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INTERNATIONAL

OECD Publishes New Country Reports on Implementation of the Foreign Bribery Convention

The OECD's Working Group on Bribery released reports on the implementation of the OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions by Japan, Italy, and Switzerland. OECD criticized Japan for not actively detecting and investigating foreign bribery cases and recommended the country to establish a legal basis for confiscating the proceeds of bribing foreign public officials and amend legislation to establish a new crime, laundering the proceeds of foreign bribery. The primary recommendation for Italy is extending its statute of limitations to allow more time to prosecute and sanction companies and individuals in foreign bribery cases. In the past decade, Italy has concluded prosecutions against 60 defendants for foreign bribery, but only 3 companies and 9 individuals were sanctioned. The existing limit is the primary reason that significant enforcement efforts have led to only limited results. Switzerland received praise on its first conviction of a company for foreign bribery and a recommendation to continue its enforcement efforts. The report noted that Switzerland is particularly exposed to the risks of bribery of foreign public officials due to its important financial sector and the large number of multinational enterprises based there.

The OECD reports are available at
<http://www.oecd.org/dataoecd/59/51/49377330.pdf> (Japan),
<http://www.oecd.org/dataoecd/59/47/49377261.pdf> (Italy), and
<http://www.oecd.org/dataoecd/59/53/49377354.pdf> (Switzerland).

Sources:
http://www.oecd.org/document/21/0,3746,en_2649_37447_49377493_1_1_1_37447,00.html;
http://www.oecd.org/document/48/0,3746,en_2649_37447_49377392_1_1_1_37447,00.html;
http://www.oecd.org/document/49/0,3746,en_2649_37447_49377841_1_1_1_37447,00.html.

The World Bank Publishes Sanctions Board Law Digest

The World Bank Group released the Sanctions Board Law Digest, publicly detailing for the first time the rationale behind how the Bank holds entities accountable for fraud, corruption, and other wrongdoing. Since 1999, the World Bank Group has sanctioned more than 450 firms and individuals. The

independent Sanctions Board is the final decision-maker in all contested cases. Until now, the decision-making process behind the sanctions was kept confidential. In a major step toward greater transparency and accountability, the new Law Digest presents information about past Sanctions Board decisions that illustrates the types of cases received and the legal principles the Sanctions Board has applied in deciding liability and sanctions. The World Bank is the first among multilateral development institutions to publish a document of this kind. The Digest is available at <http://go.worldbank.org/S9PFFMD6X0>.

Source:

http://web.worldbank.org/WBSITE/EXTERNAL/NEWS/0..contentMDK:23065147~menuPK:34466~pagePK:34370~piPK:34424~theSitePK:4607.00.html?cid=EAP_GACGovHubNewsletterEN_M_EXT

The World Bank Updates Its Strategy on Strengthening Governance and Tackling Corruption

The World Bank has recently updated its 2007 strategy, Strengthening World Bank Group Engagement on Governance and Anticorruption. The January 2012 document calls for engaging with countries on governance and anticorruption as an integral part of the Bank's work to improve development effectiveness, reduce poverty, and promote growth. The updated strategy is available at http://siteresources.worldbank.org/EASTASIAPACIFICEXT/Images/226299-1251872399239/StrengtheningGovTacklingCorruption1-17-12.pdf?cid=EAP_GACGovHubNewsletterEN_M_EXT.

UNITED STATES

Marubeni Corp. Agrees to \$54.6M Penalty to Settle FCPA Charges

Marubeni Corporation of Tokyo, Japan has agreed to pay a \$54.6 million criminal penalty to resolve charges related to the Foreign Corrupt Practices Act (FCPA) for its participation in a decade-long scheme to bribe Nigerian government officials to obtain engineering, procurement and construction (EPC) contracts. According to the criminal information filed by the U.S. Department of Justice, Marubeni was hired as an agent by the four-company TSKJ joint venture to help TSKJ obtain and retain EPC contracts to build liquefied natural gas (LNG) facilities on Bonny Island, Nigeria. TSKJ was comprised of Technip S.A., Snamprogetti Netherlands B.V., Kellogg Brown & Root Inc. (KBR) and JGC Corporation. TSKJ paid approximately \$51 million to Marubeni during the course of the bribery scheme and intended for these payments to be used, in part, for bribes to Nigerian government officials. TSKJ was able to secure four major EPC contracts valued at more than \$6 billion between 1995 and 2004.

Under the terms of the deferred prosecution agreement, the DOJ agreed to defer prosecution of Marubeni for two years and Marubeni agreed to retain a corporate compliance consultant for two years to review the design and implementation of its compliance program and to cooperate with the DOJ in ongoing investigations.

