

Client Alert

March 15, 2016

Top Ten International Anti-Corruption Developments for February 2016

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 from the past month, with links to primary resources. February is the shortest month, but it didn't seem like it for anti-corruption practitioners. This month, we ask: How many companies resolved FCPA charges with the Department of Justice and Securities and Exchange Commission? Which UK company received attention from the U.S. Congress? What were the latest anti-corruption developments in the UK and France? The answers to these questions and more are here in our February 2016 Top Ten list:

- 1. VimpelCom and Subsidiary Reach Resolutions With DOJ and SEC for Conduct in Uzbekistan.** On February 18, 2016, the Department of Justice ([DOJ](#)) and Securities and Exchange Commission ([SEC](#)) announced that Amsterdam-based telecommunications company VimpelCom Ltd. (Vimpelcom) and its wholly owned Uzbek subsidiary, Unitel LLC (Unitel), agreed to pay a total of \$795 million to U.S. and Dutch law enforcement agencies to settle charges that they bribed an Uzbek government official in order to enter and remain in the Uzbek telecom market and for various telecom licenses. The settlement requires the companies to pay \$230.1 million to DOJ and \$167.5 million to SEC, making it the sixth-largest FCPA resolution ever. According to DOJ, the companies received "significant credit" for their extensive and early cooperation with DOJ's investigation, amounting to a 45 percent reduction off the bottom of the U.S. Sentencing Guidelines fine range. The companies also agreed to pay \$397.5 million to the Public Prosecution Service of the Netherlands (Openbaar Ministrie, or OM), reflecting U.S. efforts to coordinate with its international law enforcement partners both during the investigation stage and at the resolution stage. Indeed, DOJ and SEC listed a total of 19 different countries as having cooperated with the investigation. In addition to the guilty plea with Unitel and DPA with VimpelCom, DOJ has filed two civil complaints against overseas accounts that allegedly belong to the Uzbek official and hold a total of \$850 million, the largest forfeiture action in the history of DOJ's Kleptocracy Initiative.
- 2. PTC and Two Subsidiaries Reach Resolutions With DOJ and SEC for Providing Travel to Chinese Officials.** On February 16, 2016, [DOJ](#) and [SEC](#) announced that Massachusetts-based technology company PTC Inc. (PTC) and two of its wholly owned Chinese subsidiaries agreed to pay more than \$28 million to resolve allegations that the companies paid for Chinese officials to travel recreationally in the United States in exchange for winning business with their state-owned employers. PTC agreed to pay \$11.9 million in disgorgement and \$1.8 million in prejudgment interest to settle SEC's charges, while the two Chinese subsidiaries agreed to pay a \$14.5 million monetary penalty pursuant to a non-prosecution agreement (NPA) with DOJ. In a related action, the SEC also announced its first ever [deferred](#)

Client Alert

prosecution agreement (DPA) with an individual in an FCPA case—the SEC agreed to defer FCPA charges against Yu Kai Yuan, a former employee at one of the subsidiaries, as a result of significant cooperation provided during the SEC’s investigation. The PTC resolution was DOJ’s first corporate resolution since July 2015 and seemed similar to several of the resolutions brought solely by SEC in the interim. As we explained in a client alert, the key difference resulting in a DOJ action here appears to have been PTC’s failure to disclose certain key facts known to the company at the time of its initial self-disclosure. According to DOJ, PTC did not disclose these facts “until [DOJ] uncovered salient facts regarding the Companies’ responsibility for the improper travel and entertainment expenditures at issue independently and brought them to the Companies’ attention[.]” Thus, by bringing the PTC resolution, DOJ sent a message that it will not give partial self-disclosure credit; companies choosing to self-disclose must be prepared to disclose all relevant facts.

