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Anti-Corruption

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Anti-Corruption

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I. United States Developments

There was a significant uptick in the number of cases brought under the Foreign Corrupt Practices Act (“FCPA”) this year. The Department of Justice (“DOJ”) also issued new policy guidelines meant to encourage companies to voluntarily self-disclose wrongdoing and cooperate in corruption-related investigations.

A. SIGNIFICANT POLICY DEVELOPMENTS

1. *FCPA Pilot Program*

On April 5, 2016, the Chief of the DOJ Fraud Section issued a memorandum announcing the launch of a new, one-year FCPA enforcement pilot program.¹ Companies who voluntarily self-disclose FCPA-related misconduct and cooperate during investigations will get credit for their good behavior. Five companies received declinations in 2016 as part of the new program.²

B. RELEVANT LITIGATION

1. *United States v. Harder*

On March 2, a pre-trial ruling by the U.S. District Court for the Eastern District of Pennsylvania confirmed that employees of public international organizations constitute “foreign officials” under the FCPA and that the Travel Act can apply to criminal activity that occurs outside of the United

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1. Memorandum from Andrew Weissmann, Chief (Fraud Section), Crim. Div., U.S. DEP’T OF JUSTICE, *The Fraud Section’s Foreign Corrupt Practices Act Enforcement Plan and Guidance* (Apr. 5, 2016), available at <https://www.justice.gov/criminal-fraud/file/838416/download>.

2. See *U.S. DOJ FCPA Pilot Program Declinations*, U.S. DEP’T OF JUSTICE (last updated Sept. 29, 2016), <https://www.justice.gov/criminal-fraud/pilot-program/declinations>.

States so long as some “relevant conduct” territorially connects the defendant and his bribery scheme to the United States.³

2. *McDonnell v. United States*

On June 27, 2016, the United States Supreme Court unanimously vacated the conviction of former Virginia governor Bob McDonnell under the Hobbs Act and the honest-services fraud statute related to his taking \$175,000 in loans, gifts, and other benefits gifts from a Virginia businessman while in office.⁴ The Court found that McDonnell’s activity did not sufficiently constitute “official act[s]” under the statutes.⁵

3. *SEC v. Straub*

On September 30, 2016, the Southern District Court of New York ruled in favor of the Securities and Exchange Commission (SEC) on a motion for summary judgment to dismiss FCPA charges against three former executives of Magyar Telekom, Plc.⁶ The defendants, who are accused of bribing Macedonian government officials, argued that the SEC could not prove that they had “ma[d]e use of the mails or any means or instrumentality of interstate commerce” in “furtherance of” the alleged bribery scheme.⁷ The court ruled that despite residing in Hungary, the defendants’ false written representations to accountants which were then used “in the preparation of falsified SEC filings” were sufficient to establish jurisdiction under the FCPA.⁸

C. CORPORATE ENFORCEMENT ACTIONS

1. *SAP SE*

On February 1, 2016, German-based company SAP SE agreed to a SEC order to pay U.S. \$3.9 million in disgorgement and prejudgment interest related to allegations that the company paid \$145,000 in bribes to a senior Panamanian government official.⁹ The bribes were allegedly orchestrated by Vincente Eduardo Garcia, SAP’s Vice-President of Global and Strategic Accounts, who arranged large, illegitimate discounts to one of SAP’s corporate partners in order to generate a slush fund to bribe officials.¹⁰

3. *Id.* at 15.

4. *McDonnell v. United States*, 136 S. Ct. 2355, 2357 (2016).

5. *Id.* at 2375.

6. Opinion and Order at 26, *SEC v. Straub, et al.*, No. 11-cv-09645 (S.D.N.Y. 2016), ECF No. 261.

7. *Id.* at 13.

8. *Id.* at 16.

9. In the Matter of Sap Se, Respondent., Exchange Act Release No. 34-77005, 113 SEC Docket 8 (Feb. 1, 2016), available at <https://www.sec.gov/litigation/admin/2016/34-77005.pdf>.

10. *Id.* ¶ 14.

