



ANTI-CORRUPTION DIGEST

October 2018

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NORTH AMERICA

THE UNITED STATES

Stryker Resolves FCPA Case with SEC

Medical device maker Stryker Corp. resolved Foreign Corrupt Practices Act (FCPA) offenses with the Securities and Exchange Commission (SEC) relating to conduct by the company's wholly-owned subsidiaries in India, China, and Kuwait. Under the terms of the settlement the firm consented to the entry of a cease and desist order based on the books and records and internal accounting control provisions of the statute and will pay a penalty of \$7.8 million. 15 U.S.C. § 78m(b)(2)(A)-(B). The action is *In the Matter of Stryker Corp.*, Admin. Proc. File No. 3-18853 (Sept. 28, 2018).

According to the SEC's Order, from 2010 through 2015, Stryker's India subsidiary (Stryker India) failed to keep and maintain documentation regarding over a quarter of

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their high-risk and compliance-sensitive accounts, and had inaccurate and missing documentation for numerous other high-risk transactions related to consulting fees, travel, and other benefits to health-care professionals in India. As a result, although Stryker India management negotiated the margin that their dealers would get from selling orthopedic products to private hospitals, the dealers often issued inflated invoices on the request of the private hospitals. The private hospitals benefited from this by passing on the inflated prices to patients, while only paying the dealers the lower amount previously negotiated between Stryker India and the dealers, pocketing the rest. Stryker India received internal complaints relating to these practices, and also uncovered evidence of such dealings during a 2012 audit. However, even after the 2012 audit, Stryker failed to devise and maintain a system of internal accounting controls to detect and prevent distributors from implementing this practice.

The conduct at issue regarding Stryker's China subsidiary (Stryker China) occurred between 2015 and 2017. During the time period, Stryker China sold its Sonupet ultrasonic aspirator through at least 21 sub-distributors that were not vetted, approved, or trained, despite Stryker policies requiring such due diligence. Stryker China employees sometimes worked directly with the unauthorized dealers, and at others times falsified records to cover up their existence.

Finally, the conduct cited by the SEC's order regarding Kuwait originated from Stryker's Netherlands based subsidiary (Stryker Netherlands), which had an office based in Dubai. Stryker Netherlands used one primary distributor to sell its orthopedic products to the Kuwait Ministry of Health. Between 2015 and 2017, the Kuwait distributor made over \$32,000 in improper "per diem" payments to health care providers attending Stryker events, although such payments had already been directly paid for by Stryker. Although Stryker had policies in place requiring third-party distributors to allow for audit rights to

review records to ensure the distributors were complying with Stryker anti-corruption policies, Stryker failed to sufficiently implement those policies in regard to the Kuwait distributor.

The SEC credited Stryker's cooperation and remedial efforts in determining to accept the firm's offer of settlement. In response to the SEC's investigation, Stryker retained outside counsel to undertake its own investigation and voluntarily shared its findings with the SEC. Stryker also undertook a number of remedial efforts to update its compliance system, terminated various senior management at Stryker India, and ended its relationship with the Kuwait distributor.

This is the second time in five years that Michigan-based Stryker has resolved FCPA offenses brought by the SEC. The first cease-and-desist proceeding occurred in 2013 and involved violations of the books and records and internal accounting control provisions regarding Stryker's wholly-owned subsidiaries' activities in Mexico, Poland, Argentina, Romania, and Greece. In resolving the previous investigation, Stryker paid about \$7.5 million in disgorgement, approximately \$2.3 million in pre-judgment interest, and a civil penalty of \$3.5 million.

Petrobras Reaches Resolution on FCPA Violations with DOJ and SEC

Petróleo Brasileiro S.A. (Petrobras), Brazil's state energy company, resolved FCPA investigations against it by the SEC and Department of Justice (DOJ) regarding the company's conduct between 2003 and 2012. Petrobras resolved the violations with the SEC by consenting to a cease-and-desist order finding that the company violated books and records and internal accounting controls provisions, 15 U.S.C. § 78m(b)(2)(A)-(B), as well as non-FCPA offenses relating to making untrue or misleading statements or omissions in the offer or sale of securities and filing misleading reports with the SEC. *In the Matter*

of *Petróleo Brasileiro S.A.*, Admin. Proc. File No. 3-18843 (Sept. 27, 2018). To resolve the FCPA investigation with the DOJ, Petrobras entered into a non-prosecution agreement (NPA). The two agencies assessed disgorgement, pre-judgment, and civil penalties against the company totaling \$1.78 billion. The SEC ordered that Petrobras disgorge \$711 million plus \$222.5 million in prejudgment interest, but allowed the company to credit the settlement fund it set up in its shareholder litigation against this figure. The DOJ's NPA included a criminal penalty of \$853.2 million, 10% of which will be paid to the DOJ and another 10% to the SEC. The remainder of the penalty will be paid to authorities in Brazil.

According to the SEC's Order and the DOJ's NPA, five unnamed senior Petrobras officials conspired with the company's largest contractors and suppliers to inflate the cost of the infrastructure project Petrobras was working on by billions of dollars. The corrupt officials ensured that the companies they were conspiring with won the contracts with Petrobras by giving them inside information and manipulating the bidding process for those companies. The inflated price tag was used to pay kickbacks equal to 1% to 3% of the contract payments to the corrupt executives as well as conspiring Brazilian politicians and political parties. In addition, the corrupt officials also executed other schemes which involved accepting bribes in return for inflating and granting Petrobras contracts to certain companies. In addition to the corrupt executives who put the schemes in place, members of Petrobras' Board of Directors were aware of the corrupt activities, with two members even involved in facilitating bribes that a Petrobras contractor was paying.

