



ANTI-CORRUPTION DIGEST

March 2016

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

Novartis Settles Allegations of Bribery in China

It has been reported that the pharmaceutical company, Novartis AG, has agreed to pay over \$25 million (£17 million) to settle bribery charges brought by the SEC.

The charges relate to allegations that the company paid bribes to healthcare professionals in China between 2009 and 2013. According to the SEC, Novartis' entities in China tried to conceal the bribes by recording them as legitimate expenses, for example, travel, entertainment, educational events and medical studies. It is said that the funds were in fact used to provide gifts and recreational rather than educational events.

The charges were reportedly settled without any admission or denial made by the company.

According to a spokesperson for Novartis:

"The issues raised by the SEC, which relate to our subsidiaries in China ... largely pre-date many of the compliance-related measures introduced by Novartis across its global organization in recent years."

Former Judge Sentenced to 10 Years for Bribery

Following a guilty plea last year to a federal bribery charge, former Arkansas Circuit Judge, Michael Maggio, has received a 10 year sentence for reducing a jury award in exchange for campaign contributions.

According to reports he admitted to accepting \$50,000 (£35,000) in donations prior to reducing a jury's \$5.2 million (£3.6 million) award to \$1 million (£700,000) in a negligence claim.

Prosecutors recommended the maximum 10 year sentence, noting that Mr. Maggio had not taken responsibility for his actions and had violated his plea agreement. Mr. Maggio's attorneys sought probation for their client, stating that former judge has suffered

"personal, professional and political destruction".

Upon sentencing the Judge noted:

"There's no question in society, a dirty judge is far more harmful to society than any dope dealer."

Medical Equipment Company Will Pay \$646 Million for Making Illegal Payments to Doctors and Hospitals in United States and Latin America

Olympus Corp. of the Americas ("OCA"), the United States' largest distributor of endoscopes and related equipment, will pay \$623 million (£431 million) to resolve criminal charges and civil claims relating to a scheme to pay kickbacks to doctors and hospitals. Its subsidiary, Olympus of Latin America ("OLA") will pay \$22.8 million (£15.8 million) to resolve criminal charges relating to the FCPA in Latin America.

As a result of the conduct outlined in the government's criminal complaint and DPA, OCA has agreed to pay a \$312.4 million (£216.5 million) criminal penalty and an additional \$310.8 million (£215.5 million) to settle civil claims under the federal and various state False Claims Acts, the largest total amount paid in U.S. history for violations involving the AKS by a medical device company.

In a separate criminal complaint filed today in Newark federal court, OCA's Miami-based subsidiary OLA was charged with FCPA violations in connection with improper payments to health officials in Central and South America, and OLA entered into a separate three-year DPA. According to court documents, from 2006 until August 2011, OLA implemented a plan to increase medical equipment sales in Central and South America by providing payments to health care

practitioners at government-owned health care facilities. These payments included cash, money transfers, personal grants, personal travel and free or heavily discounted equipment. The primary method to deliver these illicit benefits was through "training centers," nominally set up to educate and train doctors, but which OLA used to provide benefits to pre-selected practitioners. OLA and its conspirators paid nearly \$3 million (£2.1 million) to practitioners to induce the purchase of Olympus products and recognized more than \$7.5 million (£5.2 million) in profits as a result.

OLA entered into the DPA with the DOJ and the U.S. Attorney's Office of the District of New Jersey. The agreement requires OLA to pay a criminal penalty of \$22.8 million (£15.8 million), retain the same compliance monitor as for OCA for a period of three years and implement a number of compliance measures.

The department reached this resolution based on a number of factors, including that OLA did not voluntarily disclose the misconduct in a timely manner, but OLA did receive credit of a 20 percent reduction on its penalty for its cooperation, including its extensive internal investigation, translation of numerous foreign language documents and collecting, analyzing and organizing voluminous evidence.

Platform Specialty Products Corp. Initiates Foreign Bribery Investigation

The chemical products company, Platform Specialty Products Corp. ("PSP") is reportedly undertaking a foreign bribery investigation into alleged third-party payments made by a subsidiary in West Africa. PSP is said to have notified the DOJ and SEC of the payments and is cooperating with them.

PSP acquired Arysta LifeScience in 2015 and the investigation concerns payments regarding

payments made by the subsidiary in connection with its government tender business. PSP said that the payments may be “illegal or otherwise inappropriate”.

PSP is said to have obtained outside legal counsel to assist with the conduct of the investigation, which will look into “Arysta’s compliance with the FCPA”.

