Top Ten International Anti-Corruption Developments for October 2017

Charles E. Duross, James M. Koukios, and Mingda Hang

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

Client Alert

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 are the latest developments in the U.S. Department of Justice’s (DOJ) sweeping investigation into alleged corruption in Venezuela? What new Canadian anti-corruption law has drawn the ire of the Russian president? What new anti-corruption measures were announced at the Communist Party of China’s National Congress? The answers to these questions and more are here in our October 2017 Top Ten list.

1. Venezuela Bribery Prosecution Continues to Grow. On October 11, 2017, DOJ announced that Fernando Ardila Rueda had pleaded guilty in the Southern District of Texas to one count of violating the Foreign Corrupt Practices Act (FCPA) and one count of conspiring to violate the FCPA for his role in bribing purchasing analysts at Petróleos de Venezuela SA (PDVSA), Venezuela’s national oil company, in order to gain business advantages. Rueda’s alleged co-conspirators included Abraham Shiera and Roberto Rincon, who pleaded guilty in March and June 2016, respectively, in connection with the same scheme. According to his guilty plea, from 2008 through 2014, while he was sales director, manager and partial owner of several of Shiera’s companies, Ardila provided entertainment and offered bribes to PDVSA officials based on a percentage of the value of contracts the officials helped to award to Shiera’s companies. Ardila is scheduled to be sentenced in February 2018. Seven other alleged members of the conspiracy, including several PDVSA officials, have also pleaded guilty. (See our January 2017 Top Ten for more.) And that number could grow. On October 26, 2017, Spanish police arrested former Venezuelan deputy energy minister Nervis Villalobos and two former executives from Venezuelan state-owned companies in connection with an arrest warrant issued in the same case. In addition to the investigative techniques used, this case is notable for DOJ’s aggressive prosecution of both the alleged bribe payers and the alleged bribe recipients.

2. Retired U.S. Army Colonel Indicted for Haiti Bribery Scheme. On October 4, 2017, DOJ announced that Joseph Baptiste, a dentist and retired U.S. Army colonel, had been indicted by a federal grand jury in Massachusetts on one count of conspiring to violate the FCPA and Travel Act, one count of violating the Travel Act, and one count of conspiring to commit money laundering for his role in an alleged scheme to bribe senior officials in Haiti in connection with an $84 million port development project. Baptiste was arrested in August 2017 in connection with the same scheme. According to the indictment, Baptiste solicited bribes from undercover agents posing as investors and told them that he would funnel the bribes to Haitian officials through a non-profit he controlled in order to secure approval of the port development project. The indictment also alleges that Baptiste discussed bribing an aide to a senior Haitian official by giving him a job on the port development project after he left his position. As we noted when Baptiste was arrested, this case demonstrates that DOJ is still willing to pursue aggressive investigative techniques, such as using undercover agents and surreptitious recordings, to make FCPA cases. DOJ’s use of a substantive Travel Act charge, rather than a substantive FCPA charge, is somewhat
unusual, and it will remain to be seen whether the Travel Act charges will provide DOJ with some tactical advantages as the case progresses.

3. Amsterdam-based Oil Field Services Company Discloses DOJ Declination. In an October 24, 2017 securities filing, Core Laboratories N.V., disclosed that it had received a letter from DOJ stating that the agency had closed its investigation into potential FCPA violations involving the company’s relationship with Unaoil, a Monaco-based consulting company at the center of several bribery investigations worldwide. Core Laboratories had first disclosed DOJ’s investigation in a May 2017 securities filing.

4. Sentencings in Foreign Bribery Related Cases. In October 2017, two defendants were sentenced following their convictions for foreign bribery related offenses.

• South Korean Official Sentenced for Money Laundering Conviction. On October 2, 2017, DOJ announced that Central District of California Judge John F. Walter had sentenced Heon-Cheol Chi, a former director of South Korea’s Earthquake Research Center at the Korea Institute of Geoscience and Mineral Resources (KIGAM), to 14 months’ imprisonment following his July 2017 jury conviction for using a Southern California bank account to launder bribes he received from two seismological companies.

• Middleman in Vietnam Skyscraper Case Sentenced for Fraud Conviction. On October 5, 2017, DOJ announced that Southern District of New York Judge Edgardo Ramos had sentenced Malcolm Harris to 42 months’ imprisonment following his June 2017 guilty plea to wire fraud and money laundering charges arising from his role as a middleman in a corrupt scheme to pay millions of dollars in bribes to a foreign official in connection with the sale of a skyscraper in Vietnam.

5. Employee of Canada-based Aircraft and Train Manufacturer Acquitted of Foreign Bribery Charges in Sweden. On October 11, 2017, the Stockholm District Court acquitted Evgeny Pavlov of aggravated bribery. Pavlov was an employee of Bombardier Transportation Sweden AB, a subsidiary of Canada’s Bombardier Inc. The court concluded that prosecutors had failed to prove that Pavlov had promised or offered an unfair advantage to an Azerbaijani official in order to secure a train signaling contract worth around $350 million. Swedish prosecutors announced the charges against Pavlov in August 2017. Pavlov was released from custody after seven months in jail on October 4, 2017, which was seen as signaling his eventual acquittal. On October 25, 2017, prosecutors filed an appeal challenging the district court’s finding.

