



## ANTI-CORRUPTION DIGEST

August 2015

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

#### **Mead Johnson Nutrition Co. Settles FCPA Charges with SEC**

The Illinois-based maker of Enfamil and other infant formula products, Mead Johnson Nutrition Co., has settled civil charges of FCPA violations related to its China operations. Under the terms of the settlement with the SEC, which has been entered in an administrative order, Mead Johnson disgorged \$7.77 million (£4.95 million) plus \$1.26 million (£800,000) prejudgment interest, and paid a \$3 million (£1.9 million) penalty. The company neither admitted nor denied the charges.

According to the SEC, Mead China, Mead Johnson's Chinese subsidiary, paid \$2 million (£1.3 million) in bribes to healthcare professionals employed by state-owned hospitals in exchange for the healthcare professionals' recommendations of its products, and for contact information for new and expectant mothers. According to the administrative order, Mead Johnson violated

the books and records provisions of the FCPA by inaccurately recording these bribes as "distributor allowances". The SEC alleges that Mead China gave steep discounts to distributors and directed the distributors to pay the state employed health care professionals.

In its order, the SEC also alleges that Mead Johnson violated the internal controls provisions by failing to have an adequate internal accounting control system. The SEC did not allege that the U.S. parent or any U.S. person knew about or coordinated the bribes, and none of the conduct was alleged to have taken place in the U.S. This lack of U.S. nexus to the alleged violations may explain why the U.S. Department of Justice (DOJ) has informed Mead Johnson that it has closed its parallel investigation into the bribery activity.

The SEC noted in its order that Mead Johnson had conducted but not reported an internal investigation into these allegations in 2011. When the SEC approached Mead Johnson in 2013 regarding these allegations, Mead Johnson initially failed to report its internal investigation, which had not confirmed the illegal payments.

## SAP Sales Exec Subject to Parallel FCPA Proceedings by DOJ and SEC

Vicente Eduardo Garcia, a Miami-based former regional director of SAP International Inc., has pleaded guilty to conspiring to violate the FCPA by participating in a scheme to bribe Panamanian officials to win government technology contracts for SAP.

Mr. Garcia and his co-conspirators used sham contracts and false invoices to disguise the bribes, which were paid to two Panamanian officials and an agent of a third official. SAP won four contracts from the Panamanian government that included the software licenses Mr. Garcia was responsible for trying to sell. One of the contracts was worth \$14.5 million, over \$2 million of which related to the software licenses that Mr. Garcia was trying to sell. Mr. Garcia will be sentenced in the Northern District of California in December 2015.

In a parallel proceeding by the SEC, Mr. Garcia settled civil charges related to the same facts via a cease and desist order. The order concludes that Mr. Garcia violated the FCPA's anti-bribery and internal controls provisions. Chief of the SEC's FCPA Unit, Kara Brockmeyer, described the scheme as follows: "Mr. Garcia attempted to avoid detection by arranging large, illegitimate discounts to a corporate partner in order to generate a cash pot to bribe government officials and win business for SAP." Mr. Garcia was also charged with receiving kickbacks from the slush fund.

Under the terms of the order, Mr. Garcia agreed to pay \$92,395 (£58,873), which consists of disgorgement of the \$85,965 (£54,776) in kickbacks he received, plus interest of \$6,430 (£4,079).

## DOJ and SEC Revise FCPA Resource Guide

The DOJ and SEC have made several technical revisions to their *Resource Guide to the U.S. Foreign Corrupt Practices Act* (the *Guide*), originally issued in November 2012. The current version of the *Guide* may be found [here](#). The changes are technical in nature and relate to the accounting provisions and criminal penalties.

The changes to Chapter 3, related to the accounting provisions, bring the *Guide* into line with the statutory language of the FCPA as it relates to an issuer's responsibility for the books and records of joint ventures under the issuer's control, and the requirement that an issuer use "good faith efforts" rather than "best efforts" in trying to persuade their minority-owned subsidiaries to implement adequate accounting systems.

Changes were also made to Chapter 6, related to fines and penalties. One change recognizes that the Alternative Fines Act, 18 U.S.C. § 3571 (AFA), may apply in FCPA cases, and would subject an individual to a maximum fine of \$250,000 (£160,000) rather than the \$100,000 (£64,000) used by the FCPA statute. The other change is the note that pecuniary gain should be calculated as twice the benefit that the defendant *actually obtained* rather than the benefit the defendant *sought to obtain*.

### SEC fines BNY Mellon \$14.8 million

It has been reported that BNY Mellon agreed to pay \$14.8 million (£11.98 million) to settle charges that it violated the FCPA by providing student internships to family members of foreign government officials.

Under the FCPA, hiring a family member or friend of a government official isn't always a violation of the FCPA. However, a hiring

decision intended to reward or induce an official to award work can be an offense.

