

# Global Bribery and Corruption Review **2014**

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A review of the latest developments in the area of anti-bribery and corruption regulation and enforcement around the world

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**Eight years ago, we published our first year-end summary of Foreign Corrupt Practices Act (FCPA) developments as a short client alert.** Recapping key FCPA decisions of the prior year, it was, at the time, our version of a global corruption review. Our summary was global because, even as recently as eight years ago, the enforcement of anti-corruption laws was seen as a distinctly American issue. Businesses were worried about the FCPA. They were concerned about the U.S. Department of Justice (DOJ) and U.S. Securities and Exchange Commission (SEC). Yes, a few other countries had started talking about fighting corruption, but for the most part this was still just a theoretical discussion.

Clearly, times have changed. While the United States still plays a key role in the global fight against corruption and bribery, it shares the stage with a host of other countries eager to flex their muscles in this critical regulatory space. Today, our *Global Bribery and Corruption Review* reflects the new geography of the fight against corruption. In this year's issue of the *Review*, we bring you up to date on the most important developments around the world — equipping you with the vital information you need to compete in today's global marketplace.

- Our article “Foreign Corrupt Practices Act: 2014 in review” highlights key U.S. cases resolved in the past year, including three that rank among the most expensive resolutions of FCPA cases ever. We also examine developing trends such as the SEC's use of administrative proceedings to bypass the courts and the DOJ's use of settlements to impose policy changes usually reserved for Congress.
- In the United Kingdom, the Serious Fraud Office (SFO) rebounded from 2013, a year marked by some serious setbacks and embarrassments. It has now dealt with the legacy issues relating to the collapsed Kaupthing bank and has several major investigations under way that may herald the first corporate prosecution under the UK Bribery Act. Yet the SFO may still be on shaky ground. Signs abound that the UK government may, once again, be seeking to abolish the SFO and transfer corruption enforcement to the newly established National Crime Agency.
- As businesses look to open new markets, Africa has become an important part of the global marketplace. And with this growth have come both increased instances of corruption and new efforts to fight it. Our special feature on anti-bribery and corruption issues in Africa highlights the incredible complexity and diversity that characterize this continent. We look at critical features of the fight against corruption in six economically significant countries in Africa and assess how these could impact your business.
- China has drastically increased efforts to fight corruption, both within its own government and among companies active in the country. We examine the actions taken by China against numerous high-ranking party officials, as well as the prosecution of GlaxoSmithKline China Investment Co., which has spilled over into other jurisdictions.
- We also focus on developments and forecasts for the future in other significant markets such as Brazil, Mexico, India, Russia, Europe, and the Middle East.

We hope this *Review* provides valuable insights into developments over the past year and serves as a guide to key issues for the year to come. As always, if you have any questions, do not hesitate to contact the editors, the authors, or any member of the Hogan Lovells Global Bribery and Corruption Task Force listed at the end of the *Review*.

**Stuart M. Altman and Michael Roberts, Editors**

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**Global Head of Investigations, White Collar and Fraud**





# Foreign Corrupt Practices Act: 2014 in review

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**Contributed by Stuart M. Altman and Natalie T. Sinicrope (in Hogan Lovells' Washington, D.C. office)**

Although the government added new players to its lineup, the game seems to be the same in the world of Foreign Corrupt Practices Act (FCPA) enforcement, as the U.S. Department of Justice (DOJ) and the U.S. Securities and Exchange Commission (SEC) continued to push for strong enforcement in 2014.

2014 brought personnel changes to the DOJ, with Leslie R. Caldwell being confirmed as the new Assistant Attorney General (AAG) for the Criminal Division on 15 May 2014. Caldwell's public remarks underscore her commitment to FCPA enforcement. On 23 October 2014, she explained that fighting foreign corruption not only protects the ability of U.S. companies to compete fairly but also protects our national security. International corruption creates "unstable countries ... [that] become the breeding grounds and safe havens for terrorist groups and other criminals who threaten the security of the United States."<sup>1</sup> Caldwell is not the only new player in the FCPA game. In September 2014, Caldwell announced the appointment of Sung-Hee Suh as Deputy Assistant Attorney General. Suh, like Caldwell, is a former Assistant U.S. Attorney for the Eastern District of New York and a big-law partner, and she will oversee the Appellate, Capital Case, and Fraud sections of the Criminal Division. The FCPA unit is part of the Fraud section.

These leadership changes did not seem to impact FCPA enforcement. In 2014, the DOJ initiated 24 prosecutions and the SEC opened eight enforcement actions; these were roughly comparable to 2013 numbers. Among the new cases in 2014, the prosecution of Alcoa World Alumina LLC netted a settlement of US\$384 million, the fifth largest FCPA settlement in history. Also prominently in the news was the prosecution of Marubeni Corporation (Marubeni), which resulted in criminal penalties of US\$88 million, and the global joint enforcement action against Hewlett Packard and three of its foreign subsidiaries that produced a total settlement of US\$74.2 million.

<sup>1</sup> Remarks at Duke University School of Law (23 Oct. 2014 ), <http://www.justice.gov/opa/speech/assistant-attorney-general-leslie-r-caldwell-speaks-duke-university-school-law>

## TOTAL AGGREGATE FCPA ENFORCEMENT ACTIONS: 2005-2014

2005		2006		2007	
DOJ	SEC	DOJ	SEC	DOJ	SEC
7	5	7	8	18	20
2008		2009		2010	
DOJ	SEC	DOJ	SEC	DOJ	SEC
20	13	26	14	48	26
2011		2012		2013	
DOJ	SEC	DOJ	SEC	DOJ	SEC
23	25	13	12	15	12
2014					
DOJ	SEC				
24	8				

As in 2013, the DOJ has continued to emphasize the importance of corporate compliance and cooperation with FCPA investigators. Caldwell has signaled that corporate cooperation should include identification of culpable individuals. She explained that “for a company to receive full cooperation credit, it must uncover misconduct, identify the responsible individuals, and fully disclose the facts to the department.”<sup>2</sup> In a similar

vein, Principal Deputy Assistant Attorney General Marshall L. Miller for the Criminal Division drew a contrast between the prosecution of Marubeni, which declined to cooperate with the DOJ’s FCPA investigation and ultimately paid US\$88 million in fines, and PetroTiger Ltd. (PetroTiger), whose cooperation helped the DOJ secure guilty pleas from a former co-CEO and general counsel. Noting that, as a result of PetroTiger’s cooperation, no charges were brought against PetroTiger and no non-prosecution agreement (NPA) was entered, he said:

“This is all to say: we would like corporations to cooperate. We will ensure that there are appropriate incentives for corporations to do so. But if there is no cooperation, we will continue to investigate and prosecute the old-fashioned way. And companies will face the consequences.”<sup>3</sup>

Public filings continue to suggest that the DOJ and the SEC are, in fact, giving credit to corporations that voluntarily disclose possible FCPA violations. Although public reporting of declinations is not necessarily comprehensive, it appears that in 2014 at least two corporations that self-disclosed FCPA compliance concerns were notified that the DOJ would not pursue criminal charges.

Government enforcement efforts also received a boost from the courts. The Eleventh U.S. Circuit Court of Appeals gave its stamp of approval to the DOJ’s broad interpretation of “foreign official” in the act. In *Esquenazi v United States*,<sup>4</sup> Joel Esquenazi and Carlos Rodriguez appealed their convictions related to their efforts to bribe officials at Telecommunications D’Haiti. They argued that the Haitian telecommunications company was not an “instrumentality” under the FCPA, and therefore its directors, officers, and employees were not “foreign officials.” The Eleventh Circuit held that an “instrumentality” is any “entity controlled by the government of a foreign country that performs a function the controlling government treats as its own.”<sup>5</sup> The court concluded that an employee of the partially state-owned telecommunications company was a “foreign official” for FCPA purposes and laid out a nonexhaustive list of factors to consider in making this fact-specific determination. This decision bolsters the aggressive position the enforcement agencies

<sup>2</sup> Remarks at 22nd Annual Ethics and Compliance Conference (1 Oct. 2014), <http://www.justice.gov/opa/speech/remarks-assistant-attorney-general-criminal-division-leslie-r-caldwell-22nd-annual-ethics>

<sup>3</sup> Remarks at Global Investigation Review Program (17 Sept. 2014), <http://www.justice.gov/criminal/pr/speeches/2014/crm-speech-1409171.html>

<sup>4</sup> 753 F.3d 912, 925 (11th Cir. 2014).

<sup>5</sup> *Id.* at 925.

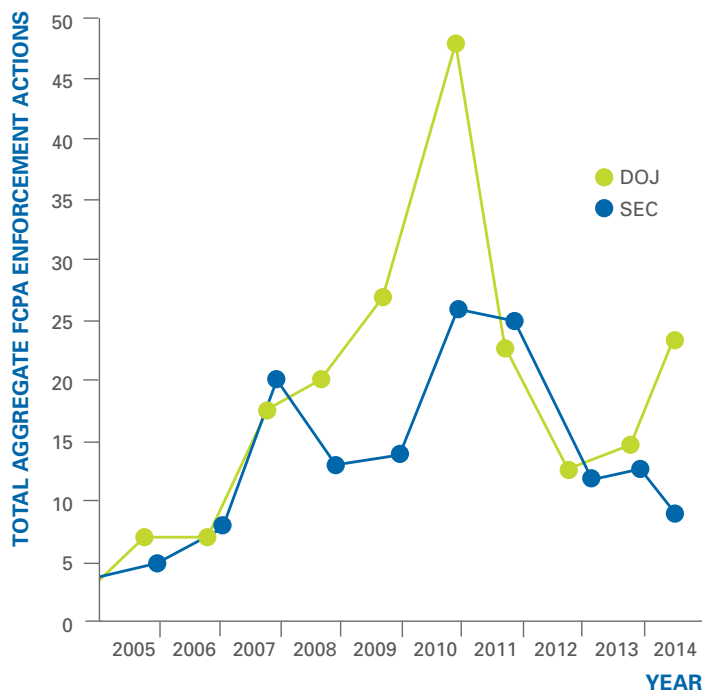
have pressed for years in relation to bribes paid to officials of state-owned enterprises. Indeed, many of the actions initiated and disclosed in 2014 involved officials of state-owned enterprises.

Examining the cases brought this year, we see four major themes:

- Both the DOJ and the SEC continue to urge corporations to self-disclose and to cooperate fully with investigations. In public comments, plea agreements, and cease and desist orders, the DOJ and the SEC underscored the importance of self-reporting FCPA violations, voluntarily producing documents and internal investigation findings, making foreign employees available for interviews, and remediating corporate compliance problems. The outcomes of several investigations illustrate the impact of such cooperation.
- The SEC is increasingly relying on administrative actions. In 2014, every SEC corporate enforcement action was resolved using the SEC's administrative process rather than a civil complaint.
- The DOJ continues to aggressively prosecute corporate executives who conspire to violate the FCPA. This commitment is evidenced by public comments of DOJ officials and the numerous guilty pleas secured in 2014.
- Whether through plea agreements, deferred prosecution agreements (DPAs), or NPAs, the DOJ continues to play the role of quasi-regulator by imposing reforms, compliance controls, and behavioral changes.

#### Corporate cooperation and compliance efforts

According to AAG Caldwell's public remarks made on 7 October 2014, Alcoa World Alumina LLC, which settled FCPA allegations for US\$384 million in January, could have faced a fine of more than US\$1 billion had it not cooperated by "conducting an extensive internal investigation[,] making proffers to the government, voluntarily making current and former employees available for interviews, and providing relevant documents."<sup>6</sup> In contrast, the DOJ's plea agreement with Marubeni indicates that the US\$88 million fine was in part due



to the fact that Marubeni did not voluntarily disclose the violation or fully cooperate with the DOJ investigation. These contrasts highlight the continuing pressure from the DOJ and the SEC for companies to "cooperate" in a manner that the government deems "sufficient."

#### Alcoa World Alumina LLC (9 January 2014)

Alcoa World Alumina LLC pleaded guilty to one count of violating the anti-bribery provisions of the FCPA to resolve allegations that its subsidiary, Alcoa of Australia (Alcoa), paid millions of dollars in bribes to officials of the Kingdom of Bahrain. According to the facts alleged in the criminal information, the violations are traced to 1989, when a Bahraini official requested that Alcoa use a London-based middleman to facilitate sales of alumina to Aluminium Bahrain BSC (Alba), a state-owned aluminum smelter. Alcoa allegedly paid sham commissions to several shell companies controlled by the middleman (collectively referred to as Alumet) in order to become and remain the preferred provider for Alba. Those commissions were, in turn, used to pay bribes to Bahraini officials. Over time, Alumet and Alcoa arranged a sham "distribution" scheme through which Alcoa would "sell" alumina to Alumet at a discount. Alumet would then "sell" the alumina to Alba at a premium, despite the fact that Alcoa shipped the alumina directly to Alba. These premiums funded additional bribes to Bahraini officials.

<sup>6</sup> Remarks at 22nd Annual Ethics and Compliance Conference (1 Oct. 2014), <http://www.justice.gov/opa/speech/remarks-assistant-attorney-general-criminal-division-leslie-r-caldwell-22nd-annual-ethics>



Alcoa's in-house counsel repeatedly raised FCPA and other concerns about the distribution contracts, but they were dismissed by the Alcoa executive responsible for the Alba relationship. To settle the DOJ's charges, Alcoa agreed to pay a US\$209 million criminal fine and US\$14 million in administrative forfeiture. In addition, Alcoa agreed to settle a parallel action undertaken by the SEC by disgorging an additional US\$161 million in ill-gotten gains. Alcoa also agreed to cooperate with further investigations and to continue implementing and maintaining a set of anti-bribery practices and procedures that reflect a "high-level commitment" to complying with the FCPA and other applicable anti-corruption laws. As noted previously, the DOJ has publicly indicated that absent Alcoa's cooperation with the investigation, it would have faced a much stiffer penalty.

#### **Marubeni Corporation (19 March 2014)**

Japanese trading company Marubeni pleaded guilty to one charge of conspiracy to violate the FCPA and seven substantive FCPA charges related to its efforts to secure a contract to manage a power supply development project (Tarahan Project) in Indonesia. Marubeni's agreement to pay a criminal fine of US\$88 million and implement a detailed FCPA compliance program resolves allegations that Marubeni executives and Connecticut-based executives of its French partner hired two consultants to bribe Indonesian officials,

including officials at state-owned electricity company Perusahaan Listrik Negara.<sup>7</sup> The consultants worked under a contract that promised them a commission based on the value of the Tarahan Project contract awarded to Marubeni and its partners. In turn, the consultants agreed to use a portion of their commission payments to "reward" Indonesian officials for supporting Marubeni's bid.

The plea agreement indicates that the magnitude of the US\$88 million fine reflected "(1) the nature and seriousness of the offense; (2) [Marubeni's] failure to voluntarily disclose the conduct; (3) [Marubeni's] refusal to cooperate with the Department's investigation when given the opportunity to do so; (4) the lack of an effective compliance and ethics program at the time of the offense; (5) [Marubeni's] failure to properly remediate; and (6) [Marubeni's] history of prior criminal misconduct."

The prior criminal conduct referred to in the plea agreement likely relates to allegations that Marubeni previously bribed Nigerian officials. Marubeni was released from a two-year DPA related to those allegations on 26 February 2014, less than one month before Marubeni pleaded guilty to bribing Indonesian officials. In the Nigerian matter, Marubeni paid a criminal fine of US\$54.6 million and admitted to acting as an agent to bribe Nigerian officials on behalf of a consortium of engineering firms developing a liquefied natural gas facility on Bonny Island. The DOJ did not state whether Marubeni's actions surrounding the Tarahan Project violated the 2012 DPA. However, it appears that the bribes paid to win the Tarahan Project that ended in 2009 pre-dated the DPA executed on 14 January 2012.

#### **Hewlett Packard Company (9 April 2014)**

Hewlett Packard (HP) and its subsidiaries in Mexico, Poland, and Russia agreed to pay US\$74.2 million to settle criminal FCPA allegations. The Russian subsidiary, ZAO Hewlett Packard AO (HP Russia), pleaded guilty to FCPA bribery, books and records, and internal controls charges.

<sup>7</sup> In 2013, four U.S. citizens employed by one of Marubeni's partners, an American subsidiary of French power company Alstom SA, were indicted on similar charges. Two of the defendants, Frederic Pierucci and David Rothschild, pleaded guilty to the charges; another two defendants, William Pompon and Lawrence Hoskins, have not entered pleas.



