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2018 FCPA Enforcement Actions and Highlights

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Overall, 2018 was a more active year in terms of Foreign Corrupt Practices Act ("FCPA") enforcement actions compared to 2017. In 2018, the Department of Justice ("DOJ") took a total of 40 enforcement actions,[1] and the Securities and Exchange Commission[2] ("SEC") took a total of 14 enforcement actions.

According to the FCPA Blog's 2018 FCPA Enforcement Index, 16 companies paid a total of $2.89 billion to resolve FCPA cases in 2018, including resolutions with the DOJ and the SEC, as well as DOJ declinations with disgorgement.[3] As anticipated over the past few years, the Yates Memo might have arguably shown its effect, as 32 out of the 40 enforcement actions taken by the DOJ were related to real persons, most of which were related to multiple bribery schemes involving PDVSA, a Venezuelan state-owned oil and natural gas company. In terms of the sectoral concentration of FCPA enforcement actions in 2018, we observe that a wide array of sectors were affected by these actions, including the investment banking, petroleum and technology sectors.

DOJ Declination Decisions

In April 2018, the DOJ closed its investigation with regard to the **Insurance Corporation of Barbados Limited** ("ICBL"). According to the DOJ, ICBL had paid approximately $36,000 in bribes to Donville Innis, a member of the Parliament of Barbados and the Minister of Industry, International Business, Commerce and Small Business Development of Barbados, in exchange for government contracts worth $93,000 in profits. Under the terms of the declination pursuant to the DOJ's Corporate Enforcement Policy, ICBL paid the DOJ about $93,900 in disgorged profits.

In April 2018, the DOJ closed its investigation with regard to **Dun & Bradstreet**, which is a company that provides commercial data and analytics services for businesses. According to the U.S. government, two Dun & Bradstreet subsidiaries in China made bribery payments to Chinese government officials. In its resolution with the SEC, Dun & Bradstreet agreed to pay over $9

[1] Please see https://www.justice.gov/criminal-fraud/case/related-enforcement-actions/2018
[2] Please see https://www.sec.gov/spotlight/fcpa/fcpa-cases.shtml
[3] Please see http://www.fcpablog.com/blog/2019/1/2/2018-fcpa-enforcement-index.html

million in disgorgement. According to the DOJ, the declination decision was based on, among other factors, (i) Dun & Bradstreet's identification of the misconduct, (ii) its prompt and voluntary self-disclosure, (iii) thorough investigation, (iv) full cooperation, and (v) the fact that it had agreed with the SEC to disgorge profits, despite the acts of bribery committed by the employees of Dun & Bradstreet's subsidiaries in China.

In August 2018, the DOJ closed its investigation with regard to **Guralp Systems Limited** ("GSL"), an engineering company based in the U.K., even though there was evidence of violations of the FCPA arising from the payment made by GSL to Heon-Cheol Chi, the director of the Earthquake Research Center at the Korea Institute of Geoscience and Mineral Resources. According to the DOJ, several reasons lead to the declination decision, such as GSL's (i) voluntary disclosure of the misconduct, (ii) significant remedial efforts, and (iii) being the subject of an ongoing parallel investigation by the U.K.'s Serious Fraud Office for violations of law relating to the same conduct, and its commitment to accepting responsibility for that conduct with the Serious Fraud Office.

DOJ Enforcement Actions

In March 2018, **Transport Logistics International Inc.** ("TLI"), a company providing services in the field of transportation of nuclear materials, agreed to resolve criminal charges in connection with a conspiracy involving the bribery of an official at a subsidiary of Russia's State Atomic Energy Corporation for awarding uranium transportation contracts, and also to pay a $2 million criminal penalty. TLI entered into a three-year deferred prosecution agreement ("DPA") with the DOJ. As per the DPA, the $2 million penalty amount is based on TLI's financial inability to pay the penalty set forth under the U.S. Sentencing Guidelines. TLI also committed to cooperate fully with the ongoing investigation, and to continue to implement a "compliance and ethics" program, designed to prevent and detect violations of the FCPA and other anti-corruption laws throughout its operations.

