrangements.

Vicha Mahakhun, a member of the NACC, stated that “although she [Yingluck Shinawatra] knew that many people had warned about corruption in the scheme, she still continued with it. That shows her intention to cause losses to the government so we have unanimously agreed to charge her.” In a televised statement, Ms. Shinawatra defended her management of the rice scheme saying that it was in line with the fiscal and monetary policy.

The rice subsidy program was launched by Ms. Shinawatra’s administration after she took office in 2011. Under the scheme, the government procured rice from farmers at a price of approximately 50% above the global market rates. Since the program’s launch date, the government incurred costs of about \$20.79 billion and is currently trying to sell 18 million tons of rice to pay farmers.

If found guilty, Ms. Shinawatra will be suspended from office and face impeachment proceedings in the Thai Senate.

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.

■ CONTACTS

LONDON

Nicholas Burkill

Partner

+44 (0)20 7031 3783

burkill.nick@dorsey.com

Cristiana Bulbuc

Trainee Solicitor

+44 (0)20 7031 3769

bulbuc.cristiana@dorsey.com

MINNEAPOLIS

Mike Stinson

Associate

+1 (612) 492 6624

stinson.mike@dorsey.com

NEW YORK

Nick Akerman

Partner

+1 (212) 415-9217

akerman.nick@dorsey.com

WASHINGTON DC

Thomas Gorman

Partner

+1 (202) 442-3507

gorman.tom@dorsey.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.