The Polish subsidiary, Hewlett Packard Polska SP ZOO (HP Poland), entered a DPA on FCPA books and records and internal control charges. Finally, the Mexican subsidiary, Hewlett Packard Mexico S de RL de CV (HP Mexico), entered an NPA to avoid potential FCPA books and records and internal controls charges. HP also settled an SEC administrative proceeding alleging FCPA books and records and internal controls violations, agreeing to pay US\$29 million in disgorgement and US\$5 million in prejudgment interest to the SEC and the Internal Revenue Service. In sum, HP paid more than US\$108 million in criminal fines, disgorgement, and interest.

Although HP agreed to one of the largest FCPA settlements in total dollar terms, the criminal fines were actually lower than the sentencing guidelines suggested. For example, given HP Russia's acknowledged culpability, its calculated fine range per the U.S. Federal Sentencing Guidelines was between US\$87 million and US\$174 million. Nevertheless, the parties agreed that a fine of approximately US\$57.8 million was appropriate given, *inter alia*, HP's "extraordinary" cooperation and remediation.<sup>8</sup> This cooperation also resulted in no charges being brought against HP's U.S. parent corporation and in an NPA for its Mexican subsidiary.

### **HP Russia**

HP Russia pleaded guilty to conspiracy and substantive violations of the anti-bribery and accounting provisions of the FCPA. The violations relate to HP Russia's effort to win a €35 million contract to upgrade the telecommunications infrastructure of the Office of the Prosecutor General of Russia (GPO). In order to secure the contract, executives at HP Russia conspired with co-conspirators and intermediaries to create a "slush fund," which was used to bribe Russian officials responsible for overseeing the GPO project. Payments to Russian officials were routed through a web of shell companies and bank accounts, and HP Russia executives kept two sets of books: a "sanitized" version for dissemination to HP officers uninvolved in the scheme and an encrypted spreadsheet detailing the bribe payments. HP Russia agreed to a criminal fine of more than US\$58 million and committed to cooperate with further investigations and implement a corporate compliance program.

### **HP Poland**

HP Poland reached a DPA with the DOJ relating to violations of the FCPA's accounting provisions. The charges stemmed from payments made to the Director of Information and Communications Technology for the Polish National Policy (KGP), who was responsible for overseeing KGP's technology contracts. Executives at HP Poland allegedly: a) invited a Polish official on a trip to San Francisco and Las Vegas and paid for food, entertainment, and a private flight over the Grand Canyon; b) provided technology products to a Polish official for his personal use; and c) in at least six different instances, gave a Polish official bags filled with cash, totaling more than US\$600,000. During the same time period, HP was awarded approximately US\$60 million in contracts with the KGP. At least two of the contracts were "single source" contracts that were not competitively bid. Under the terms of the DPA, HP Poland acknowledged its culpability and agreed to cooperate with further investigations, implement a corporate compliance program, and pay a criminal fine of approximately US\$15.5 million.

### **HP Mexico**

HP and HP Mexico reached an NPA with the DOJ in which HP Mexico admitted to circumventing HP's internal controls to facilitate the bribery of officials at Petroleos Mexicanos (Pemex), Mexico's state-owned oil company. HP Mexico officials used an intermediary that was an approved HP channel partner to route "influencer fee" payments to a consultant. The consultant, in turn, paid a Pemex official in an effort to win HP a contract to sell software to Pemex. As a part of the NPA, HP Mexico agreed to forfeit more than US\$2.5 million, the total net benefit HP Mexico earned from the software contract.

### **Bio-Rad Laboratories Inc. (3 November 2014)**

Life sciences company Bio-Rad Laboratories Inc. (Bio-Rad) agreed to pay a total of US\$55 million to resolve DOJ and SEC investigations relating to payments made by its subsidiaries, through third parties, to foreign officials in Russia, Vietnam, and Thailand. Bio-Rad entered an NPA with the DOJ and agreed to pay a US\$14.4 million penalty to resolve allegations that it falsified books and records and failed to implement adequate internal accounting controls. A parallel SEC administrative action was resolved and required Bio-Rad to pay US\$40.7 million in disgorgement and prejudgment interest.

<sup>8</sup> HP Russia Plea Agreement, ¶ 39.

According to the facts admitted in the NPA, Bio-Rad's French subsidiary paid sham commissions to a sales agent in Russia, which purported to provide distribution services in connection with certain sales to the Russian government. These sham commission payments were recorded in the subsidiary's books and consolidated in the parent company's books. Thus, managers of the U.S. parent company knowingly caused Bio-Rad to falsify its books and records. These U.S.-based managers also failed to implement adequate controls that would have prevented the paying of above-market commissions for little or no service. The SEC's cease-and-desist order further indicates that Bio-Rad employees used intermediaries to funnel unlawful payments to Vietnamese and Thai government officials. In addition, Bio-Rad failed to uncover an existing bribery scheme in Thailand when it purchased a Thai company.

In addition to paying penalty, disgorgement, and interest, Bio-Rad agreed to adopt compliance reforms and report to the DOJ about those reforms for two years. The DOJ's press release indicates that it entered into the NPA in large part because Bio-Rad self-disclosed the misconduct and fully cooperated with the DOJ investigation by making U.S. and foreign employees available for interviews, voluntarily producing overseas documents, and summarizing the findings of its internal investigation.

#### **Dallas Airmotive Inc. (10 December 2014)**

Dallas Airmotive Inc., a Texas-based provider of aircraft engine maintenance, entered a DPA with the DOJ and agreed to pay US\$14 million in criminal fines to resolve allegations that it bribed officials in Brazil, Peru, and Argentina between 2008 and 2012. According to the information filed with the DPA, bribes were conveyed through front companies affiliated with government officials, through third-party representatives, and, in some cases, directly through gifts of paid vacations and other things of value. The information, which charges Dallas Airmotive with one count of conspiring to violate the FCPA and one count of violating the FCPA's anti-bribery provisions, relied heavily on email traffic between Airmotive sales representatives and government officials that discussed consulting arrangements and payments to third parties.

#### **Avon Products Inc. (17 December 2014)**

Avon Products Inc. (Avon) and its China subsidiary (Avon China) resolved FCPA allegations related to its efforts to secure a direct selling license in China. According to the criminal information, between 2004 and 2008, China paid US\$8 million to Chinese officials in cash, gifts, travel, and entertainment. Avon allegedly was informed of the possible FCPA violations by its internal audit group in 2005. However, it did not immediately take action to put an end to such payments. Instead, executives insisted the audit reports be sanitized to remove discussion of the payments to China officials. Avon China pleaded guilty to FCPA violations, and Avon entered an 18-month DPA. Avon China agreed to pay a criminal fine of US\$67.6 million.

The Avon DPA notes that once it began its internal investigation in 2008, the companies' efforts to enhance its compliance have been extensive. The DPA sets forth a criminal fine of US\$67.6 million but deducts the fine in the same amount paid by Avon China. The DPA also requires Avon to retain an independent compliance monitor and make periodic reports to the DOJ.

Avon also settled a parallel SEC investigation alleging violations of the FCPA internal controls and books and records provisions. Avon agreed to disgorge approximately US\$67.36 million in profits and interest. Avon is also required to retain an independent compliance monitor for 18 months, followed by another 18-month period of self-reporting on compliance matters.

#### **Alstom (22 December 2014)**

Alstom, a Paris-based energy and transportation leader, and one of its subsidiaries pleaded guilty to charges related to the bribery of officials in Indonesia, Saudi Arabia, Egypt, and the Bahamas to win power contracts. The DOJ alleged that Alstom paid more than US\$75 million to secure US\$4 billion in projects around the world, with a profit to the company of approximately US\$300 million. The company will pay US\$772 million — the biggest criminal fine ever levied for FCPA offenses and the second biggest FCPA enforcement action overall — to settle the charges.

The DOJ charged the company with violating the FCPA by falsifying its books and records and failing to implement adequate internal controls. Alstom admitted its criminal conduct in a two-count criminal information

in federal court in Connecticut. The final sentencing hearing is scheduled for June 2015.

In addition, Alstom Network Schweiz AG, a Swiss subsidiary, pleaded guilty to a criminal information charging it with conspiracy to violate the anti-bribery provisions of the FCPA. Two U.S. subsidiaries — Alstom Power Inc. and Alstom Grid Inc. — both entered into DPAs with the DOJ, admitting that they conspired to violate the anti-bribery provisions of the FCPA.

### **SEC increasingly reliant on administrative proceedings**

Forgoing the courts, the SEC increasingly relied on administrative proceedings in 2014 to enforce FCPA laws. This shift in strategy tracks an overall expanded reliance on administrative proceedings at the SEC as a result of increased authority under the 2010 Dodd-Frank amendment to the Securities and Exchange Act of 1934. That amendment enables the SEC to collect civil penalties through administrative proceedings. In 2014, all eight SEC corporate enforcement actions (the five summarized in this section along with the SEC's proceedings that paralleled the DOJ investigations of Alcoa, HP, and Bio-Rad discussed previously) were resolved using the SEC's administrative process rather than a civil complaint. This trend is noteworthy because resolution of an administrative proceeding does not require judicial approval, an area that has caused the SEC some grief in the past.

#### **Smith & Wesson (28 July 2014)**

The SEC settled allegations that Smith & Wesson violated the anti-bribery, books and records, and internal controls provisions of the FCPA. The SEC's cease-and-desist order, issued pursuant to the settlement, found that between 2007 and 2010 Smith & Wesson authorized its agents to provide gift guns and cash payments to officials in Pakistan, Indonesia, Turkey, and Nepal to induce officials in those countries to award sales contracts to the company. The SEC noted that Smith & Wesson took prompt action to remediate its FCPA issues, including conducting internal investigations, terminating its entire international sales staff, and terminating pending international sales. Smith & Wesson agreed to pay over US\$2 million in civil penalties, disgorgement, and prejudgment interest.



#### **Layne Christensen Company (27 October 2014)**

The SEC settled allegations that subsidiaries of Layne Christensen, a global water management, construction, and drilling company, violated the anti-bribery, record keeping, and internal controls provisions of the FCPA by making more than US\$1 million in payments to officials in Mali, Guinea, Burkina Faso, Tanzania, and the Democratic Republic of Congo in order to receive favorable tax treatment, customs clearance for drilling equipment, work permits, and relief from penalties for delinquent tax payments, customs duties, and failure to register immigrant workers. Layne Christensen agreed to pay disgorgement of US\$3.9 million and US\$858,720 in prejudgment interest. The settlement requires a penalty payment of only US\$375,000, which reflects Layne's self-reporting, remediation, and significant cooperation with the SEC's investigation.

#### **Employees of FLIR Systems Inc (17 November 2014)**

Two former employees, Stephen Timms and Yasser Ramahi, in the Dubai office of U.S.-based defense contractor FLIR Systems Inc (FLIR) were sanctioned for allegedly violating the anti-bribery and record-keeping provisions of the FCPA. The allegations centered around their efforts to sell US\$28 million worth of thermal binoculars and security cameras to the Saudi government in 2008. The two, who were the primary sales employees responsible for the Saudi contract, allegedly provided five Saudi officials with luxury watches worth more than US\$7,000 in total. They also arranged for two officials to embark on a "world tour" with stops in Casablanca, Paris, Dubai, Beirut, and New York City in route to a visit to FLIR's Boston facilities. FLIR paid for 20 nights of accommodation, despite the fact that there was no business purpose

# TOP 10

## FCPA Penalties 2008-2014

- 1 SIEMENS, GERMANY | 2008  
US\$800 MILLION PENALTY
- 2 ALSTOM, FRANCE | 2014  
US\$772 MILLION PENALTY
- 3 KBR/HALLIBURTON, USA | 2009  
US\$579 MILLION PENALTY
- 4 BAE SYSTEMS, UK | 2010  
US\$400 MILLION PENALTY
- 5 TOTAL S.A., FRANCE | 2013  
US\$398 MILLION PENALTY
- 6 ALCOA, USA | 2014  
US\$384 MILLION PENALTY
- 7 ENI S.P.A/SNAMPROGETTI  
NETHERLANDS B.V., ITALY/  
HOLLAND | 2010  
US\$365 MILLION PENALTY
- 8 TECHNIP S.A., FRANCE | 2010  
US\$338 MILLION PENALTY
- 9 JGC CORPORATION, JAPAN | 2011  
US\$218.8 MILLION PENALTY
- 10 DAIMLER AG, GERMANY | 2010  
US\$185 MILLION PENALTY

for any of the stops prior to the Boston visit. When these expenses were questioned by FLIR, Timms and Ramahi claimed the expenses were mistakenly charged to FLIR and allegedly directed a third-party to provide false information supporting their assertion. Timms and Ramahi settled administrative proceedings with the SEC and agreed to pay US\$50,000 and US\$20,000 in civil penalties, respectively.

### **Brucker Corp (15 December 2014)**

Brucker Corporation, a Massachusetts-based maker of scientific instruments, agreed to pay approximately US\$2.4 million to settle an SEC administrative procedure alleging that the company violated the internal controls and books and records provisions of the FCPA. The SEC alleged that Bruker's lax internal controls allowed employees in its China office to enter sham "collaboration agreements" with Chinese government officials. These agreements made payments to Chinese government officials contingent on state-owned entities providing research on Bruker products or using Bruker products in demonstration laboratories. In addition, Bruker allegedly reimbursed Chinese officials for European and American shopping trips that had no business purpose. The SEC noted that Bruker's self-reporting and cooperation impacted the settlement, which consisted of more than US\$2 million in disgorgement and interest and a US\$375,000 penalty.

### **Executives continue to be targeted**

As in 2013, the DOJ continues to aggressively charge individuals — U.S. and foreign residents alike — with FCPA violations. Moreover, despite the setbacks in the Gunshow cases of a couple years ago, The DOJ continues to rely on some very old-school law enforcement techniques in going after individuals. In September, Marshall L. Miller, Principal Deputy Assistant Attorney General for the Criminal Division, publicly disclosed that the 2013 case against BizJet executives relied in part on the cooperation of a BizJet employee who wore a body wire and recorded others scheming to bribe Mexican and Panamanian officials. Miller said, "Such proactive investigative tools — previously used primarily in organized crime and drug cases — have become a staple in our white collar investigations. I can promise you we will continue to use them."<sup>9</sup> This aggressive pursuit of culpable individuals resulted in the following 2014 actions:

<sup>9</sup> Remarks at the Global Investigation Review Program (17 Sept. 2014), <http://www.justice.gov/criminal/pr/speeches/2014/crm-speech-1409171.html>

### Indian titanium mining bribery and racketeering scheme (2013 indictment unsealed 2 April 2014)

In April, the DOJ unsealed an indictment of five foreign defendants charged with conspiracy to violate the FCPA in relation to a scheme to bribe Indian state and central government officials. All of the defendants are foreign nationals and face one count each of racketeering conspiracy and money-laundering conspiracy, two counts of interstate travel in aid of racketeering, and one count of conspiracy to violate the FCPA. The DOJ based its FCPA charges on allegations that the conspirators “utiliz[ed] United States financial institutions to engage in the international transmission of millions of dollars for the purpose of bribing Indian public officials” and “us[ed] the facilities of interstate and foreign commerce to coordinate, plan, facilitate, and promote the bribery of Indian public officials.” The defendants allegedly conspired to bribe Indian officials in order to secure a license to mine ilmenite, which can be processed into titanium, in the eastern coastal Indian state of Andhra Pradesh. This mining was expected to generate more than US\$500 million in titanium sales annually, including sales to an unnamed U.S.-based corporation (reported to be Boeing Co).<sup>10</sup>

The indictment accuses Dmitri Firtash, a prominent Ukrainian businessman with ties to the Russian natural gas industry, of orchestrating the complex bribery scheme. Firtash, along with others, allegedly arranged bribery payments to Indian officials totaling more than US\$18.5 million.<sup>11</sup> The indictment seeks to compel the defendants to jointly and severally forfeit approximately US\$10.6 million and also seeks to compel Firtash to forfeit his holdings in Group DF, a European energy and commodities conglomerate, and related entities. Firtash was arrested in March in Vienna, Austria, and posted €125 million bail in order to gain his release. The remaining defendants remain at large.

<sup>10</sup> Firtash Indictment, ¶ 1-e; Irina Reznik & Henry Meyer, Billionaire Sought by U.S. Holds Key to Putin Gas, Bloomberg (24 March 2014), available at <http://www.bloomberg.com/news/2014-03-23/billionaire-sought-by-u-s-holds-key-to-putin-gas-cash.html>

<sup>11</sup> A sixth defendant, KVP Ramachandra Rao, a sitting member of Parliament in India and formerly an official in the state of Andhra Pradesh, was also indicted on the racketeering charges.

