

FCPA & Global Anti-Corruption Webinar: 2018 Mid-Year in Review

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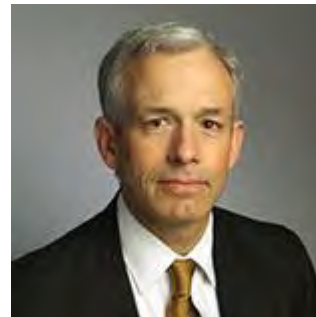
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Agenda

- I. Enforcement Trends and Priorities
- II. New DOJ Policy Initiatives
- III. Declinations/Case Closures
- IV. Settlements & Prosecutions
- V. Key International Anti-Corruption Developments
- VI. Predictions for the Rest of 2018



I. Enforcement Trends and Priorities



Enforcement Trends & Priorities

- FCPA enforcement remains a high priority – a message reinforced by Attorney General Sessions at the Ethics and Compliance Initiative Annual Conference in April
- Slower than average Q1 in 2018 but significant activity in Q2
- 133 public companies report having open FCPA investigations which is a near-record number of ongoing investigations
- 2018 is already the fifth-biggest year ever for total FCPA fines and penalties
- Declination policy is in effect with an increase in the number of investigations closed without enforcement action



Enforcement Trends & Priorities

- Continued cooperation with overseas law enforcement agencies
 - Société Générale S.A. Libya (“SocGen”) settlement is a milestone for US – France cooperation
 - In SocGen settlement, DOJ assessed full penalty but half of it was paid to French enforcement agency, Parquet National Financier (“PNF”)
 - DOJ’s decision to have SocGen monitored by France’s L’Agence Française Anticorruption drew international praise
- Long-time FCPA prosecutor says he used to mainly speak with only the UK’s Serious Fraud Office, but now he’s talking with up to 10 foreign agencies every week

