Welcome to Dorsey & Whitney’s monthly Anti-Corruption Digest. 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

FedEx Corp.

Atlanta-based international shipper FedEx Corp. has informed the DOJ and SEC that it is investigating a whistleblower allegation that it paid bribes to Kenyan customs officials from approximately 2010-2013. According to an article in The Wall Street Journal, “the alleged bribes went to customs officials to clear shipments without inspection, as well as to government vehicle inspectors and others.” FedEx issued a statement to the Journal in which it said it has “not found anything to substantiate the allegations.” According to a December 2013 email reviewed by the Journal and authored by FedEx General Counsel Christine Richards, the allegations here were “similar to another complaint [FedEx was] already investigating.”

In Kenya, FedEx services clients through third party shippers called “nominated service contractors.” FedEx uses nominated service contractors in numerous countries, including Albania, Armenia, Kyrgyzstan, Uzbekistan, Iceland, Yemen, Libya, Ethiopia, Rwanda, Tanzania, The Republic of Congo, Djibouti, Senegal, Madagascar, Haiti, Micronesia, Malta, Mali, Palau, Seychelles, Mauritius, and Maldives.

SEC “No Admit, No Deny” Settlements

The pendulum has swung back in favour of the United States Securities and Exchange Commission’s (SEC’s) ability to gain approval of settlements, including consent decrees, in which parties do not admit guilt. In a June 4 decision with potentially important ramifications for resolving FCPA matters with the SEC, the United States Court of Appeals for the Second Circuit instructed its district courts generally to approve settlements reached by the SEC and private parties where the settlements are fair, reasonable, and where the public “would not be disserved” by approval.

The Second Circuit decision vacated Southern District of New York Judge Jed Rakoff’s November 2011 order in SEC v. Citigroup Global Markets, Inc. There, Judge Rakoff rejected a proposed settlement between the
SEC and Citigroup because, he said, the lack of admission of wrongdoing by Citigroup and lack of information about the transaction meant the SEC could not show that the settlement was “fair, reasonable, adequate and in the public interest.”

With regard to the public interest, Judge Rakoff stated that lack of information about the facts would render the court “a mere handmaiden to a settlement privately negotiated on the basis of unknown facts, while the public is deprived of ever knowing the truth in a matter of obvious public importance.” The Second Circuit rejected this argument, stating, “Trials are primarily about the truth. Consent decrees are primarily about pragmatism.” The Court also rejected Judge Rakoff’s “adequacy” analysis, instructing district courts to show deference to SEC by not asking whether the settlement’s terms are adequate.

Following rejections of “no admit, no deny” consent decrees by Judge Rakoff and a federal judge in the District of Columbia, the SEC implemented a policy under which admissions of wrongdoing would be required in certain cases. What will happen to this policy in the wake of the Second Circuit’s decision here is unclear.

Key Energy Services

In May, onshore energy production services company Key Energy Services, Inc. disclosed a probe into whether certain of its Russia operations violated the FCPA. On June 6, Key Energy filed an 8-K, in which it disclosed allegations of a possible FCPA violation stemming from its Mexico operations.

“In April 2014, the Company became aware of an allegation involving Key’s Mexico operations that, if true, could potentially constitute a violation of certain Company policies, including our Code of Business Conduct, the U.S. Foreign Corrupt Practices Act (FCPA) and other applicable laws. The Company conducted an initial investigation of this matter and the Board of Directors of the Company has formed a special committee of independent directors to oversee the investigation of this matter as well as the investigation of previously disclosed possible violations of the FCPA involving business activities of our operations in Russia, and any other resulting matters. The special committee has retained external independent legal counsel to continue these investigations.

On May 30, 2014, the Company voluntarily disclosed the allegation and information from this initial investigation to the Securities and Exchange Commission (SEC) and the Department of Justice (DOJ). The Company and its management are fully cooperating with the SEC and DOJ; however, at this time the Company is unable to predict the ultimate resolution of these matters with these agencies.”

