Top Ten International Anti-Corruption Developments for September 2017

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FCPA + Global Anti-Corruption, Public Companies Counseling + Compliance, Securities Enforcement, and Investigations + White Collar Defense

Client Alert

By MoFo’s 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. This month we ask: What nearly billion dollar case did the U.S. Department of Justice (DOJ), Securities and Exchange Commission (SEC), Sweden, and the Netherlands resolve? What country is considering adding deferred prosecution agreements (DPAs) as an additional enforcement tool? How have countries lived up to their anti-corruption pledges in the year since a major international anti-corruption event in the UK? The answers to these questions and more are here in our September 2017 Top Ten list.

1. Sweden-Based Telecommunications Company Resolves Uzbek Bribery Allegations; Former Executives Charged in Sweden. On September 21, 2017, DOJ and SEC announced that Telia Company AB and its Uzbek subsidiary, Coscom LLC, had agreed to resolve allegations that they had paid over $330 million to an Uzbek official between 2007 and 2010 in order to enter and continue operating in the Uzbek telecommunications market. According to the allegations, the bribes were paid to a shell company controlled by the Uzbek official under the guise of payments for lobbying and consulting services that were never performed and generated over $2.5 billion in revenue and $457 million in profits. The official is reportedly Gulnara Karimova, the daughter of former Uzbek President Islam Karimov. The parent company, a former issuer, entered into a deferred prosecution agreement (DPA) with DOJ and agreed to an administrative cease-and-desist order with SEC, while the Uzbek subsidiary agreed to plead guilty to conspiring to violate the FCPA’s anti-bribery provisions. The agencies also announced that the resolution had been coordinated with Dutch and Swedish authorities, for a total combined penalty of approximately $966 million. This is the second corporate resolution involving similar allegations, following a coordinated resolution by U.S. and Dutch authorities with VimpelCom in February 2016. On September 22, 2017, Swedish prosecutors charged three of Telia’s former executives—former CEO Lars Nyberg,
former Eurasian business head Tevo Kivisaari, and an unnamed former manager—in connection with the alleged Uzbek bribery scheme. All three defendants deny the charges, the maximum sentence for which is six years’ imprisonment. No trial date has been set.

2. Massachusetts-Based Diagnostic Testing Equipment Maker Resolves Colombia and India FCPA Allegations. Pursuant to an SEC administrative order dated September 28, 2007, Alere Inc. agreed to resolve allegations that its subsidiaries in Colombia and India made improper offers and payments through distributors or consultants to foreign government officials to secure sales of its equipment in violation of the FCPA’s accounting provisions. According to the order, the misconduct in Colombia began prior to Alere’s acquisition of its subsidiary and while the customer was private and continued post-acquisition and after the Colombia Ministry of Health took over the customer—the order thus presents interesting issues with regard to M&A transactions and commercial bribery. The order also resolved alleged revenue recognition problems and tax accounting errors that had led the company to issue several restatements. In total, the company, without admitting or denying the allegations, agreed to pay a civil monetary penalty of $9.2 million, disgorgement of approximately $3.3 million (approximately $3.2 million of which was attributable to the alleged misconduct in Colombia from 2011-2013), and approximately $500,000 in prejudgment interest.

3. Former Alstom Executive Sentenced for FCPA Conviction. On September 25, 2017, District of Connecticut Judge Janet Bond Arterton sentenced former Alstom executive Frederic Pierucci to 30 months’ imprisonment following his July 2013 guilty plea to one count of violating the FCPA and one count of conspiracy to violate the FCPA in connection with a scheme to bribe Indonesian officials to secure a lucrative power generation contract. Charges against Pierucci were originally unsealed in April 2013 after Pierucci, a French national, was arrested upon his arrival at JFK International Airport in New York.

4. Former Miami Telecom Executive Sentenced for FCPA Conviction. Also on September 25, 2017, Southern District of Florida Judge Jose Martinez sentenced former Cinergy executive Amadeus Richers to 53 months’ imprisonment following his July 2017 guilty plea to one count of violating the FCPA in connection with a scheme to bribe officials at Haiti’s state-owned telecommunications company for various benefits. Richers, a Brazilian national, was originally charged in 2011 but had been considered a fugitive until his arrest in Panama and eventual extradition to the United States in February 2017. The 53 month term of imprisonment represented time Richers had already served, primarily in Panama as he awaited extradition.
Richers is the ninth individual to have been sentenced by Judge Martinez in the Haiti Teleco case. One of the other defendants, Joel Esquenazi, received the longest term of imprisonment in FCPA history, 15 years.