Petrobras did not receive voluntary disclosure credit from the DOJ, but it did receive full cooperation credit for conducting an internal investigation once it learned of the misconduct. Among other things, the company proactively disclosed facts to the DOJ which would not have otherwise been

available to it and facilitated interviews of employees. Petrobras also was credited by both the DOJ and SEC for undertaking extensive remedial measures by terminating and ending affiliation with all of those involved in the corrupt schemes and replacing the Board of Directors and the Executive Board and expanding the scope of decisions requiring Board of Director approval. The company also revamped and overhauled its compliance policies and function, including by creating and staffing a Division of Governance and Compliance whose officer cannot be terminated without the affirmative vote of a Board member representing minority shareholders. In addition, the DOJ took other factors into consideration when determining the resolution of the case, including the fact that Petrobras and its shareholders were victimized by embezzlement by corporate officers outside the scope of the DOJ and SEC orders, as well as the company's settlements with the SEC, Brazilian authorities, and the companies' settlement of a private class action suit, *In re Petrobras Securities Litigation*, No. 14-cv-9662 (S.D.N.Y.), for which it is paying \$2.95 billion into a settlement fund. Due to these and other factors discussed in the order, the DOJ agreed to the NPA with a criminal penalty that represented a 25% discount off the bottom of the U.S. Sentencing Guidelines fine range.

Former CEO of Chilean Mining and Chemical Company Settles with the SEC

Patricio Contesse González agreed to pay the SEC \$125,000 to resolve charges that he caused Sociedad Química y Minera de Chile, S.A. (SQM), to violate the books and records and internal accounting control provisions of the FCPA, 15 U.S.C. § 78m(b)(2)(A)-(B), among other charges. According to the SEC's cease-and-desist order, Mr. González, the former CEO, caused SQM to make over \$14.75 million in payments to Chilean politicians, candidates, and other politically-connected figures between 2008 and 2015. *In*

the matter of Patricio Contesse González, Admin. Proc. File No. 3-18839 (Sept. 25, 2018).

According to the SEC's Order, Mr. González caused these payments to be made by personally creating fictitious contracts with third-party vendors which he then approved, along with invoices and other documents. His actions caused the illicit payments to be falsely recorded as legitimate business expenses. As the CEO, Mr. González was also responsible for SQM's internal accounting controls, which were deficient and contained material weaknesses which Mr. González exploited to make the improper payments.

The illicit conduct came to light when the Chilean government initiated criminal and tax investigations, resulting in SQM's Board of Directors initiation of an internal investigation into the conduct. In January 2017, SQM resolved FCPA investigations with the SEC by consenting to a cease-and-desist order and paying a penalty of \$15 million. The company also concurrently resolved the investigation by the DOJ by entering into a three-year deferred prosecution agreement, agreeing to pay a \$15 million fine and to certain other undertakings.

More Guilty Pleas in PDVSA Bribery Scandal

Juan Carlos Castillo Rincon, the former manager of a Houston-based logistics and freight forwarding company, pleaded guilty in September 2018 to one count of conspiracy to violate the FCPA, 15 U.S.C. § 78dd-2(a), in connection with his role in the scheme to corruptly secure contracts and contract extensions from Venezuela's state-owned energy company, Petroleos de Venezuela S.A. (PDVSA). The case is *U.S. v. Castillo*, Case No. 18-cr-200 (S.D. Tex. filed April 11, 2018).

In connection with this plea, another guilty plea from July 2017 was unsealed, this one relating to the individual that Mr. Castillo bribed. Jose Orlando Camacho, a former official at PDVSA,

pleaded guilty to conspiracy to commit money laundering in regard to bribes he received from Mr. Castillo. The case is *U.S. v. Camacho*, Case No. 17-cr-394 (S.D. Tex. filed July 5, 2017).

According to admissions made in connection with Mr. Castillo's plea, from 2011 to 2013, Mr. Castillo bribed a PDVSA official in exchange for assistance from the official in obtaining contracts with PDVSA and obtaining inside information about the bidding process. In connection with his plea, Mr. Camacho admitted to being the PDVSA official who Mr. Castillo was bribing during that period.

The DOJ has now announced charges against 18 people as part of the investigation into corruption connected to PDVSA. Of the 18, 14 of those individuals have pleaded guilty.

United Technologies Corp. Resolves FCPA Investigation with SEC

United Technologies Corporation (UTC) agreed to a cease-and-desist order with the SEC regarding its books and records and internal accounting controls violations, 15 U.S.C. § 78m(b)(2)(A)-(B). The company agreed to disgorge \$9 million, plus about \$900,000 in pre-judgment interest. In addition, the SEC fined UTC \$4 million. The case is *In the Matter of United Technologies Corp.*, Admin. Proc. File No. 3-18745 (Sept. 12, 2018).

According to the SEC's Order, from 2009 through 2015, UTC made unlawful payments through a number of its wholly-owned subsidiaries and affiliated companies. For instance, from 2012 through 2014, UTC made improper payments through its subsidiary Otis Elevator Company to Azerbaijan officials facilitate the sales of elevator equipment. When Azerbaijan undertook a project to upgrade its elevator systems, Otis Elevator used sham subcontractors and intermediaries to make improper payments to officials to win the contracts. Despite a corporate policy

requiring due diligence be performed on third parties, none was performed.

In the mid-2000s, UTC's subsidiary Pratt & Whitney, along with a joint venture partly owned by Pratt & Whitney, International Aero Engines (IAE), retained a Chinese sales agent to increase IAE's market share in China. Although the companies completed minimal due diligence on the sales agent, they retained the agent. While IAE was competing for a contract from the state-owned Air China Limited, the Chinese sales agent requested a \$2 million advance on his commission for a supposed office renovation; the following month, the sales agent received confidential information regarding the Air China tender, which he forwarded on to officials at IAE. The IAE executive did not question how the sales agent received the confidential information, despite UTC's policy directing employees who receive such information to contact the legal department.

Finally, according to the SEC's order, between 2009 and 2015, UTC, through Pratt & Whitney and Otis Elevator Company, improperly provided trips and gifts to various foreign officials in China, Kuwait, South Korea, Pakistan, Thailand, and Indonesia in connection with its business.

The SEC took into account that UTC voluntarily disclosed the conduct and cooperated with the SEC during its investigation. UTC also undertook remedial actions, such as terminating all of the employees involved in the conduct and strengthening its global compliance program.

ING Receives Declination from the SEC

ING Group NV received a declination from the SEC after reaching a settlement with Dutch authorities to the tune of \$900 million, according to a disclosure in a new filing by the company with the SEC. The declination is consistent with the new policy against piling on. For more regarding the Dutch settlement,

see the Europe section of this month's Anti-Corruption Digest.