2. *SciClone Pharmaceuticals*

On February 4, 2016, California-based SciClone Pharmaceuticals, Inc. agreed to pay the SEC over U.S. \$12 million to settle charges that it violated the FCPA.¹¹ Managers at the parent company were allegedly told that VIP healthcare professionals were provided trips, meals, and entertainment.¹² Further, travel companies were allegedly hired to provide services in connection with what were ostensibly legitimate conferences, when in actuality there was no legitimate educational purpose.¹³

3. *PTC Inc.*

On February 16, 2016, Massachusetts-based PTC, Inc. entered into separate settlement agreements with both the DOJ and SEC regarding allegations that two PTC China-based subsidiaries provided improper travel, gifts, and entertainment, disguised as commissions, totaling nearly \$1.5 million to Chinese government officials who were employed by state-owned entities that were PTC customers.¹⁴ PTC agreed to pay U.S. \$11.8 million in disgorgement and U.S. \$ 1.7 million in prejudgment interest to settle the SEC's charges, and its Chinese subsidiary, PTC China, entered into a non-prosecution agreement (NPA) with the DOJ, agreeing to a U.S. \$14.5 million penalty.¹⁵

4. *VimpelCom Ltd.*

On February 18, 2016, Dutch company VimpelCom Ltd. agreed to a deferred prosecution agreement (DPA) with the DOJ and a consent agreement with the SEC pertaining to VimpelCom's business in Uzbekistan.¹⁶ According to the SEC, VimpelCom paid more than U.S. \$114 million in bribes—disguised as sham contracts and charitable donations—to a government official in Uzbekistan to benefit VimpelCom's business there.¹⁷ VimpelCom agreed to pay U.S. \$230.3 million in criminal penalties to the DOJ and U.S. \$167.5 million to the SEC, and U.S. \$397.5 million to the Dutch Public Prosecution Service, bringing the total global resolution amount to more than U.S. \$835 million.¹⁸

11. In the Matter of SciClone Pharmaceuticals, Inc., Securities Exchange Act Release No. 34-77058, 113 SEC Docket 8 (Feb. 4, 2016), available at <https://www.sec.gov/litigation/admin/2016/34-77058.pdf>.

12. *Id.* ¶ 5.

13. *Id.* ¶ 11.

14. See Press Release, Tech Company Bribed Chinese Officials, SEC. & EXCH. COMM., 2016-29 (Feb. 16, 2016), <https://www.sec.gov/news/pressrelease/2016-29.html>.

15. *Id.*

16. Press Release, Vimpelcom to Pay \$795 Million in Global Settlement for FCPA Violations, SEC. & EXCH. COMM., 2016-34 (Feb. 18, 2016), <https://www.sec.gov/news/pressrelease/2016-34.html>.

17. See *id.*

18. *Id.*

5. *Qualcomm*

In September 2010, a whistleblower informed the SEC of allegations of wrongdoing by California-based Qualcomm, Inc. Qualcomm settled with the SEC on March 1, 2016, and agreed to pay a U.S. \$7.5 million penalty for violations of the FCPA.¹⁹ Qualcomm allegedly offered and provided full-time employment and paid internships to foreign officials' family members in order to obtain business in China.²⁰ Last November, the DOJ informed Qualcomm that it had terminated its investigation and would not pursue any charges against the company.

6. *Olympus Latin America Inc.*

On March 1, 2016, Olympus Corp. of the Americas and its Miami-based subsidiary, Olympus Latin America, Inc., agreed to pay U.S. \$646 million in total penalties for the illegal payments to doctors and hospitals both in the United States and in Latin America.²¹ The company was charged under the Anti-Kickback Statute for winning new business in the United States by giving doctors and hospitals kickbacks.²² The company's subsidiary was charged with violating the FCPA by establishing strategic "training centers" as well as a "Miles Program" through which it made improper payments and gifts to health care professionals in Latin America.²³

7. *Nordion Inc.*

Violations of the FCPA's books and records and accounting provisions were the basis of the SEC's March 3, 2016, order instituting a settled administrative proceeding against Nordion (Canada), Inc.²⁴ According to the SEC, Nordion used a third-party agent to help distribute the company's cancer treatment even though the agent was chosen with virtually no due diligence and lacked experience.²⁵ In a separate action, Nordion employee, Mikhail Gourevitch, also entered into a cease-and-desist order with the

19. See Press Release, SEC: Qualcomm Hired Relatives of Chinese Officials to Obtain Business, SEC. & EXCH. COMM., 2016-36 (Mar. 1, 2016), <https://www.sec.gov/news/press-release/2016-36.html>.

20. *Id.*

21. Press Release, Medical Equipment Company Will Pay \$646 Million for Making Illegal Payments to Doctors and Hospitals in United States and Latin America, U.S. DEP'T OF JUSTICE, 16-234 (Mar. 1, 2016), <https://www.justice.gov/opa/pr/medical-equipment-company-will-pay-646-million-making-illegal-payments-doctors-and-hospitals>.