According to the SEC, BNY Mellon lacked sufficient internal controls to prevent and detect the improper hiring practices. The bank reportedly had an FCPA compliance policy in place "but maintained few specific controls around the hiring of customers and relatives of customers, including foreign government officials." On top of this, human resources personnel were said not to be trained to flag potentially problematic hires.

The agency settled the case through an internal administrative order and didn't go to court.

### **Plaintiffs Request \$62 million Avon Settlement**

A group of investors have reportedly requested that a federal judge in New York approve a \$62 million (£40 million) settlement in a lawsuit. The shareholders allege that Avon along with its former CEO, Andrea Jung, and former CFO, Charles Cramb, misled them about the company's compliance with the FCPA in China.

The Chinese subsidiary in question allegedly made \$8 million (£5 million) worth of payments in cash, gifts, travel, and entertainment to various Chinese officials, according to the DOJ. Avon needed the approval of the officials in order to undertake direct sales in China.

The matter is ongoing.

### **Uzbek Telecoms Bribery Matter**

The DOJ has requested authorities in several European countries last week to freeze \$1 billion (£630 million) in assets associated with Gulnara Karimova, the daughter of the Uzbek

President, and alleged bribes from VimpelCom and MTS of Russia and TeliaSonera of Sweden.

The DOJ is investigating bribes regarding alleged payments, including those totaling 2.3 billion Swedish crowns (\$358 million/£230 million) reportedly made by the TeliaSonera to Ms. Karimova in return for mobile telephone frequencies along with licenses to enter Uzbekistan's telecom market.

In a July 9 ruling, U.S. District Judge Andrew Carter allowed the DOJ to hold funds in Bank of New York Mellon Corp. in Ireland, Luxembourg, and Belgium, relating to the matter.

Ms. Karimova has reportedly been under house arrest in the Uzbek capital of Tashkent for corruption since September last year.

## **THE UNITED KINGDOM**

### **SFO Confirms Criminal Investigation**

The SFO has confirmed that it has opened a criminal investigation into Soma Oil and Gas Holdings Ltd ("Soma") following allegations of corruption in Somalia. However, the agency has not outlined the corruption allegations against the company.

In 2013 Soma was reported awarded the exclusive right to conduct seismic surveys of offshore Somalia oil and gas blocks. The allegations are said to focus on payments, called Capacity Building Arrangements, to Somalia's Ministry of Petroleum and Mineral Resources. Lord Michael Howard, who has been Soma's chairman since 2013, has reportedly rebutted claims of corruption, stating that arrangements are normal in the industry and are used to fund things such as training of staff due to Somalia's limited infrastructure, and to enable it to manage and develop the oil and gas sector.

Soma reportedly said that it was "confident that there is no basis to the allegation" and was co-operating with the SFO.

### **LIBOR Trial: Verdict**

Tom Hayes has been convicted of eight counts of conspiring to manipulate the Libor and sentenced to 14 years in prison. The conviction follows a two-and-a-half year criminal investigation by the SFO.

Prosecutors accused Mr. Hayes of acting as the "ringleader" in manipulating Yen Libor, by asking traders who were on the panel that set the daily rate, as well as external brokers, to move the rate up or down to benefit his trading positions. Upon sentencing, the judge is reported to have told the court that, "what this case has shown is the absence of that integrity that ought to characterize banking". Addressing Mr. Hayes, he went on to say that "you were the center, the hub of the conspiracy, and you involved others."

Mr. Hayes was the first individual to face trial in the global matter and is unlikely to be the last. According to reports further criminal charges are to be brought against individuals suspected of fixing Libor. The head of the SFO, David Green told reports that:

"I have said further charges are likely ... in the autumn. Out Libor investigation is far-reaching ... we haven't finished yet."

### **Bribery Act: Too Tough on UK Businesses?**

It has been reported that the Government is to review the Bribery Act 2010 (the "Act") after business leaders allegedly claimed that it was stifling the export of goods by British companies. Opponents of the Act claim that the law goes "above and beyond international standards", thus putting British businesses at a competitive disadvantage.

The Business Secretary, Sajid Javid, is inviting companies to comment on whether the tough anti-corruption measures are "a problem". Supporters of the move state that:

"The UK is rightly leading the charge against global corruption, which is morally wrong and distorts markets. However, the unintended consequences of the Act can limit mid-sized businesses' international expansion."

Anti-corruption watchdogs are said to be concerned that any attempt to lessen the reach of the Act will damage the UK's credibility on tackling corruption. A spokesman for a coalition of anti-corruption campaign groups is reported to have said:

"Consulting the business community in this way sends entirely the wrong message as to the government's commitment to uphold the Bribery Act."

## **THE REST OF THE WORLD**

### **Brazil**

In the ongoing corruption matter regarding Petrobras, Brazilian prosecutors are alleging that bribes of artwork and cash were paid on behalf of the Italian oil services company, Saipem, in return for lucrative contracts. Prosecutors have reportedly filed charges against five individuals, said to include a Saipem representative and a former Petrobras director.