Company Owner and Employee Plead Guilty to FCPA Offenses in Venezuela Oil Company Bribe Case

On March 22, Abraham Jose Shiera Bastidas, owner of multiple U.S.-based oil and gas services companies pleaded guilty to FCPA and fraud charges for bribing officials to win contracts from Venezuela’s state-owned energy company, Petroleos de Venezuela S.A. (“PDVSA”).

Mr. Shiera said he and a co-defendant, Roberto Enrique Rincón Fernandez, submitted joint bids to provide equipment and services to PDVSA through their various companies. Mr. Shiera admitted in his plea that, beginning in 2009, he and Mr. Rincón agreed to bribe PDVSA purchasing analysts to make sure their companies were on PDVSA bid slates. Mr. Rincón supplied PDVSA with \$500 million (£345 million) in oil equipment a year, becoming one of PDVSA’s most important contractors. Mr. Shiera also admitted that he bribed PDVSA officials so that his companies would have payment priority on their outstanding invoices.

Mr. Shiera was arrested in Miami on December 16, and is currently scheduled to be sentenced on July 9, 2016.

THE UNITED KINGDOM

Protection for Whistleblowers

In a report by the Public Accounts Committee (the “PAC”) on “Making a Whistleblowing Policy Work: Progress Update” (the “Report”), the PAC has concluded that, in spite of assurances made 18 months ago, the Cabinet Office has failed to introduce measures to encourage and protect whistleblowers in public services.

In the Report the PAC stated that it was “disappointed by the lack of urgency shown in dealing with this important topic”. Key findings and recommendations in the Report include the following:

- The Task and Finish Group, that was established to inspect whistleblowing in Government Departments, has met only once. It is recommended in the Report that the Government define the role of the Group.
- There has been too much focus on implementing policies and procedures rather than instilling the culture required to support those raising a concern. The Report recommends that the Cabinet Office should work with departments to create an environment that is conducive for whistleblowers to come forward.
- The Cabinet Office does not have the necessary data on whistleblowing to identify where improvements are needed. It is stated in the Report that, by June 2016, the Cabinet Office is expected to share with the PAC an analysis of the data it has collected and how it intends to use this.

A Cabinet Office spokesman said that the Government takes the issue “very seriously”

and noted that they will “take action to address this issue”.

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

Former Employees of Technology Company Charged with Bribery

The Serious Fraud Office (the “SFO”) has reportedly charged two former executives of Sarclad Limited, a company that supplies technology based products for the metals industry, with bribery.

Michael Sorby, a former director of the company, and Adrian Leek, once a sales manager for the company, are accused of offering financial inducements in order to secure contracts for Sarclad Limited between 2004 and 2012. The individuals have been charged at Westminster Magistrates’ Court in London with one count of conspiracy to corrupt contrary to the Prevention of Corruption Act 1906 and with one count of conspiracy to bribe under the Bribery Act 2010.

The defendants have been granted unconditional bail and a further hearing is scheduled to take place at Southwark Crown Court.

THE REST OF THE WORLD

Brazil

It has been reported that one of the country’s most senior businessmen has been sentenced to over 19 years in jail following allegations of corruption concerning the state oil company, Petrobras.

Marcelo Odebrecht, owner of the construction conglomerate Grupo Odebrecht, which expanded through Latin America and the Caribbean, was convicted of paying more than \$30 million (£21 million) in bribes to officials at

Petrobras in exchange for contracts. According to the federal judge overseeing the case, such corruption “deserves special reprobation”.

Reports state that the judge recommended that Grupo Odebrecht seek a settlement with regulators over its alleged involvement in the matter to limit its exposure:

“Grupo Odebrecht, for its part, has significant political and social responsibilities and cannot escape from them,” the judge said. “It is necessary, as a first step to emerge from this criminal scheme and recuperate its reputation, to assume responsibility for its past faults,” the judge said.

According to his lawyer, Mr. Odebrecht will be appealing the decision, noting that he believed the prosecution to have failed in producing evidence which incriminated his client:

“The sentence against Marcelo Odebrecht is manifestly unfair and unjust because it has no basis in the evidence uncovered in the criminal investigation. The defense of Marcelo Odebrecht will keep fighting for his liberty and to prove his innocence.”

China

The former president of the Bank of Inner Mongolia, Yang Chenglin, is on trial following allegations that he was involved in corrupt payments of over 600 million yuan (\$92 million/£65 million).

It is reported that the former bank president embezzled cash and took bribes for himself, his son, Yang Hai, and his mistress, Zhang Ting. In addition to the charges against himself, his son, Yang Hai, is on trial on charges of taking bribes and embezzlement and his mistress, Zhang Ting, has been charged with accepting bribes.