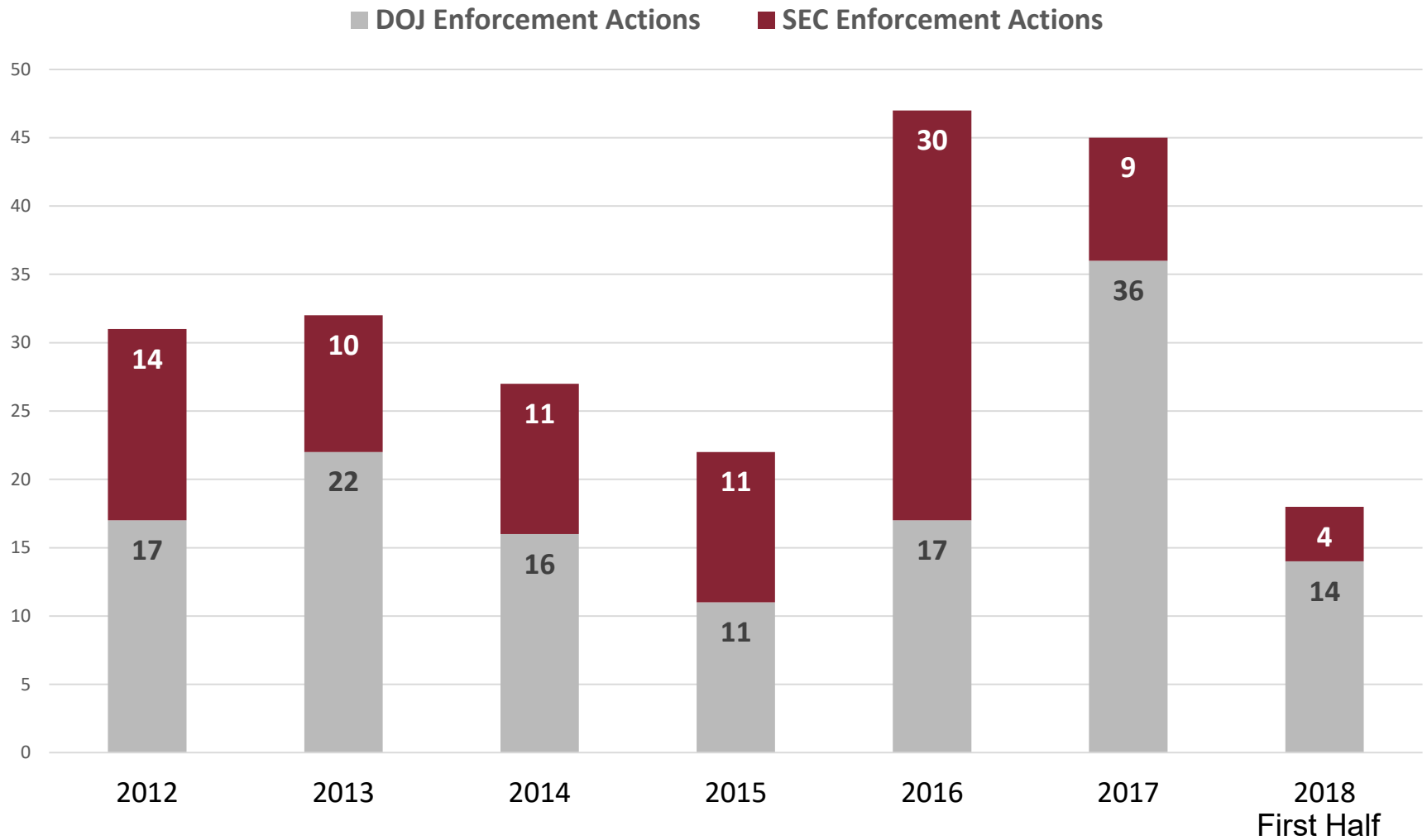


Additional Trends in Early 2018

- DOJ FCPA Corporate Enforcement Policy (implemented in Nov. 2017 following the pilot program) formally applied for first time in Dun & Bradstreet Corp. enforcement action
- SocGen made the Top Ten list with a \$585 million DOJ resolution (combined total penalties of more than \$1 billion)
- Continued focus on individuals



Enforcement Trend Line





II. New DOJ Policy Initiatives



DOJ “Piling On” Policy

- On May 9, 2018, Deputy Attorney General Rosenstein announced the new “Piling On” Policy, which is designed to reduce duplicative penalties against corporations
 - The full policy was added to the U.S. Attorneys’ Manual (at 1-12.100) and instructs the DOJ to consider *“the totality of fines, penalties, and/or forfeiture imposed by all Department components as well as other law enforcement agencies and regulators in an effort to achieve an equitable result.”*



DOJ “Piling On” Policy

- Urges DOJ officials to consider fines imposed by other enforcement agencies, here and abroad
- Encourages coordination with those authorities, during and after the investigation, to calculate penalties
- Policy applies to cases involving the same misconduct
- DOJ discretion
 - Gives discretion to DOJ officials to “consider all relevant factors” that allow “*the interests of justice to be fully vindicated*”
 - DOJ may impose other alternative remedies including providing restitution to the victims of violations
- Policy is step in the right direction, but does not mean that penalties will be smaller
- Issue remains of DOJ/SEC “piling on”



DOJ “Piling On” Policy in action

- Société Générale S.A. Libya (“SocGen”) (2018):
 - SocGen entered into Deferred Prosecution Agreement (“DPA”)
 - SocGen’s subsidiary, SGA Société Générale Acceptance N.V., pleaded guilty to a one-count criminal information
 - Coordination with French authorities
 - SocGen will pay in excess of \$1 billion to DOJ, Commodity Futures Trading Commission (“CFTC”), and Parquet National Financier (“PNF”)
 - \$585 million total FCPA penalty to DOJ = fifth largest FCPA penalty
 - \$475 million in regulatory penalties and disgorgement to the CFTC in connection with LIBOR scheme
 - DOJ gave a credit of \$292.8 million for money SocGen will pay to French authorities, PNF
 - SocGen also paid approximately \$1.1 billion to the Libyan Investment Authority to resolve a related civil dispute
 - DOJ did not impose its own monitor on SocGen



DOJ “Piling On” Policy in action

- SocGen (2018):
 - Alleged bribery of Libyan officials
 - Jurisdiction under 78dd-3 prong of the FCPA, which provides jurisdiction over foreign persons (not issuers) who take acts “while in the territory of the United States”
 - SocGen admitted paying over \$90 million in bribes to a Libyan intermediary in connection with 14 investments made by Libyan state-owned financial institutions during the Qaddafi regime
 - Some of that money was sent via a wire transfer of \$19.8 million through a New York branch in 2008
 - Libyan official and intermediary traveled through New York in 2008 and enjoyed multiple days of entertainment while there at SocGen’s expense
 - Travel and entertainment were considered necessary to secure deals for SocGen and thus were in furtherance of improper payments
 - These two activities apparently triggered the DOJ’s jurisdiction