22. See Complaint ¶¶ 7-10, United States v. Olympus Corp. of the Ams., No. 16-3524 (MF) (D.N.J. 2016), available at <https://www.justice.gov/usao-nj/file/829696/download>.

23. *Id.* ¶ 3.

24. In the Matter of Nordion (Canada), Inc., Securities Exchange Act Release No. 34-77289, 113 SEC Docket 12 (Mar. 3, 2016), available at <https://www.sec.gov/litigation/admin/2016/34-77290.pdf>.

25. *Id.* ¶ 7.

SEC, agreeing to pay close to U.S. \$180,000 in disgorgement, prejudgment interest, and a civil penalty.²⁶

8. *Novartis AG*

On March 23, 2016, Swiss-based company Novartis AG agreed to pay U.S. \$25 million to settle with the SEC due to violations of the FCPA books and records and accounting provisions.²⁷ Certain employees and agents of Novartis subsidiaries conducting business in China provided gifts, travel, entertainment, and other improper favors to health care professionals in China from 2009 to 2013.²⁸ These payments were improperly recorded on the company's general ledger as legitimate expenses.²⁹

9. *Las Vegas Sands Corp.*

On April 7, 2016, Las Vegas Sands Corp. consented to the entry of a SEC cease-and-desist order to settle charges that it violated the books and records and internal control provisions of the FCPA by failing to properly authorize or document U.S. \$62 million in payments to a consultant who was facilitating business activities in China and Macao.³⁰ The company agreed to a U.S. \$9 million civil monetary penalty and to retain an independent compliance consultant for a period of two years.³¹

10. *Akamai Technologies*

On June 7, 2016, Massachusetts-based company Akamai Technologies entered into a NPA with the SEC regarding allegations that the company's Chinese subsidiary arranged approximately U.S. \$40,000 in payments and improper gifts to induce Chinese government-owned entities to purchase more in services from the company than they actually needed.³² The DOJ notified the company that the agency had closed its investigations against the company, noting Akamai's prompt voluntary self-disclosure and cooperation as the basis for its decision not to prosecute.³³

26. In the Matter of Mikhail Gourevitch, Securities Exchange Act Release No. 34-77288, 113 SEC Docket 12 (Mar. 3, 2016), available at <https://www.sec.gov/litigation/admin/2016/34-77288.pdf>.

27. See In the Matter of Novartis AG, Securities Exchange Act Release No. 34-77431, 113 SEC Docket 15 (Mar. 23, 2016), available at <https://www.sec.gov/litigation/admin/2016/34-77431.pdf>.

28. *Id.* ¶¶ 8, 14.

29. *Id.*

30. See Press Release, Las Vegas Sands Paying Penalty for FCPA Violations, SEC. & EXCH. COMM., 2016-64 (Apr. 7, 2016), <https://www.sec.gov/news/pressrelease/2016-64.html>.

31. *Id.*

32. Non-Prosecution Agreement, In re Akamai Tech., Inc., SEC No. 2016-109 (SEC June 7, 2016), available at <https://www.sec.gov/news/press/2016/2016-109-npa-akamai.pdf>.

33. Letter from Daniel Kahn, U.S. Dep't of Justice, to Josh Levy, Akamai Technologies, Inc. 1 (June 6, 2016), <https://www.justice.gov/criminal-fraud/file/865411/download>.

11. *Nortek Inc.*

On June 7, 2016, the SEC announced a NPA with Rhode Island-based manufacturer, Nortek, Inc. Nortek's indirect, wholly-owned Chinese subsidiary made more than four hundred improper payments during a five-year period to local officials from multiple different governmental departments.³⁴ The payments were inaccurately recorded in the subsidiary's books, records, and accounts, which were consolidated into the books and records of Nortek.³⁵ The SEC noted that Nortek's self-reporting, extensive cooperation with the Commission's investigation, prompt tightening of its internal controls, and remedial measures to eliminate the problems resulted in the NPA.³⁶

12. *Analogic Corporation*

On June 21, Massachusetts-based company Analogic Corporation and its wholly-owned Danish subsidiary, BK Medical ApS, entered into an order with the SEC, agreeing to pay nearly fifteen million USD to resolve charges that it failed to keep accurate books and records and maintain adequate internal accounting controls.³⁷ The company allegedly engaged in a ten-year scheme involving hundreds of sham transactions with distributors that funneled approximately twenty million USD to third parties in Russia and elsewhere.³⁸ It agreed to a \$3.4 million USD penalty in a separate NPA with the DOJ.³⁹

13. *Johnson Controls, Inc.*

On July 11, Wisconsin-based Johnson Controls, Inc. agreed to pay more than fourteen million USD to the SEC regarding charges that it violated the FCPA's books and records and accounting provisions.⁴⁰ Employees of Johnson Controls' Chinese subsidiary made payments amounting to U.S.