The offenses are alleged to have taken place from 1999 to 2013, the period when Zhang Ting held the position of president of the bank. Zhang Ting is alleged to have embezzled funds by claiming that the funds were being used by the bank to pay for projects and official spending. The former bank president is also alleged to have charged personal expenditure to the company, such as family holidays, by disguising it as business expenditure.

Guatemala

A criminal investigation has reportedly been ordered into Roxana Baldetti, a former Vice President of the country, for alleged corruption regarding the purchase of a “magic solution” for millions of dollars to clean a polluted lake. It is said that the solution turned out to be salt water.

The investigation will look into Ms. Baldetti’s alleged role in the Guatemalan government awarding a contract to an Israeli company for the solution. According to reports the contract was executed in December 2014 and was worth \$18 million (£12.5 million). Pressure from the country’s opposition party resulted in the suspension of the project and tests being undertaken on the solution, which allegedly revealed that it was simply seawater.

Ms. Baldetti has claimed her innocence, stating that “I didn’t receive any money” and that she has a letter from the then President Molina in which he gave the “all clear”.

India

The Supreme Court of India has expanded the scope of the Prevention of Corruption Act 1988 (the “Act”), ruling that directors and other officers of private banks can be prosecuted for corruption under Act. This takes the Act beyond its original intent, which was to prosecute corrupt government officials.

The case of *CBI v Gelli and Others* concerned corruption charges against a number of senior executives at Global Trust Bank, who were alleged to have entered into a conspiracy to gain over \$ 2 million (£1.4 million). The Supreme Court ruled that the executives, despite being in the private sector, discharged a public duty and therefore fell within the meaning of “public servant” under the Act.

India’s Central Bureau of Investigation will now be able to investigate and prosecute corruption matters involving private banks operating in India.

Iran

According to reports, the Iranian businessman, Babak Zanjani along with two accomplices has been sentenced to death for corruption. The Court of First Instance convicted the defendants of “spreading corruption on earth”, the most serious offence under Iran’s criminal code.

Mr. Zanjani was arrested in 2013 having been accused of withholding billions of dollars in oil revenue through his companies. Prosecutors accused him of owing the government more than \$2.7 billion for oil sold on behalf of the country’s oil ministry. It is believed that under the country’s previous regime, Mr. Zanjani arranged the sale of Iranian oil and then channeled payments back to Tehran via a web of companies, keeping vast amounts for himself.

The defendants have the right to appeal against the ruling.

North Korea

It has been reported that the high ranking general, Ri Yong-gil, was executed this month following charges of corruption, abuse of power and factionalism. The execution comes

at a time when North Korea's leader, Kim Jong-un, has warned the party and military elites against abusing their power.

It is said that General Ri Yong-gil was accustomed to accompanying the nation's leader to high profile state events but his name disappeared from the media earlier this year. North Korea rarely reports the execution of top officials, however, an official reportedly agreed to confirm the execution on the condition of his report being anonymous. The execution has not been independently verified.

There is a suggestion that Ri Yong-gil might have been executed because he resisted the control that the ruling Workers' Party, under Kim Jong-un, has reasserted over the military.

Russia

It has been reported that a lawsuit filed against Russian President Vladimir Putin for alleged corruption has been dismissed by a Moscow court.

The lawsuit was reportedly filed by Alexei Navalny, a prominent opposition leader who is known for his campaign against corruption in Russia. Mr. Navalny claims that the Russian premier ordered loans of \$1.75 billion (£1.2 billion) of cheap financing to be awarded by Russia's National Wealth Fund to the petrochemical company, Sibur. According to reports, the President's son-in-law, Kirill Shamalov, owns a stake in Sibur. The lawsuit is said to be substantiated with information derived from public record.

The decision to dismiss the case was made by Tatyana Molitvina, a judge based at Moscow's Tverskoi district court, who said in her decision that, "In accordance with article 91 of the Russian constitution the President of the Russian Federation enjoys immunity."

The lawsuit is the latest of many accusations levelled against President Putin that he has interfered with the necessary independence of the judicial system and allowed persons connected to him to enrich themselves over the past 15 years.

South Korea

Allegations of corruption within the Korean Swimming Federation have reportedly resulted in the arrest of Mr. Chung, a member of the board of the organization, on charges of receiving bribes in return for "peddling influence" regarding the selection of members of the national team. Mr. Chung stands accused of receiving payments in the region of 230 million won (\$190,000/£130,000) in return for influencing the selection of athletes.

Further reports state that a swimming coach was also arrested. Mr. Park, who is said to run a private swimming club, has been indicted for unlawfully helping athletes who trained at his facility to be selected for the national team.

Investigations are ongoing.

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.

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