ARNOLD & PORTER

Global Anti-Corruption Insights

Update on Recent Enforcement, Litigation, and Compliance Developments

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EXECUTIVE SUMMARY: 2015 MID-YEAR REVIEW

The Department of Justice (DOJ) and Securities and Exchange Commission (SEC or the Commission) continued their focus on the Foreign Corrupt Practices Act (FCPA) in the first half of 2015. On the criminal side of FCPA enforcement, the DOJ obtained a guilty plea, mid-trial, from a former chief executive of an oil and gas company; entered into non-prosecution agreements with a defense contractor and its former vice president; and announced the indictment of the former head of a consulting company. In other enforcement news that caught the world's attention, the DOJ unveiled a 47-count indictment against nine officials of Fédération Internationale de Football Association (FIFA) and five corporate executives in connection with decades of alleged corruption in organized international soccer.

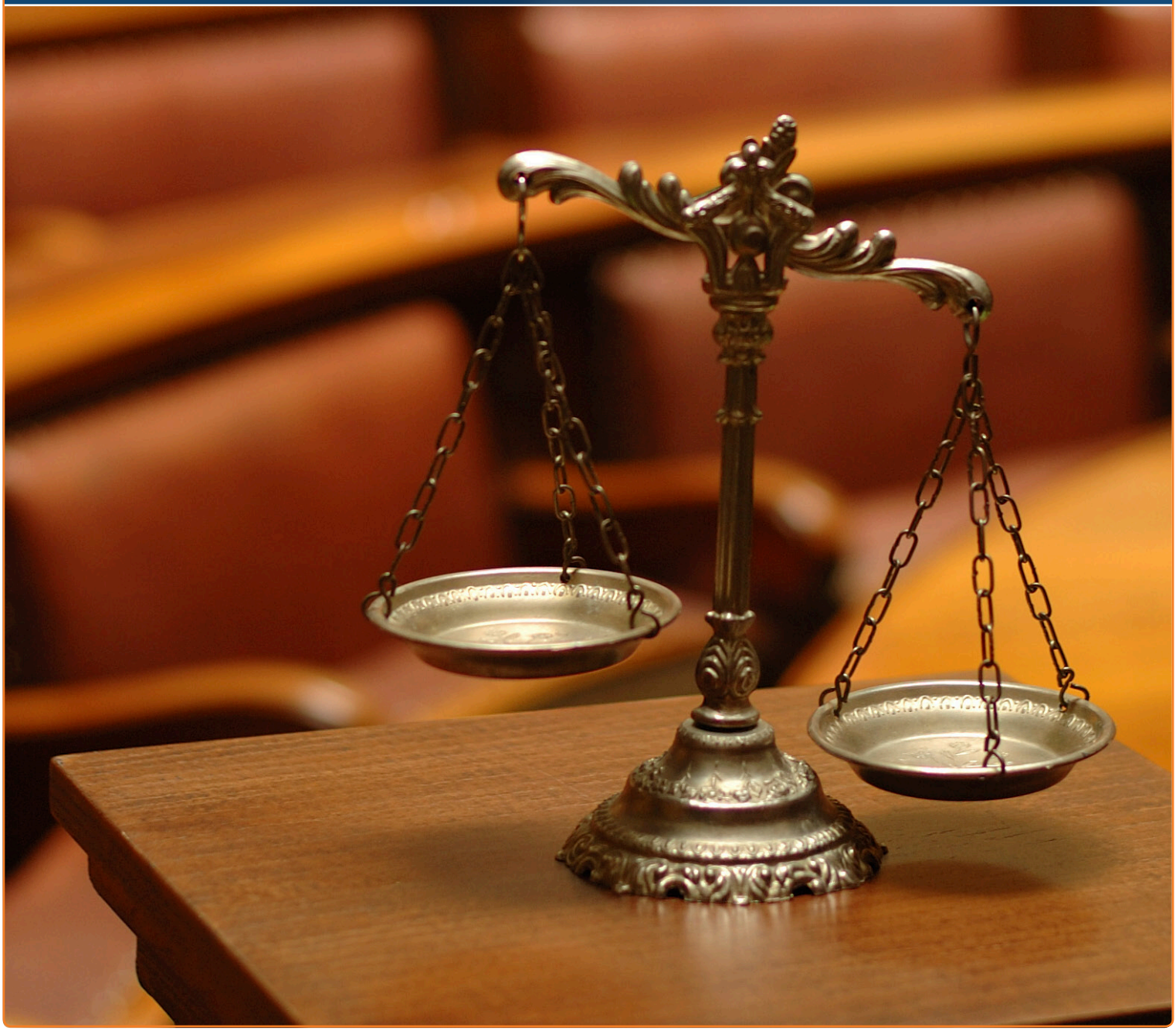
Meanwhile, as of late July, the SEC had resolved five FCPA enforcement actions in 2015. The SEC entered into a deferred prosecution agreement with an engineering and construction company, and entered administrative orders against an individual and three different companies, including BHP Billiton, which agreed to pay a record US$25 million in penalties. The SEC's reliance on administrative proceedings continues a trend that is likely to be of interest both to those facing FCPA charges and those facing other types of charges by the Commission. SEC administrative proceedings involve timetables, discovery obligations, and fact finders different from proceedings in district court.

Companies disclosing potential FCPA violations also continue to be the target of civil litigation brought by shareholders and affected employees. For example, a California-based life sciences company that last year resolved FCPA enforcement actions with the DOJ and SEC has been hit with an employment suit by its former general counsel, in addition to numerous shareholder suits, all of which relate to the company's investigation of bribery allegations. The threat of tag-along civil cases thus remains a significant consideration in how companies go about conducting internal investigations.

Other countries around the world continue to ramp up their anti-corruption enforcement efforts, with the United Kingdom, Canada, Brazil, and Norway all becoming increasingly active in the area. This activity extends a trend reported by TRACE International, which found that, while the United States remains a leader in anti-corruption enforcement, "non-U.S. enforcement actions have more than doubled since 2012, and in 2014 total non-U.S. enforcement actions concerning bribery of foreign officials outnumbered total U.S. enforcement actions."

We analyze these developments and more in this edition of Global Anti-Corruption Insights.

KEY ENFORCEMENT AND INVESTIGATIVE DEVELOPMENTS IN THE UNITED STATES



KEY ENFORCEMENT AND INVESTIGATIVE DEVELOPMENTS IN THE UNITED STATES

NOTABLE JUSTICE DEPARTMENT AND/OR SEC ENFORCEMENT ACTIONS AGAINST CORPORATE ENTITIES

Louis Berger Enters Deferred Prosecution Agreement to Resolve FCPA Bribery Charges

Louis Berger International, Inc. (LBI), a New Jersey-based construction management company, has admitted to violating the FCPA by paying officials in Asia and the Middle East to secure contracts to manage government construction projects.[1] On July 17, 2015, the DOJ announced that it had entered into a deferred prosecution agreement (DPA) with LBI that includes the company's paying a US$17.1 million criminal penalty.[2] Two former LBI senior vice presidents also pleaded guilty to conspiracy and FCPA charges, and will be sentenced on November 5, 2015.[3]

In the DPA, LBI admitted to paying US$3.9 million in bribes to foreign officials in India, Indonesia, Vietnam, and Kuwait, to secure government contracts between 1998 and 2010.[4] According to the DPA, the company and its employees disguised payments in company records as "commitment fees," "counterpart per diems," and payments to third-party vendors. In addition to the monetary penalty, the DPA requires LBI to implement stronger internal controls, retain a compliance monitor for three years, and continue to cooperate with the government.[5]

The DOJ 's decision to enter into a DPA with LBI was based on a number of factors, including LBI's (1) self reporting of the misconduct, (2) cooperation in the form of making company personnel available for interviews and gathering evidence for the government, (3) remedial efforts, including termination of responsible personnel, and (4) efforts to strengthen its internal controls and compliance program, at a cost of approximately US$25 million since it discovered the misconduct in 2010.[6]

IAP Enters Non-Prosecution Agreement and Former Employee Pleads Guilty

On June 16, 2015, the DOJ announced that it had entered into a non-prosecution agreement (NPA) with **IAP Worldwide Services Inc.** (IAP), a Florida-based defense and government contracting company, which agreed to pay a US$7.1 million penalty to resolve an investigation into the company's contracts with Kuwaiti officials. The same day, a former IAP vice president, **James Michael Rama**, pleaded guilty before a federal judge in Virginia to one count of conspiracy to violate the anti-bribery provisions of the FCPA. Rama is scheduled to be sentenced on September 11, 2015.[7]

According to the statement of facts in the NPA, between 2005 and 2008 Rama and other employees of IAP schemed to win contracts from Kuwait's Ministry of Interior for providing various Kuwaiti government agencies with nationwide surveillance capabilities, primarily through closed-circuit television. IAP employees set up a shell company called "Ramaco" to bid on an initial consulting contract, which Ramaco won. Then, through a series of accounts and intermediaries, IAP employees arranged to divert US$1,783,688 of Ramaco's proceeds from that initial contract, to a consultant who would make payments to Kuwaiti officials in exchange for helping IAP secure an even more lucrative installation contract based on specifications recommended by Ramaco.[8]

The DOJ stated that its decision to enter into an NPA with IAP resulted from a variety of considerations, including the company's cooperation, ongoing remedial efforts, and agreement to make periodic reports to federal prosecutors.[9]