Ensco Receives Declinations from SEC and DOJ

Ensco plc, a U.K.-based drill operator, received a double declination regarding alleged corrupt activity in Brazil, according to its September Form 8-K filing. The investigation into Ensco related to a drilling services agreement in 2008 between Petrobras and Pride International Inc., a company it acquired in 2011. An internal investigation by Ensco revealed alleged irregularities, which the company disclosed to the DOJ and SEC in 2015 upon learning of them. The internal investigation did not uncover any evidence that Pride, Ensco, or any of their employees were aware of any wrongdoing.

Sanofi Resolves FCPA Offenses with the SEC

Sanofi agreed to a cease-and-desist order and to pay the SEC a total of \$25.2 million to resolve charges that it violated the books and records and internal accounting controls provisions of the FCPA, 15 U.S.C. § 78m(b)(2)(A)-(B). The charges related to the French-based pharmaceutical company's subsidiaries' alleged payment of bribes to foreign officials between 2011 and 2015 throughout the Middle East and Kazakhstan to influence them to buy more Sanofi products. The matter is *In the matter of Sanofi*, Admin. Proc. File No. 3-18708 (Sept. 4, 2018).

According to the SEC's order, senior members of Sanofi's Kazakhstan subsidiary engaged in a scheme between 2007 and 2011 to bribe foreign officials to corruptly influence the award of tenders at public institutions. The scheme involved providing a 20-30% discount to distributors, who then used a portion of those funds to bribe the foreign officials. Another Sanofi subsidiary, Sanofi Levant, engaged in a series of schemes between 2011

and 2013 to pay foreign officials in Jordan, Lebanon, Syria, and the region of Palestine to boost sales of Sanofi products through increased prescriptions. These schemes took the form of sponsorships, gifts, donations, product samples, consulting agreements, peer-to-peer meetings, clinical studies, and grants, and in some cases involved senior managers of Sanofi Levant. Finally, Sanofi Gulf sales managers and medical representatives in the Primary Care business unit engaged in a scheme between 2012 and 2015. The employees submitted false travel and entertainment expenses, pooled the proceeds, and used the funds to bribe health care professionals across Bahrain, Kuwait, Qatar, Yemen, Oman, and the United Arab Emirates. These funds were falsely recorded as legitimate expenses in Sanofi's books and records.

The SEC considered Sanofi's remedial efforts in deciding to accept its offer of settlement. These actions included providing regular briefings on its findings from its internal investigation, including of information and facts the SEC would not have otherwise learned. Prior to the investigation, Sanofi had already begun to enhance its compliance program by developing a centralized program and revamping its internal controls over payments to health care professionals, among other things. Sanofi also terminated 121 employees, including senior local business managers, accepted resignations from another 14 employees, and disciplined 49 employees. According to the order, Sanofi will also undertake to cooperate with the SEC in any future investigation or litigation in connection with the proceedings. It will also report to the SEC on the status of its remediation and compliance efforts for at least two years.

EUROPE

UNITED KINGDOM

Landmark Appeal Protecting Legal Privilege in Fraud Investigation Case

The U.K.'s Court of Appeal (CoA) has overturned a widely reported decision made by the U.K. High Court in May 2017, which compelled Eurasian Natural Resources Corporation (ENRC), a Kazakh mining company, to provide documents, principally notes of interviews shared between ENRC and its former legal adviser, Dechert LLP, to the U.K.'s Serious Fraud Office (SFO). In this landmark case, the CoA confirmed that the documents in question should be protected on the grounds of privilege. It re-affirmed that businesses should be entitled to "seek and obtain legal advice" without fear of external intrusion.

The case began in 2010 when a whistleblower alleged bribery and financial malpractice relating to the ENRC's relationship with its subsidiaries in Kazakhstan and Africa. The SFO launched a criminal investigation in April 2013. In May 2017, a High Court judge decided that documents shared between ENRC and Dechert would not be protected by legal advice privilege, as there was no evidence that the interviewees were tasked with seeking legal advice. Nor were they protected by litigation privilege, since in the judge's view they were for the purposes of fact-finding, not adversarial litigation that was reasonably in prospect. The relevant documents included evidence given to Dechert by current and former employees or officers of ENRC. ENRC successfully challenged the judge's finding regarding privilege. ENRC argued that there was a reasonable prospect that the matter could have led to prosecution and the documents were created for the purpose of resisting it.

Michael Roberts, the partner at Hogan Lovells who acted for ENRC, stated “This historic ruling by the Court of Appeal is significant not just for ENRC but for any company faced with undertaking an internal investigation in response to a whistleblower or other allegation of wrongdoing. It is critical that companies are not penalized for acting responsibly, and are able to instruct lawyers to conduct investigations without fear that the authorities will later be able to demand all of the lawyers’ work product.”

Regulators Urged to Investigate U.K. Links to Money Laundering Scandal at Danske Bank

A report focusing on the recent allegations of money laundering at Danske Bank’s Estonia branch has revealed that the U.K. is one of the countries most involved in suspect transactions, along with Russia and the British Virgin Islands. The report, written by a Danish law firm, details allegations that U.K. shell companies have been used to launder money. It is alleged that £180 billion (approximately US\$240 billion) of overseas money was funneled through the Bank’s Estonian branch between 2007 and 2015. While Danske Bank was unable to determine how much of this was illicit, it has claimed that it expects a “significant” proportion of such payments to be “suspicious”.

The report also claims that concerns raised by a whistleblower based in the U.K. were ignored in 2013, and that Danske Bank managers considered alerting U.K. authorities about potential misconduct on British soil in 2014, but decided against it.

The U.K. National Crime Agency has opened an inquiry into the use of U.K.-registered companies in the Danske case. Similarly, the European Commission has asked the European Union banking watchdog to investigate and U.S. authorities are also reportedly looking into the case.

Anti-corruption groups have urged the U.K.’s Financial Conduct Authority and Serious Fraud Office to intervene in the case and to consider legal action.

Rachel Davies Teka, Head of Advocacy at Transparency International UK, said “this case underlines the huge sums of illicit wealth being laundered around Europe but also the absolute centrality of UK-based shell companies in allowing this to happen.”

U.K. Moves to Crack Down on Suspicious Wealth

The U.K. National Crime Agency (NCA) is increasing its focus on targeting sources of wealth from Russia, former Soviet Union republics, and certain jurisdictions in Africa and Asia in an attempt to crack down on the suspected £90 billion (approximately US\$150 billion) of suspicious funds coming into the country’s capital, London.

