

Client Alert

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Top Ten International Anti-Corruption Developments for December 2014

By the MoFo FCPA and Global Anti-Corruption Team

In order to provide an overview for busy in-house counsel and compliance professionals, we summarize below some of the most important international anti-corruption developments in the past month with links to primary resources. December has traditionally been a busy month for the Department of Justice (DOJ) and Securities and Exchange Commission (SEC) as they attempt to wrap up Foreign Corrupt Practices Act (FCPA) cases. This year was no exception with multiple blockbuster corporate resolutions closing in on nearly \$1 billion in penalties and disgorgement combined with a series of guilty pleas from former executives. Not to be outdone, enforcement agencies around the world also announced major cases and developments. Here is our December 2014 Top Ten list:

- 1. Alstom SA Pleads Guilty and Agrees to a \$772 Million Fine.** In a [press release](#) on December 22, 2014, DOJ announced that Alstom [pleaded guilty](#) to a two-count criminal [information](#), which charged the company with FCPA violations arising from the bribery of officials in Indonesia, Saudi Arabia, Egypt, and the Bahamas. The enforcement action involved a guilty plea by Alstom, which was a publicly traded company until 2004, to violating the accounting provisions of the FCPA and another guilty plea by Alstom's Swiss subsidiary to violating FCPA's anti-bribery provisions. The enforcement action included two separate three-year Deferred Prosecution Agreements (DPAs) for two U.S. subsidiaries of Alstom. In announcing the resolution, DOJ said Alstom paid more than \$75 million in bribes from 2000 to 2011 to secure \$4 billion in contracts, which resulted in profits of [approximately \\$300 million](#). As a result, Alstom will pay a criminal fine of \$772 million to resolve the charges. This penalty is the biggest criminal fine ever levied for FCPA offenses and the second biggest FCPA enforcement action overall, just behind the \$800 million fine and disgorgement in the [Siemens case](#) almost exactly six years ago. The addition of Paris-based Alstom means three of the top ten biggest FCPA cases now involve French companies.
- 2. Other Significant Corporate FCPA Resolutions in December:**
 - **Avon Resolves FCPA Violations with DOJ and SEC for \$135 Million.** On December 17, 2014, a Chinese subsidiary of Avon Products, Inc. [pleaded guilty](#) in federal court in Manhattan to one count of conspiring to violate the FCPA. The Chinese subsidiary made \$8 million worth of payments in cash, gifts, travel, and entertainment to various Chinese officials. Avon's [Chinese subsidiary](#) will pay a \$67.7 million criminal fine, and Avon itself entered into a three-year DPA and must retain an independent compliance monitor. Avon also settled with the SEC and agreed to pay an additional \$67.4 million in disgorgement and prejudgment interest, bringing the total amount of U.S. criminal and regulatory penalties paid by Avon and its subsidiary to more than

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\$135 million. The Justice Department's release did highlight Avon's cooperation with DOJ, which included conducting an extensive internal investigation, voluntarily making U.S. and foreign employees available for interviews, and collecting, analyzing, translating, and organizing voluminous evidence. Avon Products, Inc. issued this release in connection with the agreements. One aspect of the Avon matter not mentioned in the resolution documents was the substantial cost of the internal investigation, which by last year was reported to have exceeded \$300 million.

- **Dallas Airmotive Inc. Enters \$14 Million DPA with DOJ for FCPA Violations in Latin America.** On December 10, 2014, DOJ announced that Dallas Airmotive agreed to pay a \$14 million penalty related to FCPA violations. Dallas Airmotive, a privately held company, provides aircraft engine maintenance, repair, and overhaul services. The company, based in Grapevine, Texas, admitted to FCPA anti-bribery violations in connection with bribes paid to Latin American government officials in order to secure lucrative government contracts. A criminal information was filed in federal court as part of a three-year DPA. The charges allege that between 2008 and 2013 Dallas Airmotive bribed officials of the Brazilian Air Force, the Peruvian Air Force, the Office of the Governor of the Brazilian State of Roraima, and the Office of the Governor of the San Juan Province in Argentina. DOJ alleged that Dallas Airmotive used a variety of methods to pay the bribes, which included entering into agreements with front companies tied to foreign officials, making payments to third parties, and directly providing gifts to officials.
- **Bruker Pays \$2.4 Million to Settle SEC FCPA Charges.** On December 15, 2014, SEC charged Bruker Corporation with violating the FCPA's accounting provisions by providing improper payments and non-business related travel to Chinese government officials responsible for buying the company's products. Bruker, a publicly traded Massachusetts-based scientific instruments company, self-reported the misconduct and provided cooperation during SEC's investigation. According to SEC, Bruker made about \$1.7 million in profits from bribe-tainted contracts with state-owned enterprises. Kara Brockmeyer, Chief of SEC's FCPA Unit, stated in the release: "Bruker's lax internal controls allowed employees in its China offices to enter into sham 'collaboration agreements' to direct money to foreign officials and send officials on sightseeing trips around the world. The company has since taken significant remedial steps to revise its compliance program and enhance internal controls over travel and contract approvals." Bruker paid \$2.4 million to settle the charges, including disgorgement and prejudgment interest, as well as a \$375,000 penalty. When determining the settlement, the SEC "considered the remedial acts promptly undertaken by Bruker and the significant cooperation it afforded to the Commission staff." The full administrative order can be found here. No DOJ action was announced.