BHP Billiton Charged for Beijing Olympics Hospitality Program

On May 20, 2015, the SEC charged BHP Billiton[10] with FCPA violations stemming from the company's failure to maintain adequate internal controls over a global hospitality program associated with the 2008 Beijing Summer Olympics.[11] BHP Billiton, a major producer of raw materials (including iron ore, coal, and oil and gas), agreed to pay a

US$25 million fine to the SEC, without admitting or denying the SEC's findings, as part of a cease-and-desist order that resolved the charges.[12]

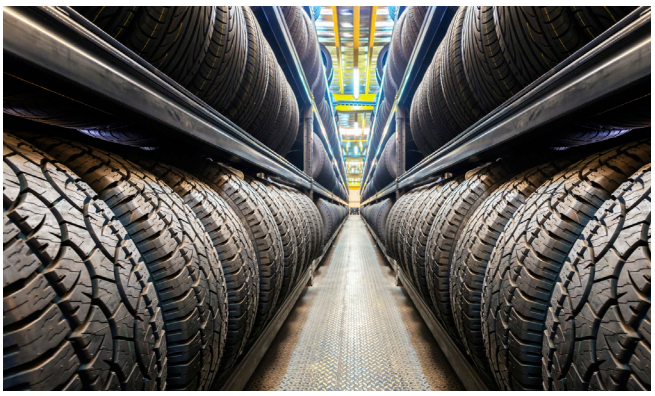
BHP Billiton was an official sponsor of the 2008 Beijing Olympic Games and supplied raw materials for the Olympic medals.[13] As a sponsor, BHP Billiton received a variety of benefits during the August 2008 games, including tickets, access to hospitality suites, and accommodations in Beijing.[14] The company invited 176 government officials (largely from Asia and Africa) and numerous other people to attend the Olympics at BHP Billiton's expense.[15] A number of officials accepted invitations for trips that cost between US$12,000 and US$16,000 each; the trips included luxury accommodations, meals, tickets, and side trips for sightseeing.[16] Some trips included business-class airfare, as well as benefits for spouses.[17] According to the SEC, there was no business purpose for the trips other than to enhance business opportunities and strengthen relationships.[18]

The SEC charged that BHP Billiton failed to implement adequate internal controls with respect to its Olympics hospitality program.[19] As a result of the inadequate controls, the SEC found that BHP Billiton invited several government officials involved in or in a position to influence pending negotiations or business dealings with BHP Billiton relating to mining rights.[20] The SEC also found that BHP Billiton failed to properly maintain books and records that reasonably recorded the business interests between BHP Billiton and the government officials invited on the trips, and also failed to maintain internal accounting controls to ensure the hospitality program's use of company assets was in accordance with management authorization.[21]

FLIR Agrees to Pay US$9.5 Million to Resolve SEC's FCPA Charges

On April 8, 2015, the SEC resolved FCPA charges against **FLIR Systems Inc.** (FLIR), an Oregon-based developer of infrared technology used in binoculars, through an administrative cease-and-desist order, with FLIR agreeing to pay disgorgement of US$7,534,000, prejudgment interest of US$970,584, and a penalty of US$1 million.[22] FLIR consented to the order without admitting or denying the SEC's allegations that the company financed excessive personal travel for Saudi government officials, including an extended trip with stops in Casablanca, Paris, Dubai, Beirut, and New York City, and that the company also gave expensive watches to members of the Saudi Interior Ministry, in an effort to secure contracts from these officials.[23] The SEC's order notes that FLIR self-reported these allegations to the Commission, cooperated with the Commission's investigation, and undertook remedial efforts, including personnel and vendor terminations.[24]

The SEC previously entered cease-and-desist orders against two former FLIR employees in connection with this case.[25]



Goodyear Resolves SEC and DOJ Investigations into African Subsidiaries

On February 24, 2015, the SEC announced it had resolved an administrative proceeding against Ohio-based **Goodyear Tire & Rubber Co.** (Goodyear) in connection with bribes allegedly paid by Goodyear subsidiaries to secure tire sales in Angola and Kenya.[26] Without admitting or denying the SEC's findings, Goodyear agreed to the entry of a cease-and-desist order, disgorgement and prejudgment interest payments totaling US$16.2 million, and annual reporting to the SEC for the next three years on the company's FCPA compliance and anti-corruption efforts.[27]

According to the SEC, Trentyre Angola Lda., a wholly-owned subsidiary of Goodyear, paid bribes of roughly US$65,000 to local government officials and US$1.4 million "to employees of government-owned or affiliated entities in Angola." Over half of the improper payments went to employees of the Catoca Diamond Mine, which was at that time the largest customer of Trentyre and owned primarily by the national mining company of Angola and a Russian mining company. The SEC claims Goodyear failed to record these payments accurately and failed to detect or prevent them because of inadequate FCPA compliance training and controls at Trentyre.[28]

Treadsetters Tyres Ltd., a Kenyan distributor and an indirect subsidiary of Goodyear, purportedly made similar illicit payments of approximately US$14,000 to local government officials and additional bribes in excess of US$1.5 million to individuals employed by entities owned by or affiliated with the Kenyan government, including the Kenya Ports Authority, the Kenyan Air Force, and the Ministry of State for Defense. The SEC alleged that Goodyear's failure to prevent or detect the payments in Kenya resulted from the company's inadequate due diligence upon its acquisition of Treadsetters, as well as its "fail[ure] to implement adequate FCPA compliance training and controls after the acquisition."[29]

In resolving the enforcement action without imposition of a civil penalty, the SEC credited Goodyear's cooperation and remedial measures. As we previously reported, the company retained outside counsel and forensic accountants to conduct an internal investigation after the improper payments were first reported internally in 2011, and the results were then voluntarily disclosed to both the DOJ and the SEC.[30] Goodyear also made significant changes to improve its compliance program and internal controls, including enhanced anti-corruption training at its subsidiaries and the creation of the position of Vice President of Compliance and Ethics at Goodyear.[31] Additionally, the SEC announced that Goodyear had severed ties with Treadsetters—including complete divestment and an end to all business dealings—and was working to divest itself of Trentyre.[32]

Goodyear reported that the DOJ concluded its own inquiry and informed Goodyear that it did not intend to file criminal charges.[33]

SEC Enters DPA with Florida Engineering Company

As we reported in our previous newsletter, the year's first settlement of a corporate enforcement action came on January 22, 2015, when the SEC announced that it had entered into a two-year deferred prosecution agreement with **The PBSJ Corporation** (PBSJ)—a Florida-based engineering and construction company now known as The Atkins North America Holdings Corporation—in connection with FCPA charges relating to an alleged bribery scheme to secure two multi-million dollar contracts from the government of Qatar.[34]

NOTABLE JUSTICE DEPARTMENT AND/OR SEC ENFORCEMENT ACTIONS AGAINST INDIVIDUALS

PetroTiger's Former CEO Pleads Guilty During FCPA Trial, While Company Avoids Prosecution

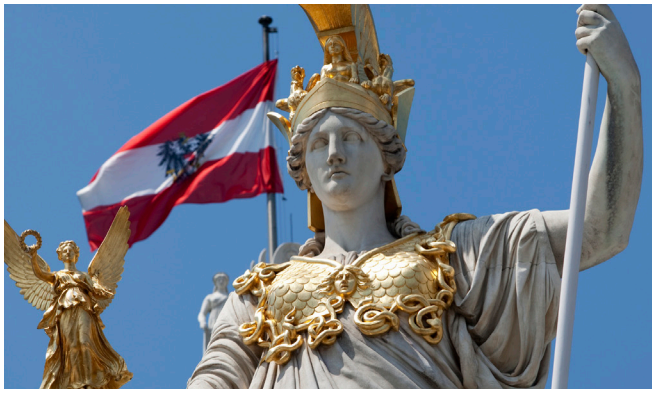
Two weeks into his jury trial, on June 15, 2015, the former CEO of **PetroTiger Ltd.** (PetroTiger), **Joseph Sigelman**, pleaded guilty in federal court in New Jersey to one count of conspiracy to violate the FCPA by authorizing a bribe to an employee of Colombia's state-owned oil company, Ecopetrol SA, in an effort to obtain an oil services contract worth approximately US$45 million.[35] The following day, Sigelman was sentenced to three years of probation, with no jail time, and ordered to pay US$339,000 in fines and restitution. Sigelman had been charged with multiple counts, including FCPA, fraud, and money-laundering allegations. These charges exposed him to maximum sentences of dozens of years in prison, though his actual Sentencing Guidelines exposure may have been lower.[36]

A key witness in the much-watched trial—the first FCPA case to go before a jury since 2012—was PetroTiger's former general counsel, **Gregory Weisman**, who had pleaded guilty to violations of the FCPA and wire fraud statute in November 2013. As part of his cooperation with the government, Weisman had secretly recorded conversations with Sigelman. On cross-examination, Weisman admitted that some of his earlier testimony about the nature of his cooperation with the government had been false. Following this revelation, both sides agreed to a break in the trial, and a few days later they announced that they had reached a plea deal.[37]

PetroTiger, which is a British Virgin Islands oil and gas company with operations in Colombia and offices in New Jersey, was not charged with any crimes in connection with the bribery scheme. The DOJ stated that "[t]he case was brought to the attention of the department through a voluntary disclosure by PetroTiger, which fully cooperated with the department's investigation. Based on PetroTiger's voluntary disclosure, cooperation, and remediation, among other factors, the department declined to prosecute PetroTiger."[38]

The DOJ's June 15, 2015 press release also noted the significant assistance provided by its law enforcement counterparts in Colombia. In March of this year, Colombian officials arrested David Duran, the Ecopetrol official whom the DOJ accused PetroTiger executives of bribing, Duran's wife, and several other officials from Ecopetrol in connection with the bribery scheme. The DOJ also acknowledged the assistance of authorities in the Philippines, Panama, and the United Kingdom.[39]

Another former CEO of PetroTiger, **Knut Hammarskjold**, pleaded guilty to conspiring to violate the FCPA and commit wire fraud in February 2014.[40] Neither Hammarskjold nor Weisman (PetroTiger's former general counsel) has been sentenced.