6. Former Employees of Logistics and Freight Operations Company Sentenced in UK for Angola Bribery Scheme. On October 20, 2017, the UK Serious Fraud Office (SFO) announced that three former senior employees of the F.H. Bertling group were sentenced at Southwark Crown Court after pleading guilty to participating in a scheme to make corrupt payments to an agent of Sonangol, Angola’s national oil company, in connection with a contract worth approximately $20 million. Joerg Blumberg, Dirk Juergensen and Marc Schwieger were each given a 20 month sentence, suspended for two years and a £20,000 fine and were disqualified from being company directors for five years. The company and two other former employees who pleaded guilty still await sentencing. The SFO announced the guilty pleas in August 2017.

7. TRACE International Releases Bribery Risk Matrix. On October 12, 2017, TRACE International announced that it had released a new edition of its Bribery Risk Matrix. The Risk Matrix aggregates and analyzes data from institutions such as the United Nations, the World Bank, and the World Economic Forum along four dimensions: (1) the nature and extent of government interaction with the private sector; (2) the existence and enforcement of anti-bribery laws; (3) the degree of governmental transparency; and (4) the ability of civil society to monitor and expose corruption. Countries are then ranked based on their composite score on these dimensions. Sweden, New Zealand, and Norway come out on top of this year’s
ranking, while Turkmenistan, Venezuela, and Somalia finish in the last three positions, respectively. Along with the widely known Transparency International Corruption Perception Index (CPI), which was most recently revised in January 2017, the Trace Bribery Risk Matrix can serve as a valuable data point for assessing anti-corruption risk in international business.

8. Canada Adopts Justice for Victims of Corrupt Foreign Officials Act. On October 18, 2017, Canada adopted the Justice for Victims of Corrupt Foreign Officials Act, also known as the Sergei Magnitsky Act after a Russian lawyer who died in prison in 2009 after accusing Russian officials of corruption. The Act allows the Canadian government to impose sanctions and travel bans on foreign officials responsible for corruption or human rights violations. The United States enacted a similar law in 2012, which led to Russia retaliating by instituting its own travel ban on certain U.S. officials and a ban on the international adoption of Russian children into the United States. Russian President Vladimir Putin criticized the new Canadian law and accused Canada of playing “political games.”

9. OECD Criticizes Foreign Bribery Enforcement Efforts in Chile, Russia, and Sweden. On October 25, 2017, the Organisation for Economic Co-operation and Development’s (OECD) Working Group on Bribery made several statements critical of the foreign bribery enforcement efforts of Chile, Russia, and Sweden. The Working Group on Bribery is made up of the 35 OECD Member countries plus 8 additional countries—including Russia—that have joined the OECD Anti-Bribery Convention. The parties to the Convention are subject to a rigorous peer review process.

• With respect to Chile, the Working Group “noted with approval” that the country was considering draft legislative reforms to address recommendations on criminal sanctions and bank secrecy and applauded the country’s first two foreign bribery cases in 2015 and 2016 but criticized the country’s failure to implement other measures to strengthen its foreign bribery offense.

• With respect to Russia, the Working Group expressed “serious concerns regarding Russia’s continued failure to implement key legislative reforms to enable it to effectively investigate, prosecute and sanction the offence of foreign bribery.” (For previous OECD criticism of Russia’s foreign bribery enforcement, see our October 2016 Top Ten.)

• With respect to Sweden, the Working Group stated that the country’s laws on corporate responsibility for international bribery “need urgent reform.” According to the press release, the Working Group “is concerned about how effectively Sweden is able to investigate and sanction companies that bribe foreign public officials to obtain advantages in international business, such as foreign government procurement contracts in the building, transportation and information technology sectors.”

10. China Vows to Continue—and Strengthen—Its Anti-Corruption Campaign. At the 19th National Congress of the Communist Party of China, held between October 18 and 24, 2017, the Central Commission for Discipline Inspection (CCDI), China’s top anti-graft watchdog, reported its work over the past five years. Since President Xi Jinping came to power in 2012, the CCDI has undertaken a massive campaign against corruption and extravagance within the Communist Party, reportedly jailing or otherwise punishing nearly 1.4 million party members. Xi called the anti-corruption campaign “irreversible” in his October 29, 2017, congressional address and vowed that China would keep up the momentum. Indeed, according to the CCDI work report, which was released on October 29, 2017, a draft law on national supervision will be submitted to the 13th National People’s Congress for approval in March 2018. In addition, a new anti-corruption agency, the National Supervision Commission, will be set up under the new law and will share responsibility and personnel with the CCDI. The new law and the new anti-corruption agency are aimed at broadening the anti-corruption campaign to all public servants exercising public power, beyond the CCDI’s jurisdiction over only Party members.