3. Three Defendants in FCPA-Related Cases Plead Guilty:

- **Asem Elgawhary Pleads Guilty in Overseas Corruption Case.** On December 4, 2014, Asem Elgawhary, the former Principal Vice President of Bechtel Corporation and General Manager of the Power Generation Engineering and Services Company, pleaded guilty to mail fraud, money laundering, and tax-related charges in connection with a \$5.2 million kickback scheme intended

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to manipulate the bidding process for state-run power contracts in Egypt. In his plea, Mr. Elgawhary admitted to accepting a total of \$5.2 million from three power companies, including kickbacks from Alstom, which were separately referenced in the matter against Alstom. The kickbacks were paid by the companies to secure inside information on the bidding process, and resulted in a competitive and unfair advantage. The power companies and their consultants paid more than \$5 million into various off-shore bank accounts under the control of Mr. Elgawhary, a portion of which he used to purchase a house for \$1.6 million in cash. He is scheduled to be sentenced in March 2015.

- **Two Former Broker-Dealer Executives Plead Guilty.** On December 17, 2014, the former chief executive officer and an ex-managing director of U.S. broker-dealer Direct Access Partners LLC pleaded guilty to bribing an official of a state-owned Venezuelan bank in exchange for bond trading business. Benito Chinae and Joseph De Meneses admitted to bribing Maria De Los Angeles Gonzalez De Hernandez, a former senior official in Venezuela's state economic development bank, BANDES. After receiving at least \$5 million in bribes from 2008-2010, Ms. Gonzalez directed work to Direct Access generating more than \$60 million in commissions. Messrs. Chinae and De Meneses entered their pleas before Judge Denise Cote in the Southern District of New York. Each pleaded guilty to one count of conspiracy to violate the FCPA and the Travel Act. Messrs. Chinae and De Meneses have also agreed to pay \$3.6 million and \$2.7 million in forfeiture, respectively, which amounts represented their earnings from the bribery scheme. Messrs. Chinae and De Meneses were the fifth and sixth defendants to plead guilty in the matter. Sentencing is scheduled for March 27, 2015.

4. Battles Continue in Pending FCPA Cases in Connecticut and New Jersey. While three FCPA-related defendants may have pleaded guilty in December, two defendants continue to contest their charges, and both cases should be followed closely.

- **District Court Denies Former Alstom Executive's Motion to Dismiss.** On December 29, 2014,¹ in *United States v. Hoskins*, the Honorable Janet Bond Arterton denied the defendant's Motion to dismiss, which contained the following arguments: (1) a statute of limitations and withdrawal defense; (2) an argument based on the statutory interpretation of the meaning of the term "agent" in the FCPA; (3) a claim that the FCPA was unconstitutionally vague as applied to the defendant; (4) the lack of extraterritoriality under the FCPA to non-U.S. citizens; and (5) an argument that there was no venue for the money laundering charges in Connecticut. In rejecting the defendant's motion to dismiss, however, the district court left open a number of the defendant's challenges until the evidentiary record is developed at trial. If the case proceeds to trial, which is scheduled for June 2, 2015, these issues will likely be re-raised at the close of the government's case-in-chief.

¹ Ruling on Defendant's Motion to Dismiss the Indictment, *United States v. Hoskins*, No. 3:12CR238 JBA, 2014 WL 7385131 (D. Conn. Dec. 29, 2014).

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- **Judge Rejects and Defers Arguments by Former PetroTiger Co-CEO.** On December 30, 2014, the Honorable Joseph E. Irenas heard arguments on five motions in *United States v. Sigelman* case: the defendant's motion to suppress (and accompanying motion to seal documents filed in support of the suppression motion), motion to dismiss FCPA charges, motion to dismiss the honest services charges, and motion to strike surplusage from the indictment. The court denied four of the five motions and deferred its ruling on the motion to dismiss the honest services charges.² Trial is currently set for April 20, 2015.

