Welcome to Dorsey & Whitney’s monthly Anti-Corruption Digest. Anti-corruption enforcement crosses boundaries like no other, so keeping up to date is more important than ever. In this digest, we draw together news of enforcement activity throughout the world and aim to reduce your information overload. Our London, Minneapolis, New York and Washington DC offices edit the digest and select the most important material so that you can use this digest as a single source of information.

The USA

Stryker Corporation Settles FCPA Charges with SEC

The Securities Exchange Commission (“SEC”) has announced that it has struck a deal worth over $13.2 million with Stryker Corporation, a Michigan-based medical technologies firm, to resolve alleged violations of the Foreign Corrupt Practices Act 1977. According to the SEC website, Stryker allegedly bribed doctors and other government officials in at least five countries to obtain or retain business, leading to millions in illegal profits.

According to the SEC’s press release, “Stryker's misconduct involved hundreds of improper payments over a number of years during which the company’s internal controls were fatally flawed . . . . Companies that allow corruption to occur by failing to implement robust compliance programs will not be allowed to profit from their misconduct.”

Of note, some of the alleged bribes did not actually involve payment of cash or kick-backs, but instead Stryker allegedly provided lavish business trips or (in one instance) funded a “pet research project” of a public hospital doctor in Poland by building the doctor a $200,000 laboratory. All of these expenses were allegedly recorded on Stryker’s balance sheet as legitimate business expenses.

The settlement requires Stryker to disgorge over $7.5 million in profits, and pay interest and penalties amounting to another $5.7 million. The deal highlights the importance of internal compliance programs for companies doing business internationally.

Diebold Settles FCPA Charges with SEC and DOJ

On October 22, the United States Department of Justice (“DOJ”) and Securities Exchange Commission (“SEC”) announced that Diebold Inc., an Ohio company engaged in the manufacture of ATM machines and bank security systems, had agreed to pay more than
$48 million to settle charges related to alleged violations of the FCPA.

The SEC alleged that Diebold subsidiaries in China and Indonesia spent more than $1.8 million on travel, entertainment, and other inappropriate gifts for senior officials within government-owned banks. The SEC also alleged dozens of cash gifts ranging from $100 to $600. Diebold allegedly recorded these transactions as “training expenses.”

Scott W. Friestad, an Associate SEC Enforcement Director, commented on the settlement, and noted that “a bribe is a bribe, whether it’s a stack of cash or an all-expense-paid trip to Europe.”

The settlement includes over $22.9 million in disgorged profits, a $25 million penalty, and also requires Diebold to submit to an independent compliance monitor for an undisclosed amount of time. Of note, the settlement comes just three years after Diebold had settled a non-FCPA enforcement action related to manipulation of its underlying books, records, and disclosures to meet earnings forecasts.

The case is significant in that it is another example of FCPA enforcement related to bribes for lavish entertainment and travel expenses.

**Weatherford International Ltd. Settles FCPA Charges with SEC**

On November 6, the Wall Street Journal reported that Swiss oil company Weatherford International Ltd. (which has its operational headquarters in Houston, Texas) has agreed to pay $253 million to settle varying charges, including charges brought under the FCPA.

Weatherford, according to SEC filings, had originally only reserved $100 million to cover possible exposure to resolve the charges. The settlement resolves allegations that Weatherford had conducted business in restricted countries, including Cuba and Iraq, and had also allegedly bribed government officials through its European subsidiary in violation of the FCPA.

Weatherford has since stated that it stopped doing business in Cuba, Iran, Sudan, and Syria. In addition to the $250 million settlement, Weatherford has disclosed that the cost of its investigation into these compliance matters exceeded $115 million. The case highlights the enormous expense that can follow FCPA and other enforcement inquiries into a company.