The director of the NCA’s economic unit, Donald Toon, told the *Financial Times* that it was preparing to widen the use of unexplained wealth orders, a court-approved mechanism that allows investigators to seize property if the owners fail to explain how they could afford it. Mr. Toon commented, stating, “We are looking at high-value Russian assets inside the UK ... and whether or not we can be in a position to go to the courts and raise sufficient concern to obtain an unexplained wealth order on those assets.”

MPs Accuse RBS Chief Executive of Withholding Information

The U.K. Parliament’s Treasury Select Committee has accused the chief executive of Royal Bank of Scotland (RBS), Ross McEwan, of deliberately misleading Members of Parliament (MPs) when the Committee questioned him about the bank’s much-criticized practices at its Global Restructuring Group (GRG) in January.

When he gave evidence previously, Mr. McEwan said that he was not aware of any allegations of criminal activity involving the bank. In fact, RBS had previously reported to the police that a former banker in its GRG had allegedly accepted a bribe from the owner of a small business in exchange for leniency towards the owners company. The bribery allegations are currently subject to a criminal investigation in Scotland.

Mr. McEwan has since responded to the accusations, stating that he "entirely rejects" the suggestion that he misled the committee, explaining, "the criminal allegations that RBS referred to Police Scotland in relation to this employee did not relate to the issues that the FCA has been considering as part of its four-year investigation into GRG's treatment of SME customers."

The Committee's chairperson, Nicky Morgan MP, said that RBS had displayed a "pattern of defensiveness" and "failure to acknowledge mistakes" throughout its management of the troubles at the bank's GRG. The committee may now call Mr. McEwan back to give more evidence and expect him to "tell the whole truth, not an edited version to suit him".

The Financial Conduct Authority investigated the GRG for the period from 2008 to 2013 and concluded that although many aspects of its culture, governance and practices were "deficient," there had been no criminal activity.

United Kingdom and Kenya Sign Deal to Repatriate Proceeds of Crime

The United Kingdom and Kenya have entered into an agreement to repatriate the proceeds of corruption and crime back to Kenya. The deal was signed when Theresa May, the U.K Prime Minister, visited Nairobi. Mrs. May was accompanied by 29 representatives, meeting with Kenya's leading policy makers, businesses and entrepreneurs to create trading and export links between the two countries.

In a statement, the President of Kenya, Uhuru Kenyatta, said "We have agreed with Prime Minister Theresa May on modalities of bringing back to the country proceeds of crime and stolen assets. This will boost the war on corruption that has denied Kenyans important services that they deserve"

In July this year, President Uhuru signed a similar deal with Switzerland to trace and recover an estimated KSh72 billion assets (approximately US\$714.6 million) held in Swiss accounts.

U.K. Announces New Anti-Corruption Partnership with Pakistan

The U.K. government announced a new anti-corruption partnership with Pakistan on September 18, 2018. The announcement follows a visit by the U.K.'s Home Secretary Sajid Javid to the country, where meetings were held Prime Minister Imran Khan and other government officials.

The new Justice and Accountability Partnership aims to help Pakistan to combat corruption by giving the country £750,000 (approximately US\$990,000) to pursue those suspected of involvement in money laundering. Donald Toon, who is currently a Director at the U.K's National Crime Agency, will be appointed as Envoy on Justice and Accountability.

During the visit, Mr. Javid said "Corruption reduces tax and is a barrier to investment. The UK has done more than any country to tackle corruption and we are absolutely committed to supporting Pakistan to tackle this problem. Our announcement today demonstrates this commitment."

U.K.'s New National Economic Crime Centre Set to Open Next Month

A new organization for fighting economic crime, known as the National Economic Crime Centre (NECC), will begin operations on October 31, 2018. The creation of the NECC, which will sit within the U.K.'s National Crime Agency (NCA), was first announced in December 2017 to help with the government's anti-corruption strategy. The NECC will "plan, task and coordinate operational responses across agencies bringing together the UK's capabilities to tackle economic crime more effectively."

The NECC is set to start with a budget of approximately £6 million (approximately US\$7.8 million) and around 55 staff members. Although most of the NECC members will come from the NCA, there will also be representatives from the U.K. tax authority, HM Revenue & Customs, the Serious Fraud Office, the police and the Financial Conduct Authority. It is estimated that more than £90 billion (approximately US\$120 billion) of criminal money is brought through the U.K. every year.

U.K. Government Freezes Zambian Aid Over Corruption Fears

The U.K. has suspended aid funding to Zambia following concerns that the money, which is meant for Zambian people, is being stolen by corrupt officials. The suspension comes after an enquiry ordered by the Zambian President, Edgar Lungu, revealed the "misappropriation" of \$4.3 million. The money has disappeared from the Social Cash Transfer program, which directs funding to the poorest people in the country. The U.K. based journal, *Africa Confidential*, has reported that the misappropriated money has allegedly been used to purchase expensive vehicles, and that the corruption has affected Zambia's

health and education ministries. Sweden, Finland and Ireland have also suspended aid payments to Zambia.

In a statement, the U.K.'s Department for International Development said that the U.K. takes "zero-tolerance approach to fraud and corruption." More than half of the 17 million people living in Zambia live below the poverty line, according to the World Bank.

FRANCE

Police Search Offices of France's Largest Electrical Goods Companies

On September 6, 2018, police in France raided the offices of four large electrical goods companies, Rexel, Legrand, Schneider Electric and Sonepar, on suspicion of corruption and cartel pricing. According to a source familiar with the matter, the searches were carried out in connection with an investigation launched in June this year by the Paris prosecutor's office, after reports were received in April from the French Anti-Corruption Agency and the Competition Authority.

The four companies are suspected of various offences, including tax fraud, forgery, bribery and misuse of corporate assets. A report released in April this year by the investigative website *Mediapart* reported a suspected secret deal between the four companies to raise prices by limiting competition. If found guilty, the companies could face hundreds of millions of euros in fines.

French Civil Servant Charged Over Nicolas Sarkozy's Campaign Funding

On September 17, 2018, judges investigating the financing of Nicolas Sarkozy's 2007 French presidential election campaign, which was allegedly financed with money from the

deceased Libyan dictator, Muammar Gaddafi, charged Claude Guéant with taking bribes.