### Additional employees of Direct Access Partners indicted in bond trading kickback scheme (10 April 2014)

The DOJ filed charges against a number of employees of Direct Access Partners LLC (Direct Access) in 2013. Two additional employees of the same broker-dealer were indicted in April and pleaded guilty in December. Benito Chinaea, chief executive, and Joseph DeMeneses, managing partner, were indicted on 15 counts of conspiracy and substantive violations of the FCPA, the Travel Act, and the federal money-laundering statute. They were also charged with conspiring to obstruct justice for allegedly deleting emails related to the scheme. The pair pleaded guilty to conspiracy to violate the FCPA and to violate the Travel Act and are set to be sentenced in March 2015.

The alleged scheme involved paying kickbacks to Maria De Los Angeles Gonzalez De Hernandez,<sup>12</sup> a senior official in Venezuela’s state economic bank, Banco de Desarrollo Económico y Social de Venezuela (BANDES). Gonzalez directed BANDES’ bond buying and selling business to Direct Access’ Global Markets Group, generating more than US\$60 million of trading commissions for Direct Access and the defendants. The defendants and their co-conspirators used a portion of these commissions to fund kickbacks to Gonzalez.

Chinaea and DeMeneses were added as defendants to the SEC’s non-FCPA fraud claim, which was presumably filed as such in 2013 because the SEC has FCPA jurisdiction over “issuers” but not broker-dealers. The SEC action seeks disgorgement of ill-gotten gains plus interest. The amended SEC complaint also contains new allegations of a kickback scheme allegedly used to bribe an official at a separate Venezuelan state-owned bank, Banfoandes Banco Universal CA.

### PetroTiger executives (criminal charges filed 8 November 2013 and unsealed 6 January 2014)

The DOJ brought charges of conspiracy and substantive FCPA anti-bribery violations against three executives of PetroTiger. Former co-CEOs Joseph Sigelman and Knut Hammarskjold and former General Counsel Gregory Weisman allegedly conspired to pay bribes to a Colombian official in exchange for assistance in securing an oil services contract worth approximately US\$39 million. The three are also alleged to have

<sup>12</sup> Gonzalez as well as Direct Access employees, Ernesto Lujan, Jose Alejandro Hurtado, and Tomas Alberto Clarke Bethancourt pleaded guilty in 2013 to conspiracy and substantive charges relating to their roles in the kickback scheme described above.

attempted to arrange a kickback from officials at a company PetroTiger purchased after Sigelman and Hammarskjold arranged for the board of directors to overpay for the purchase.

Hammarskjold and Weisman pleaded guilty to conspiring to violate both the FCPA and the federal wire fraud statute. Sigelman did not enter a plea and was indicted in May 2014. Sigelman was charged with (1) conspiracy to violate the FCPA and to arrange the kickback scheme; (2) three counts of substantive FCPA violations; (3) conspiracy to commit money laundering; and (4) transacting in criminal proceeds. The DOJ is seeking to compel Sigelman to forfeit proceeds and property related to the offenses. Sigelman's trial commenced in January 2015 in U.S. District Court for the District of New Jersey.

#### Power generation company executive indicted (10 February 2014)

The DOJ has also started to show an interest in commercial bribery, even absent the involvement of foreign officials. The DOJ indicted Asem Elgawhary, former executive of Bechtel Corporation and general manager of Power Generation Engineering and Services Company (PGESCO), a joint venture between Bechtel Corporation and the state-owned Egyptian Electricity Holding Company (EEHC), on charges of mail and wire fraud as well as money-laundering and tax violations.

The indictment alleges that Elgawhary solicited and received more than US\$5 million in kickbacks from three power companies while serving as general manager of PGESCO, which manages the bidding process for EEHC. In exchange, Elgawhary allegedly helped the companies secure more than US\$2 billion in contracts with EEHC. The indictment does not allege that any other officials were involved in the scheme and does not assert any violations of the FCPA because Elgawhary was not a government official. Elgawhary pleaded guilty to a single count of mail fraud, conspiracy to commit money laundering, and obstruction and interference with the administration of tax laws on 5 December 2014.

#### 2015: What's to come?

2015 will likely see heightened scrutiny of hiring practices by the big banks. The SEC is reportedly investigating the hiring practices of JPMorgan Chase & Co., Goldman Sachs, Citigroup, Credit Suisse, and UBS AG to determine whether they have violated the FCPA by hiring relatives

of government officials.<sup>13</sup> In 2013, the SEC reportedly began inquiring whether JP Morgan hired children of Chinese officials to bolster its Chinese business.<sup>14</sup>

This is not the first time FCPA enforcers have asserted that jobs may be a "thing of value" under the anti-bribery provision of the FCPA. In 2011, Tyson Foods settled FCPA allegations that it put wives of Mexican veterinarians responsible for certifying Tyson products for export on the corporate payroll with corrupt intent. In that case, the wives were alleged to have not performed any services for Tyson.<sup>15</sup> The broad investigation of banks' hiring activities could have far-reaching implications for the hiring practices of multinational corporations. While that investigation unfolds, companies should assure that any relative of a foreign official who is hired (1) fills a vacancy (as opposed to a position created for a well-connected individual); (2) is qualified for the existing position; and (3) performs the duties of the position.

As noted previously, the trial of former PetroTiger co-CEO Sigelman commenced in January 2015 in the federal court. This is one of the first individual FCPA trials since the DOJ abandoned its cases against numerous "Africa Sting" defendants in 2012. The government's Africa Sting cases suffered from heavy reliance on an informant whom the jury found not to be credible. The government's ability to build a case against Sigelman without running into similar problems will be closely watched. In addition, the charges against Sigelman are premised on a broad interpretation of "foreign official" that includes officials of state-owned or state-controlled entities. Specifically, the Sigelman action alleges that Ecopetrol is "the state-owned and state-controlled petroleum company in Colombia." The outcome of these charges may, along with the Esquenazi case discussed previously, shape the parameters of FCPA culpability for the future.

In her October 2014 speech at Duke University School of Law, AAG Caldwell offered a vigorous defense of the FCPA, suggesting that the DOJ's enforcement of the statute has not remotely reached its peak.

<sup>13</sup> Edna Curran and Jean Eaglesham, Regulators Step Up Probe Into Bank Hiring Overseas, *Wall St. J.* (6 May 2014), <http://online.wsj.com/articles/SB10001424052702303417104579546190553220338#printMode>

<sup>14</sup> Joe Palazzolo, Christopher M. Matthews and Serena NG, Nepotism: Is It a Crime?, *Wall St. J.* (19 Aug. 2013), <http://online.wsj.com/articles/SB10001424127887323423804579023273864417160>

<sup>15</sup> Press Release, U.S. Department of Justice, Tyson Foods Inc. Agrees to Pay US\$4 Million Criminal Penalty to Resolve Foreign Bribery Allegations (10 Feb. 2011), available at <http://www.justice.gov/opa/pr/tyson-foods-inc-agrees-pay-4-million-criminal-penalty-resolve-foreign-bribery-allegations>

Caldwell characterized the DOJ's enforcement of the FCPA as a broader foreign policy tool, rather than merely a device meant to punish and deter corporations that engage in anticompetitive overseas conduct. However, this foreign policy rationale for FCPA enforcement is not necessarily new — it is one about which the DOJ rarely speaks publicly and thus has been deemed by one FCPA commentator as the "Caldwell Doctrine."

If the DOJ prioritizes the United States' broader foreign policy goals in deciding how the agency will spend its FCPA resources and prosecute violations, it could mean (1) an increased scrutiny of corporate business dealings in politically unstable countries; (2) an increased focused on detecting and prosecuting bribery schemes in countries where official corruption has the potential to significantly compromise the United States' long-term foreign policy interests; and/or (3) when determining the severity of an FCPA offense, taking into consideration the degree to which the bribes might have negatively impacted the fairness of the foreign country's political and economic systems in relation to its citizenry.

Caldwell's recent remarks can be used not only to predict the coming trends of FCPA enforcement but also to deduce ways in which corporations can stay ahead of the FCPA enforcement curve. But the only certainty is that there seem to be no foreseeable limits to how broadly U.S. authorities will interpret their enforcement power — whether in their role as corporate regulators, protectors of foreign policy, or stewards of a fair and competitive global marketplace. ■



# United Kingdom: Two steps forward, one step back

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Contributed by Michael Roberts and Alex Hohl (in Hogan Lovells' London office)

## **The SFO is still standing...**

As we described in last year's review, the United Kingdom's lead anti-corruption agency, the Serious Fraud Office (SFO), was left reeling at the end of 2013 due to a series of blunders. By comparison, 2014 has been a better year for the SFO. It was able to settle civil claims against it by Robert and Vincent Tchenguiz, two former, major clients of collapsed Icelandic bank Kaupthing, which arose out of the agency's fumbled investigation into the Tchenguiz brothers' role in that bank's downfall. The Tchenguiz brothers had claimed damages of several multiples of the SFO's £35 million annual budget but ultimately settled in the summer of 2014 for a comparatively modest, but nonetheless very significant, £4.5 million plus costs.







Outside the bribery and corruption sphere, the SFO has been very busy with investigations and prosecutions relating to alleged LIBOR manipulations by British banks. Thirteen individuals have been charged to date, with the first trial commencing in early 2015. In October 2014, in something of a surprise move, the SFO announced that it was taking over from the Financial Conduct Authority in investigating accounting practices at the country's largest retailer, Tesco Plc. The SFO is also conducting an investigation into the rigging of the foreign exchange markets, in which London plays a pivotal role.

### **...but its future is in doubt (again)**

In June 2014, the UK government announced that a cross-Whitehall steering group had been set up to conduct a wide-ranging review of the United Kingdom's ability to tackle bribery and white collar crime.

When the review was announced, it was widely assumed that the SFO would be a key part of the future framework. However, reports have more recently emerged that the government may be planning to abolish the SFO. Under this plan, the SFO's investigators and prosecutors would be split across different government departments. The National Crime Agency (NCA) would take over responsibility for serious corruption and fraud. The Home Secretary, Theresa May, previously raised the possibility of merging the SFO into a larger agency in 2011 but backed down in the face of resistance from Dominic Grieve, the Attorney General at the time, and Ken Clarke, the former Justice Secretary.

Both Grieve and Clarke were removed from the cabinet in a reshuffle in the summer of 2014, leaving May free to complete her unfinished reforms. The effect of abolishing the SFO would be to give the Home Secretary direct control over all white collar crime investigations. Currently, the Home Office controls the budget of the NCA, whereas the SFO receives funding directly from the Treasury and answers to the Attorney General's Office. It would also put an end to an agency specifically set up to tackle the complexities of economic crime without competing priorities, and which was specifically designed (in the wake of earlier failings) to bring together a diverse range of investigative skills, as well as prosecutors, under one roof.

Whether the SFO survives will likely depend on the outcome of the upcoming election. The Labour party, currently in opposition, has argued that the SFO should

remain in existence but be given more resources and be able to keep some of the proceeds of successful enforcement actions.

### **UK anti-corruption plan**

On 18 December 2014, the UK government published the country's first Anti-Corruption Plan (Plan). This document is intended to bring greater coherence and a so-called "whole of government approach" to the United Kingdom's efforts to tackle different forms of corruption, ranging from bribery to abuse of public office and the recovery of the proceeds of crime.

The Plan is partly retrospective, as it summarizes steps already taken by the United Kingdom to combat corruption, including the passage of the Bribery Act 2010. However, it also sets out a series of actions that the UK government intends to take in the future. Notably, the Plan states that the Cabinet Office will conduct a review of the UK's enforcement response to bribery and corruption by June 2015. The Plan is noncommittal about the SFO's future and interestingly does not give the SFO responsibility for accomplishing any of the listed actions. However, the SFO may take some comfort from the statement in the Plan that the fight against international corruption requires "specialist investigators, with access to a range of tools," which is followed by a reference to the fact that the SFO has developed its capacity to tackle bribery and corruption.

It is also noteworthy that the Plan states that the Ministry of Justice will "examine the case for a new offense of a corporate failure to prevent economic crime and the rules on establishing corporate criminal liability more widely," also to be completed by June 2015 (discussed in more detail later in this section).

### **Deferred prosecution agreements**

Legislation (in the form of Schedule 17 to the Crime and Courts Act 2013) allowing the use of deferred prosecution agreements (DPAs) in England and Wales came into force on 24 February 2014. DPAs are now available to prosecutors for a range of offenses by corporations, including offenses under the Bribery Act 2010.

No DPAs have yet been announced, and it remains to be seen how they will be used in practice. However, the SFO has reported that it has ongoing investigations that may prove suitable for the first DPA. The SFO has emphasized that DPAs will only be deemed appropriate where the SFO has received the "maximum cooperation"



from a defendant, including a voluntary disclosure at a very early — perhaps even unrealistically early — stage.

#### **Enforcement update**

The SFO has secured its first convictions of individuals under the Bribery Act, although there still has been no prosecution of a company under that law. It also has continued to progress a number of major bribery investigations commenced in previous years and added a few more to its caseload. The range of investigations illustrates how very different sources of information can spur the SFO into launching an investigation. The trigger for an investigation can be an action taken by overseas authorities (GlaxoSmith Kline plc (GSK)), press reports (Sweett Group), or whistleblowing (GPT Special Project Management (GPT)). The Innospec sentencing decision reflects how the UK courts are increasingly prepared to hand down tough sentences in relation to corruption offenses.

#### **“Green biofuel” trial**

Sustainable Growth Group (SGG), together with subsidiary companies Sustainable AgroEnergy Plc (SAE) and Sustainable Wealth Investments UK Ltd, were involved in promoting investment products relating to “green biofuel” tree plantations in Cambodia. These products were sold to UK investors, who were deliberately misled into believing that SAE owned land in Cambodia; that the land was planted with *Jatropha* trees, the seeds of which can be crushed to make fuel oil; and that there was an insurance policy in place to protect investors if the crops failed.

In December 2014, a former director of SAE and a former director of SGG, together with a third individual involved in the scheme, were convicted of a series of

offenses, including counts of active bribery and passive bribery under the Bribery Act. They were sentenced to prison terms of 13, nine, and six years, respectively. They were also disqualified from being company directors. Legal proceedings to establish compensation and confiscation orders against the three defendants have commenced.

#### **GlaxoSmithKline plc**

In May 2014, the SFO confirmed that it had launched an investigation into the global pharmaceutical company GlaxoSmithKline plc (GSK). The announcement followed a major bribery scandal for GSK in China, which resulted in senior executive Mark Reilly receiving a three-year suspended prison sentence in China, with the company having to pay in excess of £297 million in fines to the Chinese government. GSK had been accused of paying US\$482 million in bribes to Chinese health officials and doctors in order to boost sales. The Chinese authorities alleged that GSK had used a network of 700 travel agents to deliver the improper payments since 2007.

This case illustrates how, when a matter has sufficient connection to the United Kingdom (GSK is UK-listed and headquartered in London), the SFO is prepared to open its own investigation following an action taken by overseas authorities.

#### **Sweett Group**

Also in July 2014, the SFO launched a formal investigation into the activities of construction services firm Sweett Group. The investigation centers around allegations that a former employee, based in Dubai, asked a firm of architects to bribe a public official in order to secure a contract worth in excess of US\$100 million.

Sweett informed the SFO and the DOJ about the alleged conduct last year, following an investigation

by the *Wall Street Journal (WSJ)*. The *WSJ* alleged that the former employee met an architect in Abu Dhabi and said that the architect's firm would have to make a payment to a public official to secure the contract for the development of a hospital in Morocco.

#### **GPT Special Project Management**

In the latest step in a long-running investigation into the Airbus subsidiary GPT Special Project Management (GPT), the SFO arrested and questioned six individuals. Two of the individuals are reported to be current GPT employees, two to be former employees, and the other two to be Ministry of Defence officials.

The investigation centers around allegations made by a whistleblower that gifts were given to Saudi generals and payments made into a Cayman Islands bank account in order to facilitate a £1.5 billion deal to supply communications equipment to the Saudi Arabian National Guard.