**FCPA Declinations by United States Enforcement Agencies Continues to Increase in 2013**

The number of FCPA declinations by United States enforcement agencies is on the rise. A declination is an instance in which an enforcement agency – e.g. the DOJ or the SEC – conducts an FCPA investigation but decides not to pursue any enforcement activity such as a fine or penalty. So far in 2013, the DOJ has publicized 15 declinations, and the SEC has publicized 8. This continues an upward trend over the past few years. For instance, in 2012, the DOJ only had 12 declinations, while the SEC had 6. And in 2011, both agencies each only publicized 5 declinations.

The reason for the increase in declinations may be related to a number of factors, including an overall increase in the number of actual investigations, or the unique nature of the declinations. The first hypothesis is likely not correct given that there has been a decrease in the number of enforcement actions during this same time (19 combined in 2013; 28 combined in 2012; and 36 combined in 2011).

The more likely explanation is that in the past few years, DOJ and the SEC have conducted
industry-wide investigations of most major players in giant international markets, including oil, medical, and defense. While some of these investigations turned into enforcement actions (See Stryker above), many did not.

For example, the SEC and DOJ announced in June that pacemaker market leader Medtronic was no longer the target of an investigation into possible use of foreign bribes in the medical device industry. And earlier in 2013, the SEC announced that it was dropping an investigation into at least six of the seven major oil companies it had previously been investigating as part of an industry sweep relating to dealings with former Libyan leader Muammar Gaddafi.

**FCPA Compliance in China**

The US China Business Council (the “USCBC”) has published a report which provides an insight into practices which can assist companies doing business in the higher risk environment of the PRC. The report, entitled Best Practices for Managing Compliance in China, is based on a survey of 30 companies doing business in China, spanning a variety of industry sectors.

The survey highlights compliance practices currently being utilized by companies doing business in China. These include:

- **Entertainment.** One of the key risks faced by companies stems from commercial and government entertainment. 94% of the firms responding in the survey reported using mandatory monetary thresholds or limits on the amount that can be spent on entertainment and gift giving. 44% of those companies use global company wide limits in U.S. dollars while 56% keep the thresholds in local currency. The average threshold for entertainment expenses in China is about $72 per event.

- **Gifts.** Gift giving is a key issue because it is a customary practice in China. Most companies reported that they discourage gifts. When they are unavoidable, typically firms favor giving gifts of minimal monetary value with corporate logos such as flash drives, calendars, notebooks and small toys directly related to the business of the company. Most companies also maintain a threshold for gifts. The average amount for those in the survey was $57.

- **Whistleblowers.** Nearly all of the companies in the survey offer hotlines for staff to anonymously report compliance concerns. The most successful are those with multi-lingual support and local call-in numbers.

- **Joint ventures.** Given the local laws restricting the modes of foreign investment in China, these present one of the most challenging issues. Companies in the survey stated the importance of continually discussing compliance to ensure that it is considered a priority in the partnership. Given that a foreign partner may not always have direct input with regards to the joint venture’s day-to-day operations, the respondents noted that it is vital to ensure that senior leaders at the joint venture company continually reinforce the compliance message.

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

**THE UNITED KINGDOM**

**Printing company corruption charges**

Smith & Ouzman Limited, along with two of its directors, an employee and an agent have been charged by the Serious Fraud Office with
offences of corruptly agreeing to make payments totaling nearly half a million pounds. The charges relate to alleged offences between November 2006 and December 2010. The Bribery Act 2010 does not have retrospective effect, and so the SFO is bringing the prosecution under section 1 of the Prevention of Corruption Act 1906.

The company specializes in printing security documents such as ballot papers, exam certificates and payment vouchers. It is alleged that the illegal payments, which totaled £413,552.12 ($669,986.36), related to transactions in Mauritania, Ghana, Somaliland and Kenya, and were made in order to influence the award of contracts to the company. The defendants have been released on unconditional bail and a trial listed for 10 November 2014.

The charges may provide some respite for the SFO, which has been criticized of late for its lack of enforcement action, however the shine may be somewhat removed as the charges are not coming under the 2010 Act.