34. See Non-Prosecution Agreement, Exhibit A – Statement of Facts at ¶¶ 3-5, *In re Nortek Inc.*, SEC No. 2016-109 (SEC June 7, 2016), available at <https://www.sec.gov/news/press/2016/2016-109-npa-nortek.pdf>.

35. *Id.* ¶¶ 7-8.

36. Press Release, SEC Announces Two Non-Prosecution Agreements in FCPA Cases, SEC. & EXCH. COMM., 2016-109, (June 7, 2016), available at <https://www.sec.gov/news/pressrelease/2016-109.html>.

37. Press Release, SEC Charges Medical Device Manufacturer with FCPA Violations, SEC. & EXCH. COMM., 2016-126, (June 21, 2016), available at <https://www.sec.gov/news/pressrelease/2016-126.html>.

38. *Id.*

39. Press Release, Analogic Subsidiary Agrees to Pay More than \$14 Million to Resolve Foreign Bribery Charges, U.S. DEP'T OF JUSTICE, 16-716 (June 21, 2016), available at <https://www.justice.gov/opa/pr/analogic-subsidiary-agrees-pay-more-14-million-resolve-foreign-bribery-charges>.

40. In the Matter of Johnson Controls, Inc., Securities Exchange Act Release No. 34-78287, 114 SEC Docket 11 (July 11, 2016), available at <https://www.sec.gov/litigation/admin/2016/34-78287.pdf>.

\$4.9 million to employees of Chinese government owned shipyards, ship-owners, and others to win business. Employees at the Chinese subsidiary circumvented previously implemented controls by utilizing third-party vendors who were deemed low risk, who would then pass on the payments to government officials.⁴¹ On June 21, 2016, the DOJ issued a letter of declination to the company, citing its voluntary disclosure, thorough investigation, full cooperation, remediation, and additional enhancements to its internal controls.⁴²

14. *LATAM Airlines*

On July 25, 2016, LATAM Airlines Group S.A. settled an administrative proceeding with the SEC regarding charges that its predecessor, LAN Airlines, failed to keep accurate books and records and maintain adequate accounting controls.⁴³ The SEC alleged that LAN entered into a fictitious \$1.15 million USD consulting agreement with a third party, knowing that the money would be used to funnel bribes to labor union officials with whom LAN Airlines had an existing dispute.⁴⁴ LATAM also entered into a DPA with the DOJ regarding the same matter, agreeing to pay a U.S. \$12.75 million criminal penalty.⁴⁵

15. *Key Energy Services, Inc.*

On August 11, 2016, Houston-based Key Energy Services, Inc. entered into a cease-and-desist order with the SEC to settle charges that it violated the internal controls and books and records provisions of the FCPA, relative to its Mexican subsidiary's use of a third-party consulting firm to make improper payments to Mexican officials.⁴⁶ The company agreed to disgorge five million USD. The SEC order further notes that Key Energy voluntarily disclosed the matter in May 2014, and had subsequently undertaken significant remedial efforts.⁴⁷ In April 2016, the company disclosed that the

41. *Id.* ¶¶ 6-11.

42. Letter from Daniel Kahn, U.S. Dep't of Justice, to Jay Holtmeier, Johnson Controls, Inc. 1 (June 21, 2016), <https://www.justice.gov/criminal-fraud/file/874566/download>.

43. In the Matter of LAN Airlines S.A., Securities Exchange Act Release No. 34-78402, 114 SEC Docket 13, 1 (July 25, 2016), *available at* <https://www.sec.gov/litigation/admin/2016/34-78402.pdf>.

44. *Id.* at 2.

45. Deferred Prosecution Agreement at 8, United States v. LATAM Airlines Grp. S.A., No. 0:16-CR-60195 (S.D. Fla. 2016), *available at* <https://www.justice.gov/opa/file/878806/download>.