Mr. Guéant, widely regarded as Mr. Sarkozy's right hand man, was the interior minister in his government. He denies any wrongdoing.

In addition to the bribery charges, Mr. Guéant has also been charged with misuse of public funds and conspiracy in illegal campaign financing. Mr. Guéant was already facing charges of forgery and tax fraud linked with a €500,000 (approximately US\$585,000) transfer from a Malaysian company in 2008 and the sale of a luxury villa in France to a Libyan investment fund.

The initial inquiry began in 2013 following claims from several individuals in Mr. Gaddafi's regime that Mr. Sarkozy's election campaign received money from Mr. Gaddafi and his son. Mr. Sarkozy was charged last March with passive bribery, illegal campaign financing and receiving Libyan public funds.

ITALY

Italy Stands up to Corruption with “Bribe Destroyer” Bill

Italy's cabinet submitted a draft bill on September 6, 2018, known as the “spazzacorrotti” or “bribe destroyer”, to parliament for approval. The bill prevents any person who is convicted of corruption and handed a prison sentence exceeding two years from holding public office or seeking a state contract. The bill states that those with convictions carrying sentences under two years would be excluded from public business for five to seven years. Additionally, under this draft, undercover agents would be permitted to work on corruption investigations for the first time and full transparency would be required on all contributions to political groups.

This bill's concept was created by the anti-establishment 5-Star Movement, which is currently governing Italy in a coalition with the

far-right Northern League party. The bill will now go to parliament, but is expected to be amended by deputies prior to enactment. Justice Minister Alfonso Bonafede commented by stating that the bill is a “revolution in the fight against corruption”.

Milan Court Acquits Oil Major Eni but Finds Saipem Guilty of Corruption

Judges in Milan have sentenced Pietro Tali, the former CEO of oil services group Saipem, to four years and nine months in prison for corruption in a lengthy trial relating to the payment of bribes in Algeria.

The Milan court ruling, which was made on September 18, 2018, also seized €197.9 million (approximately US\$230 million) from Saipem and fined the company €400,000 (approximately US\$470,000).

The case centers on allegations that Saipem paid intermediaries around €198 million (approximately US\$231 million) to secure contracts with Sonatrach, an Algerian government-owned oil exploration company. Under Italian law, companies are responsible for the actions of their managers and can face fines if the managers are found guilty.

At the same time, the court acquitted major oil company Eni, along with its former CEO and its current Chief Upstream Officer. Italian prosecutors had alleged that money was paid to Eni in order to get approval from Algeria's energy ministry to purchase Canadian oil and gas company, First Calgary Petroleum. The firm held rights to a gas field in Algeria named Menzel.

Eni said “Eni welcomes today's judgment of acquittal on the grounds there was no case to answer,” according to a statement released after the ruling by the company.

SWITZERLAND

Former South American Football Official Sentenced in FIFA Scandal

The former president of the South American Football Confederation Conmebol, Juan Ángel Napout, has been sentenced to nine years in jail for his role in the FIFA bribery scandal. Mr. Napout was found guilty in December 2017 of racketeering, conspiracy and two wire fraud charges. The crimes were connected with Mr. Napout's participation in arrangements to accept millions of dollars in bribes in exchange for the marketing and media rights to several football tournaments.

Mr. Napout, who has been ordered to forfeit \$3.37 million and pay a fine of \$1 million, was found guilty alongside Jose Maria Marin, the former head of the Brazil Football Confederation. Mr. Marin was sentenced to four years in prison earlier this month.

Roman Abramovich Deemed a Potential 'Security Threat' by Swiss police

Roman Abramovich one of the most well-known Russian Oligarchs, and the owner of Chelsea Football Club, has been denied Swiss residency after Switzerland's federal police advised officials to reject his application. The decision was made due to suspicions that Mr. Abramovich may be involved in money laundering or have contact with criminal organizations.

These allegations are based on unproven police suspicions, which became known after Zurich-based publisher, *Tamedia*, gained access to a letter written by the police. *Tamedia*'s news outlets reported that the Federal Office of Police viewed Mr. Abramovich's potential presence in Switzerland as a danger to public security.

Mr. Abramovich's lawyer, Daniel Glasl, of Swiss law firm Bratschi, said "Despite multiple requests, FedPol has failed to provide any evidence supporting these defamatory allegations." Mr. Abramovich denies any wrongdoing and has never been indicted.

Switzerland's Financial Watchdog Criticizes Credit Suisse for Money Laundering Failures

On September 17, 2018, Switzerland's financial Watchdog, FINMA, criticized the country's second-largest bank, Credit Suisse, for failing to adequately tackle money laundering in suspected corruption cases linked to Venezuelan and Brazilian state oil companies, along with FIFA, soccer's ruling body.

According to FINMA's investigations, the money laundering failures involved three of the bank's clients, Petroleos de Venezuela SA, Petroleo Brasileiro SA and FIFA. In each case, the bank failed to properly identify the client and its beneficial owner, did not categorize the relationship as high risk or did not perform enhanced due diligence. FINMA also found that the bank was "too slow to identify and treat" a politically exposed client, and as a result, failed to comply with heightened due diligence obligations.

In a statement, Credit Suisse said that FINMA had uncovered "legacy weaknesses", but added that it has acted to improve compliance since the new Chief Executive, Tidjane Thiam, was appointed in March 2015. Switzerland's financial watchdog did state that the bank cooperated with its investigation and a number of compliance improvements have been made, some of which are substantial.

FINMA will now appoint an independent auditor to review the bank's implementation of improvement measures.

SWEDEN

Three Ex-Telia Executives on Trial for Bribery

A criminal trial has commenced in Stockholm in which three former executives of Swedish based telecom company, Telia, have been charged with bribing a foreign official to gain business in Uzbekistan. Telia's Former general counsel, Olli Tuohimaa, former chief executive, Lars Nyberg, and former head of the Eurasian business unit, Tero Kivisaari, are suspected of paying \$350 million to Gulnara Karimova, Uzbekistan's deputy foreign minister and daughter of then Uzbek President Islam Karimov, as remuneration for a mobile phone license and "protection" from the Uzbek government.

The three defendants were charged on September 22, 2017, but have denied all charges. The trial is scheduled through to December 2018 and a verdict is due in January or February next year.

