

# Client Alert

January 14, 2016

## Top Ten International Anti-Corruption Developments for December 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. This month we look at how a busy 2015 ended. What did the UK Serious Fraud Office (SFO) do to close out the year with a bang? How much jail time did FCPA defendants receive? Which state-owned enterprises were at the center of enforcement actions and investigations? The answers to these questions and more are here in our December 2015 Top Ten list:

- 1. UK Serious Fraud Office (SFO) Brings Second Failure to Prevent Bribery Case in as Many Months.** On December 2, 2015, the SFO announced that Sweett Group PLC had admitted an offense under Section 7 of the UK Bribery Act 2010 (UKBA) for failing to prevent bribery in the Middle East. Just over two weeks later, on December 18, 2015, the SFO announced that Sweett Group had pleaded guilty to that offense at Southwark Crown Court. According to the SFO, servants and agents of Sweett Group's "associated person," Cyril Sweett International Limited, paid bribes to an individual in order to secure a project management and cost consulting services contract with an insurance company, Al Ain Ahlia Insurance Company, related to the building of a hotel in Dubai. The Sweett Group resolution is only the second time that the SFO has brought a Section 7 case and follows quickly on the heels of its first resolved Section 7 case, the deferred prosecution agreement (DPA) with ICBC Standard Bank Plc announced on November 30, 2015 (and discussed in last month's Top Ten). Two Section 7 cases in as many months suggest that the SFO is vigorously pursuing these charges, a development to watch for in 2016. Although liability under the UKBA, unlike under the FCPA's anti-bribery provisions, is not strictly confined to bribery of foreign public officials, it is nevertheless notable that the state of Abu Dhabi, through its sovereign wealth fund, owns approximately 20% of Al Ain Ahlia Insurance, whose shares are traded on the Abu Dhabi Securities Exchange. The SFO cleared the Sweett Group of separate bribery allegations involving a Moroccan hospital design contract in 2014.
- 2. U.S. Department of Justice (DOJ) Brings FCPA Charges Against Two Individuals for Venezuelan Bribery Scheme.** On December 10, 2015, a Houston grand jury returned a sealed indictment charging Roberto Rincon and Abraham Shiera with conspiring to violate the FCPA and wire fraud statute, violating the FCPA, and laundering money.<sup>1</sup> According to the indictment, which was unsealed following Rincon's and Shiera's reported arrests in Houston and Miami on December 16, 2015, the defendants conspired to secure lucrative energy contracts with Venezuela's state-owned and state-controlled oil company, Petroleos de Venezuela S.A. (PDVSA), and two of its purchasing and procurement subsidiaries, PDVSA Services, Inc. and Bariven S.A., by paying bribes to at least five officials (called Officials A through E in the indictment) at those companies. Reports from October 2015 stated that U.S. authorities had launched a series of investigations

<sup>1</sup> *United States v. Roberto Enrique Rincon-Fernandez and Abraham Jose Shiera-Bastidas*, No. 15-cr-654 (Dec. 10, 2015).

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involving corruption at PDVSA but did not specifically mention Rincon and Shiera. The Rincon and Shiera indictment reflects DOJ's long-standing policy to prosecute individuals for FCPA violations—at least one Venezuelan media outlet suggested that the investigation that led to these charges began in 2011, and the indictment references conduct beginning in October 2009. The indictment also reflects the FCPA risk inherent in doing business with state-owned oil companies, which may qualify as “instrumentalities” of foreign governments under the FCPA. Indeed, numerous FCPA cases have involved bribing officials at state-owned oil companies in Latin America, such as the recent prosecution of several former Petro Tiger executives for allegedly bribing an official at Colombia's EcoPetrol. For its part, PDVSA reacted to the charges by issuing a press release “denounc[ing] an international discredit campaign made through certain media to link alleged wrongful acts committed by Venezuelan citizens and business to the national oil company.” The Rincon and Shiera case will be one to watch in 2016.