#### **Innospec: Individuals sentenced**

On 4 August 2014, four former senior executives of Innospec were sentenced (under pre-Bribery Act law) for conspiring to corrupt public officials in Indonesia and Iraq. The sentences ranged from four years in prison to a 16-month suspended sentence. The four-year sentence was later reduced to three years to reflect personal mitigating circumstances. The bribes in question related to contracts to supply a range of chemical products. The sentencing concludes a long-running case, with the company itself having pleaded guilty to bribing state officials in Indonesia in March 2010 and paying a US\$12.7 million fine.

In sentencing the individuals, the judge emphasized that the defendant who avoided prison only did so as a result of his cooperation with the authorities. Reduced punishment for cooperation is an increasing theme in bribery and corruption cases, with a similar approach also taken, in appropriate cases, to corporate penalties.



The judge's sentencing remarks were also notable for signaling that bribery offenses are deserving of severe punishment and that corruption of public officials is considered to be at the top end of culpability and harm. Significantly, the judge endorsed the view that UK fines against companies for corruption offenses should be of a similar scale to those imposed in the United States.

### Private prosecutions

A feature of the English criminal law that will seem particularly foreign to those from jurisdictions that follow a continental European tradition is that prosecutions are not the sole domain of public authorities. Section 6(1) of the Prosecution Offences Act 1985 still preserves an ancient right of private parties to commence criminal prosecutions. Until the middle of the 19th century, the majority of prosecutions were private, but the right is now largely vestigial. Even where a private prosecution is commenced, the Director of Public Prosecutions (DPP) can take it over at any stage and may discontinue prosecutions if he/she considers that there is either insufficient evidence or that a prosecution is not in the public interest.

However, 2014 saw one of the most high-profile private prosecutions in recent times. A Kenyan businessman called Mr. Somaia used his purported wealth and status to persuade a number of individuals to make large investments (totaling some US\$19.5 million) in what they believed to be short-term loans with high rates of interest and investments in business opportunities identified by him. In fact, Somaia used the money to fund his lavish lifestyle and support his own group of companies that were in a precarious financial state. In June 2014, following a private prosecution by Somaia's principal victim, a jury found him guilty of nine out of 11 charges of obtaining a money transfer by deception. Somaia was sentenced the following month to an eight-year prison term.

A private prosecution may be attractive in circumstances where the SFO cannot or will not pursue the matter due to lack of funds or time. The outcome of a successful prosecution may have a more powerful deterrent effect, both on the defendant and others in a similar position, than damages in a civil action. However, private prosecutions also have their downsides. There will be uncertainty due to the possibility of an intervention by

the DPP and the higher standard of proof in a criminal case. Furthermore, compensation will not follow as a matter of course, even if a prosecution is successful, although criminal courts can award compensation in appropriate cases.

A private prosecution of a bribery offense requires the prior consent of either the DPP or the SFO. There has not been a private prosecution under the Bribery Act to date, but this may only be a matter of time. Private prosecutions of white collar offenses may serve as a useful part of an armory of legal options at the disposal of victims.

### Expansion of the Bribery Act: failure to prevent economic crimes?

The Bribery Act aside, English criminal law is ill-suited to cope with complex multinational corporations. Corporate criminal liability normally depends on the so-called "identification" doctrine. This means that a corporation is only liable for criminal conduct if the "controlling mind" (i.e., the company's top management) can be shown to have been complicit in the criminality. This is very hard to prove — the email chain tends not to go above a certain level. This contrasts with the position in the United States (and a number of other jurisdictions), where companies are vicariously liable for criminal acts of their employees and agents committed during the course of their employment.

Section 7 of the Bribery Act reflects a very different approach of making companies automatically liable — subject to a statutory defense based on the adequacy of the organization's compliance program — for bribes paid anywhere in the world by the corporation's "associated persons," provided that the bribe is paid for the company's benefit. The idea of expanding this model to other economic and financial crimes is not an entirely new one but has appeared to gain traction over the past year.

The Law Commission tentatively explored this issue in 2010,<sup>16</sup> and in the same year the Policy Exchange thinktank proposed that companies should be vicariously liable for serious fraud, corruption, and financial market offenses.<sup>17</sup> It arose again in a House of Lords

<sup>16</sup> [http://lawcommission.justice.gov.uk/docs/cp195\\_Criminal\\_Liability\\_consultation.pdf](http://lawcommission.justice.gov.uk/docs/cp195_Criminal_Liability_consultation.pdf)

<sup>17</sup> <http://www.policyexchange.org.uk/images/publications/fighting%20fraud%20and%20financial%20crime%20-%20mar%202010.pdf>

debate in December 2012<sup>18</sup> regarding the Crime and Courts Bill. Lord Beecham, a Labour peer, suggested the following amendment to the bill,

“A corporation may be held criminally liable for the illegal acts of its directors, officers, employees, and agents where the act is committed during the performance of duties which are intended, at least in part, to benefit the corporation.”

The amendment was withdrawn at the time as Lord Ahmad (a then - Whip with responsibility for Home Office and Ministry of Justice matters) said it was

“appropriate to allow the provision in the [Bribery] Act to bed down before we examine the extent to which the formulation could be usefully rolled out into other areas.”

David Green took up the idea in a number of speeches in 2013, saying that “prosecution of a corporation would be appropriate where, for example, the company profited from fraud by its employees; where a particular illegal practice was common and tolerated in a particular sector; where deterrence was needed in a sector; or where a company has brought in a compliance regime but senior management had failed to ensure enforcement of that regime.”

2014 saw the call taken up by Oliver Heald (the former Solicitor General), Ken Clarke (then - Minister without Portfolio and UK “Anti-Corruption Champion”), and the current Attorney General, Jeremy Wright. The Labour party has also indicated that it would be in favor of legislating in this direction. As previously mentioned, the UK Anti-Corruption Plan published in December 2014 indicates that the UK Ministry of Justice will explore further in the coming year, the possibility of a new corporate criminal offense. While the United Kingdom is likely to be some years away from legislation, corporations will want to follow developments closely and reflect on the potential impact on existing compliance programs.

### **Pursuing ill-gotten gains**

A landmark decision of the UK Supreme Court in July 2014 has clarified the availability of proprietary remedies for principals seeking to pursue corrupt agents in the English civil courts. Having a proprietary (as opposed to a personal) remedy will assist a principal in situations where the bribe received by the agent has increased in value, where the principal wishes to trace the bribe into other property, and/or where the agent is insolvent (as the principal will be entitled to the bribe ahead of the agent’s unsecured creditors).

In *FHR European Ventures v Cedar Capital Partners*,<sup>19</sup> the defendant Cedar acted as the agent to FHR in negotiating the purchase of a hotel by way of a share purchase. Unbeknownst to FHR, the seller of the shares entered into an agreement with Cedar under which Cedar would receive €10 million on the sale of the shares to FHR. Overruling a Court of Appeal judgment that had stood since 1890, the Supreme Court ruled that FHR had a proprietary right to the money paid to Cedar. Hogan Lovells acted for FHR. ■

<sup>18</sup> <http://www.policyexchange.org.uk/images/publications/fighting%20fraud%20and%20financial%20crime%20-%20mar%202010.pdf>

<sup>19</sup> [2014] UKSC 45.









# Africa: Rising, but not yet shining

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Contributed by Michael Roberts and Alex Hohl (in Hogan Lovells' London office)

It is tempting to sum up Africa as a continent of immense opportunities but great risks. Outsiders see an economic growth rate that, by some measures, is higher than that of any other continent.<sup>20</sup> Africa boasts a young and dynamic population that will provide many of the world's future entrepreneurs and consumers. There is enormous scope for growth beyond natural resources into the services and manufacturing sectors. Yet those doing business in Africa must deal with the risks posed by geopolitical instability, poor governance, and a regulatory environment that is at times overburdensome and underdeveloped. And last but by no means least, there is the issue of seemingly pervasive corruption.

The truth, however, is that corruption, like almost everything else about Africa, is not nearly as uniform as those of us outside Africa tend to assume. It is true that of the 10 countries scored as most highly corrupt in Transparency International's 2014 Corruption Perceptions Index (CPI), five are in Africa. Yet, it is also true that Botswana, which has had a stable representative democracy since its independence in 1966, has a CPI score similar to that of Portugal, Spain, Israel, and Taiwan. Levels of perceived corruption in Rwanda, Namibia, and Lesotho are comparable to those in the Czech Republic and Saudi Arabia. Ghana, South Africa, and Senegal are all ranked well above the world's second-largest economy, the People's Republic of China. Indeed, 34 African countries were ranked as less corrupt than Russia.

20 <http://www.afdb.org/fileadmin/uploads/afdb/Documents/Project-and-Operations/ADER-%20Annual%20Development%20Effectiveness%20Review%202013.pdf>



Africa also benefits from a growing number of organizations focused on combating corruption, ranging from nongovernmental organizations (NGOs) such as Corruption Watch in South Africa to pan-African institutions like the African Development Bank, which set up a Business Integrity and Anti-bribery Initiative with the Organisation for Economic Co-operation and Development (OECD) in 2008. Many initiatives, such as the African Parliamentarians' Network Against Corruption, focus on combating the demand for bribes by promoting accountability, transparency, and public participation. There also have been efforts to tackle the supply side of corruption through the introduction of tougher legislation. However, with some notable exceptions, many anti-bribery laws both inside and outside Africa remain ineffective for want of enforcement.

Given this climate, it is not surprising that Africa has been the setting for some of the more interesting U.S. and UK enforcement actions we have discussed in this review over the past two years.

#### **The Bonny Island project, Nigeria**

Between 1995 and 2004, a four-company joint venture consisting of Technip S.A., Snamprogetti Netherlands B.V., Kellogg Brown & Root LLC (KBR), and JGC Corporation was awarded engineering, procurement, and construction contracts valued at more than US\$6 billion to build

liquefied natural gas facilities on Bonny Island, which lies just off the coast of southern Nigeria in the Niger Delta. In a series of Foreign Corrupt Practices Act (FCPA) enforcement actions between 2009 and 2012 by the U.S. Department of Justice (DOJ) and U.S. Securities and Exchange Commission (SEC) against the four joint venture partners, KBR's former and current parent companies Halliburton Company and KBR as well as Marubeni, the DOJ and SEC secured settlements totaling approximately US\$1.3 billion and US\$400 million, respectively. To put those fines in perspective, of the 10 largest FCPA enforcement actions of all time, four relate to the Bonny Island project.

#### **Weatherford International**

This Swiss-headquartered oilfield services company, with substantial operations in Houston, allegedly employed an agent in Angola who insisted that an FCPA clause be omitted from his consultancy agreement. The agent used bogus work orders and invoices to conceal bribes that secured the renewal of a lucrative oil services contract for Weatherford in Angola. Weatherford agreed to pay US\$65.6 million to the SEC and US\$87 million to the DOJ.

#### **Layne Christensen Company**

A Texas-headquartered global water management, construction, and drilling company settled charges that it made payments to officials in Mali, Guinea, and the Democratic Republic of the Congo (DRC) to reduce

its tax liability. It also allegedly made payments to customs officials in Burkina Faso and the DRC to avoid paying customs duties and obtain clearance to import and export its equipment.

### **BAE Systems Plc**

As part of its 1999 contract to supply the Tanzanian government with a radar defense system for Dar-es-Salaam International Airport, BAE Systems plc (BAE) paid around US\$12.4 million to two companies owned by local businessmen, admitting it was aware that this money would likely be used to influence local officials on BAE's behalf. BAE was only fined £500,000, but that was in light of its agreement to make an ex gratia payment for the benefit of the people of Tanzania of £30 million, less the fine. In sentencing BAE, the judge also considered the fact that the group had committed itself to a process of change following a report produced by a committee led by Lord Woolf, a former senior judge. BAE also agreed to pay a US\$400 million fine to the DOJ for its criminal conduct in Saudi Arabia and several European countries.

### **Oxford University Press**

Between 2007 and 2010, two subsidiaries of Oxford University Press (OUP) made payments to government officials for contracts to supply school textbooks in Kenya and Tanzania. The bribes were uncovered as part of a World Bank investigation, as two of the contracts in question had been financed by the World Bank. Following a High Court action brought by the Serious Fraud Office (SFO), OUP was ordered in 2012 to pay £1.9 million under a civil recovery order. The company also agreed to contribute £2 million to not-for-profit organizations for teacher training and other educational purposes in sub-Saharan Africa.

With the increased pace of business activity across the continent and the varied level of effort in fighting corruption, it is likely that Africa will continue as an active arena in the battle against bribery and corruption for the near future. Given the variations in how anti-bribery and corruption enforcement is carried out on the continent, we spotlight six countries that are currently on the business radar in most multinational corporations and summarize issues to be aware of when doing business there. We invited our lawyers with active practices in Africa, as well as a few local law firms with whom we work closely, to provide their insight into these areas.

### **Hogan Lovells' Africa practice**

Members of Hogan Lovells from across the world have experience in and regularly advise clients located or with interests in Africa. Our team includes lawyers from across the continent, including — in addition to more than 100 lawyers in our Johannesburg office — lawyers from Nigeria, Gambia, Libya, Kenya, Egypt, and Sierra Leone, many of whom are dual qualified. Our Paris office also frequently handles transactions in francophone African countries and has substantial practical knowledge of the unified legal system that applies in 17 sub-Saharan jurisdictions.

### **South Africa**

**Contributed by Tony Canny (in Hogan Lovells' Johannesburg office)**

#### **What is the local legislative framework?**

The South African Constitutional Court has said the following:

“The rapid growth of organized crime, money laundering, criminal gang activities [,] and racketeering threatens the rights of all in [South Africa], presents a danger to public order, safety and stability, and threatens economic stability. This is also a serious international problem and has been identified as an international security threat. South African common and statutory law fail to deal adequately with this problem, because of its rapid escalation and because it is often impossible to bring the leaders of organized crime to book, in view of the fact that they invariably ensure that they are far removed from the criminal activity involved. The law has also failed to keep pace with international measures aimed at dealing effectively with organized crime, money laundering, and criminal gang activities. Hence the need for the measures embodied in [the Prevention of Organized Crime Act]. It is common cause that conventional criminal penalties are inadequate as measures of deterrence when organized crime leaders are able to retain the considerable gains derived from organized crime, even on those occasions when they are brought to justice ...”

South Africa has an elaborate framework of policies, laws, and mechanisms intended to ensure that bribery and corruption are dealt with as effectively as possible. Key pieces of legislation include the Prevention and Combating of Corrupt Activities Act and the Prevention



of Organized Crime Act. These criminalize both public and private sector bribery inside the country, as well as bribery of foreign officials by South African persons outside the country. South Africa has a tough corporate liability regime. There is also ancillary legislation such as the Asset Forfeiture Act that provides for the confiscation of the proceeds of crime and the Protected Disclosures Act that protects whistleblowers.

#### What is the enforcement climate?

Despite a well-developed framework of policies, laws, and enforcement agencies, corruption continues to be a significant problem in South Africa. Among the reasons for this are

- noncompliance with the established framework;
- the widespread appointment of inexperienced managers and personnel, as well as high staff turnover;
- the legacy of apartheid;
- the absence of coordination of the overall anti-corruption effort; and
- fragmentation of anti-corruption efforts.

An extensive range of entities are tasked with dealing with allegations of bribery and corruption in what has been referred to as the multi-agency anti-corruption system. These include the South African Police Service's Directorate for Priority Crimes Investigations, the Asset Forfeiture Unit, and the Financial Intelligence Centre. A key role is also played by the Office of the Public Protector, currently under the leadership of

Advocate Thulisile Madonsela. In March 2014, Advocate Madonsela published a report chastising the president, Jacob Zuma. She has received widespread international recognition for her efforts in fighting bribery and corruption, including Transparency International's 2014 award for integrity.

Given the challenges presented by corruption in South Africa, it is highly recommended that any businesses intending to conduct business in South Africa, or enter into any third-party relationships with entities in South Africa, obtain prior legal advice from suitably qualified and experienced local lawyers.

## Tanzania

**Contributed by FB Attorneys in Dar es Salaam, Tanzania**

#### What is the local legislative framework?

The core legislation dealing with corruption issues in Tanzania is the Prevention and Combating of Corruption Act, 2007 (PCCA). The PCCA was enacted to implement the United Nations Convention against Corruption and the African Union Convention on Preventing and Combating Corruption. It also seeks to bring together anti-corruption institutions, expand the range of corruption offenses, and address private corruption in the private sector. Under the PCCA, corruption is designated as an economic offense. Economic crimes are punishable by imprisonment and corruptly acquired assets are subject to confiscation.