Austria Refuses to Extradite Dmitry Firtash

An Austrian court has refused to extradite **Dmitry Firtash**, a Ukrainian billionaire with strong connections to Russia, to face US charges that include conspiracy to violate the FCPA.[41] On April 30, 2015, Austrian Judge Christoph Bauer found that there was insufficient evidence to support the extradition. Judge Bauer reportedly stated that "America obviously saw Firtash as somebody who was threatening their economic interests," and noted that even if there were sufficient evidence, he could still deny a politically motivated request for extradition.[42]

Firtash has been in Austria since he was arrested in March of last year and required to post an Austrian-record bail of US$173 million.[43] As we previously reported, Firtash was indicted in 2013 by a US grand jury on allegations that he and six others schemed to bribe government officials in India in connection with permits to mine for titanium minerals.[44] Firtash has maintained his innocence and has blamed the indictment on his purported enemies in Ukraine.[45] DOJ may appeal the denial of extradition.[46]

Former Broker-Dealer Executives Sentenced to Four Years in Prison

Two former executives of **Direct Access Partners LLC** (DAP), a now-defunct New York-based broker-dealer, were each sentenced to four years in prison on March 27, 2015, for conspiring to violate the FCPA and the Travel Act in connection with a scheme to bribe a senior official at a Venezuelan state-owned economic development bank. The two individuals—former CEO **Benito Chinea** and former managing director **Joseph DeMeneses**—were also ordered by the Manhattan federal judge presiding over their case to pay US$40,000 each in fines and to forfeit a total of more than US$6 million.[47]

As we have previously reported, Chinea and DeMeneses pleaded guilty in December 2014, following the criminal convictions, in 2013, of four other individuals associated with the scheme to make approximately US$5 million in illicit payments through third parties posing as "foreign finders," in exchange for bond trading business controlled by the Venezuelan official. Those individuals are former DAP employees **Ernesto Lujan**, **Tomas Alberto Clarke Bethancourt**, and **Jose Alejandro Hurtado**, and the Venezuelan banking official, **Maria de los Angeles Gonzalez De Hernandez**.

A parallel SEC enforcement action is pending. The federal investigation reportedly began with a periodic examination of DAP by the SEC.[48]

Haiti Teleco Defendants Seek to Overturn Convictions

Individuals convicted for their role in a bribery scheme involving **Telecommunications D'Haiti** (Haiti Teleco) have continued to fight their convictions.

On February 9, 2015, **Jean Rene Duperval**, the former Assistant Director General and Director of International Affairs for Haiti Teleco, lost his appeal to overturn his convictions on two counts of conspiring to commit money laundering and 19 counts of concealment of money laundering involving the proceeds of bribes paid from telecommunications companies in violation of the FCPA.[49] The US Court of Appeals for the Eleventh Circuit rejected Duperval's argument that there was insufficient evidence to find that Haiti Teleco was an "instrumentality" of the government of Haiti for purposes of the FCPA. The court relied in part on its 2014 decision in *United States v. Esquenazi*, which found Haiti Teleco to be an "instrumentality" under the FCPA, because Haiti Teleco was "an entity controlled by the government of a foreign country that performs a function the controlling government treats as its own."[50] The Court of Appeals also rejected Duperval's argument that his "administration of a multi-million dollar telecommunication contract" fit within the FCPA's limited exception for facilitating payments insofar as the payments were made to continue Haiti Teleco's business with particular entities.[51]

In a separate action also involving the Haiti Teleco bribery scheme, on May 18, 2015 the former Vice President of **Terra Telecommunications Corp.** (Terra), **Carlos Rodriguez**, filed a pro se motion for a new trial.[52] Rodriguez was convicted for his role in the scheme to pay bribes to Haiti Teleco officials in connection with telecommunications contracts. He appealed that conviction to the Eleventh Circuit, which affirmed the conviction in May 2014. Rodriguez also filed a petition for a writ of certiorari, which was denied by the US Supreme Court. Rodriguez's pro se motion is based on purportedly new evidence in the form of a sworn affidavit from Terra's General Counsel stating that the General Counsel never attended any meetings where the subject of bribes came up. Rodriguez contends that this affidavit directly impeaches the government's chief witness, who testified that the bribery scheme was discussed at an October 2001 meeting attended by both the General Counsel and Rodriguez. The government's response is due August 17, 2015.

Former Alstom Exec Awaits November Trial

Former Alstom S.A. (Alstom) executive **Lawrence Hoskins**, who had been scheduled to go to trial in June on FCPA charges, now awaits a November 30, 2015 trial date.[53] In the interim, a federal court judge in Connecticut is weighing a number of pre-trial motions filed by Hoskins, Alstom, and the US government.[54] Last December, Alstom—a French energy and transportation company—pleaded guilty to paying over US$75 million in bribes from 2000 to 2011 to government officials in the Bahamas, Egypt, Indonesia, Saudi Arabia, and Taiwan in connection with US$4 billion worth of power, grid, and transportation projects for state-owned entities. The company agreed to pay a US$772 million penalty to resolve the charges. Three other former employees of Alstom have pleaded guilty to FCPA-related crimes.[55]

Former Owner and President of Chestnut Consulting Indicted for Violations of the FCPA

As we reported in our previous newsletter, on January 6, 2015, in the year's first FCPA enforcement action against an individual, a federal grand jury in the Eastern District of Pennsylvania indicted **Dmitrij Harder**, the former owner and President of Chestnut Consulting Group Inc. and Chestnut Consulting Group Co. (collectively, **Chestnut Group**) on charges of violating the FCPA, Travel Act, and anti-money laundering laws. The allegations in the indictment center around Chestnut Group's payment of approximately US$3.5 million to an official of the European Bank for Reconstruction and Development, a London-based multilateral development bank, which is owned by over 60 sovereign nations and finances development projects in Eastern Europe and other emerging markets.[56]

ROUNDING OUT THE FCPA ENFORCEMENT DOCKET

Announcements Regarding New, Ongoing, and Closed Investigations

Teva Reports "Likely" Violations of the FCPA

Teva Pharmaceutical Industries Ltd. (Teva), an Israel-based global pharmaceutical company, on February 9, 2015 disclosed in its annual 20-F report that in the course of a continuing investigation it had discovered business practices and transactions that "likely" violated the FCPA and/or local laws. These potential violations occurred in Russia, Europe, Latin America, and "other countries in which it conducts business." Teva also discovered that "Teva affiliates in certain countries under investigation provided to local authorities inaccurate or altered information relating to marketing or promotional practices."[57]

Since 2012, Teva has been conducting a voluntary worldwide investigation into business practices that may have implications under the FCPA. Teva's investigation was prompted by subpoenas and informal document requests from both the SEC and DOJ. Teva states that it has provided and will continue to provide documents and other information to both agencies as it cooperates with their investigations.[58]

Flowserve Discloses Possible FCPA Violation

On February 17, 2015, **Flowserve Corp.** (Flowserve), a maker of valves and pumps, disclosed in its annual report to the SEC that it had "uncovered actions involving an employee based in an overseas subsidiary that violated [its] Code of Business Conduct and may have violated the Foreign Corrupt Practices Act."[59] According to Flowserve, the employee has been terminated and the company has self-reported the potential violation to the DOJ and SEC.

DOJ Declines to Prosecute Eli Lilly

On February 19, 2015, Indiana-based **Eli Lilly and Company** disclosed in its annual report to the SEC that the DOJ had closed a long-running FCPA probe without filing any criminal charges.[60] The DOJ and the SEC had been conducting parallel FCPA investigations into payments made between 1994 and 2009 by Eli Lilly subsidiaries in Brazil, China, Poland, and Russia.[61] As we previously reported, the SEC investigation resulted in a civil enforcement action alleging violations of the FCPA's anti-bribery, books and records, and internal controls provisions, which the company settled for US$29.4 million in December 2012.[62]

General Cable Reserves $24M in Connection with Possible Angola Bribes

In February 2015, Kentucky-based cable manufacturer **General Cable Corporation** announced that it was reserving approximately US$24 million for disgorgement of profits in connection with a possible settlement of FCPA charges. The company has determined "that certain employees in [its] Portugal and Angola subsidiaries directly and indirectly made or directed payments at various times from 2002 through 2013 to officials of Angola government-owned public utilities that raise concerns under the Foreign Corrupt Practices Act and possibly under the laws of other jurisdictions."[63] As we have previously reported, General Cable disclosed in September 2014 that it was investigating potentially improper transactions involving its operations in Angola, Thailand, India, and Portugal. The company voluntarily disclosed this information to the DOJ and SEC, and has cooperated with their investigations.[64] The company also has undertaken measures to strengthen its anti-corruption compliance program, including hiring a chief compliance officer who reports to the chief executive officer, conducting anti-corruption training for its global sales force, and implementing a screening process for foreign sales agents.[65]

Akamai Discloses Internal Investigation

On March 2, 2015, Massachusetts-based cloud computing services company **Akamai Technologies Inc.** (Akamai) disclosed in its annual report to the SEC that it is conducting an internal investigation into the company's sales practices in a foreign country "that represented less than 1% of [Akamai's] revenue in each of the years ended December 31, 2014, 2013 and 2012."[66] Akamai said that in February 2015 it had notified the SEC and DOJ of this investigation, which includes a review of the company's compliance with the FCPA and other applicable anti-corruption laws and regulations.