DOJ “Piling On” Policy in action

- SocGen (2018)
 - Factors DOJ considered were:
 - SocGen’s failure to voluntarily self-disclose the misconduct
 - Seriousness of the conduct, including the high value of the bribes paid to foreign officials
 - Company’s substantial, though not full, cooperation with the Department
 - Company’s significant remediation which, together with the company’s risk profile and ongoing monitoring by L’Agence Française Anticorruption, resulted in the Department determining that a monitor was not necessary



“Disappearing Messaging” Apps

- In FCPA Enforcement Policy, DOJ announced that the obligation to retain appropriate business records extends to applications that are designed specifically to delete records of such communications
 - Includes messaging services such as WhatsApp and Snapchat, and the DOJ put the burden on companies to require employees to not use so-called “self-eradicating software”
 - Likely born out of the DOJ’s frustrated efforts to collect digital evidence of foreign bribery through messaging apps and social media
 - Failing to meet these new obligations may affect the credit a company gets for remediation and cooperation under the USSG
 - Obligation has been announced with little practical guidance for how companies should manage and oversee the communications of its employees



III. Declinations/Case Closures



Nine Declinations/Case Closures in Q1/Q2 2018

DOJ

1. Juniper Networks, Inc.
2. Sanofi
3. Millicom International Cellular SA
4. Dun & Bradstreet Corp.

Parallel DOJ/SEC

1. Core Laboratories N.V.
2. Teradata Corporation
3. Exterran Corporation
4. Transocean Ltd.

SEC

1. Cobalt International Energy, Inc.



DOJ Case Closures

- In Feb. 2018, **Juniper Networks** disclosed in an SEC filing that the DOJ closed its FCPA investigation and would not bring an enforcement action against the company; SEC parallel investigation apparently not yet resolved
- In Mar. 2018, **Sanofi** disclosed in an SEC filing that the DOJ had closed its FCPA investigation; SEC parallel investigation apparently not yet resolved
- In an Apr. 2018 press release, **Millicom** announced that DOJ informed its headquarters that DOJ would close its FCPA investigation
- No declination letters made public by DOJ



DOJ - Dun & Bradstreet Corp. Declination

- In Apr. 2018, the DOJ announced it would decline to prosecute Dun & Bradstreet (“D&B”)
- The DOJ based its decision on numerous factors relating to the company’s voluntary disclosure, cooperation, compliance program, and remediation (including termination and discipline of employees)
- The DOJ considered D&B’s “full disgorgement” to the SEC
 - D&B agreed to pay more than \$9 million to the SEC including:
 - Disgorgement of \$6,077,820
 - Prejudgment Interest of \$1,143,664
 - Civil Penalty of \$2,000,000



Parallel DOJ/SEC Case Closures

- In Oct. 2017, **Core Labs** announced that the DOJ closed its FCPA investigation into Core Labs' interactions with Monaco-based Unaoil; in Feb. 2018, the company announced that the SEC's parallel investigation also was closed
- In Feb. 2018, **Teradata** announced that the DOJ and SEC each had closed its FCPA investigation of the company
- Also in Feb. 2018, **Exterran** disclosed in a securities filing that the FCPA portion of a DOJ/SEC investigation had been closed
- In Mar. and Apr. 2018, **Transocean** announced that it had received notifications from the SEC and DOJ that their respective FCPA investigations would be closed



SEC - Cobalt International Energy Case Closed

- On Jan. 29, 2018, Cobalt announced that the SEC had concluded its FCPA investigation without action
- Investigation involved funding of a research center pursuant to an agreement with Sonangol EP, the Angolan state-owned oil and gas company
- In 2011, Cobalt had disclosed SEC and DOJ investigations into Cobalt's Angola operations and announced declinations in 2015 (SEC) and 2017 (DOJ)
- Cobalt filed for bankruptcy in Dec. 2017 and was delisted from the NYSE in Jan. 2018