Source: <http://www.justice.gov/opa/pr/2012/January/12-crm-060.html>.

Two Defendants in FCPA Sting Case Acquitted

After a three month trial and nine days of deliberation, a Washington, D.C. federal jury acquitted R. Patrick Caldwell and John Gregory Godsey, two Africa sting case defendants, of charges they participated in a scheme to bribe the defense minister of Gabon in violation of the FCPA. The judge asked the jury to continue deliberating charges against three other defendants, John and Jeana Mushriqui and Marc Morales. The sixth defendant, Stephen G. Giordanella, was exonerated last month.

Source: http://blogs.wsj.com/corruption-currents/2012/01/30/jury-acquits-two-defendants-in-fcpa-sting-case/?mod=google_news_blog.

Judge Dismisses Twelve FCPA Counts in Foreign Bribery Case

U.S. District Judge Lynn N. Hughes granted defendant John O'Shea's motion to dismiss twelve counts of violating the FCPA and one conspiracy count against him. Mr. O'Shea, a former manager of Swiss engineering firm ABB Ltd., was arrested and charged in December 2009 for allegedly facilitating payment of bribes to officials at a Mexican state-owned utility to gain favorable standing with regard to future contracts on behalf of a Houston-based ABB Ltd.'s subsidiary. Judge Hughes cited the lack of credibility of the DOJ's main witness, the alleged intermediary, who sought to tie O'Shea to the crimes in question. O'Shea still faces four counts of international money laundering and one count of falsifying records. Judge Hughes carved out the FCPA counts from the government's case in October 2010. ABB Ltd. pleaded guilty to FCPA violations in 2010 and paid more than \$58 million in civil and criminal penalties.

Source: http://blogs.wsj.com/corruption-currents/2012/01/17/houston-judge-tosses-foreign-bribery-case-hands-doj-new-setback/?mod=WSJBlog&utm_source=feedburner&utm_medium=feed&utm_campaign=Feed%3A+wsj%2Fcorruption-currents%2Ffeed+%28WSJ.com%3A+Corruption+Currents%29.

AFRICA

Cameroon Enacts Anticorruption Law

The Cameroonian parliament has recently enacted a new anticorruption law which empowers the Minister of Justice to authorize the dismissal of embezzlement and other corruption charges against defendants who opt to return the ill-gotten assets. The reaction to the law has been mixed. Proponents of the bill claim that this provision would allow for the greatest possible return of stolen funds and as such, the nation is likely to avail a boon of resources with which to undertake public works. Other proponents suggest that jail or other punitive measures without asset recovery is of little utility to the nation. Critics cite the troubling expansion of executive power allowing for ministerial interference with the discretion exercised by the judiciary in disposition of corruption cases. Additional criticism posits that this law encourages unscrupulous officials to be bolder in future attempts, as short-term embezzlement gains can be converted in short-run, high-yield investments from which capital gains can be realized and retained while the principle is returned to the state.

Source: <http://www.rnw.nl/africa/article/anti-corruption-law-cameroon>.

THE AMERICAS

Report: Mexico Lost \$872 Billion to Illicit Financial Outflows

A new report by Global Financial Integrity, "Mexico: Illicit Financial Flows, Macroeconomic Imbalances, and the Underground Economy," found that crime, corruption, and tax evasion cost the Mexican economy US\$872 billion between 1970 and 2010. The illicit financial outflows, which averaged 5.2% of GDP, grew significantly over the 41-year period studied, from US\$1 billion in 1970 to US\$68.5 billion in 2010. Illicit outflows were found to drive the domestic underground economy, which includes, among other things, drug smuggling, arms trafficking, and human trafficking. Thus, illegal capital flight was found to contribute to deterioration in governance. The GFI report is available at

http://www.gfintegrity.org/storage/gfip/documents/reports/mexico/gfi_mexico_report_english-web.pdf.

Source: <http://www.gfintegrity.org/content/view/493/70/>.

ASIA

Chinese Communist Party Watchdog Vows to Fight Corruption

Following a three day plenary session this month, the Communist Party of China's Central Commission for Discipline Inspection has vowed to continue its anticorruption drive in 2012. The Commission stressed the importance of anticorruption work while recognizing that eradication of corruption is an arduous task. The plenary session's communique called for stricter discipline and better education of Party members to ensure compliance with the Party's standards; scrutiny of election and promotion of officials; correction of "bad practices of infringing upon the people's interests" and forging "closer relations between Party officials and the masses;" and improving the system of corruption prevention and control to "further the anti-corruption fight and promote cleanness and honesty among Party officials." The plenary session underlined the significance of intensifying the long-term anticorruption efforts and resolving the problems related to graft before the Communist Party's 18th National Congress to be held later this year.