- 3. SAP Settles With SEC Over Former Executive’s Panama Bribes.** On February 1, 2016, SEC announced that German-based software manufacturer SAP SE (SAP) had agreed to disgorge \$3.7 million in profits to settle charges that it violated the FCPA’s accounting provisions in connection with its government sales efforts in Panama. The charges stem from the actions of Vincente Garcia, former head of Latin American sales for SAP International, Inc., who last year pleaded guilty to a criminal information filed by DOJ and settled civil FCPA charges brought by SEC. (See our client alert for more analysis of Garcia’s guilty plea. Garcia was sentenced to 22 months’ imprisonment in December 2015.) According to SEC, Garcia used SAP’s local partner in Panama to channel bribe payments to a high-ranking government official. Garcia sold SAP software to the local partner at a steep discount; the local partner, in turn, sold the software at a significantly higher price to the Panamanian government, creating a slush fund used to pay bribes. Garcia falsified approval forms for the discounts, which were then falsely recorded as legitimate on the books of SAP’s Mexican subsidiary and subsequently consolidated into SAP’s financial statements. SEC found that SAP lacked adequate internal controls to prevent Garcia’s conduct. Without admitting or denying SEC’s findings, SAP consented to the entry of a cease-and-desist order and agreed to pay disgorgement of \$3.7 million plus prejudgment interest. No civil penalty was imposed. According to SEC, the settlement reflects SAP’s extensive cooperation and remedial measures once it learned of Garcia’s conduct. DOJ appears to have declined the matter.
- 4. Airline CEO Settles With SEC Over Labor Union Bribes in Argentina.** On February 4, 2016, SEC announced that the CEO of South American-based LAN Airlines agreed to pay a \$75,000 penalty to settle SEC’s claims that he violated the FCPA’s accounting provisions by authorizing payments to a third-party consultant, despite knowing that the consultant might pass money onto union officials in Argentina. According to SEC, LAN’s Argentine subsidiary was in a dispute with its unionized employees in 2006 and 2007, when then-President and COO, Ignacio Cueto Plaza, authorized \$1.15 million in payments to a Virginia-based account of a third-party consultant. The payments were made pursuant to an unsigned consulting agreement, under which the consultant was to provide a study of existing air routes in Argentina. But, according to SEC, Cueto knew that no such study would be performed and that, instead, the consultant was hired to help settle the labor dispute, potentially by passing on a portion of the payments to union officials. The payments were not properly recorded in LAN’s books and records, and SEC found that Cueto did not follow the company’s internal accounting controls. Cueto neither admitted

Client Alert

nor denied the allegations. LAN has not yet reached a corporate resolution with either SEC or DOJ. Notably, the alleged bribe recipient in this matter was not a foreign official, highlighting the fact that the FCPA's accounting provisions are not confined to foreign bribery. Indeed, SEC has used the FCPA's accounting provisions to go after sanctions violations and commercial bribes. Such resolutions highlight the need for publicly traded companies to maintain accurate books and records and effective accounting controls in all aspects of their businesses.

- 5. SciClone Settles With SEC for China Bribes.** Also on February 4, 2016, SEC announced that California-based SciClone Pharmaceuticals (SciClone) agreed to pay approximately \$12.8 million in connection with charges that it made improper payments to health care professionals in China. According to SEC, from at least 2005 to 2012, employees of a SciClone subsidiary—acting as agents of SciClone in China—gave money, gifts, travel, and other things of value to health care professionals employed at state-owned hospitals in order to obtain sales of SciClone products. SEC alleged that the transactions were falsely recorded as legitimate business expenses and that the company lacked both sufficient internal auditing controls and an effective anti-corruption compliance program. SEC charged the company with violations of the anti-bribery, books and records, and internal accounting controls provisions of the FCPA. Without admitting or denying those findings, the company consented to the order and agreed to pay \$9.42 million in disgorgement of sales profits, \$900,000 in prejudgment interest, and a \$2.5 million penalty. According to a statement from SciClone, DOJ has completed its investigation and declined to pursue any action.
- 6. Mondelez Receives Wells Notice for Alleged India Bribes.** In February 2016, Mondelez International Inc. (Mondelez) received a subpoena from the SEC regarding potential FCPA violations in connection with approvals for the operation of a facility in India that Mondelez acquired as part of its 2010 acquisition of Cadbury. According to its 10-K for 2015, on February 11, 2016, Mondelez received a “Wells” notice from the SEC indicating that the staff has made a preliminary determination to recommend that the SEC file an enforcement action against the company for violations of the FCPA's books and records and internal controls provisions in connection with the investigation. While never a welcome development, recent history has shown that a Wells notice does not always mean that an enforcement action will follow.
- 7. U.S. Representatives and Senators Urge DOJ to Investigate Bribery Allegations Involving British American Tobacco.** In a letter dated February 3, 2016, six members of the U.S. House of Representatives and four Senators called on DOJ's FCPA Unit to investigate recent media reports alleging that British American Tobacco (BAT), one of the UK's largest companies and a U.S. issuer, “conspired to bribe politicians and public health officials across Central and East Africa to block, weaken, and delay the passage and implementation of public health laws” related to tobacco. In particular, the reports allege that BAT sought to undermine the World Health Organization Framework Convention on Tobacco Control (WHO FCTC) by paying bribes to African FCTC representatives. Consistent with DOJ policy, the FCPA Unit does not appear to have responded publicly to the letter. According to the BBC and other UK outlets, however, the UK's Serious Fraud Office (SFO) may be investigating the allegations.