Declinations/Case Closures

Takeaways

- Declinations under DOJ Corporate Enforcement Policy require voluntary disclosure and will be publicly announced by DOJ
- DOJ uses the Policy where it believes that an offense has been committed, but the Policy requirements have been satisfied
- Separate from the DOJ Corporate Enforcement Policy, both the DOJ and SEC continue to close cases where they have concluded that the matter does not merit enforcement action (because the statutory elements have not been met or for other reasons within their discretion)
- Voluntary disclosure, full cooperation, and robust remediation are still key factors from the DOJ/SEC perspective



IV. Settlements & Prosecutions



Summary of 18 Key Cases

9 Corporations

5 DOJ

- Panasonic Avionics Corp.
- Transport Logistics International Inc.
- Société Générale S.A.
- Legg Mason
- Credit Suisse Group AG

4 SEC

- Panasonic Avionics Corp.
- Elbit Imaging Ltd.
- Kinross Gold Corporation
- Dun & Bradstreet Corp.

9 Individuals

- Mark Lambert
- Arturo Escobar Dominguez
- Julia Vivi Wang
- Egbert Yvan Ferdinand Koolman
- Carlos Alberto Zelaya Rojas
- Frank Roberto Chatburn Ripalda
- Jose Larrea
- Azat Martirosian
- Vitaly Leshkov



Elbit Imaging Ltd. (SEC)

Matter Type	Disposition	Country	Date Initiated
SEC Civil	Cease-and-desist order – FCPA books and records; internal accounting controls provisions	Romania	3/9/2018

- Israel-based Elbit and subsidiary Plaza Centers NV
- Paid millions to third-party offshore consultants and sales agents for services related to real estate development project in Romania and a portfolio of U.S. real estate assets
- No allegation of bribery, but made payments without any evidence demonstrating services actually provided
- SEC considered Elbit’s self-reporting, cooperation, remedial acts, company’s sale of assets to pay debt, and lack of ongoing current or new business operations
- Elbit settled with SEC and agreed to pay \$500,000 civil money penalty



Kinross Gold Corporation (SEC)

Matter Type	Disposition	Country	Date Initiated
SEC Civil	Cease-and-desist order – FCPA books and records; internal accounting controls provisions	Mauritania Ghana	3/26/2018

- In 2010, Kinross acquired two African subsidiaries knowing that the companies lacked anti-corruption compliance programs and internal accounting controls
- Kinross took almost three years to implement adequate controls and failed to maintain controls once in place
- Kinross undertook remediation efforts including implementing new systems, hiring additional compliance personnel, conducting training, and hiring a consulting firm to assist with further improvements
- Settled with SEC and paid a \$950,000 civil money penalty
- DOJ declination in Nov. 2017



Dun & Bradstreet Corp. (SEC)

Matter Type	Disposition	Country	Date Initiated
SEC Civil	Cease-and-desist order – FCPA books and records; internal accounting controls provisions	China	4/23/2018

- Two Dun & Bradstreet Chinese subsidiaries made improper payments to third-party agents to obtain data vital to their business
- Pre-acquisition due diligence raised concerns about these subsidiaries, yet Dun & Bradstreet did not stop the improper payments or the false entries into the subsidiary's books and records for several years
- After Chinese police raided one of the subsidiaries, Dun & Bradstreet self-reported, cooperated fully, and implemented numerous remedial measures
- Settled with the SEC and paid disgorgement representing profits gained as a result of the conduct totaling \$6,077,820, prejudgment interest of \$1,143,664, and a civil penalty of \$2 million
- DOJ declined to prosecute citing the new FCPA Corporate Enforcement Policy

Panasonic Avionics Corp. (Joint DOJ & SEC)



Matter Type	Disposition	Country	Date Initiated
Joint (DOJ & SEC)	DPA & cease-and-desist order – FCPA accounting provisions	Middle East/Asia	4/30/2018

- PAC (a subsidiary of Panasonic) designs and distributes in-flight entertainment systems and global communications services for airlines and airplane manufacturers
- PAC allegedly retained a consultant who did little or no actual consulting work for PAC but was paid from a budget over which a senior PAC executive had control without meaningful oversight by others in the company
- Government alleged that PAC offered a consulting position to employee of a state-owned airline who had involvement in two agreements being negotiated at the time of the consulting offer
- SEC also alleged PAC backdated a contract in 2012, resulting in Panasonic misstating revenue for that quarter
- PAC agreed to pay \$137.4 million criminal penalty to DOJ and \$143 million in disgorgement to the SEC, a combined total over \$280 million
- Compliance monitor imposed