The United Kingdom

UK Government Announces New Anti-Corruption Laws

It has been reported that the UK government plans to strengthen the UK’s anti-corruption law through two new bills: The Small Business, Enterprise and Reform Bill and The Serious Crime Bill.

The Small Business, Enterprise and Reform Bill will seek to tackle corruption by lifting the veil of secrecy over who owns private companies and making it an offence to help individuals hide their assets to avoid paying tax.

The Serious Crime Bill introduces a new white collar crime offence of ‘participation in an organised crime group’ which carries a sentence of up to five years in prison.
The new laws were announced in the Queen's Speech, which sets out the government’s legislative programme for the coming year.

Barry Johnston, a senior UK political adviser at campaign group Christian Aid, said in a statement: “The UK’s new register is good news for people living in poverty in the UK and poor countries alike, because they pay the price for tax evasion and corruption”.

Mr Johnston reportedly stated that the UK has done more than any other G8 country to shed light on the true ownership of companies registered on its shores, but the government must ensure that the information in the registry is accurate, that the registry includes trusts in addition to companies and that the UK’s Overseas Territories and Crown Dependencies also create registries of their own.

Territories such as the Channel Islands are alleged to be popular offshore havens for corporate structures that hide the ownership as a way to evade taxes or hide proceeds of crime.

The United Kingdom is likely to become the first country to make public the ownership of offshore companies set up with complex structures.

Karen Bradley, minister for modern slavery and organised crime, said in relation to the Serious Crime Bill, a statement released in advance of the Queen’s speech: “Nobody is above the law. But for too long corrupt lawyers, accountants and other professionals have tried to evade justice by hiding behind a veneer of respectability”. Ms Bradley added: “This new offence sends out a clear message to those individuals - if you are helping to oil the wheels of organised crime, you will be prosecuted and face being jailed”.

In a statement, Robert Barrington, head of campaign group Transparency International UK said: “There is abundant evidence that corrupt funds are laundered through the UK and used to buy property, luxury goods, sports clubs, companies, fine art and other assets - helped by a small army of professional intermediaries like lawyers and accountants and with reputations cleansed with the help of PR firms.” Mr Barrington added: “We have identified 10 tests that we believe any new legislation must meet in order to tackle the scale of this problem. We will be monitoring the draft legislation carefully to see whether it represents serious action or window-dressing”.

Serious Fraud Office (“SFO”) Investigates GlaxoSmithKline

Further to the April and May Digests which reported GSK investigations in Poland and China, it has been reported that the director of the SFO has opened a criminal investigation into the commercial practices of GlaxoSmithKline plc and its subsidiaries.

The SFO action follows the Chinese police announcement on 14 May that they had charged the former British boss of GSK's China business and other colleagues with corruption, after an investigation disclosed evidence of a scheme to bribe doctors and hospitals.

Innospec: the final chapter

The SFO succeeded in its first overseas corruption trial against two former Innospec Limited (“Innospec”) executives. The case was referred by the DOJ following an FCPA investigation conducted by the Department and the SEC.

The SFO’s case was brought against Dennis Kerrison, former CEO of Innospec Limited, and Mitiades Papachristos, former Regional
Sales Director for the Asia Pacific region. Both were charged with, and convicted of, conspiracy to commit corruption. The Offences were committed prior to the Bribery Act and therefore under the prior anti-corruption law.

The report states that the corruption took place over a six year period beginning in 2002; bribes were paid to government officials in Indonesia in connection with the sale for Innospec products which included Tetraethyl Lead (a highly dangerous compound created as an octane booster to be added to engine fuel). Leaded fuel that contained this substance was banned in the UK in 2000. Although the Indonesian government wanted to eliminate the use of Tetraethyl Lead, the corruption significantly extended its use. Both defendants were involved in the bribes.

