

# Client Alert

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August 11, 2015

## Top Ten International Anti-Corruption Developments for July 2015

**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. It was another busy month, with DOJ announcing what is only its second corporate FCPA enforcement action of 2015, SEC announcing its fifth corporate FCPA enforcement action of 2015, new developments in the ever-evolving corruption scandal in Brazil, and increasing enforcement efforts abroad, including bribery convictions in both Norway and Qatar. Here is our July 2015 Top Ten list:

- 1. Louis Berger International (LBI) Agrees to Pay \$17.1 Million Criminal Penalty and Two Former Executives Plead Guilty.** On July 17, 2015, the New Jersey-based engineering, architecture, and construction management company entered into a deferred prosecution agreement (DPA) with DOJ, admitting to violations of the FCPA. LBI agreed to pay a \$17.1 million criminal penalty and to implement rigorous internal controls, including retention of a compliance monitor for at least three years. Two of the company's former executives also pleaded guilty to conspiracy and FCPA charges in connection with the alleged twelve-year scheme to funnel approximately \$3.9 million in bribe payments to foreign officials in India, Indonesia, Vietnam, and Kuwait to secure government construction management contracts. Sentencing for the former executives—Richard Hirsch (a Senior Vice President responsible for LBI's operations in Indonesia, Thailand, the Philippines, and Vietnam) and James McClung (a Senior Vice President responsible for LBI's operations in India and, later, in Vietnam)—is scheduled for November 2015.

Interestingly, although LBI discovered the FCPA violations only during an internal investigation prompted by DOJ making LBI aware of an unrelated False Claims Act investigation, DOJ nevertheless gave LBI full self-disclosure credit for raising the FCPA issues. Also of note, this is the second consecutive “packaged” DOJ FCPA resolution—that is, the simultaneous announcement of a corporate resolution with individual guilty pleas. On June 16, 2015, DOJ simultaneously announced a corporate non-prosecution agreement (NPA) with IAP Worldwide Services and the guilty plea of IAP's former vice-president, James Rama, for FCPA violations involving Kuwait. This underscores DOJ's determination to pursue both corporate and individual FCPA prosecutions, as well as DOJ's expectation that companies cooperate against individual wrongdoers in order to obtain cooperation credit. It also suggests that DOJ is interested in achieving comprehensive resolutions of FCPA matters rather than taking a more piecemeal approach.

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**2. Mead Johnson Agrees to Pay \$12 Million to Resolve SEC Charges Over Infant Formula Marketing in China.** On July 28, 2015, SEC issued a cease-and-desist order against the manufacturer of child care and nutrition products, settling an administrative proceeding concerning its marketing and sales in China. According to SEC, certain employees of Mead Johnson's majority-owned subsidiary in China (Mead Johnson China) made improper payments to healthcare professionals at state-owned hospitals in order to encourage them to recommend the company's nutrition products to expectant and new mothers. The order states that from 2008 through 2013, Mead Johnson China made \$2.1 million in improper payments, funded by distributor discounts, resulting in profits of \$7.8 million. SEC alleged violations of the FCPA's accounting provisions on the theory that Mead Johnson failed to implement a system of internal accounting controls to prevent such payments and that Mead Johnson China caused its parent's books and records to be inaccurate. Mead Johnson agreed to pay a total of \$12 million, which included disgorgement, prejudgment interest, and a civil penalty. Although the payments were not self-reported by Mead Johnson, the SEC credited the company for its "extensive and thorough cooperation" with the investigation. With no parallel DOJ enforcement action, Mead Johnson neither admitted nor denied the SEC's allegations. In an SEC filing on July 28, 2015, Mead Johnson announced that the DOJ had closed its own investigation of Mead Johnson China. It appears likely that DOJ could not have established criminal jurisdiction over any of the conduct alleged in the SEC order.

**3. Former Teva Compliance Officer Claims She Was Fired for Cooperating with Federal Foreign Bribery Investigation.** On July 28, 2015, former Teva Pharmaceutical (Teva) Director of Finance Keisha Hall filed a wrongful termination suit in federal court in the Southern District of Florida,<sup>1</sup> alleging that Teva fired her after she began cooperating with SEC and DOJ in their parallel investigations into potential FCPA and Sarbanes-Oxley violations. The investigations of the Israeli generic drug manufacturer began in 2012 and concern, among other things, allegations of bribery of government officials in Latin America. Hall claims that she qualifies as a whistleblower under the Dodd-Frank Act.