Transport Logistics International Inc. (DOJ)



Matter Type	Disposition	Country	Date Initiated
DOJ Criminal	DPA – FCPA anti-bribery provisions	Russia	3/12/2018

- International and domestic transportation of nuclear materials
- Bribed officials at JSC Techsnabexport (“TENEX”), a subsidiary of Russia’s state-owned nuclear energy corporation, Rosatom, to help TLI secure improper business advantages and obtain and retain business with TENEX
- TLI executives caused fake invoices to be prepared for services never provided; wired payments for those purported services to shell companies in Latvia, Cyprus, and Switzerland
- TLI cooperated fully and committed to implementing a compliance program
- Paid \$2 million criminal penalty (reduced from \$28 million due to inability to pay)



Legg Mason (DOJ)

Matter Type	Disposition	Country	Date Initiated
DOJ Criminal	NPA – Unspecified violations of FCPA	Libya	6/4/2018

- From 2004 to 2010, Legg Mason subsidiary, Permal Group Ltd., partnered with SocGen “to solicit business from state-owned financial institutions in Libya”
- SocGen paid “commissions” to a Libyan broker to benefit Legg Mason through its subsidiary Permal which managed funds invested by the Libyan state institutions and made \$31.6 million in profit from the “commissions”
- Legg Mason did not voluntarily and timely disclose the conduct, but fully cooperated in the investigation and fully remediated
- Agreed to pay \$64.2 million in penalties and disgorgement
- Agreed to enhance its compliance program, and to self-report to the DOJ on its enhanced compliance program



Credit Suisse Group AG (DOJ)

Matter Type	Disposition	Country	Date Initiated
DOJ Criminal	NPA – No criminal charges brought	Hong Kong; Asia-Pacific	6/6/2018

- Credit Suisse first disclosed in Feb. 2018 that the DOJ and SEC were investigating whether the bank hired referrals from government and other state-owned entities between 2007–2013 in exchange for investment banking business and regulatory approvals, in potential violation of the FCPA
- Credit Suisse did not give details about the specific hires that drew the attention of law enforcement, but it stressed that it had introduced new controls to prevent any recurrence
- Agreed to pay \$47 million criminal penalty to DOJ
- DOJ has not released the NPA
- SEC investigation is ongoing, according to Credit Suisse



Mark Lambert (DOJ)

Matter Type	Disposition	Country	Date Initiated
DOJ Criminal	Indictment	Russia	1/12/2018

- Former executive at Transport Logistics International (“TLI”) (discussed earlier)
- Lambert charged (along with former co-president Daren Condrey) with paying \$2 million in bribes to the former TENEX official Vadim Mikerin to award uranium transportation contracts to the company
- Condrey and Mikerin previously pleaded guilty to charges arising from the same scheme
- 11-count indictment with one count of conspiracy to violate the FCPA and to commit wire fraud, seven counts of violating the FCPA, two counts of wire fraud, and one count of money laundering
- Trial scheduled to begin on Apr. 30, 2019



Arturo Escobar Dominguez (DOJ)

Matter Type	Disposition	Country	Date Initiated
DOJ Criminal	Plea	Ecuador	2/20/2018

- Former Petroecuador business management coordinator who advised senior managers controlling the award and authorization of payments on contracts
- From 2012 to 2014 Dominguez was part of bribery scheme where he and other Ecuadorian officials received millions of dollars in bribes in exchange for contracts
- Personally received \$1.9 million in bribes in exchange for steering contracts and laundered bribe money through offshore shell companies, one of which is listed in the Panama Papers
- Entered into plea agreement with DOJ on Mar. 28, 2018
- Sentenced to 48 months in prison on Jun. 7, 2018



Julia Vivi Wang (DOJ)

Matter Type	Disposition	Country	Date Initiated
DOJ Criminal	Plea	Antigua and Barbuda	4/4/2018

- Chinese-born naturalized U.S. citizen
- Former VP of South-South News and International Organization for South-South Cooperation (headquartered in New York City)
- Helped Ng Lap Seng (convicted Jul. 2017) to bribe late former U.N. General Assembly President John Ashe and former Dominican Republic U.N. Ambassador Francis Lorenzo
- Pleaded guilty on Apr. 4, 2018 to three criminal counts of violating the FCPA, a related conspiracy count, and filing false tax returns after having wired a \$500,000 bribe in exchange for a diplomatic position for her or her late husband
- Sentencing date set for Sept. 5, 2018