#### What is the enforcement climate?

The Prevention and Combating of Corruption Bureau (PCCB), a body established by the PCCA, is the lead enforcement agency. Most cases investigated by the PCCB concern low-to mid-level government officials. Senior government officials have rarely been targeted. The number of prosecutions and convictions has been rising steadily over the past decade, as has the value of asset seizures, which totaled nearly 38 billion Tanzanian shilingi (approximately US\$22 million) in the first half of 2014 — more than in the previous five years combined.

In late 2008, Tanzania saw the first ever major court cases on corruption, with prosecutions of individuals whose companies allegedly siphoned funds from the Central Bank of Tanzania (BOT). Two former ministers also faced corruption charges. In May 2010, the former BOT Director of Personnel and Administration, Amatus Liyumba, was sentenced to serve two years in prison for abuse of office in connection with construction of the BOT headquarters. This conviction marked the first in the grand corruption cases.

According to the Report of the Presidential Commission of Inquiry Against Corruption of 1996, commonly known as “the Warioba Report”, government procurement of goods and services, allocation of permits for hunting and mining, and large public contracts (particularly in road-building and public construction), are particularly prone to corruption. Other areas identified by the 2013 Investment Climate Statement-Tanzania by the Bureau of Economic and Business Affairs include privatization, taxation, energy generation, and customs clearance. Corruption in taxation is a serious issue, with major taxpayers claiming that other large companies with poor governance are left untaxed.

## Nigeria

**Contributed by Aluko & Oyebode in Lagos, Nigeria**

### What is the local legislative framework?

Nigeria has multiple statutes containing anti-corruption provisions and/or establishing institutions tasked with investigating and prosecuting relevant offenses. Key anti-bribery statutes include the Penal Code and the Criminal Code Act, which apply to the northern states and the remainder of Nigeria, respectively, and the Corrupt Practices and Other Related Offences Act. The Economic and Financial Crimes Commission Act and the Money Laundering (Prohibition) Act set out related offenses regarding money laundering and fraud.

Both individuals and companies used as conduits for criminal conduct can be prosecuted. Nigerian law does not differentiate between facilitation payments and other forms of bribery.

### What is the enforcement climate?

The two principal agencies tasked with combating corruption are the Independent Corrupt Practices Commission (ICPC) and the Economic and Financial Crimes Commission (EFCC), of which the EFCC is the more active. In 2013, the EFCC prosecuted 533 cases and secured 177 convictions for offenses ranging from money laundering and conspiracy to commit economic and financial crimes to abuse of office.

The EFCC has had difficulties in pursuing individuals with political connections. In 2007, during a money-laundering investigation into James Ibori, the former governor of Delta State, then-head of the EFCC Mallam Nuhi Ribadu, alleged that Ibori had offered the EFCC a large sum of money to drop the investigation. Shortly afterwards, Ribadu was removed as head of the EFCC. Ribadu’s successor, Farida Waziri, left the post in December 2011 after describing

corruption as the biggest threat to Nigeria’s economy and national security. EFCC prosecutions are often frustrated, or at least considerably delayed, by the tactics of defense attorneys who commonly make preliminary applications to stay proceedings.

The ICPC has prosecuted a number of cases involving former governors, ministers, high-court judges, and other top public officers. Some have been unsuccessful despite overwhelming evidence indicating corrupt practices. The ICPC has not successfully prosecuted any private sector entities or organizations. The EFCC, on the other hand, has had success in prosecuting organizations in the private sector.

## Senegal

**Contributed by Antonin Lévy and David Apelbaum (in Hogan Lovells’ Paris office)**

### What is the local legislative framework?

Senegalese law criminalizes bribery of local public officials but does not currently criminalize the bribery of foreign public officials. Senegalese law does not provide for the criminal responsibility of legal persons for corruption offenses.

### What is the enforcement climate?

Senegal has a solid institutional framework designed to combat misconduct in public office.

The Court for the Suppression of Illicit Enrichment (Cour de répression de l’enrichissement illicite), composed of a specialized prosecutor, investigating judges, and a trial chamber, was set up in 1981 to exercise exclusive jurisdiction over cases of illicit enrichment and related corruption offenses in the public sector. The court’s prosecutor can require individuals suspected of illicit enrichment to demonstrate the lawful origin of their income. If the person concerned fails to do so, the case is forwarded to the Commission of Investigation, which may decide to bring charges.

The National Office for the Fight Against Fraud and Corruption (Office national de lutte contre la fraude et la corruption), an administrative body established in December 2012 and tasked, inter alia, with investigating and referring corruption cases to the judiciary for the purpose of prosecution, is now fully staffed and took up its first case in July 2014.

Senegal's government has taken significant steps to tackle corruption in the public sector. Proceedings have been initiated before the Court for the Suppression of Illicit Enrichment against Karim Wade, a former government minister and the son of former President Abdoulaye Wade. The court is also seised of a complaint by society representatives against Marième Faye Sall, the wife of incumbent President Macky Sall, concerning allegations of bribery by a Moroccan bank.

## Ghana

**Contributed by AB & David in Accra, Ghana**

### What is the local legislative framework?

Anti-corruption provisions are scattered across several pieces of legislation. Most laws focus on corruption and economic crime in the public sector. The Criminal Offences Act 1960 sets out the offenses of active and passive bribery of public officers. The Economic and Organized Crime Act 2010 established the Economic and Organized Crime Office (EOCO), a specialized government agency mandated to monitor, investigate, and, on the authority of the Attorney General, prosecute any offense involving serious financial or economic loss to the state. Pursuant to the Anti-Money Laundering Act, the Financial Intelligence Centre is responsible for monitoring and detecting suspicious financial transactions.

The government has recently published a Code of Ethics for Ministers and Political Appointees. Under the code, gifts exchanged during an official visit are to be deemed as gifts to the office and not the government official. Gifts may only be retained by the official if the value is not more than Ghanaian cedi 200 (US\$60), and any gift exceeding Ghanaian cedi 500 (US\$151) must be relinquished when leaving office.

### What is the enforcement climate?

The Constitution mandates the Commission on Human Rights and Administrative Justice (CHRAJ) to investigate complaints of corruption and abuse of power by public officers. The CHRAJ has investigated a number of high-level cases that have been successfully prosecuted in the courts.

The Criminal Investigation Department of the Ghana Police Service has the mandate to carry out investigations based on complaints or allegations made by the public, which are forwarded to the office of the Attorney General for prosecution. In recent times, EOCO has also carried out investigations and prosecuted offenses in the courts involving serious financial and economic loss to the state.

## Kenya

**Contributed by Hamilton Harrison & Mathews (incorporating Oraro & Co) in Nairobi, Kenya**

### What is the local legislative framework?

The principal statute establishing the Kenyan legal regime on corruption and bribery is the Anti-Corruption and Economic Crimes Act, 2003 (ACECA). The ACECA provides for the prevention, investigation, and punishment of corruption, economic crimes, and related offenses.

The Ethics and Anti-Corruption Commission Act, 2011 establishes the Ethics and Anti-Corruption Commission (EACC), whose function is to investigate corruption and economic crimes. The EACC also has the power to institute and conduct proceedings in court for purposes of the recovery or protection of public property.

Another important piece of legislation in this context is the Proceeds of Crime and Anti-Money Laundering Act, 2009. This introduces measures against the transmission and use of the proceeds of crime. It provides a framework for the identification, tracing, freezing, seizure, and confiscation of the proceeds of crime.

Under the Public Officer Ethics Act, a public officer may only accept a gift if it is a nonmonetary gift that does not exceed the value prescribed by regulation, which is currently 20,000 Kenyan shillings (US\$220). Gifts from relatives and friends may be accepted if given on a special occasion recognized by custom.

### What is the enforcement climate?

Over the past five years, there has been increased enforcement action culminating in civil and criminal proceedings against public officials. This has demonstrated the increasing public pressure exerted on the executive branch to demonstrate that it is taking a tough stand against corruption.

However, the only notable prosecution that has resulted in a conviction is that of a former permanent secretary in the Ministry for Tourism and Wildlife in September 2012 for conspiracy to defraud the ministry of 8.9 million Kenyan shillings (US\$100,000). She was sentenced to four years' imprisonment. The former managing director of a related parastatal organization was also convicted on similar charges and sentenced to three years' imprisonment. ■



### **Ensuring that “small things” don’t become big headaches**

As is true elsewhere in the world, corruption in African countries has its own slang. The terminology used is frequently ambiguous, with the result that the corrupt nature of the transaction may be disguised, the practice legitimized, or its corrupt nature overlooked.

In some languages used in Africa, the size and significance of a payment may be deliberately downplayed. In Egypt, one might offer “ashaan ad-dukhaan,” literally “something for your cigarettes.” In Kenya, the Kiswahili term “kitu kidogo” literally translates as “small things.” Another common theme is to use words for food or drink. In Angola and Mozambique, the Portuguese word “gaseoso” literally means “soft drink.” In Nigeria, “kola” (i.e., kola nut) should not be confused with the soft drink of which it was once an ingredient. In francophone Africa, the expression “tarif de verre” or “price of a glass” seems similarly innocuous. Even the word “chai,” literally “tea,” can have a less wholesome connotation when used in East Africa.

For multinational companies with a mix of expatriates and local employees, considerable care needs to be taken to ensure that linguistic and cultural misunderstandings do not lead to legal problems. Managers risk being unaware that subordinates are seeking reimbursement for a bribe, and accountants may misclassify payments. There are a number of simple, practical ways in which companies can work around these problems. Compliance policies and training materials should not only be translated but also incorporate local dialects and idioms. Scenarios used to develop and test employees’ understanding of anti-bribery laws should be adjusted to reflect the realities that they will face in their day-to-day interactions. Requiring receipts from local officials may assist in shedding light on the true nature of the payment that is being requested. Finally, should it be necessary to investigate alleged bribery violations, search terms should include local slang terms.





# Developments in Mexico

Contributed by Luis Enrique Graham (in Hogan Lovells' Mexico City office)

Since Mexico joined the Organisation for Economic Co-operation and Development (OECD) in 1994 — and particularly since the signature of the OECD Anti-Bribery Convention in 1999 — it has been active in the fight against corruption and bribery. Mexico, however, still lags behind many peer countries according to Transparency International's 2014 Corruption Perception Index, which ranks Mexico at number 103 out of 175 countries.

In recent months, Mexican Congress has been in the middle of a major debate regarding anti-corruption and anti-bribery amendments to the Constitution (and other secondary laws) that could go into effect in 2015.<sup>21</sup> One of the most significant developments is the enactment of the constitutional provision ordering the creation of a National Anti-corruption System (NAS) in order to effectively prevent, correct, and combat corruption at all levels.

So far, we have seen the executive and all political parties in Mexico making joint efforts toward the creation of the NAS. One of the main three political parties, the National Action Party (PAN), sent its initiative for a constitutional amendment (which includes the creation of the NAS and other institutions to prevent and combat corruption) to the House of Representatives.

Additionally, existing institutions, like the Federal Superior Auditor, the Secretariat of Public Affairs, the Specialized Prosecution Office for Crimes Related to Acts of Corruption, and the Federal Court of Administrative Justice, will have broader powers to investigate and sanction acts of corruption. If the amendment initiative is approved, these institutions will be able to fight corruption in a more effective manner, for example, in public tender and bidding procedures. This means that private parties contracting with the government will be subject to more effective anti-corruption controls.

Although the sanctions were not clearly established in the proposal, it is likely that their severity will increase and they will be applied to public officials and private parties involved in acts of corruption. Likewise, individuals will be subject to administrative and criminal liability. The initiative foresees that all goods acquired from acts of bribery or corruption (unjust enrichment) will be subject to a procedure for the seizing of assets, which is faster and more effective than the current confiscatory process.

Discussion of the proposal is expected to be approved around March 2015. Although it is important to note that this also needs approval by the Senate and the Congress of all States — as it is a constitutional amendment — all political parties have expressed their commitment to introduce the new anti-corruption system as soon as possible, making it a priority in the political agenda. ■

<sup>21</sup> These potential amendments in many ways reflect Mexico's progress in implementing the OECD's recommendations of its Phase 3 report (mainly regarding the implementation of the OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions and the 2009 Recommendation of the Council for Further Combating Bribery of Foreign Public Officials in International Business Transactions).



# 2016 Olympics draw attention to Brazil

Contributed by Peter S. Spivack (in Hogan Lovells' Washington, D.C. office)

With the 2016 Olympics around the corner, Brazil's Clean Companies Law became effective at the end of January 2014. The law has several major features. First, it imposes direct civil liability on corporations for the bribery of local and foreign public officials, as well as making them liable under the theory of respondeat superior for the acts of their directors, officers, employees, and agents. Second, the law creates jurisdiction for actions within Brazil of non-Brazilian companies that have an office, branch, or other type of representation in Brazil. Third, the law provides for significant administrative and judicial sanctions of 1 percent to 20 percent of a company's revenues in Brazil, or where revenues are too difficult to determine, up to a maximum of 60 million Brazilian reais (more than US\$2.2 million). In addition, in a judicial action, the company could be debarred from public tenders for one to five years. Fourth, the legislation contains a significant carrot for cooperation: a leniency agreement for being the first to turn itself in. Despite these features of the law, as of the time of this article, the implementing decree had still not been issued, leaving one to wonder whether it is a "paper tiger."

Brazil faces significant international pressure to increase enforcement of its anti-bribery laws. In addition to the observation that the implementing decree is overdue, the Organisation for Economic Co-operation and Development (OECD) issued its Phase 3 Report on Implementing the OECD Anti-Bribery Convention in Brazil in October 2014 in which it was critical of the lack of indigenous enforcement there. The OECD commented that, despite its large economy, foreign bribery investigations have been opened in only five cases in the 14 years since Brazil joined the OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions. The OECD noted that, "[o]f these 5 investigations, only 3 are ongoing; 2 of which are far from reaching the prosecutorial stage. Of the 14 allegations of foreign bribery that have been identified in this report, 5 allegations were unknown to Brazil before the time of the evaluation."

The OECD's report did note, however, that there is considerable popular support and economic rationale for vigorous enforcement of its anti-bribery laws (a recent study by the Federation of Industries of the State of São Paulo (FIESP) estimated that Brazil loses 1.38 to 2.3 percent of its Gross Domestic Product (GDP) in kickbacks and bribes). Recently, the Operation Lavo Jato (Operation Car Wash) has transfixed public attention with allegations that former directors of the state-owned oil company received kickbacks for awarding billions of dollars in contracts to the leading construction companies in Brazil. At last report, federal police had made more than 36 arrests of executives at these companies and conducted numerous searches of business locales for evidence.

Fulfilling the requirements of the country's membership of the OECD Convention, Brazilian authorities continue to cooperate in international law enforcement investigations. In November 2014, Dutch prosecutors announced a settlement with SBM Offshore NV for US\$240 million, stating that they had received information from Brazilian authorities showing payments were made from a sales agent's offshore entities to government officials. In December 2014, Dallas Air motive Inc., a provider of aircraft engine maintenance, repair, and overhaul services, agreed to pay US\$14 million to resolve an investigation being conducted by the U.S. Department of Justice (DOJ). According to the deferred prosecution agreement, between 2008 and 2012, the company bribed officials of the Brazilian Air Force, the Peruvian Air Force, the Office of the Governor of the Brazilian State of Roraima, and the Office of the Governor of the San Juan Province in Argentina. The DOJ made a point of acknowledging the assistance of its law enforcement counterparts in Brazil, and we expect more thank you notes in the future. ■





# China: Enforcement, full steam ahead

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Contributed by Eugene Chen (in Hogan Lovells' Shanghai office)

When we reported on anti-bribery and anti-corruption developments in 2013, China had just seen the installment of Xi Jinping's new administration, followed shortly by a rigorous campaign against corruption in both the government and within private enterprise. We questioned then "[w]hether this administration can or will sustain its attack on corruption in 2014 and the coming years."

From the vantage point of one year on, Xi Jinping's anti-corruption campaign shows no sign of slowing down. Indeed, new regulations and interpretations suggest an unprecedented level of interest by China in international cooperation on anti-corruption efforts, as well as evident determination to publicize corruption convictions. Likewise, investigations and prosecutions of public officials, at the highest and lowest levels of government, continue to pepper the news every few weeks. This last year has also seen a criminal judgment issued against GlaxoSmithKline China Investment Co. and a number of its senior officers in China. And while there has been no other major criminal enforcement action for commercial bribery, the anti-corruption atmosphere in China remains frenzied, such that administrative agencies essentially act as if they have a "blank check" to conduct fishing investigations. All of this points to a 2015 that will be every bit as chaotic and volatile for multinational companies as the last two years have been.