- 3. Defendants in Another Venezuelan Bribery Scheme Sentenced in New York.** In 2013 and 2014, DOJ charged five officers and employees of New-York based broker dealer Direct Access Partners (DAP) with FCPA and other offenses in connection with a scheme to bribe Maria Gonzalez, an official at the state-owned and state-controlled Banco de Desarrollo Económico y Social de Venezuela (BANDES), in exchange for her directing lucrative bond-trading business (including bonds issued by Venezuelan state-owned enterprises) to DAP. All five DAP defendants pleaded guilty and two (former CEO Benito Chinaea and former managing director Joseph DeMeneses) were sentenced to four years' imprisonment in March 2015. In December 2015, the three remaining former DAP defendants, all of whom cooperated post-arrest against Chinaea and DeMeneses, were sentenced. On December 7 and 9, 2015, respectively, Ernesto Lujan and Tomas Alberto Clarke Bethancourt were sentenced to two years' imprisonment, and on December 15, 2015, Jose Alejandro Hurtado was sentenced to three years' imprisonment.<sup>2</sup> Gonzalez was also charged with and pleaded guilty to money laundering and commercial bribery offenses related to the bribery scheme and is scheduled to be sentenced in January 2016.
- 4. Defendant in Panamanian Bribery Scheme Sentenced in San Francisco.** Continuing the theme of individual FCPA prosecutions, on December 16, 2015, Vicente Garcia, a former Latin American sales director for a U.S. subsidiary of German software company SAP A.G., was sentenced to 22 months' imprisonment following his guilty plea to an FCPA conspiracy charge in August 2015. In pleading guilty, Garcia admitted that he had participated in a scheme to bribe Panamanian officials to secure government technology contracts from 2009 to 2013. Although the charging document, per DOJ policy, anonymized the names of the allegedly bribed officials, both Garcia and Northern District of California Judge Charles R. Breyer reportedly identified former Panamanian president Ricardo Martinelli as one of the bribe recipients during Garcia's sentencing. Martinelli reportedly denied the allegations.
- 5. Russian Official Sentenced in Maryland.** On December 15, 2015, Vadim Mikerin, the president of a subsidiary of Russia's State Atomic Energy Corporation (ROSATOM), was sentenced to four years' imprisonment following his guilty plea to FCPA-related money laundering charges in August 2015. In pleading guilty, Mikerin admitted that he had accepted bribes in exchange for steering ROSATOM business to

<sup>2</sup> *United States v. Lujan*, No. 13-cr-671 (S.D.N.Y. Dec. 7, 2015), ECF No. 35; *United States v. Clarke Bethancourt*, No. 13-cv-670 (S.D.N.Y. Dec. 9, 2015), ECF No. 75; *United States v. Hurtado*, No. 13-cv-673 (S.D.N.Y. Dec. 15, 2015), ECF No. 82.

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U.S. companies. Mikerin's alleged co-conspirators, Daren Condrey and Boris Rubizhevsky, pleaded guilty to related charges in June 2015 but have not yet been sentenced.

6. **Superseding Indictment in FIFA Case Unsealed.** In May 2015, DOJ issued a press release and held a press conference to announce the unsealing of a 47-count indictment against 14 defendants related to corruption within the Federation Internationale de Football Association (FIFA). DOJ made clear that the investigation was ongoing and, on December 4, 2015, issued a press release and held a press conference to announce the unsealing of a 92-count superseding indictment charging an additional 16 defendants with racketeering, wire fraud, and money laundering conspiracies, among other offenses. As we noted previously, although not an FCPA case (FIFA is not a "public international organization" for FCPA purposes), the FIFA case nevertheless demonstrates DOJ's aggressive pursuit of international corruption and increasingly close ties with international law enforcement authorities.
7. **DOJ Opposes Release of Monitor Report.** In July 2013, Eastern District of New York Judge John Gleeson approved a five-year DPA with HSBC Bank USA N.A. and HSBC Holdings plc.<sup>3</sup> In so doing, Judge Gleeson held that a district court has the authority to approve or reject a DPA and to supervise its implementation. Judge Gleeson directed the parties to file quarterly reports with the court for the latter purpose. Among other things, the DPA requires the bank to retain an independent compliance monitor to ensure that it fulfills the terms of the DPA and implements recommended remedial measures. In its April 2015 quarterly report, DOJ included a short summary of the monitor's annual report.<sup>4</sup> Judge Gleeson requested a full copy of the 1,000-page-plus monitor report, which DOJ and the bank requested be submitted under seal.<sup>5</sup> In November 2015, however, an individual sent a letter to Judge Gleeson, arguing that he should be provided access to the monitor report to help support a complaint he had filed with the Consumer Financial Protection Bureau (CFPB).<sup>6</sup> On December 11, 2015, DOJ filed its opposition to this "motion to unseal." DOJ argued that the monitor's report was not a "judicial document" to which the public should have access; cited language in the DPA regarding the parties' intent to keep the monitor reports non-public; and described, among other harms, the negative impact public disclosure would have on the monitor's ability to execute his responsibilities. Although not an FCPA case, given the frequent use of DPAs and monitors to resolve corporate FCPA cases, the outcome of this motion has the potential to impact FCPA enforcement. Notably, Judge Gleeson recently announced that he is stepping down on March 9, 2016 after 21 years on the bench.
8. **Dutch Telecom Sued in Manhattan Federal Court for Allegedly Failing to Disclose FCPA Violations.** On December 8, 2015, a putative securities fraud class action complaint was filed in the Southern District of New York alleging that Amsterdam-based telecommunications company VimpelCom, Ltd. and its directors failed to disclose tens of millions of dollars in bribes paid to a company controlled by Gulnara Karimova, the daughter of the president of Uzbekistan, in order to secure access to the Uzbeki telecommunications market.<sup>7</sup> The complaint alleges that revelations of U.S. and Dutch investigations and the company's announcement

<sup>3</sup> *United States v. HSBC Bank USA, N.A. and HSBC Holdings plc*, No. 12-cr-763 (E.D.N.Y. July 1, 2013), ECF No. 23.