FCA Thematic Review

The Financial Conduct Authority (the “FCA”) has published its review of anti-bribery and corruption risk management in 22 wealth and asset management firms, highlighting areas of poor practice and “common weaknesses” in the sector. The FCA considered, among others, the firms’ policies governing the provision of gifts and entertainment, while also reviewing their approach to third party relationships e.g. with agents and introducers.

It was found that “most” of the 22 firms had documented policies on the provision of gifts and entertainment, typically providing guidelines regarding value thresholds and pre-approval procedures. Such pre-approval limits ranged from £25 to £500 ($40 to $810). It was noted, however, that the policy of some firms was “vaguely defined and open to interpretation”, thus leading to risks of inconsistent implementation and ineffective controls.

The report notes that a significant risk for firms lies with their dealings with third parties who may engage in corruption. It was reported that most firms did not have clearly defined procedures to identify and risk assess the use of third parties, while also finding that the extent of due diligence performed on them was insufficient. Examples included instances such as contractual agreements with the third parties “not always [including] appropriate clauses in relation to bribery or corruption or the ‘right to audit’.” Some instances of good practice did receive commendation, such as the documentation of the rationale for commission payments being made and such payments being regularly monitored by senior management.

A copy of the Thematic Review can be found here.

The Rest of the World

Germany

A German president is to go on trial for the first time in the post-war era. Christian Wulff has been charged with alleged acts of corruption dating back to 2008, during his tenure as president.

The charges reportedly stem from Mr. Wulff’s visit to the Oktoberfest beer festival in Munich, where he was said to have had his €719 ($960) hotel and meal expenses paid for by a film producer. State prosecutors allege that in return for the accommodation, Mr. Wulff wrote a letter to the chairman of Siemens, on behalf
of the film producer, seeking funding for one of his projects about a “war-era Siemens manager in China”.

The former president has denied the allegations, rejecting an offer from state prosecutors to settle the matter with an out of court payment. Instead he has opted to try to clear his name with a court decision.

Mr. Wulff is reported to have told the court, “I never accepted any deal … I’m here because I want justice to be done.” State prosecutors have stated that “there is sufficient suspicion” of the alleged corrupt act”.

A lengthy trial is in process, with a decision not expected to be reached until the spring of next year. If convicted of the charges, Mr. Wulff could face up to three years in prison.

India

Dinu Bogha Solanki, a Member of Parliament and a leader of the main opposition party in India, has reportedly been arrested by the Central Bureau of Investigation (the “CBI”) over his alleged role in the murder of an anti-corruption activist.

Amit Jethwa, who was shot dead in 2010, was said to be undertaking a campaign to highlight illegal mining in the state of Gujarat. This reportedly included the filing of several petitions in the Gujarat High Court by Mr. Jethwa along with accusations against Mr. Solanki of being associated with the alleged illegal mining activities in the Gir Forrest region. In a statement, the CBI said that “The MP [Mr. Solanki] was called for questioning by the CBI and after detailed interrogation, he was arrested.”

The broader picture of the incident highlights India’s push to stifle corruption among public officials and the heightened demand from the Indian public to have legislation in place which affords greater protection for whistleblowers.

Israel

Former Chief Rabbi Yona Metzger is reported to have been arrested on suspicion of receiving bribes and has been remanded in police custody. Judge Menahem Mizrahi said that releasing Rabbi Metzger could interfere with the investigation, adding that “there is reasonable suspicion that the offences attributed to the suspect were indeed committed [by him].”

The Lahav 433 National Crime Unit, who are carrying out the investigations, allege that the Rabbi received bribes and illicit payments of an “unprecedented scope”. The cash payments, reported to be in the “millions of shekels”, were said to have been received over the last ten years, during his tenure as Chief Rabbi. In return for the bribes, Rabbi Metzger is alleged to have utilized his authority and acted as an agent in order to direct and advance the interests of several non-profit organizations.

The attorney for Rabbi Metzger is said to have countered that “it is totally unrealistic that he received millions [of shekels] in relation to his job”, adding that he was concerned that the accusations against his client were being made in order to slander the Rabbi.

The investigation is ongoing.