Biomet DPA, Monitoring Extended One Year

On March 13, 2015, medical device manufacturer **Biomet Inc.** (Biomet) disclosed that DOJ has extended the term of a deferred prosecution agreement, including oversight of the company by an independent compliance monitor, for an additional year.[67] Biomet has been subject to the oversight of a compliance monitor since entering into a DPA with the DOJ in 2012 to resolve charges of FCPA violations relating to a scheme in which Biomet's agents allegedly bribed public doctors in Argentina, Brazil, and China between 2000 and 2008. The DPA had been set to expire on March 26, 2015.[68] Biomet was recently acquired by Zimmer Holdings.[69]

The newest allegations against Biomet, which prompted extension of the DPA, reportedly were revealed by an anonymous whistleblower. The whistleblower claimed that distributors hired by Biomet had been paying kickbacks to publicly employed doctors in Mexico and Brazil, and the DOJ considered these allegations sufficiently credible to warrant further investigation and extended proceedings. It is

unclear whether DOJ or SEC will pursue additional charges or penalties against Biomet as a result of the new allegations.[70]

Anheuser-Busch InBev Exits Indian Joint Venture Amid Government Scrutiny

In its March 24, 2015 annual report to the SEC, Belgian brewing company, **Anheuser-Busch InBev SA/NV** (AB-InBev), disclosed that it had exited a joint venture in India that has been the subject of a US investigation into potential FCPA violations. Later this year, AB-InBev will begin operating in India through a wholly-owned subsidiary, Crown Beers India Private Limited, rather than through affiliates. Meanwhile, AB-InBev continues to conduct its own investigation into potential corruption in its India business.[71]

United Technologies Faces Second SEC Subpoena in Ongoing Bribery Probe

On April 24, 2015, Connecticut-based **United Technologies Corporation** (United Technologies) disclosed in a quarterly filing that it had received a second subpoena from the SEC relating to potential violations of anti-bribery laws in its aerospace and commercial businesses. This subpoena follows United Technologies' December 2013 and January 2014 voluntary disclosures to the SEC, DOJ, and UK Serious Fraud Office of an internal investigation regarding a non-employee sales representative retained by related entities for the sale of engines and aftermarket services in China. United Technologies reports that it is continuing to cooperate with government inquiries.[72]

DOJ Closes Inquiry of Hyperdynamics

Hyperdynamics Corp., an emerging oil and gas exploration company operating off the coast of West Africa, announced that on May 21, 2015 it received a letter stating that the DOJ was closing its inquiry into potential FCPA violations.[73] As we previously reported, nearly two years ago Hyperdynamics received a subpoena from the DOJ and SEC requesting documents relating to its business in Guinea.[74] According to Hyperdyanimcs, the DOJ was investigating whether the company's activities in obtaining and retaining concession rights and the company's relationships with charitable organizations violated the FCPA.[75] The SEC inquiry has yet to be resolved.

SEC Declines to Charge Net1, While Other Investigations Continue

On June 8, 2015, **Net1 UEPS Technologies Inc.** (Net1), a South Africa-based payment processing company, reported that the SEC does not intend to bring an enforcement action against it under the FCPA, although the investigation by the DOJ continues. According to Net1, the SEC's investigation began in December 2012 and related to alleged irregularities in the bidding process for a contract that Net1 was awarded by the South African government. Net1 further disclosed that the investigation into these matters by the South African Police Commercial Crimes Unit "is expected to be concluded shortly."[76]

Eletrobrás Discloses Investigation

Centrais Elétricas Brasileiras S.A. (Eletrobrás), Brazil's majority state-owned electric power company, disclosed in a June 10, 2015 SEC filing that it had hired outside counsel to investigate the existence of "irregularities" that may violate the FCPA, Brazil's anti-corruption law, and the company's Code of Ethics. According to Eletrobrás, the investigation will focus on high-risk areas, including business relationships with construction companies implicated in Operation "Lava Jato" (Operation Car Wash), the Brazilian government's wide-ranging inquiry into corruption involving state-run oil company Petróleo Brasileiro S.A. (Petrobras).[77]

Archer-Daniels Midland Granted SEC Waiver, Despite FCPA Violations

On June 3, 2015, the SEC granted Illinois-based **Archer-Daniels Midland Company** (ADM) a waiver from regulatory disqualification, allowing the company to retain its "well-known seasoned issuer" (WKSI) status despite previous charges that the company had failed to prevent FCPA violations.[78] As we previously reported, in December 2013 ADM resolved enforcement actions by the SEC and DOJ related to bribery allegations stemming from ADM's efforts to obtain Value-Added Tax Refunds from the

Ukrainian government.[79] As part of the resolution of the DOJ charges, ADM's Ukrainian subsidiary pleaded guilty to one count of conspiracy to violate the anti-bribery provisions of the FCPA.[80] This guilty plea would have stripped ADM of its WKSI status with the SEC for three years if ADM did not have a waiver. In support of its application for a waiver, ADM argued that the misconduct did not pertain to activities undertaken by ADM as an issuer of securities, that ADM should receive credit for the remedial measures it implemented and its enhancement of anti-corruption controls, and that disqualification as an eligible issuer would result in "significant hardship" to the company.[81]

Gold Fields Discloses SEC Declination

On June 22, 2015, **Gold Fields Limited** (Gold Fields), a South African gold producer with a secondary listing on the New York Stock Exchange, disclosed that the SEC's FCPA Unit "has concluded its investigation" in connection with a transaction related to South Africa's South Deep mine and "will not recommend to the Commission that enforcement action be taken against Gold Fields."[82] As we previously reported, the SEC was looking into the company's efforts to obtain a mining license, including the payment of US$210 million, in the form of a nine percent stake in the South Deep mine, to a fund called Black Economic Empowerment. This fund was established to create economic opportunities to redress inequalities created by South Africa's former apartheid regime, but has attracted criticism in recent years for benefiting only a politically connected elite.[83]

SENIOR DOJ OFFICIALS COMMENT ON FCPA ENFORCEMENT

In recent speeches, DOJ officials have continued to stress that enforcement of the FCPA remains a priority, while also recognizing that companies retain flexibility in how they handle FCPA compliance issues.

At the American Bar Association's March 2015 White Collar Crime Conference, James Koukios, the then-Senior Deputy Chief of the DOJ's Fraud Section, acknowledged that some companies, when faced with a one-off instance of misconduct, may choose not to self-report the conduct to the DOJ. "We understand that sometimes companies choose not to self-report, and it is not always the wrong thing to do," Mr. Koukios said. He further explained that the need to self-report depends on a number of factors, including the severity of the conduct and whether or not it appeared to be a systemic issue.[89]

In an April 2015 speech at New York University Law School, Assistant Attorney General Leslie Caldwell, head of the DOJ's Criminal Division, discussed the DOJ's efforts to increase transparency in its prosecution of corporations. While emphasizing the importance of cooperation with government investigations, she acknowledged that "some cooperating companies spend large sums of money investigating potential misconduct and correcting internal controls issues that allowed the misconduct to occur," even when not required to do so by the DOJ. In this regard, Ms. Caldwell stated that while the DOJ expected companies to conduct thorough investigations, it does not "expect companies to aimlessly boil the ocean."[90]

FCPA-RELATED CIVIL LITIGATION

Petrobras Continues to Face Securities Lawsuits in the US

Majority-state-owned Brazilian energy company **Petroleo Brasileiro S.A.** (Petrobras) continues to face civil litigation stemming from widely publicized allegations that certain of its former employees engaged in corruption in connection with large infrastructure projects. More than a dozen lawsuits have been filed against the company, its officers, its directors, its underwriters, and its auditors. These lawsuits have been consolidated before Judge Jed Rakoff of the US District Court for the Southern District of New York.[91]

The Consolidated Amended Complaint, filed on March 31, 2015, asserts claims under US securities laws on behalf of purchasers of Petrobras stock and bonds premised on allegations of wide-ranging bribery and money laundering that diverted billions of dollars from Petrobras. In a motion to dismiss dated April 17, 2015, defendants argued that Petrobras was a victim of the bribery scheme, claiming that a cartel of construction and engineering companies worked with a small subset of former Petrobras executives, without the company's knowledge.[92] On July 10, 2015, Judge Rakoff issued a ruling permitting the majority of the plaintiffs' claims to proceed.[93] A few days later, on July 16, 2015, the plaintiffs filed their Consolidated Second Amended Class Action Complaint, repleading, with greater specificity, causes of action that Judge Rakoff had dismissed without prejudice.[94]