In February 2015, Teva disclosed that an internal investigation revealed "likely" FCPA violations.

**4. FBI Selects Members of New FCPA and Anti-Kleptocracy Squads.** On July 21, 2015, Jeff Sallet, chief of the FBI's Public Corruption and Civil Rights section, announced that a national canvas of the FBI rendered a team of twenty-three special agents for three new foreign bribery and anti-kleptocracy squads. Although not naming the agents, Sallet described their backgrounds, noting that their average time in the FBI is almost ten years, and that roughly three-quarters have experience with money laundering cases, asset forfeiture, and/or white-collar cases. Prior to the establishment of the new "International Corruption Squads," about five FBI agents in the Washington field office had investigated FCPA cases, while other agents in the field worked these cases on top of their other work. The squads will receive \$15.6 million of funding from the DOJ's Three Percent Fund, which holds up to three percent of penalties from the DOJ's civil debt collection, and the Asset Forfeiture Fund, which collects the proceeds of forfeiture.

<sup>1</sup> Complaint, *Hall v. Teva Pharmaceutical USA, Inc.*, No. 15-cv-61536 (S.D. Fla. July 28, 2015), ECF No. 1.

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5. **U.K. Serious Fraud Office Issues DPA Letters to Six Companies.** The SFO has reportedly issued letters to six companies under investigation, offering the opportunity to enter into negotiations for deferred prosecution agreements (DPAs). DPAs have only recently been made available to the SFO, and their implementation in the United Kingdom has proven controversial. In June, three prominent non-governmental organizations issued a [joint letter](#) to David Green, the SFO's Director, expressing concern regarding the SFO's planned use of DPAs. Their concerns are primarily based on the history of DPAs in the United States and the belief that DPAs lack transparency and deterrent value.

Although DPAs are a common prosecutorial tool in the United States, it remains to be seen whether UK prosecutors will regularly offer companies the opportunity to enter into negotiations for DPAs.

6. **Federal Prosecutors in California Drop Appeal of Foreign Bribery Charges Dismissed for Lack of U.S. Nexus.** On July 16, 2015, prosecutors at the U.S. Attorney's office in San Francisco filed a voluntary motion to dismiss<sup>2</sup> their Ninth Circuit appeal of a district court ruling that dismissed fraud and foreign bribery charges against three foreign nationals for jurisdictional overreaching. In his April 21, 2015 order,<sup>3</sup> U.S. District Judge Charles Breyer had criticized the prosecutors' decision to bring charges against Alexander Vassiliev, Yuri Sidorenko, and Mauricio Siciliano for conduct that had little-to-no connection to the United States. Vassiliev and Sidorenko—Ukrainian nationals and executives at Ukrainian-based EDAPS Consortium, an identification and security products company—were accused of conspiring to bribe Siciliano, a Venezuelan national holding a Canadian passport who worked at Montreal-based International Civil Aviation Organization (ICAO), to gain contracts. Prosecutors argued that because the United States provided a quarter of ICAO's operating budget, the U.S. government has a right to police how the money was spent. In dismissing the charges, Judge Breyer said that “under the government's theory, there is no limit to the United States's ability to police foreign individuals, in foreign governments or in foreign organizations, on matters completely unrelated to the United States's investment...”

The prosecutors also filed a motion to withdraw arrest warrants issued against the three foreign nationals.<sup>4</sup> During the proceedings, Vassiliev was in jail in Switzerland, Siciliano was out on bail in the United States, and Sidorenko remained free in the United Arab Emirates. While the recent [FIFA case](#) demonstrates the potentially broad reach of U.S. federal criminal law in foreign bribery cases, the Vassiliev case is a reminder that such reach is not unlimited.

7. **Canadian Government Implements New Government-Wide Integrity Regime for Procurement and Real Property Transactions.** On July 3, 2015, Public Works and Government Services Canada, the Canadian government's principal contracting arm and manager of real property portfolio, implemented a

<sup>2</sup> United States' Motion to Dismiss Appeal, *United States v. Sidorenko, et al.*, No. 15-10190 (9th Cir. July 16, 2015), ECF. No. 2.