46. In the Matter of Key Energy Services, Inc., Securities Exchange Act Release No. 34-78558, 114 SEC Docket 15, 1-2 (Aug. 11, 2016), *available at* <https://www.sec.gov/litigation/admin/2016/34-78558.pdf>.

47. *Id.* at 8.

DOJ had closed its investigation against the company and would not pursue charges.⁴⁸

16. *AstraZeneca PLC*

On August 30, 2016, U.K.-based company AstraZeneca PLC agreed to a settlement with the SEC, agreeing to pay more than five million USD to settle charges that it violated the books and records and internal controls provisions of the FCPA.⁴⁹ Between 2005 and 2010, AstraZeneca's wholly-owned subsidiaries in China and Russia were involved in multiple schemes allowing for improper payments to be made to foreign officials.⁵⁰ The SEC remarked that the company's existing controls were insufficient. The company did not provide adequate FCPA training to its sales and marketing employees in China and Russia nor did it employ reasonable due diligence and monitoring of third-party contractors.⁵¹

17. *Nu Skin Enterprises*

On September 20, 2016, Utah-based Nu Skin Enterprises settled charges with the SEC that it violated the FCPA's books and records and internal controls provisions. In 2013, Nu Skin's Chinese subsidiary allegedly made a U.S. \$154,000 payment to a local charity in order to influence an investigation by China's Administration of Industry and Commerce.⁵² The company had also promised to secure college recommendation letters for the child of a government official.⁵³ Under the settlement, Nu Skin agreed to pay disgorgement, prejudgment interest, and a civil penalty totaling U.S. \$765,688.⁵⁴

18. *Anheuser-Busch InBev*

On September 28, Belgian brewer Anheuser-Busch InBev agreed to pay a US \$6 million penalty to the SEC related to FCPA and whistleblower violations. The company allegedly made improper payments to sales distributors to be passed on to government officials in India, and then recorded the payments inaccurately on the company's books. The company

48. Key Energy Services, Inc., April 28, 2016 Form 8-K, available at <https://www.sec.gov/Archives/edgar/data/318996/000119312516564285/d188921d8k.htm>, (accessed Nov. 22, 2016).

49. In the Matter of AstraZeneca PLC, Securities Exchange Act Release No. 34-48730, 114 SEC Docket 18, 6 (Aug. 30, 2016), available at <https://www.sec.gov/litigation/admin/2016/34-78730.pdf>.

50. In the Matter of AstraZeneca PLC, Securities Exchange Act Release No. 34-48730, 114 SEC Docket 18, 4 (Aug. 30, 2016), available at <https://www.sec.gov/litigation/admin/2016/34-78730.pdf>.

51. *Id.* at 5.

52. In the Matter of Nu Skin Enterprises, Inc., Securities Exchange Act Release No. 34-78884, 115 SEC Docket 1, 2 (Sept. 20, 2016), available at <https://www.sec.gov/litigation/admin/2016/34-78884.pdf>.

53. *Id.* at 3.

54. *Id.* at 5.

also attempted to chill a whistleblower who reported the misconduct by including language in a separation agreement restricting the employee's communications with the SEC.⁵⁵

19. *Och-Ziff Capital Management Group LLC*

On September 29, 2016, New York-based hedge fund Och-Ziff Capital Management, along with its wholly-owned subsidiary, entered into a cease-and-desist order with the SEC and a DPA with the DOJ for violating the FCPA's anti-bribery, books and records, and internal control provisions.⁵⁶ Och-Ziff agreed to pay more than U.S. \$213 million in a criminal fine as well as approximately U.S. \$199 million in disgorgement and prejudgment interest.⁵⁷ Och-Ziff made payments to well-connected third parties who paid bribes to various African government officials in Libya, Niger, Chad, and other nations in exchange for investment opportunities.⁵⁸ Separately, Och-Ziff's CEO and CFO entered into agreements with the SEC to settle charges related to their involvement in the schemes.⁵⁹

20. *HMT LLC*

On September 29, 2016, the DOJ wrote a letter of declination to HMT LLC, a Texas-based manufacturer, concerning an investigation into the company's activities in China and Venezuela.⁶⁰ The DOJ noted the Department's FCPA pilot program and HMT's timely and voluntary self-disclosure, full cooperation, and remediation, as well as the fact that the company agreed to disgorge over U.S. \$2.7 million in profit from the illegally obtained sales in Venezuela and China.⁶¹

21. *NCH Corp.*

On September 29, 2016, the DOJ issued a public letter of declination to Texas-based NCH Corp., closing a FCPA investigation into the company for

55. Press Release, SEC Charges Anheuser-Busch InBev With Violating FCPA and Whistleblower Protection Laws, SEC. & EXCH. COMM., 2016-196, (Sep. 28, 2016), *available at* <https://www.sec.gov/news/pressrelease/2016-196.html>.