These charges came only a day after Telia agreed to a three year deferred prosecution agreement with the U.S., Swedish and Dutch authorities. Gulnara Karimova was regarded as a potential successor to her father and was described by Chief Prosecutor, Gunnar Stetler, as having "complete control of the mobile-phone market". Karimova has previously been convicted of a variety of crimes including extortion, embezzlement and tax evasion.

DENMARK

Danske Bank Publishes Results of Money Laundering Investigation

On September 19, 2018, Danske Bank, Denmark's leading bank, published the results of the bank's internal investigations into the large money laundering scandal at its

Estonian branch. The investigation, which was carried out by the law firm, Bruun & Hjejle, examined the transactions of 15,000 customers at the Estonian branch between 2007 and 2015, and concluded that the flow of payments covered by the investigation amounted to €200 billion (approximately US\$240 billion).

According to a press release published on the bank's website, "a series of major deficiencies in the bank's governance and control systems made it possible to use Danske Bank's branch in Estonia for suspicious transactions". The deficiencies led to an "insufficient focus on the risk of money laundering" at the Estonian branch which resulted in a large number of suspicious transactions by non-resident customers "that should have never happened".

Although the investigation has not been able to provide an accurate estimate of the amount of suspicious transactions, 6,200 customers with the most high risk indicators have been analyzed, almost all of which have been reported to the authorities.

Ole Andersen, the Chairman of the Board of Directors at Danske Bank, commented on the investigation, stating "The findings of the investigations point to some very unacceptable and unpleasant matters at our Estonian branch, and they also point to the fact that a number of controls at the Group level were inadequate in relation to Estonia."

NETHERLANDS

ING to Pay €75 Million Penalty for Money Laundering Control Failures

ING, Netherlands largest bank, has agreed to pay €775 million (approximately US\$890 million) in penalties in connection with compliance failures that allegedly allowed companies holding ING bank accounts to launder millions of euros and to pay bribes

over a period of six years. Prosecutors found that clients of the bank “were able to use accounts held with ING for, *inter alia*, criminal activities for many years, virtually undisturbed” and that the compliance department “was understaffed and inadequately trained.”

The compliance failures were uncovered during the Dutch prosecutor’s investigations into four client companies of ING, including a Curaçao-based lingerie firm that allegedly laundered €150 million (approximately US\$175 million) and a unit of Russian mobile operator, VimpelCom, that is suspected of paying \$55 million in bribes to Gulnara Karimova, daughter of the former Uzbek President, Islam Karimov.

The penalties, comprised of a €675 million fine and a €100 million disgorgement (approximately US\$780 million and US\$115 million respectively), are the largest imposed on a company by the Dutch prosecution service.

UKRAINE

Ukrainian Minister Facing Graft Probe Claims Case is Politically Motivated

Ukrainian infrastructure minister, Volodymyr Omelyan, is facing allegations of illegal enrichment and is under investigation by the national anti-corruption bureau (NABU). Detectives notified Mr. Omelyan of the investigation on September 13, 2018 alleging his assets, including \$90,000 cash and a BMW, exceeded the amount he would have earned as a civil servant since the year 2000. NABU also alleges that Mr. Omelyan did not declare hundreds of thousands of U.S. Dollars’ worth of assets in 2015 and 2016, including the costs of multiple residences he occupied.

Mr. Melian strongly rejects the accusations and has refused to resign from his ministerial position. Mr. Omelyan said “I categorically reject all accusations brought against me ... I

want to say that I am being pressured by the leadership of the NABU.” The minister said that he had anticipated in March 2018 that cases would be brought against him, solely because he is aiding reforms with a view to liberalizing the ex-Soviet republic’s economy, eradicating corruption and improving governance.

The lead prosecutor in the case, Nazar Kholodnytskyi, has denied the accusation that the case is driven by politics. NABU has called on Mr. Omelyan to pay a 5 million hryvnia (approximately US\$180,000) bond pending the outcome of the case.

ROMANIA

Romanian Justice Minister Nominates Senior Prosecutor to Head Anti-Corruption Agency

On September 6, 2018, the Romanian Ministry of Justice released a statement nominating senior prosecutor, Adina Florea, for the position of Chief Prosecutor of Romania’s National Anti-Corruption Directorate (DNA). The proposal, made by Justice Minister Tudorel Toader, will now be forwarded to the Superior Council of Magistracy for an advisory opinion, before going to President Klaus Iohannis for approval.

In her application to the ministry for the role, Florea stated “In recent years, Romania has taken important steps in the fight against corruption, both external evaluations and internal analysis reflecting consistent results in this area, with prosecutors within the DNA ... playing a central role in this work. Notwithstanding the good things that have been done in recent years, an analysis of the DNA activity, brings to light enough, if not too many, deviations from the rigors of the rule of law”. The preceding Chief Prosecutor, Laura Codruta Kovesi, was dismissed from her DNA post in July this year, due to claims of mismanagement.

Romanian Activists Continue Campaign Against Government After Violent August Protest

On September 10, 2018, a month after violent anti-corruption protests in Romania resulted in 450 people being injured, Romanian demonstrators are continuing their campaign against the ruling left-wing Social Democrats. Alongside smaller protests in other cities, campaigners rallied outside the Romanian government offices holding Romanian, European Union and U.S. flags chanting "Resign!" and "We won't give in!".

Critics claim the judicial changes being made by the current government will render prosecution of the elite for anti-corruption crimes much more challenging. The protests carried out in August 2018 were mostly peaceful.

RUSSIA

Russian Courts Extend Detention of Former Anti-Corruption Official Accused of Corruption Crimes

The Moscow City Court has upheld a decision to extend the detention of Russia's former anti-corruption official, Dmitry Zakharchenko. In September 2016, Mr. Zakharchenko was arrested after a search of his sister's apartment uncovered 9 million Rubles in cash (approximately US\$132,000). Officers confiscated the funds and Mr. Zakharchenko denied any connection. In March this year, Mr. Zakharchenko was charged with receiving a bribe of 7 million Rubles (approximately US\$100,000) from an unknown source, along with abuse of office, hindering the conduct of a preliminary investigation and multiple other corruption related crimes.