Other companies also continue to be implicated in the Petrobras corruption investigation. For example, on April 24, 2015, Brazilian petrochemical producer **Braskem SA** (Braskem) announced that it had opened investigations into allegations that two of its former executive officers paid bribes to officials of Petrobras. According to testimony from a former Petrobras executive, Paulo Roberto Costa, and an individual who has admitted to money laundering, Alberto Youssef, Braskem paid bribes initially set at US$5 million per year in exchange for contracts to purchase naphtha and other ingredients for making petrochemicals at low prices from 2006 to 2012. Braskem has reported the potential misconduct to Brazilian and US authorities.[95]

Och-Ziff Seeks Dismissal of Securities Lawsuit

Och-Ziff Capital Management Group LLC (Och-Ziff), an alternative investment fund, has moved to dismiss a shareholder suit alleging that the company and certain of its officers violated US securities laws by failing to disclose that the company had violated the FCPA in Libya and the Republic of the Congo. The shareholder suit was filed in the Southern District of New York on May 5, 2014, two months after Och-Ziff revealed that it was under investigation by the DOJ and SEC. In their motion to dismiss, the defendants argue, among other things, that there have been no findings of FCPA violations, that they were under no duty to disclose the government's investigation earlier, and that the plaintiffs have not sufficiently alleged fraudulent intent. The motion is now fully submitted for decision.[96]

Wal-Mart Continues to Defend Against Shareholder Suits

Wal-Mart Stores, Inc. (Wal-Mart) continues to defend against shareholder suits based on allegations that its Mexican subsidiary, Wal-Mart de México, S.A.B. de C.V. (Wal-Mex), bribed Mexican officials and that Wal-Mart executives failed to conduct a proper investigation once they were made aware of the allegations. In recent months, Wal-Mart has received favorable decisions in two shareholder derivative suits, while Wal-Mart, Wal-Mex, and two individual defendants await a ruling on a motion to dismiss a class action suit filed in the Southern District of New York.

In *Indiana Electrical Workers Pension Trust Fund IBEW v. Wal-Mart Stores, Inc.*, shareholders brought a derivative suit against Wal-Mart in Delaware Chancery Court, seeking to inspect Wal-Mart's books and records in order to "investigate mismanagement and possible breaches of fiduciary duty by [Wal-Mart's] directors and officers."[97] In October 2013, the Chancery Court ordered Wal-Mart to produce documents that related to (1) Wal-Mart's investigation of Wal-Mex, (2) Wal-Mart's FCPA compliance policies and procedures, and (3) Wal-Mart's internal investigation policies.[98] On July 23, 2014, the Delaware Supreme Court affirmed the order.[99]

More recently, following an October 2014 production deadline, the shareholders filed a contempt motion against Wal-Mart claiming it had redacted responsive information and failed to produce all of the required documents.[100] On May 7, 2015, Chancellor Andre Bouchard denied the shareholders' motion, determining that none of the redacted information was responsive and that while Wal-Mart had omitted some responsive documents from its initial production, the company had subsequently produced them, along with a supplemental privilege log.[101] Accordingly, Chancellor Bouchard closed the case.[102]

In another shareholder derivative suit filed in the Western District of Arkansas, shareholders alleged that the officers and directors of Wal-Mart breached their duty of loyalty, good faith, candor, and trust and violated the Securities Exchange Act of 1934.[103] Wal-Mart moved to dismiss the suit, and on March 31, 2015, Judge Susan Hickey granted Wal-Mart's motion, with prejudice, because the plaintiffs' complaint did not establish that the plaintiffs satisfied the procedural requirements for pursuing a derivative lawsuit on the company's behalf.[104] Plaintiffs have appealed.[105] In its most recent Form 10-K, filed with the SEC on April 1, 2015, Wal-Mart stated that any potential losses from the derivative suits filed in Arkansas and Delaware would not "be material to the Company's financial condition or results of operations."[106]

Meanwhile, in *Fogel v. Vega*, shareholders brought a class action suit in the Southern District of New York against Wal-Mart, Wal-Mex, and individual defendants Ernesto Vega (former Chairman of Wal-Mex's Board of Directors) and Scot Rank (President and CEO of Wal-Mex), on behalf "of all those who purchased or otherwise acquired [Wal-Mex's American Depositary Receipts (ADRs)] between December 8, 2011 through April 24, 2012," alleging violations of Section 10(b) and 20(a) of the Securities Exchange Act of 1934 and SEC Rule 10b-5.[107] The defendants moved to dismiss the amended complaint on the ground that the statute of limitations for the plaintiffs' 10(b) and 20(a) claims had run, that Wal-Mart's alleged misrepresentation in the December 2011 Form 10-Q was not made "in connection with" the sale of Wal-Mex ADRs, and that, as a matter of law, Wal-Mart did not control Wal-Mex.[108] The motion to dismiss has been fully briefed and is now awaiting a decision.

After Resolving FCPA Enforcement Actions, Bio-Rad Faces Civil Lawsuits

Multiple private lawsuits were filed against California-based **Bio-Rad Laboratories, Inc.** (Bio-Rad) following the resolution of FCPA enforcement actions against the company late last year. As we previously reported, on November 3, 2014 the company entered into a non-prosecution agreement with the DOJ, in which Bio-Rad agreed to a US$14.35 million penalty and admitted violating the FCPA's books and records and internal controls provisions in connection with sales made in Russia. That same day, the company consented to the entry of a cease-and-desist order under which it agreed to pay US$40.7 million in disgorgement and prejudgment interest to resolve a civil enforcement action brought by the SEC alleging violations of the anti-bribery, books and records, and internal controls provisions of the FCPA, stemming from improper payments in Russia, Thailand, and Vietnam.[109]

On January 23, 2015, the City of Riviera Beach General Employees' Retirement System (CRBGERS) commenced a shareholder derivative action against three current directors and one former director of Bio-Rad. CRBGERS had filed a similar suit in 2011, but later agreed to dismiss the case until the DOJ and SEC concluded their investigations.[110] The current complaint, quoting the DOJ NPA and the SEC cease-and-desist order, alleges the company lacked any form of FCPA compliance training for its employees and failed to implement sufficient internal controls, despite paying millions of dollars in compensation to the defendants who were responsible for overseeing the company.[111] The lawsuit alleges that the directors breached their fiduciary duty of loyalty and were unjustly enriched.[112] On April 23, 2015, Bio-Rad and the individual defendants moved to dismiss the case; a hearing on the motion is scheduled for August 6, 2015.

Two other actions were brought by stockholders seeking to inspect Bio-Rad's books and records pursuant to Section 220 of the Delaware General Corporation Law.[113] The lawsuits were filed on behalf of Wayne County Employees' Retirement System and International Brotherhood of Electrical Workers Local 38 Pension Fund on April 21, 2015 and May 1, 2015, respectively.[114] The two actions were consolidated on May 26, 2015, and the case remains pending in the Delaware Court of Chancery.[115]

Moreover, on May 27, 2015, Bio-Rad's former general counsel Sanford Wadler sued the company and five of its directors in California federal court, alleging that he was fired for unearthing and attempting to report FCPA violations in China, in violation of the whistleblower protections of the Sarbanes-Oxley and Dodd-Frank Acts, as well as various California employment laws. Wadler alleges that after learning of the FCPA issues in Russia, Thailand, and Vietnam, he began investigating the company's activities in China, where Bio-Rad's sales were higher. According to the complaint, despite "repeated stonewalling" by management, Wadler "uncovered evidence of bribery, books-and-records violations, and … [attempts] to circumvent Bio-Rad's internal controls to prevent such violations of the law."[116] Even though Bio-Rad subsequently retained outside counsel after he reported these findings to the company's audit committee in February 2013, Wadler claims he was cut off from the internal investigation and was ultimately fired a few months later, shortly before the company was scheduled to provide an update on its FCPA investigation to the DOJ and the SEC.