Egbert Yvan Ferdinand Koolman (DOJ)



Matter Type	Disposition	Country	Date Initiated
DOJ Criminal	Information	Aruba	4/10/2018

- Dutch citizen residing in Miami, Florida
- Former official of Aruban state-owned Servicio di Telecomunicacion di Aruba N.V. (“Setar”)
- Pleaded guilty on Apr. 13, 2018 to one count of conspiracy to commit money laundering for his role in a scheme to arrange and receive corrupt payments to influence the awarding of contracts with an Aruban state-owned telecom corporation
- Personally received \$1.3 million in bribes in exchange for providing Setar’s confidential information and awarding mobile phone and accessory contracts to favored vendors
- Sentencing date set for Jun. 27, 2018



Carlos Alberto Zelaya Rojas (DOJ)

Matter Type	Disposition	Country	Date Initiated
DOJ Criminal	Indictment	Honduras	4/27/2018

- Citizen of Honduras residing in the New Orleans area
- Allegedly conspired with his brother, former Executive Director (“ED”) of the Honduran Institute of Social Security, to launder \$1.3+ million in bribes and funds misappropriated from Honduran Social Security Agency
- Two Honduran businessmen paid bribes to the ED; Rojas then laundered the bribes into New Orleans and used them to purchase real estate
- Rojas also used his brother’s high-ranking official position to profit from lucrative Honduran government contracts and then laundered misappropriated funds into the New Orleans area
- 12-count indictment on May 1, 2018 charging money laundering, impairing the court’s jurisdiction over property subject to forfeiture, impeding an official proceeding, and perjury
- Trial pushed back from Jul. 9 to Oct. 15 due to the large amount of evidence for the case

Frank Roberto Chatburn Ripalda & Jose Larrea (DOJ)



Matter Type	Disposition	Country	Date Initiated
DOJ Criminal	Indictment	Ecuador	4/19/2018

- Both men worked for GalileoEnergy SA, an Ecuadorian oil services company
- Facilitated \$3.2 million in bribe payments to officials at Ecuadorian state-owned oil company Petroecuador to secure contracts for GalileoEnergy SA

Frank Roberto Chatburn Ripalda

- Dual U.S. and Ecuadorian citizen
- Five-count indictment on Apr. 19, 2018 charging FCPA, conspiracy to violate the FCPA, money laundering, and conspiracy to commit money laundering
- Arraignment scheduled for Jun. 22, 2018

Jose Larrea

- U.S. citizen residing in Miami
- Co-conspirator to Ripalda
- Few details about how Larrea was connected to the bribery scheme
- One-count indictment on Apr. 19, 2018 charging conspiracy to commit money laundering

Azat Martirossian & Vitaly Leshkov (DOJ)



Matter Type	Disposition	Country	Date Initiated
DOJ Criminal	Information	Kazakhstan	5/24/2018

- Part of a scheme to pay bribes to foreign officials in Kazakhstan in exchange for directing business to Rolls-Royce Energy Systems Inc.
- Disguised payments as commissions to a third company in exchange for helping Rolls-Royce win contracts with Asia Gas Pipeline LLP (“AGP”)
- AGP awarded Rolls-Royce a contract in Nov. 2009 worth approximately \$145 million
- Rolls-Royce paid kickbacks to Martirossian and Leshkov who paid bribes to at least one foreign official in Kazakhstan
- Eleven-count indictment on May 24, 2018 charging the men with one count of conspiracy to launder money and 10 counts of money laundering
- Both are believed to be residing outside the United States

Azat Martirossian

- Citizen of Armenia and former Armenian ambassador to China

Vitaly Leshkov

- Citizen of Russia



V. Key International Anti-Corruption Developments

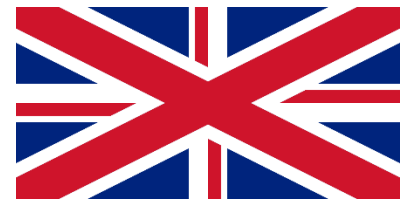
International Anti-Corruption Efforts

- ✓ Global Adoption of DPA Model
- ✓ UK Serious Fraud Office
- ✓ General Data Protection Regulation (“GDPR”)
- ✓ Developments in China