There had already been three guilty pleas in connection with this case. In March 2010, Innospec pleaded guilty to bribing state officials in Indonesia and it was fined $12.7 million. In June 2012 Paul Jennings, a former CEO of Innospec pleaded guilty to two charges of conspiracy to commit corruption and a further charge of conspiracy to commit corruption in July 2012. David Turner, a former Innospec Sales and Marketing Director pleaded guilty to three charges of conspiracy to commit corruption in January 2012.

The sentencing for the four individual defendants is expected to take place on 25 July 2014 which will conclude the SFO’s investigation related to Innospec.

In March 2010 Innospec, Inc, pleaded guilty to defrauding the United Nations and to violating the FCPA as well as the U.S. embargo against Cuba. The company pleaded guilty to fraud connected to payments made to the former Iraqi government under the UN Oil for Food Program and FCPA violations in connection with bribing officials in the Iraqi Ministry of Oil.

Innospec agreed to pay a $14.1 million fine, to the instalment of a compliance monitor and to install a robust compliance program.

Innospec also settled this case with the SEC. The company consented to the entry of a permanent injunction prohibiting future violations of the bribery and books and records and internal control provisions. Innospec also agreed to pay $60,071,613 in disgorgement, most of which was waived. In addition, Innospec agreed to pay $2.2 million to OFAC. The criminal fines were based in part on the financial condition of the company.

**The Rest of the World**

**Argentina**

Argentina’s Vice President Amado Boudou is the first of seven to be questioned in court about alleged influencing tactics in the acquisition of a company with a monopoly to print the national currency, which stems from a transaction in 2010 when Mr Boudou was the country’s economy minister.

Federal Judge Ariel Lijo is considering whether Mr Boudou acquired Ciccone Calcografica through associates to negotiate favourable contracts with the state and the ruling party to print money and official documents.

According to reports, prosecutors allege that Mr Boudou: “took advantage of his condition as a public official” to favour the company, as stated in the summons issued for him to appear.

Once all seven suspects are questioned, the judge will have 10 days to decide whether to proceed to a trial.
Jorge Capitanich, President Cristina Kirchner’s chief of staff said in a statement: “It would be very good to have transparency and visibility in this case, which has been much talked about”. He added: “It is an excellent opportunity for the public to learn of all the reasons and for the judiciary and a judge to act without pressures of any kind.”.

As president of the Senate, Mr Boudou can be tried but not arrested unless his position is terminated by the legislature, which is controlled by the ruling party.

**Australia**

Thiess, an infrastructure and mining corporation, may have breached Australian bribery laws by paying Indonesian police and military officials in return for security at its mines according to reports.

It is alleged that Thiess paid Indonesian security officials tens of thousands of dollars by bank transfers and cash payments.

In return for the payments, the officials allegedly directed forces under their command to provide security at Thiess’ coalmines in South and East Kalimantan, where there has been union unrest and accusations of police brutality.

The company has reportedly referred the matter to lawyers for advice on whether federal police should be notified.

Thiess Indonesian operation’s connections with military and police officials came to public attention in Indonesia in March 2012 when workers at the company’s East Kalimantan mine began to protest at Thiess’ local office.

Indonesian mining union told reporters that workers were met by police and military officers with batons. Union general secretary, Bambang Surjono, says workers were beaten.

Australian law prohibits giving a foreign official a benefit to secure a business advantage that is not legitimately due.

It is possible that the payments made by Thiess to security officials would not breach Australian law on the basis that the firm was entitled to the security provided and it did not amount to a “business advantage”.

A company source reportedly stated that the question of whether the company may have breached Australian foreign bribery law would have been avoided if it had hired private security guards, especially in light of the corruption profile of Indonesia’s security services.

In 2013, according to reports, Leighton Holdings (the parent of Thiess) made a $42 million bribery payment to secure an Iraqi oil pipeline contract in 2010-11. That payment remains under federal police investigation.

Reports indicate that the board of Leighton Holdings was recently made aware of the potential corruption problems regarding Thiess in Indonesia. Leighton Holdings chief executive Hamish Tyrwhitt and chief financial officer Peter Gregg who were also members of the board have resigned from Thiess Australia.