Texas Supreme Court Finds That Company's Report to DOJ Cannot Form the Basis of a Defamation Suit

In our Winter 2015 Newsletter, we reported the Texas Supreme Court was reviewing a lower court decision in a defamation suit brought against **Shell Oil Co.** and **Shell International Exploration and Production, Inc.** (collectively, Shell) by a former employee, Robert Writt, who, Shell allegedly informed the DOJ, had been involved in

the bribery of Nigerian officials.[117] The intermediate appeals court had ruled that Shell's communications with the DOJ were entitled to only a "qualified privilege" for purposes of a defamation action, and allowed the former employee's lawsuit to proceed.[118]

On May 15, 2015, the Texas Supreme Court reversed the lower court, holding that Shell's report to the DOJ about a possible FCPA violation was absolutely privileged and therefore could not be the basis for an employee's defamation claim against the company.[119] The Texas Supreme Court noted that "at all relevant times, Shell was a target of the DOJ's investigation," and that "when the DOJ's leverage over Shell vis-à-vis the FCPA and its somewhat draconian potential penalties are considered, it is manifest that Shell was, practically speaking, compelled to undertake its internal investigation and report its findings to the DOJ… ."[120] The Texas Supreme Court also observed the "dramatic" increase of FCPA enforcement actions during the last decade and that "[f]rom the time Shell was first contacted by the DOJ to the time it provided its report to the DOJ, FCPA compliance was of great concern for US businesses operating overseas and potential violations were not taken lightly."[121]

Las Vegas Sands Wrongful Termination Suit Can Proceed

On May 22, 2013, a Nevada court ruled that it has jurisdiction to hear a wrongful termination claim brought by **Steve Jacobs**, a US citizen and the former CEO of **Sands China Ltd.** (Sands China), which owns a resort and casino in Macau. Jacobs' lawsuit against Sands China, its controlling shareholder, **Las Vegas Sands Corp.** (LVSC), and several top executives, including casino mogul **Sheldon Adelson**, alleges that he was fired for refusing to take actions that he believed violated US anti-bribery laws. The Nevada judge found that Jacobs' allegations that Adelson and LVSC exercised control over Sands China from Las Vegas, and that Sands China board members had pervasive contacts with Nevada, were sufficient to establish jurisdiction. Sands China has stated that it will pursue appellate options. Adelson, for his part, denies the allegations that Jacobs was fired for refusing to violate anti-bribery laws.[122]

DOJ Seeks Forfeiture of US$34 Million in Bribes Paid to Former Ambassador

On June 30, 2015, the DOJ filed a civil forfeiture complaint to recover the cash value of four million shares allegedly issued by Calgary-based **Griffiths Energy International Inc.** (Griffiths) (now doing business as Caracal Energy Inc. (Caracal)) as bribes to the wife and associates of Mahamoud Adam Bechir, then the Republic of Chad's Ambassador to the United States and Canada, in order to secure oil development rights in Chad.[123] The DOJ's complaint alleges that the shares were liquidated for £22 million (roughly US$34 million) when Caracal was acquired by Glencore plc last July, and it seeks to recover that amount from an account associated with Bechir's wife at the Royal Bank of Scotland in London.[124] The United Kingdom has frozen the account.[125]

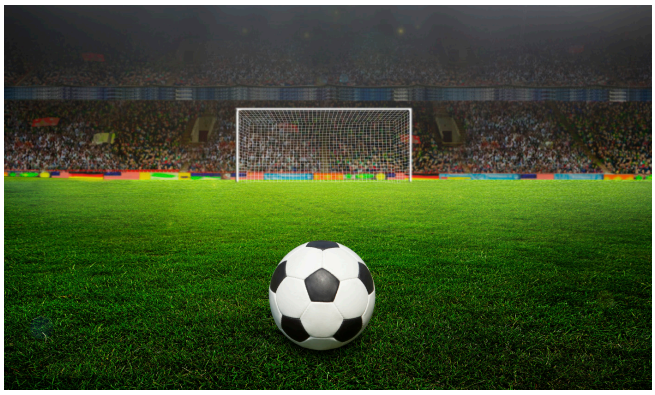
The case is part of the DOJ's Kleptocracy Asset Recovery Initiative, which seeks to recover the proceeds of foreign corruption.[126] Under US law, the DOJ can seek a court order permitting it to seize money or other property that was involved in or can be traced to certain illegal activities, including foreign bribery offenses, violations of the FCPA, and money laundering.[127]

As we previously reported, in Fall 2014 the DOJ seized funds in Bechir's bank account in South Africa, where he is currently serving as Chad's Ambassador. The funds in that South African account were the proceeds of a US$2 million cash payment that Griffiths made to persons associated with Bechir after it obtained the desired oil rights.[128] In 2013, Griffiths pleaded guilty to a violation of Canada's Corruption of Foreign Public Officials Act, paying a record CA$10.35 million fine.[129]

US Authorized to Seize US$300 Million in Uzbek Corruption Investigation

On July 9, 2015, federal Judge Andrew Carter in the Southern District of New York issued orders permitting the DOJ to seize US$300 million in connection with a corruption probe involving Uzbek officials.[84] The DOJ had argued that the money represented the accumulation of improper payments from an international conspiracy to launder corrupt payments to an unnamed "close relative" of Uzbek President **Islam Karimov**—reported to be **Gulnara Karimova**, Karimov's daughter—in exchange for access to Uzbekistan's telecom market.[85] Specifically, the DOJ had alleged that Russian and Scandinavian telecommunications companies looking to secure portions of Uzbekistan's mobile telecommunications business established shell companies to launder more than US$500 million to shell companies owned by "Government Official A"[86] The DOJ further

alleged that telecommunications executives believed that they needed to sign contracts with Government Official A's shell companies in order to do business in the Uzbek market.[87] For example, the DOJ's complaint alleges that executives believed such payments were required in order to obtain radio frequencies.[88]



FIFA Officials Indicted on Corruption-Related Charges

On May 27, 2015, the DOJ announced a 47-count indictment charging nine officials of the **Fédération Internationale de Football Association** (FIFA) and five corporate executives with wire fraud, racketeering, money laundering, and other offenses, in connection with decades of alleged corruption in organized international soccer. DOJ also announced that four individuals and two corporations previously had pleaded guilty to charges based on corruption involving FIFA.[130] The case is pending in the Eastern District of New York.

On the same day as DOJ's announcement, Swiss authorities arrested seven of the indicted FIFA officials in Zurich, Switzerland at the request of US authorities, and US law enforcement executed a search warrant at the Florida headquarters of the **Confederation of North, Central American and Caribbean Association Football** (CONCACAF), a FIFA governing body.[131]

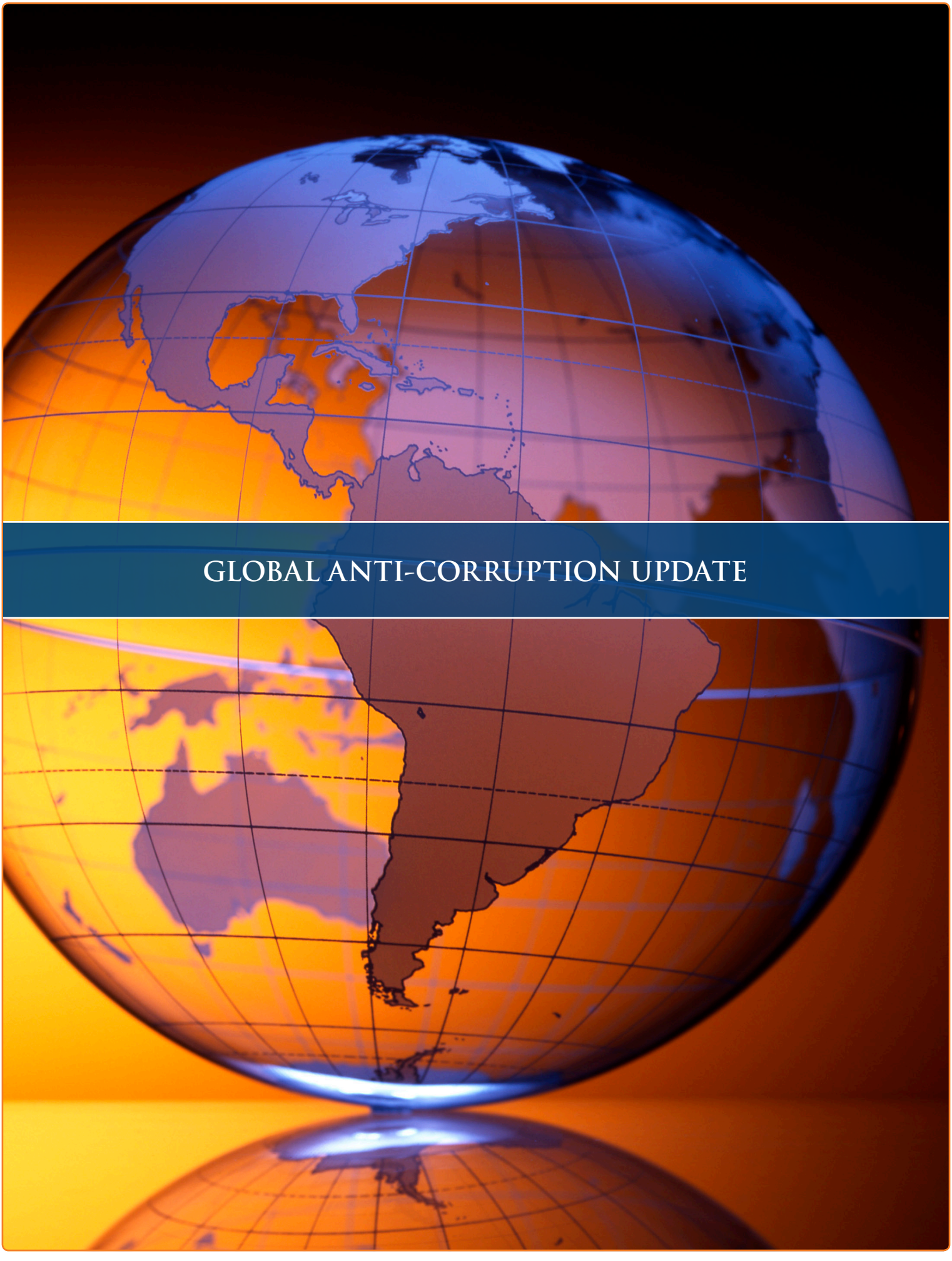
The indictment alleges that FIFA and its six continental confederations, together with affiliated regional federations, national member associations, and sports marketing companies, make up an enterprise that engaged in a pattern of criminal activity over the course of 24 years. FIFA officials and their co-conspirators allegedly schemed to solicit and receive over US$150 million in bribes and kickbacks from sports marketing executives in exchange for lucrative media and marketing rights associated with various soccer matches and tournaments — rights that the sports marketing companies then sold to broadcasters and corporate sponsors.[132]