## Interpretations and regulations

### Statements on cross-border anti-corruption cooperation

Recent developments within the Asia-Pacific Economic Cooperation (APEC) forum have seen China taking an unprecedented level of interest in international engagement on cross-border anti-corruption. On 15 August 2014, the inaugural meeting of the APEC Network of Anti-Corruption Authorities and Law Enforcement Agencies, or ACT-NET, was held in Beijing. The meeting was designed to allow representatives of law enforcement agencies from APEC countries to meet and share information and experience from criminal investigations and prosecutions. According to APEC, ACT-NET was designed to “[connect] anti-corruption and law enforcement officers to enhance informal cross-border cooperation between agencies responsible for investigations and prosecutions of corruption, bribery, money laundering, and illicit trade and the identification and return of the proceeds of those crimes.” According to an APEC source, ACT-NET’s headquarters will be located in Beijing and China’s Ministry of Supervision will be overseeing the network.

Another noteworthy development was the adoption of the Beijing Declaration on Fighting Corruption on 9 November 2014 during the Ministerial Meeting of APEC, which reaffirmed the APEC countries’ “commitment to denying safe haven to those engaged in corruption, including through extradition, mutual legal assistance, and the recovery and return of proceeds of corruption.” Furthermore, according to Xu Hong, Director-General of the Department of Treaty and Law of the Ministry of Foreign Affairs, the Ministry completed the negotiation of 10 bilateral treaties on extradition and judicial assistance in criminal matters during the past year. In countries such as the United States, which have no treaties on extradition with China, Xu said that the Ministry of Foreign Affairs is considering initiating lawsuits in those countries’ own courts in order to recover the proceeds of corruption.

While it will take some time to see how effectively these new pronouncements of initial cooperation will be implemented, China’s new sense of international engagement is very much consistent with the trend for globalization in bribery and corruption investigations. Companies should very much expect that an investigation in one jurisdiction may easily spill into others and that it is increasingly likely that a China-related bribery issue may attract the interest of both Chinese and international law enforcement agencies.



### Provisions on the Establishment of a Commercial Bribery Blacklist in Relation to the Purchase and Sale of Pharmaceuticals (the Provisions)

The National Health and Family Planning Commission (NHFPC) promulgated the Provisions on 25 December 2013, effective from 1 March 2014. The Provisions are a revision to a similar set of provisions with the same name that were promulgated in 2007 but have never been effectively enforced. Without giving a clear definition of commercial bribery, the Provisions specify that when certain thresholds are met (including, administratively, penalties imposed by the Administration of Industry and Commerce), any enterprise manufacturing or dealing in pharmaceuticals, medical equipment, or disposable medical materials, or any agent thereof (Pharmaceutical/Device Manufacturers and Agencies), that offers any property or other benefits to the employees of healthcare institutions that purchase and use their products will be included on a commercial bribery blacklist. This blacklist will be published promptly at a provincial level by administrative health and family planning authorities on their official websites. Significantly, public medical institutions or healthcare institutions that receive government subsidies in a given province will be prohibited from purchasing pharmaceuticals, medical equipment, or disposable medical materials from Pharmaceutical/Device Manufacturers and Agencies included on that province’s commercial bribery blacklist within the past two years. Furthermore, when evaluating bidding and procurement, public medical institutions or healthcare institutions receiving government



subsidies in other provinces will, for a period of two years, lower their ratings of products provided by those Pharmaceutical/Device Manufacturers and Agencies.

Because very few bribery records have been published since March 2014, it remains unclear how effectively the Provisions will be implemented. Given that virtually all public medical institutions or healthcare institutions receive government subsidies and the Administration of Industry and Commerce agencies at local levels frequently pursue and extract settlements for administrative penalties — particularly from multinational companies, if implemented rigorously — the Provisions have the potential to dramatically alter the landscape of anti-commercial bribery enforcement. When negotiating settlements of administrative penalties, Pharmaceutical/Device Manufacturers and Agencies will be forced to consider challenging the penalties through administrative reconsideration or administrative litigation, rather than accepting them quietly as they may have done in the past.

### Major enforcement actions

For those who thought the Xi administration would be satisfied with the symbolic message of pursuing a few big “tigers” in 2013, the enforcement actions of 2014 proved very much the opposite. Multinational companies doing business in China have been affected by this campaign in two ways. First, although most multinational companies are unlikely to be directly affected by the prosecution of “tigers” (high-ranking officials of the Communist Party), Xi Jinping, true to his promise upon

taking office, appears to be attacking “flies” — lower-ranking officials and heads of state-owned enterprises and public institutions (such as hospitals) — every bit as aggressively as the tigers; and multinational companies are certainly likely to be interacting and transacting with them. Second, the high level of publicity and public support for Xi’s anti-corruption campaign has had the spillover effect that even non-criminal, administrative enforcement actions have continued to increase in frequency and scope. The environment created by this anti-corruption campaign is essentially such that administrative agencies feel free to conduct fishing expeditions with impunity.

### Public official bribery: Zhou Yongkang

2014’s most eye-catching anti-corruption enforcement action was undoubtedly the dramatic downfall of Zhou Yongkang, the former head of the Central Political and Legal Affairs Commission of the Communist Party of China (CPC) and a member of the CPC Politburo Standing Committee, China’s supreme decision-making body. Zhou, described by many as China’s domestic security czar, is the highest ranking official who has ever been under formal investigation for corruption in China’s history.

On 29 July 2014, the CPC officially announced the investigation of Zhou, although rumors of the investigation had entered the public realm long before that. The internal investigation wrapped up on 5 December 2014, and Zhou was both expelled from the party and arrested to face criminal charges. The investigation is ongoing, but Zhou is expected to be charged with taking significant bribes, abusing power, and leaking state secrets. Many legal and political observers believe that the criminal penalties Zhou faces may be even more severe than those imposed on Bo Xilai, another high-flying politician, who was sentenced to life in prison in 2013 for corruption and abuse of power.

Zhou’s collapse has led to a major power reshuffle in China’s oil sector, the government of Sichuan Province, and the domestic security sector. Many of his affiliates and protégés have also come under investigation or been prosecuted. Zhou’s collapse has also directly resulted in the shrinking power of the CPC Central Political and Legal Affairs Commission. Xi’s administration has instead been promoting judicial reform, which may bring more independence to courts and judges in day-to-day adjudication and could eventually enhance the quality of the judicial system.



#### Public official bribery: Liu Tienan

Another high-profile enforcement action during 2014 ended with the conviction of Liu Tienan, former Deputy Director of the National Development and Reform Commission (NDRC) and Director of the National Energy Administration.

Liu's case is somewhat unique in that it arose largely as a result of media scrutiny. As early as November 2011, *Caijing* magazine reported that Liu's wife and son held shares in a number of overseas companies. In May 2012, several retired senior NDRC officials jointly reported Liu's corrupt behaviors to the CPC Central Commission for Discipline Inspection. However, the case did not gain much public attention until Luo Changping, Deputy Chief Editor of *Caijing* magazine, publicly accused Liu on social media on 30 January 2013. The CPC officially initiated an investigation into Liu on 12 May 2013. After the internal investigation, he was expelled from the party on 8 August 2013 and prosecuted on 23 June 2014.

During the first instance trial, the court found that Liu received bribes totaling 35.6 million Chinese renminbi (approximately US\$5.7 million) directly and through his son, from five individuals or companies, in return for

favors during the NDRC project approval process. Liu was determined to have committed the crime of taking bribes and was sentenced to life imprisonment with his personal property confiscated. Liu has expressed the intention to give up the right to appeal.

#### Commercial bribery: GlaxoSmithKline

Following one of the most highly publicized commercial criminal prosecutions in China's history, GlaxoSmithKline China Investment Co. (GSK China) was found guilty of commercial bribery by the Intermediate People's Court of Changsha on 19 September 2014. Although the judgment was not published, media reported that the court found that GSK China developed a "massive bribery network" in order to increase the sales of its pharmaceutical products. The company's corrupt practices allegedly included bribing doctors in the name of academic meeting sponsorships, lecture fees, and travel expenses, and using travel agencies and other third parties to create bribery slush funds. Five senior executives were found to have actively organized, promoted, or undertaken bribery sales. The company and the individual defendants were convicted of the crime of giving bribes to non-state functionaries (one executive was also convicted of the crime of accepting bribes by a non-state functionary).



As criminal penalty, GSK China was fined 3 billion Chinese renminbi (approximately US\$480 million). In addition, the five executives each received two to three years of suspended imprisonment, well below the maximum 10-year prison term for the crime. In particular, Mark Reilly, GSK China's former chief executive and the only non-Chinese citizen among the five, received a suspended three-year prison sentence and is set to be deported.

While the penalties imposed are undoubtedly significant, they were actually far lighter than many had expected for the nature of the allegations. The financial penalty for GSK China, while the largest ever imposed against a foreign company, was still exponentially smaller than many legal observers had opined at the outset of the case based upon GSK China's revenues. Moreover, the suspended sentences imposed upon the five management defendants ultimately meant that none served any additional jail time beyond the period of detention during the investigation and prosecution of the case. In imposing these relatively light penalties, the court apparently took into consideration the fact that Reilly, the legal representative of the company, voluntarily returned from the United Kingdom to China to confess his misconduct.

The GSK judgment seems to offer some mixed messages. Despite the grim picture painted by the government and prosecutors in the media, it suggests that commercial bribery is still largely regarded as a corporate economic crime, with primarily financial penalties to bear. To date, there has been no other company, foreign or domestic, targeted for significant criminal prosecution for commercial bribery. However, the effect of the GSK judgment and the prosecutions of government officials cited in this section has, in large part, been to create an environment where administrative enforcement actions have expanded in both frequency and scale. Armed with political and public support, agencies such as the AIC and the NDRC are actively pursuing commercial bribery and anti-monopoly investigations against multinational companies, many of which appear to be pure fishing expeditions. While many companies remain inclined to settle these matters for fear of disruption to the business and damage to company reputation, the regulatory developments cited place new pressures on companies to consider the risks in a murky legal environment. Expect 2015 to be every bit as rocky as before. ■



# 2014 developments from across the globe

With colleagues around the world from Asia to Europe and the Middle East, our international team has both the global perspective and local knowledge to advise you on the latest developments in your region. We leverage our regional experience and familiarity to provide you with an update of developments in bribery and corruption legislation and enforcement on a more local scale.





## ASIA



### India

**Contributed by Manjula Chawla, Ritika Ganju, and Shinjni Kharbanda (of Phoenix Legal in New Delhi, in association with Hogan Lovells)**

High-profile cases of corruption such as the 2G spectrum scam, involving the illegal allocation of frequency licenses to telecom companies, and the Coalgate scam, involving the illegal allocation of coal blocks in India at a cost of around US\$33 billion to the exchequer, forced the previous government to take initiatives to combat corruption. It appears that the new government under Prime Minister Narendra Modi will be taking the issue seriously.

India ratified the United Nations Convention against Corruption (UNCAC) in May 2011. To meet its obligations under UNCAC, the government introduced the Prevention of Corruption (Amendment) Bill 2013 in the Rajya Sabha — the upper house of the Indian Parliament — in February 2014. That bill is aimed at amending the Prevention of Corruption Act 1988, India's principal piece of anti-corruption legislation, to bring it into line with current international practices.

Key features of the bill include

- a more comprehensive definition of bribery covering passive bribery and bribes through intermediaries;
- the creation of an offense of giving bribes (as opposed to punishing bribe-givers for abetment);
- provisions regarding the punishment of bribery by commercial organizations; and
- provisions regarding the confiscation of proceeds of bribery by attachment and forfeiture of property.

The Lokpal and Lokayuktas Act 2013 (Lokpal Act) came into force on 1 January 2014. The Lokpal Act focuses on creating the role of a central lokpal (ombudsman) and lokayuktas for dealing with complaints of corruption against public functionaries. This bill had been the subject of heated debate for the last two years after prominent anti-corruption activist Anna Hazare took up the cause.

Some of the key features of the Lokpal Act include

- creating the lokpal as a constitutional body with a membership composed of at least 50 percent judicial members and 50 percent from socially or economically weaker and minority classes of society;
- giving the lokpal jurisdiction over all ministers and public servants, including the prime minister, former legislators, government employees, societies, and trusts collecting funds from the public;
- entrusting the lokpal with the powers of a civil court while conducting an inquiry (in certain cases) with the power to order provisional attachment of any property that it has reason to believe is linked to the proceeds of corruption;
- setting up special courts — at the lokpal's recommendation — for hearing matters relating to corruption, with specific time periods prescribed for completing investigations and trials in such cases; and
- setting up a lokayuktas in each Indian state within 365 days from the commencement of the Lokpal Act to deal with the complaints relating to corruption against public functionaries.

The Whistleblowers Protection Act 2011 (Whistleblowers Act) came into force on 12 May 2014. The Whistleblowers Act seeks to establish a mechanism to receive complaints relating to acts of corruption, to commence inquiries into such disclosures, and to provide adequate safeguards against the victimization of whistleblowers. Some of the key aims of the act include

- identifying a competent authority to receive public disclosures relating to corruption or wrongful gains being made by the government due to willful misuse of power or discretion by any person;
- assurance of protection for whistleblowers or witnesses from any victimization as a result of making a public disclosure against any person;
- fair practice and procedures for inquiry to be followed upon receiving a public disclosure; and
- protection of confidentiality for the whistleblower and adequate safeguards to those making complaints in good faith and on the basis of reasonable suspicion.



Indonesia

**Contributed by Cornel B. Juniarto (of Hermawan Juniarto in Jakarta, in association with Hogan Lovells)**

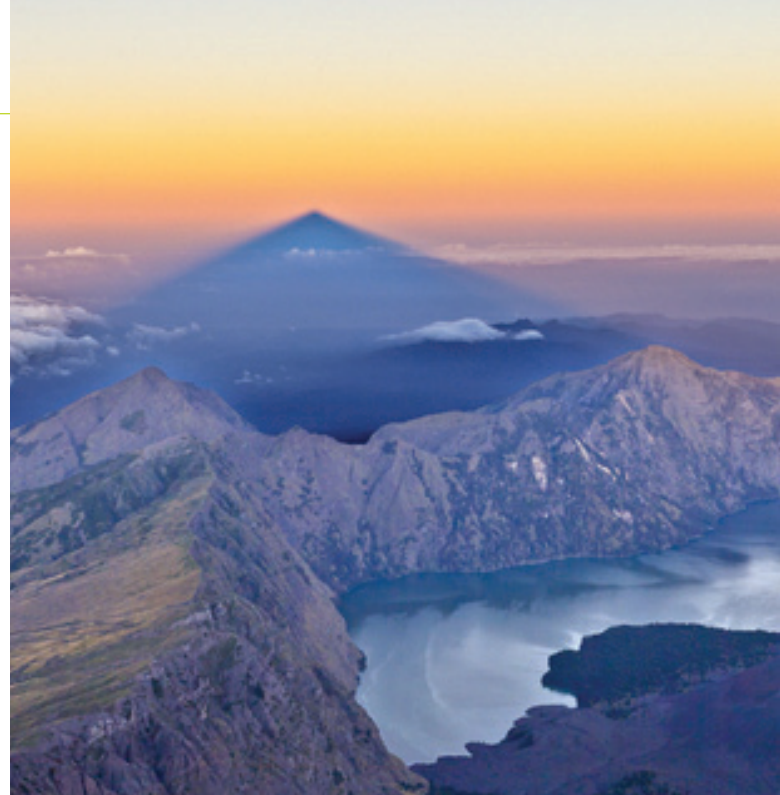
Corruption in Indonesia remains a pervasive problem, as evidenced in Transparency International's 2014 Corruption Perception Index that ranked Indonesia 107th out of 175 countries. Although Indonesia's score is certainly a cause for concern, it also represents a significant opportunity for the body politic, especially newly elected President Joko Widodo, to implement reforms with the purpose of eradicating corruption.

In 2014, there were several government-led efforts to accomplish this. The Attorney General's Office has been aggressively pursuing irregularities in government procurement processes. One major case targeted a US\$88 million scheme involving the former head of the country's transportation agency and the procurement of faulty buses. In response to this case, the government implemented an electronic procurement process to help reduce potential opportunities for corruption.

In another move to clean up the procurement process, the Constitutional Court has decided that state-owned enterprises must abide by the State-Owned Enterprises Ministry's Good Governance Principles, a set of best practices that will be particularly important where these entities are dealing with the procurement of goods and services. One relevant mandate under these principles is that state-owned enterprises have a duty to disclose financial information to state auditors.