A spokeswoman for Leighton Holdings said in response to the Indonesian allegations: “We do not comment on matters that are the subject of old and unsubstantiated media reports or speculate on their implications.”

**Canada**

Further to May’s Digest which reported a recent case, Chowdhury v. H.M.Q. 2014 ONSC 2635, where the Ontario Superior Court of
Justice concluded that Canada does not have jurisdiction over a foreign national alleged to have breached the Corruption of Foreign Public Officials Act, there have been further charges against foreign nationals involved in alleged bribery concerning Canadian corporations.

The Canadian police have charged two Americans, Robert Barra and Dario Berini, the former CEO and COO of Cryptometrics Inc., the U.S. parent company of Cryptometrics Canada, which is based in Ottawa and one UK national, Shailesh Govindia, who worked with Cryptometrics, with allegedly attempting to bribe public officials in India.

These charges are reportedly in connection with last month’s prosecution that sentenced, Nazir Karigar a businessman in Ottawa, to three years in prison for his role in a conspiracy to make payments to public officials at Air India, including a government minister, in an attempt to secure a $100 million contract for security and facial recognition technology for the affiliated Canadian and U.S. technology companies.

In a statement Gilles Michaud, the RCMP assistant commissioner who heads the National Division said: “We have a mandate to investigate domestic and international allegations of corruption of foreign public officials. This investigation demonstrates the RCMP’s [Royal Canadian Mounted Police] commitment to combatting international corruption”.

Peter Dent, chair of Transparency International Canada said in an interview with CBC News: “It is important to send the message that anyone who conspires to bribe foreign public officials, where there is a connection to Canada, will face justice in Canada”.

The three accused have also allegedly been charged with Cryptometrics-related charges. The report indicates that Canada may request extradition of the three accused from Britain and the United States to face trial in Ontario.

In relation to this matter, the court sentenced Mr Karigar last month after former Cryptometrics Canada engineer Robert Bell co-operated with authorities and testified in return for a promise of immunity. The court heard in evidence that a series of meetings took place between company officials in the USA, Canada and India involving spreadsheets, payment schedules and plans to offer payments of millions of dollars in potential bribes if the company won the Air India deal. Company officials reportedly invented a second sham company to submit a similar but higher priced bid in an effort to make Cryptometrics’ proposal more attractive. Cryptometrics Inc. (USA) transferred $200,000 to Mr Karigar’s bank account in Mumbai, according to the court judgment.

Italy

The mayor of Venice, Giorgio Orsoni, has resigned due to further investigations into alleged corruption over the flood barrier project, known as the Moses project which was designed to protect Venice from sinking into the lagoon.

Italian authorities reportedly placed the mayor of Venice under house arrest and have issued warrants for at least 30 people for suspected corruption over the 5 billion euro (c. $6.8 billion) the Moses project.

In a statement, Venice prosecutors said they have issued 25 jail warrants and 10 warrants for house arrest on allegations of corruption, illicit party financing and tax fraud. The police have seized assets worth around 40 million euros (c.$54.49 million).
The report states that the authorities said Venice’s center-left mayor, Giorgio Orsoni, was among those placed under house arrest and Giancarlo Galan, of the former prime minister Silvio Berlusconi’s Forza Italia party and former governor of the Veneto region - was also among the accused.

Mr Galan reportedly issued a statement denying any wrongdoing and said he wanted to speak to prosecutors to clear his name. However, as a member of parliament, Mr Galan cannot be arrested unless parliament votes to lift his immunity.

Investigators have reportedly discovered hidden funds created by companies involved in the Moses project. In a statement, prosecutors said: “As the investigation continued, it emerged that most of these funds were used to buy political power … and to bribe senior public officials”. According to reports, investigators are looking into allegations that 20 million euros (c. $27million, c. £16 million) in public funds was sent to foreign bank accounts and used to finance political parties.