The nine FIFA executives indicted are **Jeffrey Webb**, **Eduardo Li**, **Julio Rocha**, **Costas Takkas**, **Jack Warner**, **Eugenio Figueredo**, **Rafael Esquivel**, **José Maria Marin**, and **Nicolás Leoz**. The five other defendants — all of whom were sports marketing or broadcast executives — were **Alejandro Burzaco**, **Aaron Davidson**, **Hugo Jinkis**, **Mariano Jinkis**, and **José Margulies**.[133]

One individual who previously pleaded guilty was American **Charles Blazer**, a former FIFA official, who admitted to taking bribes in connection with awarding the 1998 World Cup to France and the 2010 World Cup to South Africa.[134] Other guilty pleas were entered by **Daryll Warner** and **Daryan Warner**, sons of ex-FIFA vice president and CONCACAF president Jack Warner; **José Hawilla**, the owner of the Traffic Group, a multinational sports marketing conglomerate based in Brazil; and two of Hawilla's Florida-based companies, **Traffic Sports USA Inc.** and **Traffic Sports International Inc.**[135]

Since the DOJ's announcement of the corruption-related charges, other countries have disclosed that they too are conducting criminal investigations into the workings of FIFA. For example, the Swiss Attorney General is investigating potential money laundering related to the bidding process for the 2018 World Cup awarded to Russia and the 2022 World Cup awarded to Qatar.[136] The UK Serious Fraud Office has stated that "[t]he SFO continues actively to assess material in its possession and has made plain that it stands ready to assist continuing international criminal investigations."[137]

The widely-publicized cases against FIFA officials show how the United States and other countries may seek to tackle international private-sector bribery through legal tools such as racketeering and money-laundering laws, even when the FCPA (which relates to bribery of foreign government officials) may not apply.



GLOBAL ANTI-CORRUPTION UPDATE

DEVELOPMENTS IN THE UNITED KINGDOM

Defendants Acquitted in Swift Technical Energy Solutions Ltd Corruption Case

In May 2015, three former employees of **Swift Technical Energy Solutions Ltd** (Swift), a Nigerian subsidiary of the Swift Group of companies that supplies manpower to the global oil and gas industry, were found not guilty after a trial on corruption charges relating to payments that were allegedly made to Nigerian officials in connection with Swift's tax affairs.[138] The payments were alleged to have totaled £180,000 and been made to agents of the Rivers State Board of Internal Revenue and the Lagos State Board of Internal Revenue in 2008 and 2009 (before the enactment of the UK Bribery Act of 2010) to avoid, reduce or delay paying taxes owed in Nigeria.[139]

Bharat Sodha (a former Swift International Tax Manager) was acquitted of two counts of conspiracy to make corrupt payments; **Nidhi Vyas** (a former Swift Financial Controller), was acquitted of two counts of conspiracy to make corrupt payments; and **Trevor Bruce** (a former Swift Area Director for Nigeria) was acquitted of one count of conspiracy to make corrupt payments, while the jury was unable to reach a verdict on the other count. The Serious Fraud Office (SFO) stated that it did not intend to seek a retrial on the one undecided count, and a verdict of not guilty was entered. A fourth defendant, former chief financial officer **Paul Jacobs**, did not stand trial due to ill health. All four individuals are British nationals.[140]

The SFO's charges against these defendants were announced back in December 2012, following a two-year investigation by the SFO and City of London Police. According to the SFO, Swift cooperated with the SFO's investigation by providing documents and making staff available for interviews. Charges have not been brought against the company itself.[141]

Further Corruption Charges Brought against Alstom's UK Subsidiary and Former Employees

The SFO has announced additional corruption charges against the UK subsidiary of **Alstom S.A.** (Alstom), a French energy and transportation company, as well as against former employees of Alstom entities, in connection with the supply of trains to the Budapest Metro in Hungary between 2006 and 2007. On April 16, 2015, the SFO announced that it was charging **Alstom Network UK Ltd** with two offenses of corruption contrary to section 1 of the Prevention of Corruption Act 1906, and two offenses of conspiracy to corrupt contrary to section 1 of the Criminal Law Act 1977. The SFO also charged **Michael John Anderson**, former business development director for Alstom Transport SA in France, with the same offenses.[142]

On May 12, 2015, the SFO announced that **Jean-Daniel Lainé**, a French national and former Senior Vice President of Ethics & Compliance and director of **Alstom**

International Limited was being charged with two counts of corruption contrary to section 1 of the Prevention of Corruption Act 1906 and two counts of conspiracy to corrupt, contrary to section 1 of the Criminal Law Act 1977. Lainé is the sixth individual to be charged as part of the SFO's investigation into Alstom, and he appeared in court alongside representatives of Alstom Network UK Ltd.[143]

As previously discussed in our Winter 2015 Newsletter, in December 2014, Alstom S.A. and its subsidiaries agreed to pay a total of US$77 million to resolve FCPA charges related to a bribery scheme in various countries, including Indonesia, Saudi Arabia, Egypt, and the Bahamas.[144]

Mining company BSG Resources Ordered to Hand Over Documents to the SFO

On May 7, 2015 the High Court of Justice of England and Wales rejected a challenge by mining company BSG Resources (BSGR) to the SFO's demand for documents from the company and certain of its advisors in connection with an international bribery investigation.[145] The SFO had demanded the documents from BSGR in response to a request from the Republic of Guinea, which was investigating BSGR for allegedly bribing the former president in order to secure certain mining rights; however, BSGR resisted the request on the grounds that it was politically motivated and made in bad faith. BSGR pointed to Guinea's previous cancellation of the company's mining rights and contended that Guinean President Alpha Condé was fabricating corruption charges in order to support a seizure of the company's assets.[146] The High Court of Justice of England and Wales rejected BSGR's challenge, noting that the company's witness had "little first-hand knowledge of the underlying facts" of the conspiracy BSGR alleged.[147] Guinea has maintained that it is simply investigating whether BSGR paid bribes in order to secure valuable mining rights in the West African nation.[148]

First UK Deferred Prosecution Agreements expected by the End of 2015

Speaking at a conference in May 2015, David Green QC, the Director of the SFO, announced that by the end of 2015 he expects the UK to start resolving certain corporate misconduct cases through DPAs.[149] Green said that in order for a judge to conclude that a proposed DPA is fair and just, significant cooperation from the company will be required. According to Green, companies may be able to evidence their cooperation in a number of ways, including through the provision of reports from internal investigations, assistance with the SFO's data collection, waiver of legal privileges, or admissions of wrongdoing. He acknowledged that while DPAs may prove to be a useful tool for British prosecutors, "it remains to be seen how [DPAs] will work in practice."[150]

The National Crime Agency Takes a More Central Role in Tackling Foreign Bribery

The UK's National Crime Agency (NCA), a national law enforcement agency that was established in 2013 to oversee Britain's response to serious and organized crime, is reportedly taking on a larger role in anti-corruption enforcement. The NCA is now chairing meetings of the Bribery Intelligence Clearing House, which was first formed in 2014 as a regular inter-agency meeting of UK investigative entities involved in anti-bribery enforcement, including the SFO, the Financial Conduct Authority, and the City of London Police, among others. The NCA has also taken over responsibility from the SFO for maintaining a register of foreign bribery allegations and reports. These changes have led some commentators to wonder about the SFO's future role with respect to anti-bribery enforcement, including whether the SFO might one day be disbanded and its investigative and prosecutorial functions split between the NCA and the Crown Prosecution Service.[151] The status of the SFO is currently being reviewed by the Cabinet Office and we expect to know more towards the end of 2015.

DEVELOPMENTS IN CANADA

IBM Employees Among Those Arrested in Canadian Anti-Corruption Sweep

On March 11, 2015, anticorruption agents in Quebec arrested seven individuals linked to a corruption scheme designed to help a consortium of **IBM** and **Informatique**

EBR Inc. (EBR), a Quebec company, win a CA$24 million government contract for a Revenue Quebec data management system. The raid, carried out by Quebec's Unité Permanente Anticorruption (UPAC), targeted two Revenue Quebec employees who allegedly breached their duties as public officials by providing insider information to help the consortium prepare its bid for the Revenue Quebec contract. Three IBM employees and two EBR employees were also arrested.[152] The arrests have led some to call for a more comprehensive investigation into government information technology contracts in Quebec, but officials suggested these arrests meant the system was working as intended.[153]

MagIndustries to be Delisted After Halting Investigation into Improper Payments in Democratic Republic of Congo

On June 16, 2015, Toronto-based mining and forestry company **MagIndustries Corporation** (MagIndustries) announced in a press release that it was terminating an internal investigation into allegations, raised earlier this year by the Royal Canadian Mounted Police (RCMP), that the company had bribed government officials in the Democratic Republic of Congo (DRC). MagIndustries cited lack of funding from its controlling shareholder, China's Evergreen Holding Group, as the reason for halting the investigation, and noted that the directors working on the investigation consequently had resigned.[154] The following day, on June 17, 2015, MagIndustries announced that its outside auditor was resigning and that the Toronto Stock Exchange was reviewing whether to delist the company.[155] On July 20, 2015, MagIndustries confirmed that the company would be delisted in August.[156]