5. Logistics and Freight Operations Company and Six Employees Convicted of Angola Bribery Charges in the UK. On September 26, 2017, the UK Serious Fraud Office (SFO) announced that F.H. Bertling Ltd, a UK-based subsidiary of Germany’s Bertling Group, and six of its current and former employees had pleaded guilty to conspiracy to make corrupt payments to an agent of Sonangol, Angola’s national oil company, in connection with a contract worth approximately $20 million. The SFO also announced that another individual defendant had been acquitted by a jury at Southwark Crown Court on September 21, 2017. The SFO had originally announced the charges in July 2016.

6. World Bank Debars Australian Construction Company for Conduct in South Asia. On September 28, 2017, the World Bank announced a Negotiated Resolution Agreement (NRA) that debars SMEC International Pty. Ltd. for 12 months for alleged misconduct in South Asia, including allegedly inappropriate payments made in relation to World Bank-financed projects in India and Sri Lanka. The NRA also covers four subsidiaries based in Bangladesh, India, and Sri Lanka for periods varying from 6 to 30 months. The companies could also face cross-debarment by other multilateral development banks under the Agreement for Mutual Enforcement of Debarment Decisions, signed in 2010. Although the World Bank’s announcement did not contain detailed factual allegations, reports suggest that it had been investigating a sewerage project in Sri Lanka and a power plant project in Bangladesh.

7. Canadian Government Publishes DPA Consultation. On September 25, 2017, the Government of Canada announced that it would begin seeking public feedback to consider the possibility of introducing a Canadian DPA regime as an additional tool for prosecutors to address corporate crime. In an accompanying discussion paper, the Canadian Government noted that the United States and UK have DPA regimes in place, that France had adopted a DPA-like mechanism for anti-corruption investigations in November 2016, and that the Australian Ministry of Justice was considering the possibility of a DPA regime. (See our November 2016 and April 2017 Top Tens for more on DPA-related developments in France and Australia.) The discussion paper considers differences between the different regimes, potential advantages and disadvantages of a DPA regime, and other policy issues. The consultation period is scheduled to close on November 17, 2017.
8. Transparency International Analyzes Success of 2016 UK Anti-Corruption Summit. In May 2016, the UK hosted an international anti-corruption summit in London aimed at establishing a united global response to corruption. The summit resulted in a series of promises made by the 43 countries and 6 international organizations that attended. On September 19, 2017, Transparency International (TI) published a tracker “show[ing] how countries are keeping anti-corruption summit promises.” TI praised Spain and Indonesia for having been the most successful in living up to their promises but cited the United States, Switzerland, Japan, and the UK as having left important promises unfulfilled.

9. SEC Leadership Vow to Continue FCPA Enforcement. During a September 5, 2017 Roundtable on SEC Enforcement and Examination Priorities at the New York University School of Law, SEC Chairman Jay Clayton and SEC Co-Enforcement Director Steve Peikin stated that SEC would continue to enforce the FCPA. Repeating a theme from his confirmation hearings, Chairman Clayton noted the rise in international anti-corruption efforts since 2011, when he helped write a paper for the New York City Bar Association criticizing the United States for “unilateral and zealous enforcement of the FCPA.” Chairman Clayton went on to state that there would be no dramatic shift in SEC priorities, and Co-Director Peikin stated that FCPA enforcement would continue into the future.

10. Former Brazilian Presidents Hit with New Corruption Charges; Federal Prosecution Service Undergoes Change in Leadership. On September 5, 2017, former Brazilian presidents Luiz Inácio Lula da Silva and Dilma Rousseff, along with other senior Workers’ Party members, were charged with running a criminal organization that allegedly generated approximately $450 million in criminal proceeds involving Petrobras, Brazil’s state-owned oil company, and the Brazilian National Development Bank. Rousseff was removed from office in May 2016, but, unlike many other Brazilian politicians, had previously avoided charges related to the massive investigation into alleged misconduct at Petrobras known as Operation Lava Jato (Car Wash). The charges against Lula and Rousseff were brought by the Brazilian Federal Prosecution Service (MPF) under the leadership of prosecutor general Rodrigo Janot. On September 18, 2017, Janot was replaced in that position by Raquel Dodge. Dodge was appointed by current Brazilian president Michel Temer, who has himself been accused of corruption. It will be interesting to see how the MPF changes under Dodge’s leadership and, in particular, whether her appointment will affect the course of Lava Jato.