<sup>4</sup> *Id.* (E.D.N.Y. Apr. 1, 2015), ECF No. 33.

<sup>5</sup> *Id.* (E.D.N.Y. June 1, 2015), ECF Nos. 35, 38.

<sup>6</sup> *Id.* (E.D.N.Y. Nov. 5, 2015), ECF No. 42.

<sup>7</sup> *Westway Alliance Corp. v. VimpelCom Ltd., et al.*, No. 15-cv-9492 (S.D.N.Y. Dec. 8, 2015), ECF No. 3.

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that it had set aside \$900 million for associated litigation costs combined to cause a 4.63 percent drop in the company's American Depositary Receipts (ADRs) on November 3, 2015. This was the second putative class action complaint based on the Uzbeki bribery allegations and subsequent ADR drop filed against VimpelCom and its directors in the Southern District of New York in as many months.<sup>8</sup> VimpelCom was one of three telecom companies that announced in 2014 that they were under investigation by U.S. and other authorities for possible FCPA violations. Mobile TeleSystems PJSC (MTS), Russia's largest mobile provider, and TeliaSonera AB, a Swedish-Finnish communications company, are also under investigation regarding allegations of bribery involving Gibraltar-registered Takilant, which has been linked to Karimova. It was reported in late November 2015 that Vimpelcom was close to a \$775 million resolution with U.S. authorities, which, if correct, would overtake DOJ's December 2014 \$772.29 million resolution with France's Alstom S.A. as the second-largest FCPA resolution in history and could help explain the company's November 2015 announcement of the \$900 million litigation reserve.

- 9. China Telecom Chairman Is Detained, Resigns.** On December 27, 2015, the Chinese Communist Party's Central Commission for Discipline Inspection announced that it had detained Chang Xiaobing, the chairman, CEO, executive director, and Communist Party secretary of China Telecom Corp., on suspicion of "severe disciplinary violations." Three days later, Chang reportedly resigned his posts at China Telecom, the largest fixed-line and third-largest mobile operator in the People's Republic of China (PRC). Chang had previously served as chairman and Communist Party Secretary of China Unicom Ltd., the PRC's second-largest mobile operator. Although no specific details regarding Chang's suspected "violations" appear to have been released publicly, his detention and resignation come amid an ongoing and sustained anti-corruption campaign involving Chinese state-owned enterprises. (We have covered this campaign in previous Top Tens.) Indeed, also in December 2015, the president of state-owned Agricultural Bank of China was similarly reported to have been detained by PRC authorities and later resigned his position. State-owned telecom companies, such as Costa Rica's ICE, Honduras's Hondutel, and Haiti Teleco, have been at the center of numerous FCPA cases, and the PRC had conducted a previous investigation into its telecom sector several years earlier. This latest development is the most recent reminder of the potential FCPA risks associated with doing business with such companies.
- 10. New Petrobras-related Charges in Brazil.** On December 17, 2015, Brazilian prosecutors reportedly charged 12 individuals with various offenses related to allegations that Netherlands-based SBM Offshore NV paid at least \$46 million in bribes to former executives of Petroleo Brasileiro SA (Petrobras) in order to secure contracts for floating oil production, storage, and offloading ships. Brazilian prosecutors allege that the bribes were facilitated by companies Faercom and Oildrive, two of SBM's sales agents in Brazil, through Swiss bank accounts. Among those charged in "Operation Black Blood" were SBM's CEO and a current Board member who formerly served as the company's chief governance and compliance officer. Although such charges are sure to resonate throughout the compliance community, SBM expressed its public support for both men and stated that they would continue in their current capacities with the company. In November 2014, SBM announced that it had entered into a \$240 million resolution with Dutch authorities relating to allegations that it bribed officials in Angola, Brazil, and Equatorial Guinea and had secured a declination from DOJ. SBM is reportedly currently in discussions to reach a corporate resolution in Brazil.

<sup>8</sup> *Charles Kux-Kardos v. VimpelCom Ltd., et al.*, No. 15-cv-8672 (S.D.N.Y. Nov. 4, 2015), ECF No. 1.

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