56. Press Release, Och-Ziff Capital Management Admits to Role in Africa Bribery Conspiracies and Agrees to Pay \$213 Million Criminal Fine, U.S. DEP'T OF JUSTICE, 16-1130 (Sept. 29, 2016), <https://www.justice.gov/opa/pr/och-ziff-capital-management-admits-role-africa-bribery-conspiracies-and-agrees-pay-213>.

57. *Id.*

58. *See generally id.*

59. Press Release, Och-Ziff Hedge Fund Settles FCPA Charges, SEC. & EXCH. COMM., 2016-203 (Sept. 29, 2016), <https://www.sec.gov/news/pressrelease/2016-203.html>.

60. Letter from Lorinda Laryea & Daniel Kahn, U.S. Dep't of Justice, to Steven A. Tyrrell, HMT LLC 1 (Sept. 29, 2016), <https://www.justice.gov/criminal-fraud/file/899116/download>.

61. *Id.* at 2.

making improper payments to Chinese government officials.⁶² The DOJ noted the FCPA Pilot Program and NCH Corp.'s timely and voluntary self-disclosure, full cooperation, and remediation, as well as its full disgorgement of profits.⁶³

22. *GlaxoSmithKline*

On September 30, 2016, UK-based pharmaceutical company GlaxoSmithKline PLC agreed to pay a twenty million USD civil penalty to the SEC to settle charges that it violated the FCPA's internal controls and recordkeeping provisions.⁶⁴ GSK used third parties that ostensibly provided legitimate travel services in order to hide payments to Chinese foreign officials.⁶⁵ The payments were recorded in GSK's books and records as legitimate expenses.⁶⁶

23. *Embraer*

On October 24, 2016, Brazilian aircraft manufacturer Embraer S.A. entered into a DPA with the DOJ and settlement with the SEC concerning four transactions in Saudi Arabia, India, Mozambique, and the Dominican Republic.⁶⁷ Embraer paid bribes to officials in these countries through the use of a mixture of third-party agents, acquaintances of the government officials, false invoices, and shell companies.⁶⁸ Embraer agreed to pay a U.S. \$107 million penalty to the DOJ and more than U.S. \$98 million in disgorgement and interest to the SEC.⁶⁹

24. *J.P. Morgan Chase*

On November 17, J.P. Morgan Chase and its Hong Kong-based subsidiary entered into a NPA with the DOJ and agreed to a cease-and-

62. Letter from Laura N. Perkins, Rohan A. Virginkar & Daniel Kahn, U.S. Dep't of Justice, to Paul E. Coggins, NCH Corp. 2 (Sept. 29, 2016) <https://www.justice.gov/criminal-fraud/file/899121/download>.

63. *Id.* at 2.

64. In the Matter of GlaxoSmithKline plc, Securities Exchange Act Release No. 34-79005, 115 SEC Docket 2, 3 (Sept. 30, 2016), *available at* <https://www.sec.gov/litigation/admin/2016/34-79005.pdf>.

65. *Id.*

66. *Id.*

67. See Press Release, Embraer Agrees to Pay More than \$107 Million to Resolve Foreign Corrupt Practices Act Charges, U.S. DEP'T OF JUSTICE, 16-1240 (Oct. 24, 2016), <https://www.justice.gov/opa/pr/embraer-agrees-pay-more-107-million-resolve-foreign-corrupt-practices-act-charges>.

68. Deferred Prosecution Agreement at A-4, United States v. Embraer S.A., No. 0:16-cr-60294-JIC (S.D. Fla. 2016), *available at* <https://www.justice.gov/criminal-fraud/file/904636/download>.