5. Foreign Bribery Enforcement Abroad:

- **Brazil Charges Thirty-Six in Connection with Petrobras Corruption Scandal.** On December 11, 2014, Brazilian prosecutors filed criminal charges against 36 people for their alleged involvement in a kickback scheme at Brazil's largest company, Petrobras, a majority state-owned oil company. Twenty-three executives from Brazil's biggest construction companies were among those charged. The companies involved in the scandal include: Camargo Corrêa SA, Engevix, Galvão Engenharia, Mendes Júnior, OAS, and UTC Engenharia S.A. According to reports, the scheme potentially involves millions in bribes and numerous politicians. The main informant in the case has also alleged that President Dilma Rousseff knew of the scheme and purportedly allowed her political party to benefit from it. The charges filed against the individuals include corruption, money laundering, and organized crime. This is definitely a case to watch and certainly highlights Brazil's increasing anti-corruption efforts.
- **UK Printing Company and Two Employees Convicted After Trial in London.** On December 22, 2014, the Serious Fraud Office (SFO) announced that, following a trial at Southwark Crown Court, Smith & Ouzman and two of its employees, Christopher John Smith (chairman) and Nicholas Charles Smith (sales and marketing director), were convicted of making £395,074 in corrupt payments to officials in Kenya and Mauritania to win contracts. Two other employees were acquitted. Sentencing is set for February 12, 2015. This marks the second conviction at trial for the SFO in 2014 following the convictions of two former Innospec executives in June. These two trial victories are no doubt good news to Director David Green CB QC in the wake of the SFO's case collapsing at trial against Victor Dahdaleh a year ago.
- **Rheinmetall AG Reaches \$46 Million Settlement with German Prosecutors.** On December 10, 2014, Rheinmetall AG, a German-based auto parts maker and defense contractor released a statement that one of its subsidiaries, Rheinmetall Defense Electronics (RDE), reached a \$46 million settlement with German prosecutors to resolve allegations of bribery related to arms sales in Greece. RDE was accused of failing to detect and prevent suspicious payments to sales partners due to inadequate internal controls. Rheinmetall AG has approximately 21,000 employees and is headquartered in Düsseldorf.

² Order Denying Defendant's Motion to Suppress, Motion to Seal, Motion to Dismiss FCPA Charges, and Motion to Strike Surplusage [sic] from the Indictment, *United States v. Sigelman*, Crim. No. 14-263 (D.N.J. Dec. 30, 2014), ECF No. 135.

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- **Aberdeen-Based Company Pays £172,200 to Scotland's Prosecution Service for Corrupt Conduct in Kazakhstan.** On December 17, 2014, Scotland's Prosecution Service announced that its Civil Recovery Unit recovered £172,200 from International Tubular Services Limited (ITS), an Aberdeen-based oil and gas company. ITS admitted that "it had benefited from corrupt payments made by a former Kazakhstan-based employee to secure additional contractual work from a customer in Kazakhstan." In announcing the matter, the Prosecution Service remarked that "[t]he bribery and corruption was discovered when the company was being sold," highlighting once again the need for appropriate anti-corruption due diligence as part of M&A transactions.
6. **Transparency International Releases its Corruption Perceptions Index for 2014.** On December 3, 2014, Transparency International launched its 20th Annual Corruption Perceptions Index (CPI) for 2014. The Index draws on 12 surveys covering expert assessments and views of business people, and ranks 175 countries/territories by their perceived levels of public sector corruption from 0 (very corrupt) to 100 (very clean). Highlights from the 2014 Index include the fact that China (with a score of 36), Turkey (45), and Angola (19) saw the biggest decline, with a drop of 4 or 5 points despite average economic growth of more than 4% over the last four years. Also noteworthy was Denmark's top performance in 2014 with a score of 92. North Korea and Somalia shared last place, both scoring 8.
7. **OECD Releases Report on Foreign Bribery.** On December 2, 2014, the Organization for Economic Cooperation and Development (OECD) released its first-ever global analysis of crime and bribery of foreign officials and on December 10, 2014, the OECD, in conjunction with the World Bank and the International Bar Association, hosted a forum discussing it in depth. The Report measures the crime of transnational corruption based on analysis of data emerging from foreign bribery enforcement actions concluded since the establishment of the OECD Anti-Bribery Convention in 1999. In total, 427 transnational bribery cases were reviewed. A few of the key takeaways from the report include:
- Intermediaries were involved in 3 out of 4 foreign bribery cases.
 - Almost two-thirds of cases occurred in four sectors: mining (19%); construction (15%); transportation and storage (15%); and information and communications (10%).
 - In most cases (57%), bribes were paid to win public procurement contracts, followed by clearance of customs (6%) and attempts to gain preferential tax treatment (6%).
 - In 41% of cases, management-level employees paid or authorized the bribe, whereas chief executives were involved in 12% of cases.
 - Nearly 70% of the cases studied were settled, often involving a civil or criminal fine.