Client Alert

- 8. SFO Director's Term Extended.** On February 9, 2016, the UK's Attorney General announced that the contract for the Director of the SFO had been renewed for two years. David Green, initially appointed SFO Director in April 2012 for a fixed term due to end in April 2016, will now remain in office until April 2018. In announcing the renewal, Attorney General Jeremy Wright stated that Green "led a change in the organisation's approach to prosecuting cases and delivered the first UK Deferred Prosecution Agreement and the first convictions under the Bribery Act 2010." Since arriving at the SFO, Mr. Green has aggressively pursued significant cases, including the LIBOR investigation, and has had some noteworthy successes in the courtroom. Overall, even though there have been some losses, Mr. Green has developed a significant track record and distinguished himself from his predecessor, Richard Alderman.
- 9. UK Company Fined for Failing to Prevent Bribery.** In December 2015, the SFO announced that Sweett Group PLC (Sweett Group) had pleaded guilty to an offense under Section 7 of the UK Bribery Act 2010 (UKBA) for failing to prevent bribery in the Middle East. On February 19, 2016, the company was sentenced at Southwark Crown Court and ordered to pay a total £2.25 million penalty for the offense. The penalty included a £1.4 million fine, approximately £850,000 in confiscation, and approximately £95,000 for the SFO's costs. The sentencing judge noted that Sweett Group did not initially cooperate with the SFO, which might have influenced the SFO's decision not to offer the company a DPA, in contrast to another Section 7 case resolved by the SFO in November 2015. (For more on the Sweet Group sentence, see our client alert.)
- 10. French Appellate Court Fines Companies for Oil-for-Food Violations.** In force between 1996 and 2003, the United Nations Oil-for-Food (OFF) program was designed to allow Iraq to market its oil in exchange for food, medicine, and other humanitarian supplies during the embargo that followed the invasion of Kuwait. DOJ and SEC reached resolutions with over a dozen companies that allegedly secretly inflated contracts approved by the UN under the program by up to 10 percent in order to pay kickbacks to the Iraqi government. Until now, French authorities had not been successful in pursuing their own OFF prosecutions. But on February 26, 2016, the Paris Court of Appeals found French oil company Total SA and Swiss oil-trading company Vitol SA guilty of OFF-related corruption and fined the companies €750,000 and €300,000, respectively. The appellate court reversed the companies' acquittals on the same charges in July 2013, and the ruling calls into question the acquittal of several additional companies in June 2015.

Client Alert

For more information, please contact:

Washington, D.C.

Charles E. Duross
cduross@mofo.com

New York

Carl H. Loewenson, Jr.
cloewenson@mofo.com

San Francisco

Paul T. Friedman
pfriedman@mofo.com

London

Paul T. Friedman
pfriedman@mofo.com

Denver

Nicole K. Serfoss
nserfoss@mofo.com

James M. Koukios
jkoukios@mofo.com

Ruti Smithline
rsmithline@mofo.com

Stacey M. Sprenkel
ssprenkel@mofo.com

Kevin Roberts
kroberts@mofo.com

Demme Doufekias
ddoufekias@mofo.com

Ronald G. White
rwhite@mofo.com

Amanda Aikman
aaikman@mofo.com

Hong Kong

Timothy W. Blakely
tblakely@mofo.com

Tokyo

James E. Hough
jhough@mofo.com

Berlin

Thomas Keul
tkeul@mofo.com

Singapore

Daniel P. Levison
dlevison@mofo.com

Beijing

Sherry Xiaowei Yin
syin@mofo.com

Adrian Yip
adrianyip@mofo.com

About Morrison & Foerster:

We are Morrison & Foerster—a global firm of exceptional credentials. Our clients include some of the largest financial institutions, investment banks, Fortune 100, technology and life science companies. We've been included on *The American Lawyer's* A-List for 12 straight years, and *Fortune* named us one of the "100 Best Companies to Work For." Our lawyers are committed to achieving innovative and business-minded results for our clients, while preserving the differences that make us stronger. This is MoFo. Visit us at www.mofo.com.

Because of the generality of this update, the information provided herein may not be applicable in all situations and should not be acted upon without specific legal advice based on particular situations. Prior results do not guarantee a similar outcome.