Source: http://news.xinhuanet.com/english/china/2012-01/10/c_131352957.htm.

Bribery Tops List of China's Business Crimes

According to a study conducted by Faren Magazine, bribery topped the list of criminal offenses committed by officials at China's state-owned companies in 2011. The study covered 199 publicly reported cases, of which 88 involved state-owned enterprises and 111 cases involved private enterprises. In the state-owned enterprises, corruption per convicted official averaged 33.84 million yuan (\$5.37 million) in 2011, up from 9.57 million yuan per person in 2010. Among the state-owned enterprise cases concluded last year, fourteen officials received death sentences and six were jailed for life. Among the private enterprise officials convicted, two were executed, five other received death sentences, and eleven were jailed for life.

Source: <http://english.cri.cn/6909/2012/01/16/2982s676375.htm>.

Iraq Publishes Payments from Its Oil Exports

Following the country's commitment to the Extractive Industry Transparency Initiative (EITI) standard of transparency in natural resource revenues, Iraq disclosed detailed information about the \$41 billion in revenues from oil and gas exports it received in 2009. Commenting on Iraq's first EITI report, Clare Short, Chair of the International EITI Board, noted that "Iraq has taken a significant step towards transparency in its all-important oil sector," which allows the country's citizens to "start to ensure that Iraq's resource wealth is properly managed." All of Iraq's revenues from petroleum products and natural gas exports are deposited into the Oil Proceeds Receipt Account pursuant to the UN Security Council Resolution 1483. In 2009, revenues from oil exports equaled 40% of the country's GDP, and Asian countries were the primary destination of Iraqi oil. Iraq's EITI Report is available at <http://ieiti.org.iq/ArticleShow.aspx?ID=36>.

Source: <http://eiti.org/news-events/iraq-publishes-payments-its-oil-exports>

The Philippines Adopts New Anticorruption Plan

President of the Philippines Benito Aquino recently announced a new anticorruption plan, the Good Governance and Anticorruption Cluster, for 2012-2016. Among the measures outlined in the new plan are: the National Payroll System, under which the salaries of government employees will be transferred directly to employees' bank accounts; the expansion of the operations of the Philippine Government Electronic Procurement System to include electronic bidding; procedures to ensure the speedy resolution of corruption cases by the Department of Justice and the Revenue Integrity Protection Service; the passage of the Whistleblower Protection Law and strengthening of the Witness Protection Program; and requiring all 24 government departments to disclose their budget information beginning this year.

Sources: <http://businessmirror.com.ph/home/top-news/21504-aquino-oks-4-year-anti-corruption-plan>;
<http://www.manilastandardtoday.com/insideNews.htm?f=2012/january/4/news5.isx&d=2012/january/4>.

EUROPE

The Mabey Case Concludes with Paying Back Dividends

U.K.'s Serious Fraud Office announced that Mabey Engineering (Holdings) Ltd agreed to pay back over £130,000 in dividends derived from the illegally gained Iraqi bridge-building contracts and pay £2,440 in costs. Mabey Engineering (Holdings) Ltd is the parent company of modular bridge manufacturers Mabey and Johnson Ltd (M&J) and part of the Mabey Holdings group.

M&J self-reported to the SFO the irregularities it had identified as a result of an internal investigation in the beginning of 2008. Subsequently, M&J cooperated with the SFO's investigations, pleaded guilty to charges of corruption and breaches of UN sanctions, and was convicted in September 2009. Since the self-referral, the company has introduced new management, anti-bribery and corruption procedures, and has appointed an independent monitor. M&J has been viewed by the SFO as having conducted itself in an exemplary way through its self-referral, extensive cooperation with the authorities, and the transformation of

the company.

Source: <http://www.sfo.gov.uk/press-room/latest-press-releases/press-releases-2012/shareholder-agrees-civil-recovery-by-sfo-in-mabey--johnson.aspx>.

Former Innospec Director Pleads Guilty to Corruption

Former Innospec Limited Global Sales and Marketing Director, Dr. David Turner, pleaded guilty to three counts of conspiracy to corrupt before Judge McCreath at Southwark Crown Court. On the first two counts, Dr. Turner pleaded guilty to giving corrupt payments to public officials in Indonesia and Iraq as inducements to secure, or as rewards for having secured, contracts to supply Innospec's products. Dr. Turner also pleaded guilty to a charge of conspiracy to corrupt Iraqi government officials to ensure that tests on MMT, a competitor product manufactured by Ethyl Corporation, conducted by or on behalf of the Government of Iraq, concluded with an unfavorable assessment of that product.