The Corruption Eradication Commission (KPK), Indonesia's independent anti-corruption body, continues to investigate and prosecute individuals. Between January and October 2014, the KPK conducted 73 initial investigations and prosecuted 37 cases. Additionally, the KPK has altered its modus operandi by confiscating assets of those found guilty of corruption and forging a strategic partnership with the Jakarta city government to investigate public employees' mandatory asset reports. The former was put into practice in a case against former tax officer Gayus Tambunan, who was entangled in bribery and money-laundering schemes.

Despite the KPK's apparent progress, a proposed legislative amendment has the potential to considerably reduce the efficacy of this organization. Under current



law, the KPK may conduct warrantless wiretapping. However, Indonesia's House of Representatives has proposed an amendment to the law that would require a court warrant for all wiretaps. Given that Indonesian courts are still considered to be some of the most corrupt public institutions, this proposal creates the possibility that court officials will tip off those targeted by the KPK.

In 2015, all eyes will be on President Joko Widodo to see if he fulfills his campaign promise to reform the government.



Japan

**Contributed by Patric McGonigal (in Hogan Lovells' Tokyo office)**

As we reported last year, the Organisation for Economic Co-operation and Development (OECD) has been, and remains, highly critical of Japan's anti-bribery efforts. In its 2014 Statement on Japan's Efforts to Increase Foreign Bribery Enforcement, the OECD Working Group noted that "Japan's written follow-up report (to the OECD Working Group's previous recommendations) raises further issues of serious concern." By way of example, the OECD Working Group noted that Japan's Ministry of Economy, Trade and Industry's "publicly available materials on the foreign bribery offence continue to contain unclear information on the legality of facilitation payments in Japan, as well as what constitutes a facilitation payment."

To date, Japan has concluded just four cases since the foreign bribery offense entered into force in Japan in 1999. The most recent of these was the indictment of Japan Transportation Consultants, a railway consulting firm, on charges of paying 66.9 million Japanese Yen (approximately US\$570,000) in bribes to government officials in Vietnam. On 1 October 2014, it was reported that three officers of the company had pleaded guilty to the bribery charges.

Overall, the enforcement of Japan's foreign bribery laws remains infrequent at best. While it is expected that international pressure from the OECD will help efforts to clarify and develop Japan's anti-bribery measures, this remains a work in progress that is likely to continue for some time.



## Malaysia

**Contributed by Koon Huan Lim and Yeong Hui Yap (of Skrine & Co in Kuala Lumpur, in association with Hogan Lovells)**

According to the 2014 Malaysian Corruption Barometer (MCB), which surveyed the public's views on corruption, 63 percent of Malaysians believe that the level of corruption in Malaysia has not improved over the last two years. Although this negative perception is concerning, a number of developments have the potential to improve the overall outlook.

First, the Malaysian Anti-Corruption Commission (MACC), an independent enforcement agency that combats corruption and operates under the Malaysian Anti-Corruption Commission Act 2009 (MACCA), had a productive year, with 415 arrests through to October 2014. One of MACC's most prominent cases involves 12 customs officers who were suspected of operating a smuggling syndicate that allegedly cost the government more than US\$300 million in lost customs duties.

Second, in February 2014, the Prime Minister's Department announced that amendments to the MACCA will be tabled in parliament this year to make corporations liable if their employees are involved in bribery when acting on behalf of the company. The proposal is part of the department's effort for sustainable transformation in integrity and governance. These new amendments are expected to incentivize companies to put in place adequate procedures to prohibit bribery; however, they are yet to be tabled in parliament.

Lastly, public and private sector organizations, including MACC, the Malaysian Institute of Integrity, Transparency International, and the Malaysian Central Bank, have formed a strategic alliance to raise awareness and combat bribery and corruption. These entities have developed the Corporate Integrity Pledge (CIP), a voluntary commitment companies can make to uphold anti-corruption principles. It is hoped that effective implementation of the CIP will help create a business environment in Malaysia that is fair, transparent, and free of corruption.

In other developments, the Chief Minister of Sarawak, a state in Malaysia whose timber industry is fraught with allegations of corruption, pledged that ministers, assistant ministers, state cabinet members and officers, and staff of all state government departments and statutory bodies will be asked to sign the CIP. The newly appointed chief minister made this declaration amid extensive allegations of illegal logging activities in that state.



## Singapore

**Contributed by Maurice Burke and Juan Arreaza (in Hogan Lovells' Singapore office)**

Over the past decade, Transparency International has consistently ranked Singapore as one of the five least corrupt countries in the world. It has shared the podium in the last four years with Denmark, Finland, New Zealand, and Sweden. This feat should not be a surprise, given the commitment of Singapore's political establishment and its citizens to tackling this difficult problem. This commitment remained unshaken in 2014, as evidenced through the continuous targeting of corruption in both the public and private spheres.

In February 2014, the former head of protocol of the Foreign Affairs Ministry — in charge of, among other things, acquiring gifts for foreign officials during trips abroad — was given a 15-month sentence for seeking reimbursement for false expense claims worth over US\$70,000. On a much larger scale, in November 2014, OW Bunker, one of the world's biggest suppliers of fuel, filed for bankruptcy in part due to a pervasive fraud scheme involving its Singapore subsidiary's senior executives. The estimated loss to the Singapore entity amounted to US\$125 million.

In addition to these high-profile cases, the Singapore judiciary recently gave a broad interpretation to the Prevention of Corruption Act (PCA), Singapore's main anti-corruption statute. In *PP v Teo Chu Ha*, an individual was found to have violated the PCA by purchasing shares in a newly formed trucking company prior to persuading his employer to secure contracts with the same company. Under the PCA, it is an offense for an individual to receive any gratification as a reward in exchange for influencing his principal to enter into a business transaction.

The court held that, even though the individual paid consideration for the shares, the shares constituted gratification. The court reasoned that a holistic

analysis that focused on the context of the transaction was required to determine gratification. A significant point for the court was that the trucking company had been formed with the specific objective of securing trucking contracts from the individual's employer. Accordingly, the court found that the mere "opportunity to purchase the shares and/or the assistance rendered in purchasing the shares...together with the shares, constitute[d] the gratification."



## Vietnam

**Contributed by Jeff Olson and Van Nguyen (in Hogan Lovells' Hanoi office)**

Official figures released by the National Anti-Corruption Steering Committee on 15 May 2014 portray Vietnam as taking an effective, multifaceted approach to targeting corruption. However, high-ranking government officials have hinted that enforcement reports may only be masking Vietnam's corruption problem, with many of them concerned that so few big corruption cases were discovered and investigated during 2014.

According to the steering committee's report, between 2013 and May 2014, the authorities instituted 275 criminal corruption cases with 601 individuals accused of, among other crimes, embezzling, receiving bribes, and abuse of power.

Several of these corruption cases have been highlighted in the media. In March 2014, the former president of Japan Transportation Consultants admitted that his company had paid kickbacks to win a government-funded project in Vietnam; this led to the Vietnamese Ministry of Public Security commencing criminal proceedings against six government officials in May 2014. If convicted, these officials face a maximum sentence of 15 years in prison.

Similarly, in November 2014, the Ministry of Health called on the Ministry of Public Security to investigate Bio-Rad Laboratories Inc. after the BBC reported that around US\$2.2 million in kickbacks had been paid to Vietnamese government officials through the company's agents and distributors. The investigation is still underway and the outcome is eagerly anticipated, as public trust in the medical field has fallen following multiple scandals.

Finally, the country continues to await investigatory and/or legal developments in the case against Tran Van Truyen, Vietnam's former Inspector General, who was in charge of investigating corruption in the government.



After the media published pictures of Truyen's luxurious properties, an official investigation revealed that Truyen had violated a number of state land policies. Although the Central Inspection Commission recommended the revocation of Truyen's ownership of some of the property in question, the public is demanding that a comprehensive investigation be undertaken to determine whether Truyen was engaged in corrupt practices during his time in government.

## EUROPE



### Germany

**Contributed by Dr. Jürgen Johannes Witte and Alexandra Wagner (in Hogan Lovells' Düsseldorf office)**

On 14 November 2014, Germany formally ratified the UNCAC, which it had signed 11 years prior on 9 December 2003. Germany is the 173rd country to have ratified UNCAC. The Federal Minister of Justice, Heiko Maas, called it an important and long overdue step. The Bundestag, the German Federal Parliament, paved the way towards ratification in September 2014, and in October 2014 the Bundesrat, the Federal Council of Germany, gave its approval.

Germany's ratification of UNCAC was delayed due to the lack of proper anti-corruption legislation regarding members of parliamentary assemblies. It was not until 1 September 2014 that section 108e of the Strafgesetzbuch (StGB), the German Criminal Code, was suitably amended to be in line with Article 16 of UNCAC. Before September 2014, this section only made the buying and selling of votes an offense. Now, pursuant to the StGB, a member of parliament who demands or accepts the promise of an undue advantage for himself or a third party as consideration for the performance of an action or omission in relation to his mandate can be punished with up to five years' imprisonment or a fine. The person offering, promising, or granting the undue advantage also commits an offense under the StGB. This amendment has tightened up German anti-corruption legislation.

Providing advantages to members of parliament is now much more likely to be unlawful. The mere offer of an undue advantage may be prosecutable, depending on the German prosecutor and his or her interpretation of,



for example, the early stages of a discussion. Companies should amend their in-house guidelines and compliance programs to raise awareness of this change in the law.

A further important step was the implementation of Regulation (EU) No 575/2013, the Capital Requirements Regulation (CRR), in January 2014. This resulted in the amendment of section 25a of the Kreditwesengesetz, the German Banking Act. Financial institutions are now obliged to implement an internal whistleblowing system to ensure that information about possible wrongdoing arrives at the right place.

The current system of regulations and sanctions of legal entities and partnerships will become stricter in future if the Act on Corporate Criminal Liability is passed into law. A draft of this law was introduced in the Bundesrat in September 2013 by the government of North Rhine-Westphalia. At present, companies can only be subject to regulatory fines under sections 30 and 130 of the Ordnungswidrigkeitengesetz (OWiG), the German Act of Regulatory Offenses, and cannot be prosecuted under German criminal law.

Under the bill, all legal entities, partnerships with legal capacity, and organizations without legal capacity can be criminally liable if there is a breach of applicable laws by an employee, director, or officer of the organization when he/she is acting on behalf of the organization. It also provides for, among other things, fines of up to 10 percent of the average total turnover of the company and, in certain cases, publication of the conviction. Additionally, companies risk being debarred from tendering for public contracts and obtaining public subsidies for at least one year. Companies that are repeat offenders can even be dissolved. At present, the bill is still pending.





The discussion around changes to the German system of corporate criminal liability has led to two alternative proposals, one from the German Federal Association of Corporate Lawyers (BUJ), and the other from the German Institute for Compliance (DICO). DICO's proposal is to tighten the existing provisions in the OWiG instead of introducing new legislation. The BUJ's proposal focuses on the implementation of a proper compliance system in companies and links this with a mitigation of punishment. Whatever happens, future legislation is likely to have a major impact on the way companies in Germany have to implement compliance mechanisms to avoid liability for bribery and corruption committed by employees and managers.



**France**

**Contributed by Antonin Levy and David Apelbaum  
(in Hogan Lovells' Paris office)**

According to Transparency International's 2011 Bribe Payers Index,<sup>22</sup> French businesses are more likely to pay bribes when operating abroad than most of their European counterparts. The prosecution of corporate entities for bribing foreign public officials is, however, relatively novel in France. According to the report of the OECD Working Group on Bribery for 2014, no final judgment has ever been rendered in France in a case involving a legal person for an offense falling within the scope of the OECD Convention (i.e., bribery of foreign public officials). Prosecutions have principally targeted individuals and have resulted in a high number of acquittals. To date, only a handful of individuals have been convicted, generally for relatively minor misconduct unrelated to corporate activities.

<sup>22</sup> The Index ranks 28 of the world's largest economies according to the perceived likelihood of companies from these countries to pay bribes abroad.

However, a number of prominent French companies have been prosecuted more recently on charges of bribing foreign public officials. The oil giant Total S.A. was acquitted in July 2013 in a case concerning the Oil-for-Food Programme in Iraq, and aerospace and defense company Safran was convicted in September 2012 for bribing Nigerian officials. Appeals in both cases are pending.<sup>23</sup> Total was also referred to a criminal tribunal in November 2014 in another case concerning bribes allegedly paid to Iranian officials between 1996 and 2003. Several other high-profile cases are currently under investigation, notably involving DCNS (a former state-owned company specializing in naval defense and energy) and its subsidiaries, concerning allegations of illicit commissions paid in relation to sales of submarines to Pakistan and Malaysia.

In 2013 and 2014, the French prosecuting authorities have also focused on corruption in the public sector, leading to the conviction of several local public officials for various forms of misconduct in office. Investigations into alleged acts of corruption and trading in influence involving former senior French public officials are also in progress.



**Italy**

**Contributed by Francesca Rolla (in Hogan Lovells' Milan office)**

Following the 2012 Anti-Corruption Act (Law no. 190/2012), which amended existing provisions relating to public corruption offenses (with a view to increasing the relevant penalties) and introduced three new corruption-related offenses relevant to the private sector (induced bribery, private bribery, and illicit trafficking in influence), the level of enforcement in Italy has increased quite significantly. Investigations by Italian public prosecutors have unveiled corruption schemes broadly used throughout the country. A massive investigation involving more than 100 individuals is underway in Rome (the "Mafia Capitale" investigation) and concerns bribes by the mafia to public officials made to gain access to profitable public work. Investigations have also been conducted in connection with alleged attempts to influence public tenders for Milan's Expo 2015.

The Autorità Nazionale Anti Corruzione (ANAC), Italy's National Anti-Corruption Authority, which is tasked with approving the National Anti-Corruption Plan, has also been active. The ANAC's powers have

<sup>23</sup> Shortly before the *Global Bribery and Corruption Review 2014* went to press, the Court of Appeals overturned Safran's conviction.

recently been increased by Law Decree no. 90/2014 (as amended by Law no. 144/2014) which provides, inter alia, for the abolition of the national authority responsible for monitoring public contracts. Its functions have been transferred to the ANAC, and the ANAC has also been given anti-corruption powers that were previously granted to the Public Function Department of the Presidency of the Council of Ministers.

Besides the investigations related to the Mafia Capitale and Expo 2015, investigations were also opened during the course of 2013 and 2014 against one of the leading industrial groups in the high-technology sector in Italy (and one of the main global players in the aerospace, defense, and security space) over allegations of international corruption. A major Italian oil and gas contractor is also under investigation for alleged bribery in Nigeria for obtaining a 10-year public oil exploration license. US\$200 million has been seized on an interim basis pending the outcome of the investigation. Interim measures of this nature have been used more frequently in 2014 than in the past.

Prosecutors appear to be focusing on tax offenses, which do not entail corporate liability, with the aim of unveiling corrupt conduct (for example, evaded tax allegedly being used to create secret funds), which can entail corporate liability under Legislative Decree 231/2001.

In 2014, Confindustria — the main organization representing companies in the Italian manufacturing and services sector — published updated guidelines on how to set up an organizational model pursuant to Legislative Decree 231/2001. The guidelines address, inter alia, the following issues

- identification of the potential risks the company may face and definition of so-called “acceptable risk;”
- protocols for planning decision-making procedures;
- ethical principles, an ethics code, and disciplinary system;
- a supervisory committee; and
- organizational models within groups.

The guidelines also address and examine — through the use of specific case studies — the types of conduct that may trigger corporate liability and provide suggestions that could be adopted by companies within the scope of the decree.

The new guidelines have been examined by the Italian Ministry of Justice, which approved the relevant document on 21 July 2014. Case law suggests that companies may also refer to such industry guidelines when creating their own organizational models.



**Poland**

**Contributed by Marek Wroniak and Agnieszka Majka  
(in Hogan Lovells' Warsaw office)**

2014 has seen a number of global bribery scandals that have impacted Polish subsidiaries of multinationals. It was disclosed that the employees of Hewlett-Packard's (HP's) Polish subsidiary were involved in bribing government officials to win and retain lucrative public contracts. The Polish Central Anti-corruption Bureau (CBA) investigated the case and, as a consequence, the HP executive responsible for public contracts was charged with bribery. This came on top of the US\$108 million that HP paid to settle charges by the U.S. Department Of Justice (DOJ) and U.S. Securities and Exchange Commission (SEC). HP admitted to having lacked internal controls over its business in Poland.