<sup>3</sup> Order Granting Motions to Dismiss at 10, *United States v. Sidorenko, et al.*, No. 14-cr-341 (N. D. Cal. Apr. 21, 2015), ECF No. 54.

<sup>4</sup> Government's Application to Withdraw Arrest Warrants, *United States v. Sidorenko, et al.*, No. 14-cr-341 (N. D. Cal. July 16, 2015), ECF No. 73.

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new Integrity Regime to ensure that the government does business with ethical suppliers in Canada and abroad. The key features of the regime include:

- A supplier convicted of a listed offense in Canada or abroad will remain ineligible for a period of ten years to enter into a contract with the government.
- A supplier can apply to have their ineligibility period reduced by up to five years if it addresses the causes of the conduct that led to ineligibility.
- A supplier will no longer be automatically penalized for the actions of an affiliate in which it had no involvement.
- It provides new tools such as independent expert third-party assessments, and administrative agreements that will specify required corrective actions and ensure their effectiveness.
- It provides the government the ability to suspend a supplier for up to 18 months if it has been charged with or has admitted guilt to a listed offense or similar foreign offenses.

As shown by this and other recent developments, such as the Mining Transparency regulations we reported on last month, Canada has been active in promoting anti-corruption measures.

## 8. International Enforcement Activity is on the Rise.

- **Former Senior Executives of Norwegian Company Convicted of Paying Bribes in Libya and India by Norwegian Court.** On July 7, 2015, a Norwegian court convicted four former executives of Yara International (Yara) on corruption charges in connection with Yara's international business in Libya and India. The four convicted former executives include former CEO Thorleif Enger, former legal director Ken Wallace, and two former executive vice presidents, Daniel Clauw and Tor Holba. Yara is a partly state-owned Norwegian company that supplies mineral fertilizers to farmers and other industrial customers. Yara self-reported the suspected bribery to Norwegian authorities in 2011. The Norwegian investigation into Yara involved multiple jurisdictions and requests for assistance from 13 countries. According to Norwegian authorities, between 2004 and 2009, Yara offered more than NOK 70 million (approximately USD \$12 million) in bribes to government officials in Libya, India, and Russia. Actual bribe payments amounted to around half of the offered amount. The bribes in Libya and India were paid for the right to establish joint ventures. In 2014, Yara was charged with three counts of corruption and fined NOK 295 million (approximately USD \$48 million). The company admitted its guilt and accepted the fine, Norway's largest corporate fine to date. Subsequently, the four executives were prosecuted for gross corruption related to bribe payments in India and Libya. Following a three-month trial in Oslo City Court earlier this year, all four were convicted and sentenced to jail, though Clauw was acquitted of charges relating to Yara's Libyan venture. Former CEO Enger received the longest term of imprisonment, three years, and Wallace was sentenced to two-and-a-half years. Clauw and

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Holba were sentenced to two years each. Enger, Holba, and Clauw have already announced that they intend to appeal their sentences.

- **Qatar Court Convicts Two Qatar Foundation Employees for Soliciting a Bribe.** In at least the fourth bribery case heard in Qatar's courts last month, a lower criminal court judge sentenced two senior employees of the Qatar Foundation (QF)—a government-supported, non-profit organization—to five years' imprisonment and imposed a significant joint fine of 3 million riyal (\$823,000). The court found that the defendants had solicited a bribe from AXA, the French private insurance firm, in exchange for renewal of its contract to provide health and life insurance to the organization. The court heard that one of the two defendants—Narayan Manugh, an Indian expatriate who worked as QF's director of payments and revenue—had requested a "gift" at the time of renewal of AXA's contract with QF to ensure the continuation of their business relationship. Following a report to the police, members of Qatar's Criminal Investigation Department conducted a sting operation in July 2014 and arrested Manugh and Faisal Al Hajiri, a Qatari who served as director of QF's financial affairs department. The joint fine imposed on the defendants was equivalent to the sum of money that they had requested as a bribe. The judge also ordered that Manugh and Al Hajiri be removed from their positions. Neither AXA nor QF was accused of any wrongdoing or charged with any offense.

### 9. Another Major Corruption Investigation in Brazil is Revealed, While the Petrobras Investigation Continues to Grow.