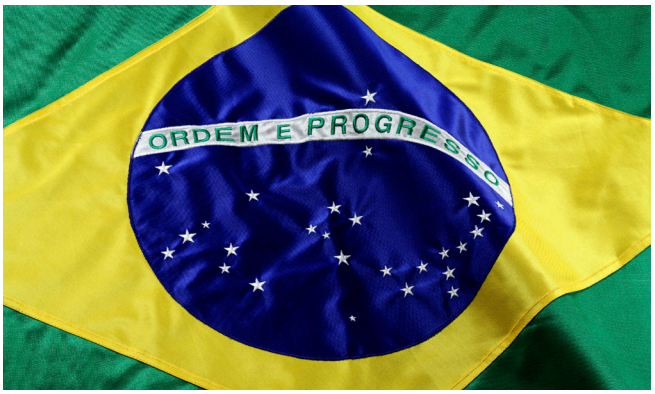
In connection with the announcement that it was curtailing its internal investigation, MagIndustries reported "interim" results. The company confirmed, for example, that one of its subsidiaries, Eucalyptus Fibre de Congo S.A., had made improper "black money" payments to tax and social welfare inspectors, as well as other DRC government officials, in an effort to reduce the taxes and penalties owed by the subsidiary in the DRC. The company also acknowledged evidence of potentially improper gifts, paid trips, per diem expenses, and construction of a villa for government officials.[157]

While no formal charges have been filed in Canada, the RCMP investigation remains ongoing.

Canada Charges SNC-Lavalin with Fraud and Corruption Relating to Libyan Officials

On February 19, 2015, the Public Prosecution Service of Canada charged **SNC-Lavalin Group, Inc.**, **SNC-Lavalin International Inc.**, and **SNC-Lavalin Construction Inc.** (collectively, SNC-Lavalin) each with one count of fraud under section 380 of the Criminal Code of Canada and one count of corruption under section 3(1)(b) of Canada's Corruption of Foreign Public Officials Act, for allegedly paying CA$47.7 million in bribes to Libyan officials between 2001 and 2011, in exchange for construction contracts.[158] SNC-Lavalin has denied the charges and blamed former employees for any wrongdoing.[159] SNC-Lavalin is reportedly suing former executives and a Swiss lawyer and Swiss banker in connection with the alleged embezzlement of funds related to the bribery scheme charged by Canadian officials.[160]

DEVELOPMENTS IN BRAZIL



Brazil Issues New Clean Company Act Regulations

On March 18, 2015, Brazilian President Dilma Rousseff issued a decree with regulations implementing the 2013 Clean Companies Act, Brazil's new anti-corruption law, which established civil and administrative liability for corporations convicted of bribery or corruption.[161] President Rousseff issued the decree at a time when Brazil is facing country-wide protests over corruption scandals that have implicated top government officials and many of the largest companies operating in Brazil, most notably Petrobras.[162]

The new regulations set forth, among other things, how to calculate penalties for offenses and the parameters for leniency agreements. In order for a company to be eligible

for a leniency agreement under the new regulations, a company must be the first to come forward, must identify who was involved in the violation, must help the government obtain the information and documents necessary to prove the violation, must cease any involvement in the wrongdoing, and must admit any responsibility for the wrongdoing. The new regulations also explicitly encourage companies to adopt compliance programs, including, for example, strict standards of conduct, periodic compliance training, risk auditing, mechanisms to monitor accounting, and protections for whistleblowers.[163]

Bilfinger Discloses World Cup Bribery Scheme

On March 22, 2015, German engineering firm **Bilfinger SE** (Bilfinger) announced that its internal investigation had substantiated allegations that employees of one of Bilfinger's subsidiaries had paid bribes to public officials in Brazil in order to obtain approximately €6 million in government contracts for walls of monitors to be installed in security centers during the 2014 World Cup.[164] The company is reportedly seeking leniency from Brazilian Comptroller General Valdir Simao under Brazil's new anti-corruption law in return for its self-reporting and cooperation.[165] Bilfinger has been subject to a deferred prosecution agreement with US authorities since December 2013, when the company agreed to pay US$32 million to resolve FCPA charges relating to an alleged scheme to bribe Nigerian government officials in order to secure large energy-sector contracts.[166]

Brazil Announces Bribery Investigation Relating to Tax Authorities

On March 26, 2015, Brazilian authorities announced that they had opened an investigation into a tax fraud scheme that may have cost the country up to US$1.8 billion. According to authorities, between 2005 to 2013 a number of companies paid bribes to members of the Finance Ministry's tax appeals board (the Administrative Council of Fiscal Resources) to secure favorable rulings that reduced the companies' taxes.[167] These payments allegedly took the form of false consulting contracts, obtained through intermediary law firms. Although the identities of suspected companies and individuals have been kept confidential, reports have suggested that as many as 70 companies, including multinationals, may be implicated.[168]

OTHER DEVELOPMENTS

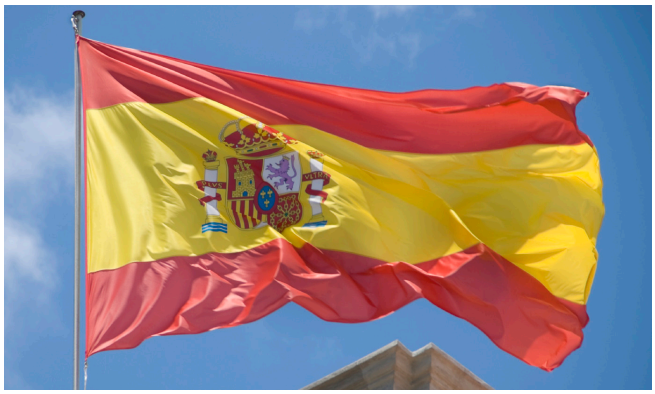
Norwegian Court Sentences Four to Prison for Paying Foreign Bribes

On July 7, 2015, a Norwegian court sentenced four former high-level employees of fertilizer company **Yara International** (Yara) to prison for paying approximately US$8 million in bribes to officials in Libya and India for the right to establish joint ventures in those countries. Former CEO **Thorleif Enger** was sentenced to three years in prison, former chief legal officer **Kendrick Wallace** was sentenced to two-and-a-half years in prison, and former head of upstream activities **Tor Holba** and former deputy CEO **Daniel Clauw** were each sentenced to two years in prison. Yara acknowledged the bribery scheme last year and agreed to pay a fine of 295 million Norwegian crowns (US$35.91 million).[169]

French Court Acquits 14 Companies in Oil-for-Food Case

On June 18, 2015, a Paris court acquitted 14 French companies—including **Renault Trucks SAS, Schneider Electric SE**, and **Legrand S.A.**—and a number of their senior managers of criminal charges that they had paid bribes or kickbacks to the Iraqi government in connection with the UN Oil-For-Food program. The program, which lasted from 1996 to 2003, was an exemption from sanctions against Iraq; it was designed for Iraq to sell oil and deposit the proceeds in a U.N. bank account to be used to purchase humanitarian supplies. French authorities accused the defendants of securing contracts by agreeing to pay 10% above the oil contract price in kickbacks to the Iraqi government. The defendants argued, however, that no crime was committed under French law because the arrangement

did not benefit any private individual or Iraqi official, nor did it harm the Iraqi government.[170]



Spain Adopts a Compliance Defense

On March 26, 2015, the Spanish Congress approved amendments to the Spanish Criminal Code that require a company's directors to adopt a compliance program that is supervised by a corporate body or individual with high-level control. Under the amendments, a company may be exempted from criminal liability for crimes committed by officers or employees if the company's compliance program includes the following key elements:

- Risk assessment;
- Standards and controls to mitigate any criminal risks that are detected;
- Financial controls to prevent crimes;
- An obligation and channel to report any violations of the standards and controls;
- A disciplinary system to sanction violations; and
- Periodic review of the compliance program, including necessary adjustments when serious violations occur or when the company undergoes organizational, structural, or economic changes.[171]

TRACE RELEASES ANNUAL REPORT, NOTING INCREASE IN NON-US ENFORCEMENT ACTIONS

On June 3, 2015, TRACE International released the findings of its fifth-annual Global Enforcement Report, which analyzes anti-bribery investigations, enforcement actions, and declinations around the world. Among TRACE's key findings was "that non-U.S. enforcement actions have more than doubled since 2012, and in 2014 total non-U.S. enforcement actions concerning bribery of foreign officials outnumbered total U.S. enforcement actions." TRACE noted that "[t]he vast majority of non-U.S. investigations (93%) and non-U.S. enforcement actions (96%) concerning bribery of foreign officials from 1977 to 2014 were conducted by Organisation for Economic Co-operation and Development (OECD) members."[172]

With respect to US anti-bribery efforts, TRACE observed that in 2014 "almost 40% of all U.S. investigations concerning bribery of foreign officials involved non-U.S. companies or individuals."[173] This figure reflects an increased focus in recent years on non-US companies and individuals.

Alexandra Wrage, president of TRACE International, remarked that "[t]he data for 2014 demonstrates that anti-bribery enforcement remains a priority not just in the United States, but throughout the world."[174]

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