Kenya

Kenya ranks poorly on Transparency International’s global corruption perceptions index, sitting at 139 of 176 countries. The group claims that bribery often goes unreported in the country because its citizens are of the belief that no action will be taken in any event.
Its statistics indicate that only 7 persons out of 100 reported or complained if they encountered corruption.

In a move that appears designed to combat this allegation, the president of Kenya has launched a website where people can report incidents of corruption directly to him. A government spokesman is reported to have said, “The president is committed to clean government and this site advances his intention to act strongly against corruption.” The website (www.president.go.ke/en/category/corruption.php) asks users to provide a description of the incident they are alleging, along with other details of the offence, such as a lengthy list of government departments to choose from, and gives them the option of uploading a photo or video in support of their report. Those submitting a report may remain anonymous if they so choose.

What is said to be the official presidential Twitter account has already reported “a good number of well documented incidences being submitted”.

**Oman**

A senior official at Petroleum Development Oman (“PDO”), a state run oil company, has gone on trial having been accused of receiving a bribe. Juma Al Hiinai, the head of the tenders committee at PDO, is alleged to have received a bribe from two executives of Galfar Engineering and Contracting (“Galfar”) in 2011, in return for extending the term of a contract which PDO had awarded the local firm. All three individuals are reported to deny the charges.

The case is said to be part of a wider effort to tackle bribery and corruption in the industry, with reports alleging that at least one other senior executive is under investigation. Critics, however, suggest that, despite the government expressing a deep commitment to tackling corruption in Oman, doubts remain as to the transparency of numerous tenders and concession agreements awarded to foreign companies each year.

**Sweden**

Sweden has traditionally been considered one of the world’s least corrupt countries, ranking fourth in the most recent Corruption Perceptions Index issued by Transparency International. However, in a report published by the Council of Europe's Group of States Against Corruption (“GRECO”), it is stated that the country could be more proactive in its efforts to prevent corruption.

The report highlights that a code of conduct for Members of Parliament would be a positive step in an effort to prevent corruption among the country’s politicians, while also expressing concern over the lack of regulations regarding the positions of employment MPs can take up upon leaving parliament. Other recommendations in the report include expanding the registry of MPs financial assets to include those held by their family members.

Riksdag, Sweden’s parliament, is said to have responded positively to the report. Its speaker, Per Westerberg, said that “openness and clarity are important issues for the Riksdag ... we therefore welcome the recommendations [of GRECO] and see it as a chance for all the parties to come together to discuss how we can be more transparent.”

A copy of the report can be found here.

**Taiwan**

A former district prosecutor has been sentenced by the Taiwan High Court to 10 years in prison and 6 years deprivation of his
civic rights after being found guilty of accepting bribes from business owners. The bribe payments were reportedly not just in cash, but included cars and furniture in exchange for his “help, advice and leniency”.

It is alleged that Chan Chao-Shu assisted an individual who was engaged in a property dispute regarding his hot spring. Mr. Chan reportedly used his authority to aid the individual in return for use of the spring’s restaurant and other facilities, including a motorcycle and luxury car.

Another instance is alleged to have involved a sludge plant owner, Mr. He, whose operations were facing opposition from local residents. Mr. Chan is alleged to have advised Mr. He to present his case when Mr. Chan was scheduled to have his rotation in office, allowing him to rule in Mr. He’s favor. This was said to be in return for NT$30,000.

After being initially found not guilty, the court in Mr. Chan’s second trial convicted him on charges of corruption. Along with the prison term, Mr. Chan was ordered to return NT$736,000, the total sum of bribes money he was alleged to have accepted during his tenure.

Dorsey & Whitney also offers a UK/US corruption workshop featuring experts from both countries that can be tailored to individual organizations.

Corruption issues are also addressed in the Anti-Fraud Network’s newsletters: see www.antifraudnetwork.com for current and archived material; see also the Computer Fraud website at http://computerfraud.us and www.secactions.com.

This update is provided for general informational purposes and is not intended to constitute advice. If you require advice on any of the matters raised in this update, please let us know and we will be delighted to assist.