In March 2018, **Eberhard Reichert**, a former Siemens AG executive who worked for the company between 1964 and 2001, pleaded guilty and entered into a plea deal with the DOJ, for conspiring to violate the FCPA's anti-bribery, internal controls, and books and records provisions. The charges in this case involved making bribery payments to officials in ten countries, including to Argentine government officials, for $1 billion worth of contracts in order to create national identity cards, and using shell companies controlled by intermediaries to disguise and launder the funds.

In April 2018, **Panasonic Avionics Corporation** ("Panasonic Avionics"), a subsidiary of the multinational electronics company, Panasonic Corporation ("Panasonic"), agreed to pay a criminal penalty of $137,400,000 to resolve charges arising out of a scheme to retain consultants of its U.S. in-flight entertainment unit in the Middle East and Asia for improper purposes and to conceal payments to third-party sales agents between 2007 and 2016, in violation of the accounting provisions of the FCPA. According to the investigated party's admissions and court documents, Panasonic Avionics had knowingly and willfully caused Panasonic to falsify its books and records with respect to Panasonic Avionics' retention of consultants for improper purposes. Panasonic Avionics also entered into a DPA with the DOJ, which requires the company to be supervised by an independent monitor for at least two years.

In June 2018, **Société Générale S.A.** ("Société Générale"), a global financial services company based in Paris, France, and its subsidiary, SGA Société Générale Acceptance N.V., agreed to pay a combined total penalty of more than $860 million to settle with criminal authorities in the United States and in France, to resolve charges arising out of bribery payments to government officials in Libya. Société Générale entered into a DPA with the DOJ and it also reached a settlement with the Parquet National Financier ("PNF") in Paris. The United States will credit $292,776,444 that Société Générale will pay to the PNF under its agreement, equal to 50 percent of the total criminal penalty payable to the United States. According to the DOJ, this is the first coordinated resolution with French authorities in a foreign bribery case.[4]

In August 2018, **Legg Mason Inc**. ("Legg Mason"), an investment management firm based in Maryland, entered into a non-prosecution agreement ("NPA") with the DOJ by agreeing to pay $64.2 million to resolve charges relating to violations of the FCPA in Libya, as well as a civil penalty of $34 million to the SEC, in order to disgorge $27.6 million of ill-gotten gains and pay $6.9 million in prejudgment interest to settle the SEC's case. According to the DOJ and the SEC, Permal Group Inc., a former subsidiary of Legg Mason, partnered with a French financial services company to solicit investment business from Libyan state-owned financial institutions and engaged in a scheme to pay bribes to Libyan government officials through a Libyan middleman in order to secure investments. As a result of the bribery scheme, Legg Mason was awarded investments by the Libyan financial institutions, in the amount of $1 billion.

In September 2018, **Petróleo Brasileiro S.A**. ("Petrobras"), a Brazilian state-owned and state-controlled energy company, entered into an NPA with the DOJ, and also reached an agreement with the Brazilian authorities, agreeing to pay a combined total of $853.2 million in penalties to

[4] Please see https://www.justice.gov/opa/pr/soci-t-g-n-rale-sa-agrees-pay-860-million-criminal-penalties-bribing-gaddafi-era-libyan

resolve charges relating to violations of the FCPA. To resolve the SEC investigation, Petrobras agreed to pay an additional $933 million in profit disgorgement and prejudgment interest. According to the DOJ and the SEC, Petrobras executives, who consisted mostly of company board members, facilitated bid-rigging and bribery schemes by enabling their contractors to inflate the contracts for their infrastructure projects, where the contractors made facilitating payments to the Brazilian politicians and political parties responsible for appointing the Petrobras executives to their positions in exchange for the inflated contracts.

SEC Enforcement Actions

In March 2018, **Kinross Gold Corporation** ("Kinross Gold"), a Canada-based gold and silver mining company, paid a civil penalty of $950,000 to settle the SEC's charges for violating the FCPA's books and records and internal accounting controls provisions, arising from the company's repeated failure to implement adequate accounting controls for two African subsidiaries. According to the SEC, Kinross had acquired two African mining companies in 2010, operating in Mauritania and Ghana, which lacked the requisite anti-corruption compliance programs and internal accounting controls. Kinross Gold was able to implement adequate controls in three years; however, the company failed to subsequently maintain these controls. For example, Kinross Gold awarded a logistics contract to a company preferred by Mauritanian government officials. Furthermore, it paid vendors and consultants without making sure that the payments were consistent with its anti-bribery compliance policies.