EUROPEAN UNION

EC Proposals to Extend EU Agency Powers Over Banks

The European Commission (EC) is trying to enhance the authority of European Union (EU) agencies in view of recently reported inefficiencies of European banks' processes, protocols and enforcement of financial crime prevention. The EC is currently considering proposals to give the EU's banking regulator, the European Banking Authority (EBA), more resources and enforcement powers to investigate the activities of banks which are suspected of involvement in illicit financing. The EC is also considering separate plans to give the European Public Prosecutor's Office (EPPO) powers to investigate allegations of terrorist financing across the EU's member states from 2025.

The EC has recently come under immense pressure for stronger pan-European supervision following a string of high-profile scandals involving the ING, Danske Bank and Latvian bank ABLV, in which criminals were allegedly able to exploit inadequacies in Europe's banking systems. Bruno Le Maire, the French Finance Minister, said, "I think we need a single EU wide agency, to ensure tough, effective and consistent enforcement."

MIDDLE EAST

SAUDI ARABIA

No More Statute of Limitations for Corruption Investigations

Saudi Arabia removed its sixty-day statute of limitations into anti-corruption investigations into former and current ministers. The move is a further sign that the country is taking actions to fight corruption following its widespread anti-corruption crackdown in

2017. That anti-corruption sweep allowed the government to seize more than \$100 billion through settlements, according to *Reuters*.

ASIA

MALAYSIA

Former Prime Minister's Top Defense Counsel Arrested for Money Laundering

Former Malaysian Prime Minister Najib Razak, recently convicted of corruption charges, faces additional legal hurdles as his defense counsel was arrested and charged with money laundering and tax violations. The Malaysian Anti-Corruption Commission that is directing the investigation alleges that Muhammad Shafee, Mr. Najib's top defense attorney, accepted RM 9.5 million (US\$ 2.3 million) from Mr. Najib and submitted inaccurate tax filings. Mr. Shafee denies the charges.

Finance Minister Acquitted After Fighting Charges for Two Years

Lim Guan Eng, former Finance Minister, was charged in 2016 for abuse of power in connection with his purchase of a two-story house at below market price. At the height of the investigation, Mr. Lim's supporters said the charges were politically motivated by Najib Razak, then prime minister. After Mr. Najib's fall from power, the prosecutors dropped the charges against Mr. Lim and the court discharged the case.

CHINA

China Reaches Cooperation Treaties with Eleven Caribbean Countries

Chinese government officials and their counterparts from eleven Caribbean countries agree to work together to jointly fight corruption. At a meeting in St. George, Grenada, attended by Chinese government officials and their counterparts from Trinidad, Tobago, Jamaica, and other Caribbean countries. The group vowed to implement the United Nations' 2030 Agenda for Sustainable Development to defend social and economical development from corruption.

Huarong to Withdraw Application for Share Offering

The value of China Huarong Asset Management Co., Ltd.'s (Huarong) stocks dropped significantly this month as the Central Commission for Discipline Inspection (CCDI) continues its investigation of Huarong's chairman, Xiaomin Lai. Huarong's auditor states that the CCDI investigation has had an adverse impact on Huarong's financials. Earlier in September, Huarong announced that it will not proceed with share offering, but assured investors its decision will not have any adverse impact on the company's financial position.

SOUTH KOREA

Prosecutors Seek Maximum Sentence for Former President

The Seoul Central District Court has held the final hearing in the trial of the former South Korea president, Lee Myung-bak. Mr. Lee was charged with abuse of power, embezzlement and accepting bribes of 11.1 billion won (US\$ 9.94 million) from companies, including Samsung Electronics Co. Mr. Lee's

sentencing hearing is expected to take place early October and the prosecutors are expected to seek the maximum sentence against Mr. Lee.

Head of World Taekwondo Headquarters Resigns Amidst Corruption Allegations

Oh Hyun-deuk, head of World Taekwondo Headquarters, resigns as he is under investigation for breach of trust, embezzlement and unlawful conduct during the employment recruitment process. In a formal statement, Mr. Oh said: "I will resign from the position after the appointment process for new Kukkiwon chief is finalized under the revised Kukkiwon code from the task force."

Energy Administration Chief Under Investigation for Corruption

Nur Bekri, head of China's Energy Administration is being investigated for corruption. Mr. Bekri is best known for how he worked his way up and being the highest ranking officer of the Uighur ethnicity. The specific charges against Mr. Bekri are still unknown.

INDONESIA

Depok City Mayor to be Investigated for Corruption

Nur Mahamudi Ismail, mayor of Depok, a city in West Java province, and his city secretary, are both under investigation for embezzling funds that were allocated for a roadway project in Depok. Mr. Nur Mahmudi and his city secretary, were alleged to have diverted a total of RP 10 billion (US\$672,675). The investigators have requested a travel ban on both individuals and summoned them for questioning.

HONG KONG

Former Government Official Charge with Bribery in Connection with Relative of Macau Casino Tycoon

Wilson Fung Wing-yip, former deputy secretary of Hong Kong's Economic Development and Labor Bureau, was charged with accepting HK\$ 510,000 (US\$ 65,000) from Chan Ung-iok in 2004, who, at the time of the bribe, was a director and shareholder of Helicopters Hong Kong Limited, Hong Kong Express Airways Limited and Heli Express Limited. Ms. Chan is the sister-in-law of the Macau casino tycoon, Stanley Ho. Ms. Chan also faces one charge of "offering an advantage to a public servant."

In his role as the deputy secretary, Mr. Fung was responsible "air service negotiations, designation of carriers and allocation of air traffic rights." The Independent Commission Against Corruption (ICAC) alleges that, in return for the accepting the bribes, Mr. Fung became and remained "favorably disposed to her or the three companies controlled by her or related to her." The investigation reveals that Mr. Fung used the bribe money toward purchasing an apartment in Hong Kong.

Mr. Fung, who has served as the executive director of the Airport Authority's Corporate Development since 2010, has been currently suspended from his position.

LATIN AMERICA

ARGENTINA

Former President Fernandez Indicted on Corruption Charges

Former President Cristina Fernandez was indicted in mid-September on charges that her administration accepted bribes from construction companies in exchange for awarding public contracts. As previously reported in the Digest, the investigation into Ms. Fernandez began after a local newspaper published notebooks that were kept by a chauffeur of a former planning minister who allegedly documented deliveries of cash to government offices and Ms. Fernandez's private residence. As a senator, Ms. Fernandez has immunity from arrest, but is not immune from prosecution. The investigation has implicated dozens of former government officials and business executives in the country's construction industry.