- During July 2015, the sprawling Lava Jato ("Carwash") corruption investigation involving the Brazilian state-run oil company, Petrobras, continued to gain pace. Since being launched in March 2014, the investigation has implicated around 500 individuals, 49 of whom are politicians. On July 20, 2015, three senior executives of Brazil's Camargo Correa group were convicted of money laundering, corruption and other charges by the Brazilian Federal Court in Curitiba. The executives, Dalton dos Santos Avancini, João Ricardo Auler and Eduardo Hermelino Leite, were sentenced to up to sixteen years and four months in prison, although these sentences were heavily discounted for cooperation with the authorities. Marcelo Odebrecht, CEO of Odebrecht SA, was formally indicted on July 28, 2015, on charges of bribery, money laundering, and criminal conspiracy. Odebrecht was indicted along with twelve other individuals, including former executives from both Odebrecht SA and Petrobras. Odebrecht SA itself is reportedly under investigation by authorities in Brazil and Switzerland. The company has also been implicated in a formal investigation into allegations of corruption and influence peddling by Brazil's former president.
- As previously reported, private civil suits often follow from bribery investigations. Douglas Peters, a shareholder of Brazil's Braskem SA, has filed a securities class action lawsuit in the Southern District of New York against Braskem and certain of its officers and directors.

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According to the class action complaint,<sup>5</sup> Braskem did not disclose that it paid at least \$5 million a year to Petrobras from 2006 to 2012 to buy cheaper raw materials. Braskem purchases naphtha, the main ingredient for making petrochemicals, from Petrobras under long-term contracts. Braskem allegedly paid bribes to acquire the contracts at lower prices, and Braskem officials allegedly made false and misleading statements to the SEC about the company's internal controls. Two individuals involved in the Petrobras scandal—Paulo Roberto Costa, former Petrobras executive, and Alberto Youssef, an admitted money launderer—claimed in testimony published on the Brazil Supreme Court's website in March 2015 that Braskem had paid bribes to Petrobras.

- Also in July 2015, Brazilian police raided the offices of the federal tax agency and national mint as part of a probe into another fraud scheme that allegedly involved over \$32 million in bribes to finance ministry officials. The bribes were allegedly paid to give the Brazilian office of Swiss-based banknote security firm SICPA a service contract to monitor the production of cold beverages such as beer and soft drinks. The federal tax agency charges beverage companies taxes based on their monthly production, and the national mint is involved in the selection of the company to monitor output. The Brazilian police made no arrests, but they seized the assets of the main suspects and are looking into their bank accounts.

**10. DOJ Attempts to Seize \$34 Million in Bribe Payments to Chadian Officials, and UK Court Upholds Related Forfeiture Order Sought by SFO.** On June 30, 2015, the DOJ filed a complaint seeking the forfeiture of approximately \$34 million, the cash value of shares in Canadian energy company Griffiths Energy International Inc. (Griffiths Energy) allegedly used to bribe Chadian officials, including Chad's Ambassador to the United States and Canada from 2004 to 2012, and the Deputy Chief of Mission from approximately 2007 to 2015. The complaint alleges that, in 2009, the two officials agreed to use their official positions to influence the award of oil development rights in Chad to Griffiths Energy in exchange for shares in the company. Griffiths Energy thereafter issued four million shares to the wives of the two officials, and to another associate. The complaint further alleges that the company agreed to pay a \$2 million "consulting fee" to the wife of one of the officials, which was allegedly transferred to an account held by a shell company she created after the company secured the oil development rights in February 2011. The payment was commingled and laundered through U.S. bank accounts and real property, and was eventually transferred to the official's bank account in South Africa.

In 2013, Griffiths Energy was fined CAD \$10.3 million to settle Canadian charges under the Corruption of Foreign Public Officials Act. The DOJ forfeiture action is part of its Kleptocracy Asset Recovery Initiative.

On July 21, 2015, the UK High Court upheld a forfeiture order sought by the Serious Fraud Office (SFO) at the request of DOJ against £6.8 million (\$10.5 million) held in Royal Bank of Scotland accounts and linked to the sale of shares in Griffiths Energy in connection with the bribery scheme. The SFO became involved when DOJ made a mutual legal assistance request in July 2014.

<sup>5</sup> Class Action Complaint for Violations of the Federal Securities Laws, *Peters v. Braskem S.A. et al.*, No. 15-cv-5132 (S.D.N.Y. July 1, 2015), ECF No. 1.

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