In March 2018, **Elbit Imaging Ltd**. ("Elbit"), an Israel-based company operating in the real estate, medical imaging, hotels, shopping malls, and retail sectors, agreed to pay a $500,000 penalty to the SEC to resolve charges relating to violations of the FCPA's books and records and internal accounting controls provisions. According to the SEC, Elbit and its indirect subsidiary, Plaza Centers N.V., made large amounts of payments to third-party offshore consultants and a sales agent, for services related to a real-estate development project in Romania and the sale of a large portfolio of real-estate assets in the U.S., without knowing if the contracted services were actually provided. The companies also failed to accurately record these payments in their books and records, in a manner that fairly reflected their true nature.

In July 2018, **Beam Suntory Inc.** ("Beam"), a subsidiary of Suntory Beverage & Food Ltd., based in Chicago, which is a subsidiary of Suntory Holdings of Osaka, Japan, paid the SEC $8.2 million to resolve charges relating to violations of the FCPA, stemming from the improper payments made by its Indian subsidiary to government officials in India. According to the SEC, Beam's Indian subsidiary had used third-party sales promoters and distributors to make illicit payments to government employees between 2006 and 2012, in order to (i) increase sales orders,

(ii) process license and label registrations, and (iii) facilitate the distribution of Beam's distilled spirit products.

In September 2018, one of the biggest pharmaceutical companies in the world, **Sanofi S.A**. ("Sanofi"), based in Paris, France, agreed to pay $25.2 million (comprising a civil penalty of $5 million, $17.5 million in disgorgement payments and $2.7 million in prejudgment interest) to resolve charges relating to violations of the FCPA's books and records and internal accounting controls provisions, as a result of its subsidiaries in Kazakhstan and the Middle East bribing officials to win business contracts. According to the SEC, the bribery schemes spanned multiple countries and involved illicit payments to government procurement officials in Jordan, Lebanon, Syria, Bahrain, Kuwait, Qatar, Yemen, Oman, and the United Arab Emirates, in order to be awarded tenders and to increase prescriptions of its products. In March 2018, the DOJ had closed its four-year FCPA investigation without deciding to bring an enforcement action.

In September 2018, **United Technologies Corporation** ("United Technologies"), a Connecticut-based company providing high-technology products and services to the building systems and aerospace industries, settled charges with the SEC that it had violated the FCPA by making illicit payments in its elevator and aircraft engine businesses. United Technologies agreed to pay $13.9 million to resolve charges that its actions had violated the FCPA. According to the SEC, its subsidiary, Otis Elevator Co., had made payments in bribes to Azerbaijani officials to facilitate elevator equipment sales in Baku, and had also paid a Chinese sales agent in order to obtain confidential information from a Chinese official to help win engine sales contracts from a state-owned Chinese airline.

In September 2018, **Stryker Corporation**, a company based in Michigan operating in the medical device sector, agreed to settle with the SEC and pay a $7.8 million penalty to resolve charges relating to the FCPA's books and records and internal accounting controls provisions. According to the SEC, Stryker's internal accounting controls were not sufficient to detect the risk of improper payments in sales of Stryker products in India, China, and Kuwait, and Stryker's Indian subsidiary had failed to maintain complete and accurate books and records. Stryker had also been charged by the SEC back in October 2013, with respect to bribery payments made by its subsidiaries in five different countries to doctors, health care professionals, and other government-employed officials in order to obtain new business or retain existing business relationships.

On November 19, 2018, **Vantage Drilling Company** ("Vantage") agreed to pay $5 million to the SEC in disgorgement for violations of the FCPA's internal accounting controls provisions, regarding its failure to properly implement and maintain a system of internal accounting controls

related to its use of third-party marketing agents. According to the SEC, Vantage lacked sufficient internal accounting controls in relation to the heightened risk of conducting business in the oil and gas industry in Brazil.

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