BRAZIL

Workers Party Vice-Presidential Candidate Haddad Charged with Corruption

State prosecutors in Sao Paulo charged vice presidential candidate Fernando Haddad with corruption in early September. Mr. Haddad, the former mayor of Sao Paulo, is alleged to have allowed construction conglomerate UTC Participações to pay a \$722,961 debt Mr. Haddad owed to a printing company for his 2012 campaign materials. Mr. Haddad's campaign denied wrongdoing. The company said it would continue to work with prosecutors.

PERU

Attorney General Investigating Former President Kuczynski in Vote Buying Allegations

Attorney General Pedro Chavarry is investigating former President Pedro Pablo Kuczynski and current Vice President Mercedes Araoz for alleged vote buying to avoid impeachment. The Attorney General alleged that Mr. Kuczynski, among others, committed bribery, influence trafficking, and belonged to a criminal organization causing damage to the state. Mr. Kuczynski resigned in March after allegations of his involvement in the Carwash bribery scandal led to two impeachment votes. The former president has denied the vote buying allegations.

GUATEMALA

Government Defies Top Court Ruling, Looks to Replace U.N. Anti-Corruption Commission Head

The government in mid-September defied a ruling from Guatemala's top court—the Constitutional Court—allowing the return of United Nations anti-corruption head Ivan Velasquez to the country. Mr. Velasquez heads a U.N.-backed anti-corruption commission that has begun a number of high-profile investigations in the country, including one against President Jimmy Morales. The government's announcement came days after the Constitutional Court issued the unappealable ruling requiring the administration to allow the commission leader entry into the country. Officials said the high court's ruling does not mention Mr. Velasquez by name, which means they are only required to allow someone in to head the commission, not Mr. Velasquez. Soon after the government's announcement, several human rights organizations filed complaints alleging the

government was violating the court's decision. President Morales said in August that he would allow the commission one year to wrap up its work, but that Mr. Velasquez needed to be replaced immediately.

EL SALVADOR

Ex-President Saca Sentenced to Ten Years in Prison for Corruption

A court in El Salvador sentenced former President Elias Antonio Saca to ten years in prison for siphoning \$301 million in state funds during his presidency. The attorney general's office announced that Mr. Saca was sentenced for the crimes of embezzlement, money laundering, and asset laundering. He was tried along with six of his collaborators in the case but entered into a plea bargain in exchange for a reduced sentence. Mr. Saca faced a maximum of 25 years in prison.

AFRICA

ANGOLA

Son of Former Angola President Arrested

Prosecutors in Angola arrested the son of former President Jose Eduardo dos Santos for his involvement in the alleged illegal transfer of \$500 million from a state-owned bank account to an HSBC Holdings account in the United Kingdom. Jose Filomeno dos Santos was charged with fraud in March and has been placed under preventive detention, prosecutors said. Mr. Filomeno dos Santos is accused of crimes relating to his management of the country's \$5 billion sovereign wealth fund. Those include corruption, participation in unlawful business, money laundering, and embezzlement. The country's Finance

Ministry said in April it had recouped the \$500 million from the HSBC account linked to an alleged fraud involving Jose Filomeno.

SOUTH AFRICA

Special Investigating Unit Probing Whether Kickback was Paid for SAP Contract

A government investigative unit in South Africa is reviewing whether a \$2 million kickback was paid in exchange for awarding German software company SAP a state contract. President Cyril Ramaphosa authorized the investigation in September after the government began a probe into a \$45 million deal SAP entered into with the country's water ministry in 2016. The Special Investigative Unit (SIU) said that it had received a tip from a whistleblower alerting them to the alleged misconduct. SAP said that it continues to cooperate with both South African and U.S. authorities in the ongoing investigations. The firm admitted in March to paying more than \$9 million to intermediary companies in deals with state firms Eskom and Transnet.

Former President Zuma's Son to Testify at Judicial Inquiry

The son of former President Jacob Zuma, Duduzane Zuma, has agreed to testify at a judicial panel investigating allegations of corruption during his father's administration. The former deputy finance minister, Mcebisi Jonas, testified last month that Mr. Duduzane Zuma arranged a meeting at which Mr. Jonas was offered the finance minister position and \$39.6 million in exchange for certain business concessions. When Mr. Jonas refused, he was warned he would be killed if he spoke publicly about the proposal. Mr. Duduzane Zuma initially refused to appear before the judicial body but recently changed his mind, according to the panel.

AUSTRALIA

Corruption Commission Recommends Former Australian of the Year Finalist be Prosecuted for Corruption

The Independent Commission Against Corruption (ICAC) recommended former Australian of the Year state finalist Eman Sharobeem be prosecuted for misconduct in public office in September. The ICAC said in a statement, “The commission finds that between 2007 and early 2016 Ms. Sharobeem improperly exercised her official functions while service manager or chief executive of the Immigrant Women’s Health Service (IWHS) and the person in day-to-day charge of the Non- English Speaking Housing Women’s Scheme (NESH).” Among other findings, Ms. Sharobeem is alleged to have transferred more than \$440,000 of IWHS funds to her personal bank account and used the money for various personal purchases, including \$13,500 on jewelry and \$18,000 toward the purchase of a Mercedes. Ms. Sharobeem claimed that she has been set up by her colleagues: “I wouldn’t take the organization’s money and pay for a Mercedes. I’m not stupid.”

ARTICLES OF NOTE

Turk, Matthew C. and Woody, Karen E., Judge Kavanaugh, Lorenzo v. SEC, and the Future of Deference at the Post-Kennedy Supreme Court (September 4, 2018). Kelley School of Business Research Paper No. 18-71; Administrative Law Review, Forthcoming. Available at SSRN.

This article focuses on the Lorenzo case which will consider the question of primary versus secondary liability in SEC enforcement actions and discusses the case as a window to the future direction of the court. The article can be downloaded [here](#).

DORSEY ANTI-CORRUPTION GROUP

The Dorsey Anti-Corruption team's deep experience from government and private practice fortified by a critical knowledge of key areas of the world such as:

- Africa
- Asia Pacific
- Europe
- Middle East
- Latin America

On anti-corruption issues, the Dorsey tools and Dorsey experience puts you ahead; the Dorsey team keeps you ahead.

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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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