Global Adoption of DPA Model

- In response to the continued global focus on encouraging voluntary self-reporting, disclosure, and cooperation more countries have shifted towards the U.S. Deferred Prosecution Agreement Model
- Europe continues DPA usage
 - In the UK, DPAs have been recently described as “rewards for openness” and the SFO has continued to offer DPAs
 - France has followed in the UK’s footsteps by adopting stricter anti-corruption laws that include the DPA, requiring companies to establish compliance programs
- 2018’s new DPA adopters
 - Singapore enacts DPA legislation that requires court-approval, mirroring the UK scheme
 - Canada recently unveiled its version of a DPA, including a fine and a monitor but dropping charges after a period of compliance
 - Australia is expected to follow suit and also adopted a government task force’s recommendation for the imposition of harsher penalties
 - India and Indonesia – influential voices are urging the adoption of DPAs. No formal legislation has been passed



UK Serious Fraud Office

- Lisa Osofky, an American lawyer with DOJ experience, was appointed by UK AG to head the Serious Fraud Office
 - Renewable term of five years
 - Previously worked as a Special Attorney in the Fraud Section of the Criminal Division at DOJ and as Deputy General Counsel and Ethics Officer at FBI
 - Has prosecuted more than 100 cases for the U.S. government over her 30-year career
- SFO's core budget will increase by 50% this year, allowing them to take on bigger cases
- Crown Court dismissed two charges against Barclays over concerns about a \$3+ billion loan the bank provided to Qatar in 2008 and hundreds of millions of dollars of “advisory services” paid to Qatari investors



General Data Protection Regulation (“GDPR”)

- The GDPR went into effect on May 25, 2018 and expanded individuals’ rights to control how their personal information is processed and collected by organizations, forcing greater accountability and transparency
 - GDPR was immediately binding on all EU countries
 - GDPR applies to all personal data processed in the EU and to all companies that sell products or services in the EU, regardless of a person’s location
 - GDPR mandates that organizations cannot keep personal data indefinitely and advocates for better record management and information governance systems
 - Data privacy in Europe is a “fundamental right,” so companies that wish to process personal data will require justification for doing so

General Data Protection Regulation

- Some effects of GDPR on FCPA and anti-corruption efforts
 - GDPR will make it more complicated for companies to conduct due diligence and investigations on employees and third parties (particularly where review of prior criminal history is relevant)
 - GDPR may require more disclosure in some situations to individuals from whom data is sought/collected in an investigation
 - Production to government authorities in FCPA/anti-corruption investigations will become more complicated, with greater requirements for withholding and redaction of documents, which will be at odds with enforcement authorities' desire to obtain relevant evidence
 - DOJ and SEC have indicated generally that articulations of clear legal rules requiring withholding and/or redaction will be accepted (but routinely provide cooperation credit to companies that navigate data protection and similar laws to facilitate production to government authorities)



Developments in China

- China's National People's Congress established the National Supervision Commission ("NSC")
 - The NSC is an extrajudicial body that drastically expands the scope of President Xi Jinping's anti-graft crackdown
 - Follows last year's increased crackdown by China on internal government corruption
 - NSC will be an extrajudicial "political organ," allowed to prosecute individuals without due process and making it essentially more powerful than the judiciary
 - Concern that the NSC will extend to anyone in the public sector and undermine existing anti-corruption initiatives that are better at encouraging disclosure and transparency
 - NSC has been cited as engaging in alarming policies, such as holding a suspect incommunicado for six months, which experts say will hinder the campaign to fight corruption
- In Apr. 2018, Chinese officials proposed a plan to introduce default judgments against individuals charged in corruption-related cases who have fled overseas
- Chinese website wenshu.gov.cn publishes judgments against "bribe takers"
- China imposes stricter data regulations focused on protecting national security and reducing cross-border transfers of data



VI. Predictions for the Rest of 2018



Predictions for the Rest of 2018

- FCPA enforcement will remain a priority
- EU data privacy rules came into force on May 25, 2018 - no one quite knows what effect it will have on anti-bribery cases
- Cross-border coordination and enforcement will continue and will increase under the new “Piling On” Policy, but penalties will likely not decrease significantly



Questions?

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