It is claimed that the Saipem representative assisted in securing a contract worth R\$249 million (\$71 million/£45 million) regarding a submarine pipe link between deep-water oil fields and Cernambi, in the south-east of Brazil.

A spokesman for Saipem confirmed that the company has not been named as a defendant in the case, stating that "We have not been

notified by the authorities. Should that happen we will cooperate fully.”

## **China**

It has been reported that, since President Xi Jinping initiated his anti-corruption campaign in 2012, Chinese authorities have returned Rmb38.7 billion (\$6.2 billion/£4 billion) of funds involved in corruption matters to the state.

The Central Commission for Discipline Inspection (the “CCDI”), China’s anti-corruption body, stated that the money had been returned to the state, without specifying which government entity received it. The sums recovered are said to include confiscated bribes in the form of cash, land, gifts and fines that have been levied.

According to Han Jinping, director-general of the CCDI’s case co-ordination department, “submitting illegally obtained money to the national coffers and recovering economic losses will help correct the economic incentives distorted through corruption”.

## **Croatia**

According to reports, the Constitutional Court of Croatia has annulled two corruption convictions against the country’s former Prime Minister, Ivo Sanader, and ordered a retrial.

Mr Sanader was found guilty of agreeing to accept a \$6.4 million (£4 million) bribe from MOL in 2008 in return for giving them full management rights over the Croatian oil company, INA.

It is reported that the appeals were upheld as a result of procedural errors that had deprived Mr. Sanader of a fair trial. The cases have been sent back to the Zagreb county court for retrial.

## **Czech Republic**

The Prague Regional Court has reportedly sentenced David Rath, a former health minister and regional governor, to eight and a half years in prison having been found guilty of corruption. It is alleged that he took bribes in return for arranging inflated public contracts for renovating hospitals and other public buildings.

Reports state that when arrested, Mr. Rath was found carrying a wine box filled with bank notes, said to total 7 million crowns (\$280,000/£180,000). According to the judge, Mr. Rath “committed a crime as a public person with the aim to secure a large benefit”. The judge is reported to have also ordered the confiscation of nearly 22 million crowns (\$900,000/£600,000), which allegedly included money found during a search of Mr. Rath’s residence.

Mr. Rath is reported to have stated his innocence and intention to appeal:

“The judgment is at odds with the evidence shown ... it ignores witnesses, experts and reality”. It is said that he remains free pending the appeal.

## **Ireland**

Transparency International has stated that Ireland has made “little or no” effort over the past four years to create a corruption-free playing field for global trade, violating its “obligation to combat cross-border bribery”.

John McDevitt, chief executive of the ethics watchdog in Ireland, said there is no sign of the accord being implemented prior to a forthcoming general election:

“Precious few resources are invested in tackling corruption or white collar crime in Ireland and

it appears that helping fighting international bribery is not a government priority either. It's particularly disappointing to see that promised changes to Irish corruption legislation have yet to be introduced.”

The report follows proposals of a bill to update laws on giving and receiving bribes, address the bribery of foreign public officials, and make corporate bodies liable for the corrupt actions of their directors, employees.

### **Kenya**

Kenya ranks 145 of 175 countries in Transparency International's corruption index. It is reported that 98.8% of the money spent by Kenya's ministries in the 2013/14 financial year could not clearly and lawfully be accounted for.

During a visit to Kenya, U.S. President Barack Obama called for the government in Nairobi to take greater steps to tackle corruption, describing it as “the single biggest impediment to Kenya growing even faster”.

In its effort to tackle corruption, President Obama urged Kenya to hold "visible prosecutions" to tackle corruption, which he said could be the "biggest impediment" to further growth to the country's economy. He stated that police officers and civil servants had to be paid properly to help curb corruption, but sometimes it just required "breaking the habit". An agreement signed between Kenya and the American government could introduce new the measures that would succeed in preventing corruption.

### **Kyrgyzstan**

The Prosecutor General has reportedly opened a criminal case into a parliamentary deputy who was allegedly caught accepting a \$100,000 (£64,000) bribe.

According to the Anti-Corruption Service, Khadzhimurat Korkmazov took bribes from the relatives of an individual in return for securing a favorable decision in an ongoing Supreme Court case. It is alleged that, in total, Mr. Korkmazov gained \$200,000 (£128,000) from the matter.

The investigation is ongoing.

### **Romania**

It has been reported that GlaxoSmithKline (GSK”) is facing allegations of bribery regarding its operations in Romania.

It is alleged that GSK paid Romanian doctors hundreds, and in one cases thousands, of euros between 2009 and 2012 for prescribing its medicines. Reports also state further allegations of GSK providing doctors with international trips and making payments to them under the pretext of their participation in advisory boards.

The whistleblower is reported to have said that the relevant information will be passed on to the DOJ and SEC in the U.S., which are already investigating GSK for possible breaches of the Foreign Corrupt Practices Act.

The company reportedly said that it would look "very thoroughly" into the claims.

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

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