Another front-page corruption affair concerned GlaxoSmithKline plc (GSK), whose medical representatives were allegedly involved in bribing doctors in Poland. Payments that were formally described as being for educational services were, in reality, made in exchange for prescribing GSK products. The Polish public prosecutor investigated the case and, as a consequence, 11 doctors and GSK's regional manager were charged with bribery in April 2014.

Corporate entities can be prosecuted in Poland for corruption and bribery under the Corporate Liability Act of 2002 (CLA). The CLA has rarely been enforced in practice. Between 2005 and 2013, only 180 corporate entities were prosecuted under the CLA, mainly for minor fiscal offenses. This low enforcement rate was partly attributable to the fact that, until 2011, a company could not be held liable for offenses committed by its executive board members under the CLA. Also, prosecutors were unwilling to make use of the CLA due to its complex and multistage procedure. In order to make a company liable for misconduct by a representative, a final and binding criminal award against the individual offender had to be secured first.

However, recent press declarations by the Polish anti-corruption authorities indicate that this approach is due to change. The head of the CBA recently stated that “[...] the Corporate Liability Act is a perfect tool to



prevent corruption. We will more frequently make use of the laws which enable [us] to impose severe punishments on entrepreneurs corrupting officials.” It remains to be seen whether the CLA’s provisions will indeed be more frequently used in the future.



## Hungary

**Contributed by Dr. László Partos (of Partos & Noblet in Budapest, in association with Hogan Lovells)**

2014 has been an eventful year in Hungary on the bribery and corruption front. In the second half of 2013, Decree No. 25/2013 (VI.24) of the Minister of Home Affairs on the Competence and Jurisdiction of the Investigation Bodies of the Police (Decree), entered into force. The Decree was adopted within the framework of the Hungarian government’s Anti-corruption Program, implemented in 2012 to decrease levels of corruption in public administration.

The aim of the Decree was, among others, to strengthen the cooperation of police forces in relation to their investigations, to shorten the duration of criminal investigations, and to make measures more effective in relation to tackling organized crime and corruption.

One controversial provision of the Decree is that it empowers the chief of police to assign particular cases to the National Police Headquarters, the National Bureau of Investigation, or the Airport Police Directorate if it appears necessary to facilitate effective measures against organized crime and corruption. While it is too early to see the effect of this provision in practice, it has encountered a mixed reception. This is because it is seen to give unlimited power to the chief of police

to intervene in a local criminal investigation and delegate the case to another investigating authority, thereby potentially jeopardizing the success of investigations into bribery and corruption.

Undoubtedly, the biggest scandal of the year in Hungary, which received international media attention, came in October 2014 when the U.S. government banned certain unidentified Hungarian officials and businessmen from travelling to the United States as a result of their connection with corruption. It is understood that six individuals, said to be closely related to the Hungarian government, are affected by the ban. The U.S. Embassy in Budapest has not published the names of the individuals, but the president of the National Tax and Customs Administration has admitted that she is on the list.



## Russia

**Contributed by Alexei Dudko and Anton Smirnov (in Hogan Lovells’ Moscow office)**

Article 13.3 of the Federal Law dated 25.12.2008 No. 273-FZ On Countering Corruption, in force since 1 January 2013, establishes an obligation for companies to develop and apply measures to prevent corruption. In November 2013, the Russian Ministry of Labor and Social Security issued the Methodical Recommendations on Development and Application by Organizations of Measures to Prevent and Counter Corruption (Methodical Recommendations) that further detail the suggested measures. The Methodical Recommendations were amended on 16 April 2014. A company that has implemented a compliance program in light of the Methodical Recommendations does not have a complete defense but can mitigate its liability.

The Methodical Recommendations are based on the following eight key principles

- compliance of the company's policy with current laws and regulations;
- senior managers' personal attitude;
- engagement of employees;
- balance between anti-corruption procedures and corruption risk;
- efficiency of anti-corruption measures;
- responsibility and unavoidability of punishment;
- transparency of business; and
- constant control and regular monitoring.

Similar concepts appear in UK and U.S. anti-corruption guidelines, and in the OECD's Good Practice Guidance on Internal Controls, Ethics, and Compliance dated 18 February 2010. However, there are some features of the Russian requirements that may require a foreign company to adjust its compliance program.

Russian anti-corruption enforcement has taken a new direction. Public prosecutors in several Russian regions have filed claims against companies demanding that the defendants adopt anti-corruption procedures and take other anti-corruption measures prescribed by the law. In most cases the courts have ruled in favor of the prosecutors.

At this stage, the prosecutors' enforcement efforts appear to be focused mainly on public utility companies and state-owned entities or, in cases of non-public companies, to be by way of follow-up on ordinary inspections by the prosecutors where the absence of anti-corruption policies was identified. In the absence of reliable reports of court cases, it is difficult to obtain the whole picture and assess the possible implications for major foreign-owned businesses. However, the possibility of action by prosecutors reinforces our recommendation that Russian entities implement anti-corruption policies and procedures.

In 2013 and 2014, the Russian Federal Antimonopoly Service (FAS) and the Russian courts considered three similar cases involving Novo Nordisk A/S, Baxter International Inc. and Teva Pharmaceutical Industries Ltd. The cases' common feature was the approach to the



question of whether a dominant entity has the right to refuse to contract with, or supply to, a distributor on the basis of the purported violation of anti-corruption law by the latter.

The issue emerged in Russia in 2010 in the first *Novo Nordisk* case. The 2011 settlement agreement in that case established the following general principle: a dominant entity is entitled to conduct due diligence checks of its counterparties in relation to their compliance with Russian, foreign, and international anti-corruption laws, but in doing so it cannot abuse its dominant position and violate antimonopoly law. Three more recent cases resulted from the practical application of that principle.

In each of the cases in question, the pharmaceutical company refused either to contract with a potential distributor due to its failure to pass anti-corruption due diligence (*Baxter* case) or to supply goods to an existing distributor due to its noncompliance with the requirements of anti-corruption law (the *Teva* and *Novo Nordisk* cases). In all three cases, the FAS and the courts declared such actions to constitute an abuse of a dominant position. In this context, arguments about the need to comply with Russian and foreign anti-corruption laws (e.g., the Foreign Corrupt Practices Act (FCPA)) were dismissed for the following reasons

- for the purposes of a company's administrative liability for bribery on its behalf, or in its interests, under Article 19.28 of the Code of Administrative offenses, the illegal actions must have been taken "on behalf or in the interests of that company";
- in distributor-supplier relationships, no actions of the former on behalf or in the interests of the latter arise, because with the transfer of title to the goods, the supplier is no longer responsible for their future legal fate, and the distributors' actions on further resale of the goods do not affect the suppliers' rights in the context of corporate administrative liability;
- as a Russian entity, the distributor is obliged to comply with Russian anti-corruption law, and Russian law does not provide for the distributor's obligation to undergo FCPA due diligence; and
- the inclusion of anti-corruption audit clauses into the distribution agreement is considered to impose

unfavorable conditions upon the distributor (which is a form of abuse of dominance), while at the same time the supplier is entitled to demand from the distributor compliance with anti-corruption law outside the scope of the contractual framework.

The approach adopted by the FAS and the courts is contrary to internationally accepted practice and makes it difficult for foreign companies to select their counterparties based on reputation. It follows from the courts' rulings in these three cases that in order to be compliant with antimonopoly law, the selection process must be conducted "on the basis of application of transparent and non-discriminatory procedures, with detailed regulation of the time limits for taking the respective decisions, the list of the necessary documents and information, and the exhaustive list of the grounds for refusal to enter into the contract." In the courts' view, apart from ensuring compliance with antimonopoly law, meeting all these conditions could also help the company avoid liability for a corporate bribery offense.

The *Teva* and *Novo Nordisk* cases are under appeal.



## Spain

**Contributed by Ignacio Sánchez (in Hogan Lovells' Madrid office)**

Spanish authorities remain active in prosecuting cases of corruption. Notable matters include criminal proceedings against *Jordy Pujol i Soley*, the former President of the Generalitat de Catalunya, the institution responsible for governing the autonomous community of Catalonia, for corruption and tax evasion. There have also been investigations concerning football match-fixing and bribery of Angolan public officials.

The Judiciary Act 6/1985 was amended in March 2014 in order to meet the obligations imposed by international treaties that Spain has ratified, including the OECD Anti-Bribery Convention. The amendment introduces the possibility in certain circumstances — for example, if the perpetrator is a Spanish resident or national, or where a Spanish company is involved — for offenses of corruption between private individuals and corruption in international business transactions to be tried by Spanish courts, even if the relevant conduct took place outside of Spain.

Spanish lawmakers have made it clear that crimes outside Spain should only be pursued in exceptional cases. Moreover, Spanish courts will not have jurisdiction where proceedings have already been brought in an international court, in the jurisdiction where the crime was committed, or in the country of origin of the person charged with the offense. In the latter two cases, this assumes that those persons are not in Spain or, if they are, that they will be extradited to another country or transferred to an international court. If the state exercising that jurisdiction is not willing to investigate the case or is not realistically capable of doing so, Spanish courts will still be able to exercise their jurisdiction.

In December 2014, the Spanish government presented a draft bill that is intended to introduce several amendments to the Procedural Criminal Code. The government is aware that the justice system needs to spearhead a rapid response when it comes to financial crime and corruption, specifically. The aim of the draft is to simplify the procedural system in accordance with European directives. In particular

- With a view to speeding up the criminal justice system so as to avoid undue delays in proceedings, the draft sets time limits for the investigative phase of the proceedings, as follows
  - In general, the investigative phase will conclude within six months after the ruling of commencement of proceedings is issued.
  - Exceptionally, in complex cases, the investigative phase can last up to 18 months, which can be extended by another 18 months given certain circumstances such as (1) where the case relates to organized crime or terrorism; (2) where it involves a large number of victims; (3) where the cooperation of foreign countries is needed; or (4) where the investigation requires the examination of extensive documentation, among others.
  - These time limits can be extended when necessary, but once the deadline expires with no extension agreed, no additional investigative measure may be ordered.

- In order to adjust legislation to new technology, the draft refers for the first time to forms of communication such as SMS and email. It extends the time limit for the interception of communication up to two years, divided into three-month periods.
- To comply with Directive 2014/42/EU, the draft envisions an independent process for the confiscation of proceeds of crime.



### The Middle East

**Contributed by Richard Kiddell and Ahmed Hammadi  
(in Hogan Lovells' Dubai office)**

The main developments this past year in the Middle East are linked to the continuing impact of the Arab Spring and relate, mainly, to public sector corruption. Specifically, public sector prosecutions in both Kuwait and Oman, born from protests in 2011 by employees and nationals seeking better pay and working conditions, have been the result of a more liberal interpretation of the current legislation by the authorities, stronger support of national anti-corruption organizations, and a reshuffle of the leadership of these organizations.

In Kuwait, the Ministry of Labor and Social Affairs, with the aid of the Kuwaiti Anti-Corruption Authority, filed four legal cases relating to allegations of corruption within former high-ranking authorities in the Ministry. The total amount of public money alleged to have been misused is estimated at US\$17.6 million.

In Oman, a prosecution, sanctioned directly by the Sultan of Oman, was brought against corrupt officials in executive and management positions in prominent oil and gas companies. Oman Refineries and Petrochemicals and Galfar Engineering and Contracting were among the companies investigated. Executives and management in these companies were convicted and handed sentences of between 10 to 15 years' imprisonment and/or fines ranging between US\$500,000 and US\$4.4 million.

These are only examples of headline cases. It is worth noting that in the Gulf Cooperation Council states, parties accused of corrupt acts, and in particular government officials, are typically held to a high level of scrutiny.

Future legislative developments are on the horizon for both Oman and the United Arab Emirates (UAE).

On 9 January 2014, Oman ratified the UNCAC. Oman is the last of the Gulf Cooperation Council states to do so. Shortly following that ratification, Oman announced plans to pass a separate legislative instrument for the implementation of the convention, although there has not, as yet, been any clear indication as to when that legislation may be passed.

In the UAE, the State Audit Institution (SAI), the nation's anti-corruption watchdog, participated in a meeting of the UN Working Group on Asset Recovery in its eighth session held in Vienna in September 2014, at which the UAE's implementation of the convention on a local level was discussed. The SAI had previously announced, in January 2013, that it was aiming to publish a federal anti-corruption law during 2013 but, to date, it has yet to do so. While no definitive indication as to timing was given, the legal community now expects a draft of the long-awaited legislation to be made public at some point in 2015. Until then, it remains a case of "watch this space." ■







## Our team

The Hogan Lovells Global Bribery and Corruption Task Force offers international clients informed advice in a number of areas of risk, from reactive incident response measures to the development of proactive strategies for managing potential exposure through compliance programs.

The task force brings together a cross-jurisdictional team of partners from Hogan Lovells' international network with more than 25 years of experience in large-scale investigations. The task force has real experience on the ground in the United States and Europe (including the United Kingdom, Germany,

Spain, Italy, and France), as well as in Russia, Asia (including China and Hong Kong), and the Middle East. Hogan Lovells is a recognized leader in investigations and fraud work, being ranked in the top tier of leading legal directories.

For more information, please contact one of our Hogan Lovells Bribery and Corruption Task Force members or the person with whom you usually deal.

Please visit our website at [www.hoganlovells.com/bribery-corruption](http://www.hoganlovells.com/bribery-corruption).

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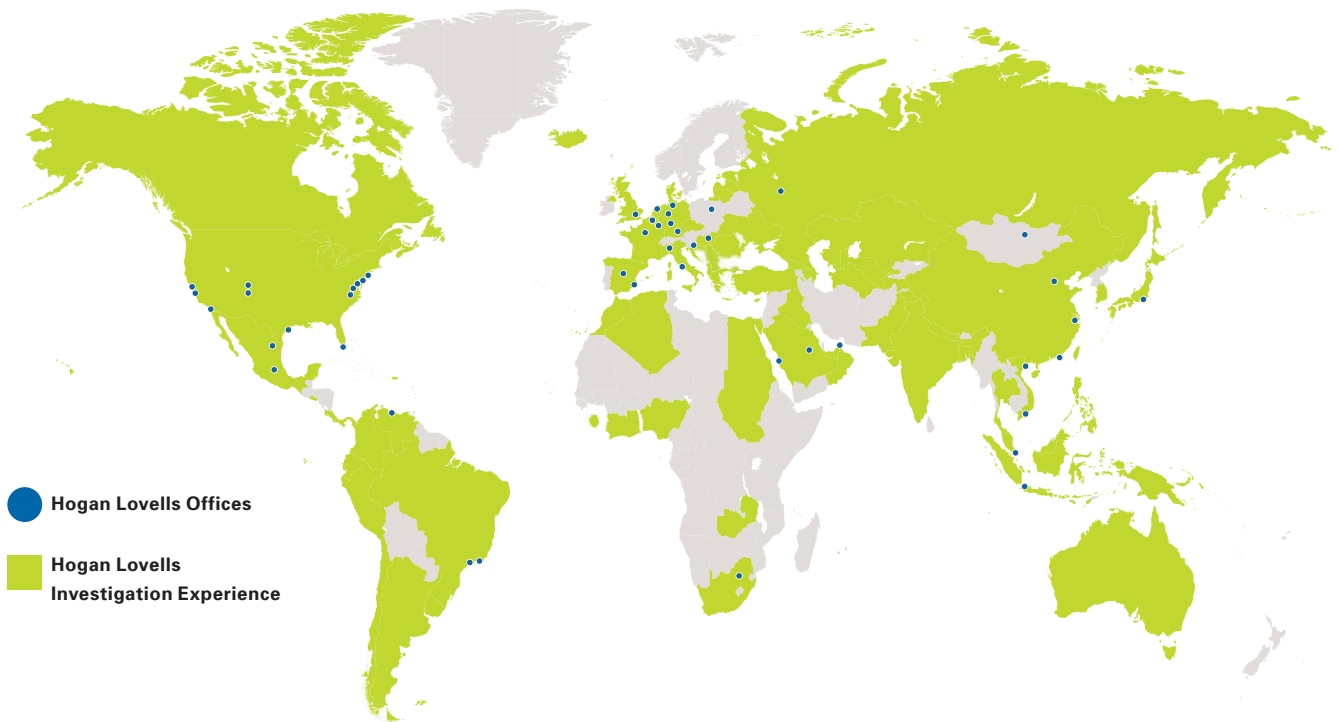
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