69. Press Release, Embraer Agrees to Pay More than \$107 Million to Resolve Foreign Corrupt Practices Act Charges, U.S. DEP'T OF JUSTICE, 16-1240 (Oct. 24, 2016), <https://www.justice.gov/opa/pr/embraer-agrees-pay-more-107-million-resolve-foreign-corrupt-practices-act-charges>.

desist administrative order by the SEC regarding violations of the anti-bribery, books and records, and internal controls provisions of the FCPA.⁷⁰ J.P. Morgan created a special hiring program in 2006 that gave preferential treatment to candidates referred by clients, prospective clients, or Chinese government officials in return for over U.S. \$100 million in business.⁷¹ J.P. Morgan agreed to pay more than U.S. \$264 million to settle the charges, including U.S. \$72 million to the DOJ, U.S. \$130 million to the SEC, and nearly U.S. \$62 million to the Federal Reserve Board of Governors.⁷²

25. *Odebrecht S.A. and Braskem S.A.*

On December 21, Brazilian-based construction company Odebrecht S.A. and its affiliate Braskem S.A. agreed to a US \$3.5 billion global settlement with authorities in the U.S., Switzerland and Brazil related to bribes paid to government officials spanning three continents.⁷³ In the US, both Odebrecht and Braskem entered into plea agreements with the DOJ, and Braskem, whose stock is traded on the U.S. markets, entered into a separate agreement with the SEC. The total amount to be paid by both companies to US authorities will be decided at a sentencing hearing in April 2017.

26. *Teva Pharmaceuticals Industries Ltd.*

On December 22, Israeli-based Teva Pharmaceuticals agreed to settle parallel investigations with the DOJ and SEC and pay over US \$519 million in penalties and fines related to bribes made to government officials in Mexico, Russia and Ukraine.⁷⁴ The bribes, many of which were concealed a legitimate payments to distributors, were used to increase market share, obtain regulatory and formulary approvals as well as favorable drug purchase and prescription decisions.⁷⁵

27. *General Cable Corporation*

On December 29, General Cable Corp. – Kentucky-based maker of copper, aluminum, and fiber optic wires and cables – agreed to pay US \$75.75 million in penalties and disgorgement to the DOJ and SEC for

70. See Press Release, JPMorgan's Investment Bank in Hong Kong Agrees to Pay \$72 Million Penalty for Corrupt Hiring Scheme in China, U.S. DEPT OF JUSTICE, 16-1343 (Nov. 17, 2016), <https://www.justice.gov/opa/pr/jpmorgan-s-investment-bank-hong-kong-agrees-pay-72-million-penalty-corrupt-hiring-scheme>.

71. *Id.*

72. *Id.*

73. See Press Release, Odebrecht and Braskem Plead Guilty and Agree to Pay at Least \$3.5 Billion in Global Penalties to Resolve Largest Foreign Bribery Case in History, U.S. DEPT OF JUSTICE, 16-1515, (Dec. 21, 2016), available at <https://www.justice.gov/opa/pr/odebrecht-and-braskem-plead-guilty-and-agree-pay-least-35-billion-global-penalties-resolve>.

74. Press Release, Teva Pharmaceutical Paying \$519 Million to Settle FCPA Charges, SEC. & EXCH. COMM., 2016-277, (Dec. 22, 2016), available at <https://www.sec.gov/news/pressrelease/2016-277.html>.

75. *Id.*

violating the FCPA in Angola, Bangladesh, China, Egypt, Indonesia, and Thailand.⁷⁶ The DOJ noted the company's voluntary self-disclosure and full cooperation during the investigation in offering the company a NPA and 50-percent reduction in penalties.⁷⁷

II. Enforcement Actions Abroad

A. CASES

1. *Algeria*

On February 2, 2016, German company Contel Funkwerk was banned from bidding for Algerian state contracts for five years⁷⁸ for its role in bribing several government employees of state energy firm Sonatrach.⁷⁹ The Algerian court also sentenced six employees to jail terms and fined two local companies.⁸⁰

2. *Brazil*

On March 8, 2016, Marcelo Odebrecht, CEO of Grupo Odebrecht SA, was found guilty of corruption and other crimes for his role in paying bribes to Brazilian state company Petrobras officials.⁸¹ He was sentenced to nineteen years in prison.⁸²

3. *Czech Republic*

On February 2, 2016,⁸³ Marek Dalík, a lobbyist and an ex-aide to a former Czech prime minister, was sentenced to five years in prison⁸⁴ for his role in a

76. See Press Release, General Cable Corporation Agrees to Pay \$20 Million Penalty for Foreign Bribery Schemes in Asia and Africa, U.S. DEP'T OF JUSTICE, 16-1536, (Dec. 29, 2016), available at <https://www.justice.gov/opa/pr/general-cable-corporation-agrees-pay-20-million-penalty-foreign-bribery-schemes-asia-and>.