Source: <http://www.sfo.gov.uk/press-room/latest-press-releases/press-releases-2012/innospec-ltd-former-director-pleads-guilty-to-corruption.aspx>.

Swiss Attorney General Raises Compliance Standard for International Companies in Bribery Case

*By Dr. Daniel Lucien Buhr and Dr. Simone Nadelhofer
Lalive, Zurich*

On 22 November 2011, the Office of the Attorney General of Switzerland (the "OAG") issued a summary punishment order against Alstom Network Schweiz AG ("Alstom" or the "Company") for not having taken all necessary and adequate compliance measures to prevent bribery of foreign officials in Latvia, Tunisia and Malaysia.

The Company, a Swiss subsidiary of French Alstom SA, was fined 2.5m Swiss francs (USD 2.7m) and ordered to pay 36.4m Swiss francs (USD 39.4m) in compensation for illegal profits derived from bribery, which is an amount equivalent to the operational profit (EBIT) derived from the affected projects.

The OAG came to the conclusion that consultants engaged by Alstom in Latvia, Tunisia and Malaysia had paid a significant proportion of their success fees to foreign officials with the objective of influencing them to buy Alstom power plants and services.

Alstom was fined under Article 102 section 2 of the Swiss Criminal Code (a provision which is highly similar to the UK Bribery Act's corporate offense, i.e. the 'Failure of commercial organizations to prevent bribery') for its failure to take all necessary and adequate measures to prevent the bribery. The OAG noted that the use of agents on the basis of success fee remuneration schemes in countries with a high level of corruption (according to the corruption index of Transparency International) entails a considerable risk of criminal prosecution for companies.

In its decision the OAG specifically concluded that Alstom's compliance organization during

the period 2003 to 2008 was inadequately staffed, in terms of both the quantity – Alstom having 75,000 employees and only 17 compliance officers – and quality, because of missing professional compliance experience and insufficient internal training of its compliance personnel.

Another aspect addressed by the OAG was the independency of the compliance function. In addition to their compliance tasks, Compliance officers also provided legal advice to the sales department which included the drafting of agreements with consultants. This resulted in a lack of independence of the compliance function within the organization and insufficient authority to fulfill its task.

Alstom's internal process regarding the approval of payments to consultants, which for instance required 'proofs of rendered services' and prohibited payments to offshore companies and bank accounts, was sound in its design. However, it was either not followed at all, or only followed deficiently. Finally, Alstom did not take remedial action when it detected violations of the internal rules and processes by its own employees or external consultants.

In summary, the OAG's decision is of major relevance to all Swiss companies engaged in international transactions. Their Boards and executive committees have a duty to regularly assess whether their compliance governance and compliance management are effective and follow best demonstrated practice. Key aspects to be revisited are the independence and authority of the compliance function, its adequate staffing and resourcing, and the discipline employed in the enforcement of internal policies. A good guideline with regard to current compliance governance in Switzerland is the 2010 position paper by *economiesuisse* (the Swiss Business Federation) on 'Fundamentals of effective compliance management' (www.economiesuisse.ch).

Source: <http://www.news.admin.ch/message/index.html?lang=en&msg-id=42300>

UPCOMING EVENTS

Careers in International Anti-Money Laundering

Join the ABA SIL Anti-Money Laundering and Anticorruption Committees on Monday, February 6th, 2012 at 6:30 - 8:00 PM for a free, live-in-person program on Careers in International Anti-Money Laundering. The program will be held at the Center for Strategic and International Studies, 1800 K Street, N.W., Room B1B, Washington, DC 20006.

A panel representing a broad spectrum of practitioners who are focused on anti-money laundering issues will make a presentation to law students, new grads and those just interested in learning more about careers in AML. Panelists will share how they arrived at their present positions, what helped to get them there, the type of work they do and what they wish they'd known in law school related to AML careers.

REGISTER NOW at <http://www.wfls.org/2012/02/06/careers-in-international-anti-money-laundering/>.

ABOUT THE ABA SIL ANTICORRUPTION COMMITTEE

The International Anticorruption Committee facilitates efforts to deter corrupt practices in international business and promotes efforts to combat corruption, both in the United States and abroad. It provides a vehicle for constructive change by serving as a clearinghouse for information about anticorruption laws, treaties, policies, initiatives, and programs and by promoting interaction between individuals and organizations -- domestic and international, government and non-governmental. In addition, by encouraging the development and dissemination of new ideas, initiatives and "best practices," this committee promotes discussion amongst all stakeholders of practical steps that can be taken to reduce corruption.

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