Last July, police arrested seven people suspected of rigging lucrative contracts for the Moses project.

In a separate incident, seven men were arrested on suspicion of bribery in building contracts for Italy’s Expo 2015 world fair. Sandro Gozi, undersecretary for European affairs, commented in an interview saying: “These things seem to me to belong to a past that never passes and that is very damaging to the changes that we want to make”.

Prosecutors are also reportedly investigating defense giant Finmeccanica and oil services group Saipem for alleged bribery over international contracts. Both deny any wrongdoing.

Malaysia

Reports indicate that the Malaysia Anti-Corruption Commission (“MACC”) has made more than 90 arrests in relation to corruption in diesel smuggling.

The arrests allegedly involve enforcement officers and people who offered payments to those who enforced the law. In a statement, Tan Sri Abu Kassim Mohamed said: “We do have cases of enforcement officers who received payments from those involved in diesel smuggling. I believe most enforcement officers (from agencies) are committed, sincere and will not sell their integrity lightly for any price”.

Reports indicate that a recent arrest was made when an individual tried to offer a RM 10,000 (c. $3,107) bribe to an enforcement officer during an operation to curb diesel smuggling.

The government was reported to have recorded a loss of RM50 million in 2010 due to diesel smuggling and MACC has urged the Domestic Trade, Cooperatives and Consumerism Ministry to impose a cap on the amount of subsidised diesel an individual is allowed to buy on a weekly or monthly basis.

Oman

It has been reported that a former Omani commerce minister, Mohammed al-Khusaibi, has been sentenced to three years in prison for corruption and has been fined $2 million (c. £1.2 million).

Mohammed al-Khusaibi was found guilty of paying bribes worth $1 million to a former transport ministry undersecretary, Mohammed al-Amri, to win a contract linked to Muscat's airport expansion.
Prosecutors alleged that during his time as minister, Mohammed al-Khussaibi bribed al-Amri to ensure that the airport expansion contract was given to a building firm in which he was a shareholder, Consolidated Contractors Company. The report states that the director of Consolidated Contractors Company, Fathi Alaa al-Din, was sentenced to six months in jail and fined $1 million.

Qatar

It has been reported that Fédération Internationale de Football Association (“Fifa”) are considering the implications of ordering a rerun of the vote for the right to stage the 2022 World Cup, following the alleged corruption carried out by the hosts, Qatar and increasing calls for a re-run of the bid process.

Reports state that Mohamed bin Hammam, a Qatari former Fifa vice-president, paid $5 million (c.£3 million) in cash, gifts and legal fees to senior football officials in attempts to gain support for their campaign. Mr Bin Hammam was banned from world football in 2011 after being found to have bribed voters in attempts to be elected as FIFA president.

The UK’s sports minister, Helen Grant, said in a statement: “These appear to be very serious allegations. It is essential that major sporting events are awarded in an open, fair and transparent manner.” The shadow sports minister, Clive Efford, called for a rerun of the vote, in which Qatar overcame rival bids from the US, Australia, Japan and South Korea.

In a report, the shadow international development secretary, Jim Murphy, said: “Fifa’s rules are clear – the World Cup hosting must not be bought.”

The Qatar 2022 organising committee asserted that Mr Bin Hammam had nothing to do with their bid.

Mr Bin Hammam allegedly paid a total of $1.6 million to the former Fifa vice-president, Jack Warner, including $450,000 before the vote. Mr Hammam also allegedly paid $415,000 towards the legal fees of Reynald Temarii, the Fifa vice-president banned from voting in the original election following an earlier investigation.

Qatar 2022 said in a statement: “We are cooperating fully with Mr Garcia’s ongoing investigation and remain totally confident that any objective enquiry will conclude we won the bid to host the 2022 Fifa World Cup fairly”. Qatar organisers added: “We vehemently deny all allegations of wrongdoing. The right to host the tournament was won because it was the best bid and because it is time for the Middle East to host its first Fifa World Cup.”

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.
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