According to the Report, governments around the world should strengthen sanctions, make settlements public, and reinforce protection of whistleblowers as part of greater efforts to tackle bribery and corruption. The overwhelming use of intermediaries also demonstrates the need for more effective due diligence and oversight of corporate compliance programs. While the data has a number of limits and the observations will be critiqued in the months to come, the Report was an excellent first step in analyzing enforcement data across countries.

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- 8. Pemex Sues Hewlett-Packard and its Mexican Subsidiary.** On December 2, 2014, Petróleos Mexicanos (Pemex) filed a civil RICO lawsuit in the wake of HP's \$108 million FCPA resolution with DOJ and SEC earlier this year. Pemex is Mexico's state-owned oil and gas company, and the allegations from HP's FCPA resolution earlier this year alleged improper conduct involving Pemex officials. Pemex now seeks damages arising from the allegedly corrupt contracts. Pemex's lawyers allege that HP's faulty internal controls enabled the bribes and corruption, which purportedly routed approximately \$6 million in business to HP. Pemex is seeking disgorgement or restitution and treble damages under the RICO statute, as well as injunctions to bar future FCPA violations by HP and force the company to investigate whether any other contracts were granted as a result of corruption. This most recent case highlights the risks of civil actions following in the wake of FCPA resolutions with government enforcement agencies.
- 9. The World Bank Hosted the Third Biennial Meeting of the International Corruption Hunters Alliance (ICHA).** On December 8-10, 2014, the World Bank hosted the ICHA 2014 at its headquarters in Washington, D.C. As part of his work as President of United for Wildlife, Prince William, the Duke of Cambridge, joined the World Bank Group President, Jim Yong Kim at the opening session. Prince William addressed more than 300 corruption experts, heads, and senior members of anti-corruption and prosecuting agencies and representatives of international organizations from more than 120 countries. At the meeting, he announced the founding of a new task force to shut down illegal wildlife trade routes, as he urged action on the illegal wildlife trade, what he called one of the most insidious forms of corruption. President Kim remarked that corruption is not only a threat to sustainable development, but also to the goals of ending extreme poverty and boosting shared prosperity. He further added, "Corruption may very well be one of the most blatant expressions of inequality in our society."
- 10. The Potential Perils of FOIA Request After Producing Documents to the Government.** On December 8, 2014, a three-judge D.C. Circuit panel heard arguments by Chiquita Brands International Inc. seeking to keep SEC from responding to Freedom of Information Act (FOIA) requests by producing 23 boxes of materials produced to SEC during the course of a foreign bribery investigation a decade earlier. Chiquita, which is embroiled in a multi-district litigation in the Southern District of Florida brought by 6,000 Colombian citizens under the Alien Tort Act who want to hold the company liable for payments it made to Colombian paramilitary groups, called the payments "extortion" and said they were necessary to keep its workers safe. Now, the D.C. Circuit must decide if SEC should—or should not—produce the records in response to FOIA requests, which Chiquita claims are exempt from production under 5 U.S.C. § 552(b)(7)(B). Chiquita resolved an FCPA matter in 2001 involving payments by its subsidiary, through a third-party customs broker, to Colombian customs officials, and later pleaded guilty in 2007 for making payments to the United Self Defense Forces of Colombia, or AUC, a designated terrorist organization. The case serves as a reminder that, even when confidential treatment is sought, later FOIA requests could lead to disclosure and, therefore, whenever producing materials to government agencies, a company must be circumspect and thoughtful in its approach.

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As 2014 comes to an end, and 2015 starts, one thing appears clear: DOJ and SEC show no signs of slowing down. A decade into their enhanced enforcement of the FCPA, and in spite of transitions at DOJ's Criminal Division and SEC's Division of Enforcement, the 2014 FCPA enforcement record reflects the continuing priority of FCPA enforcement, ever-increasing international cooperation, and sustained efforts to investigate and prosecute companies and businesspeople for FCPA (and related) violations.

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