77. *Id.*

78. See Hamid Ould Ahmed, *Algerian Court Jails Six in Oil Firm Corruption Case*, REUTERS (Feb. 2, 2016), <http://www.reuters.com/article/us-algeria-corruption-idUSKCN0VB27W>.

79. *Id.*

80. *Id.*

81. See Pedro Fonseca & Reese Ewing, *Brazil's Marcelo Odebrecht Gets 19-yr Sentence in Corruption Scandal*, REUTERS (Mar. 8, 2016), <http://www.reuters.com/article/brazil-corruption-odebrecht-idUSE6N13S03W>.

82. See Daniel Bland, *Odebrecht to sell off US\$3bn in assets in wake of Lavo Jato*, BNAMERICAS (Apr. 4, 2016), <http://www.bnamericas.com/en/news/infrastructure/odebrecht-to-sell-off-us3bn-in-assets-in-wake-of-lava-jato>.

83. See Eliška Hradilková Bártová, *Suma sumárum, aneb jak Marek Dalík nakupoval a prodával*, PRAVÝ PROSTOR (Mar. 12, 2016), <http://pravyprostor.cz/suma-sumarum-aneb-jak-marek-dalik-nakupoval-a-prodaval/>.

84. See Ruth Franková, *Lobbyist Marek Dalík sentenced to five years in prison over corruption case*, Czech Radio 7, RADIO PRAGUE (Feb. 2, 2016), <http://www.radio.cz/en/article/470211>.

corruption case involving Austrian company Steyr. Dalik's sentence was later reduced on appeal to four years.⁸⁵

4. *France*

On February 26, 2016, a French appeals court⁸⁶ found France-based extraction industry company Total SA guilty of bribing Iraqi officials and fined the company _750,000.⁸⁷

5. *Germany*

In April 2016, Chung Eui-sung, a former South Korean naval officer, and a former head of sales at MTU Friedrichshafen's,⁸⁸ was given a ten-month suspended jail sentence, and fined _30,000.⁸⁹ MTU, an arm of Tognum, now largely owned by Rolls-Royce, continues to be under investigation by German authorities,⁹⁰ who have already seized _12 million in profits MTU earned from South Korean sales obtained through bribery.⁹¹

6. *Israel*

On May 2, 2016, the Justice Ministry of Israel announced a settlement with Siemens AG.⁹² Siemens agreed to pay NIS 160 million (approximately forty-three million USD)⁹³ and accept a monitor for its operations in the country.⁹⁴ Siemens paid bribes to Israel Electric Corporation (IEC) over a six-year period,⁹⁵ including to former District Court Judge Dan Cohen,⁹⁶ who served on IEC's board.

85. See *Close Ally of Former Czech Leader Convicted of Fraud*, DAILY MAIL (May 31, 2016), available at <http://www.dailymail.co.uk/wires/ap/article-3618085/Close-ally-former-Czech-leader-convicted-fraud.html>.

86. See Gaspard Sebag, *Total, Vitol fined in Iraq Oil-for-Food Case by French Court*, BLOOMBERG (Feb. 26, 2016), <http://www.bloomberg.com/news/articles/2016-02-26/total-vitol-fined-in-iraq-oil-for-food-case-by-french-court-il3hkh41>.

87. *Id.*

88. See Jung Hwan-bong, *Arrest Warrant on Corruption Charges Sought for Big-name Defense Mogul*, HANKYOREH (July 2, 2015), http://english.hani.co.kr/arti/english_edition/e_national/698587.html.

89. See Karin Mattusek, *Rolls Royce Unit Mired in German Bribery Probe Over Asian Sales*, BLOOMBERG, (July 29, 2016), <http://www.bloomberg.com/news/articles/2016-07-29/rolls-royce-unit-mired-in-german-bribery-probe-over-asian-sales>.

90. *Id.*

91. *Id.*

92. See Tamar Pileggi, *Ex-power company execs charged in massive Siemens bribery case*, TIMES OF ISRAEL (May 3, 2016), <http://www.timesofisrael.com/ex-power-company-exec-charge-in-massive-siemens-bribery-case/>.

93. *Id.*

94. *Id.*

95. See Soon Weilun, *Israel Electric Corporation accepts \$33.1m settlement from Siemens*, BUSINESS TIMES (Nov. 16, 2016), <http://www.businesstimes.com.sg/companies-markets/israel-electric-corporation-accepts-s331m-settlement-from-siemens>.

On November 14, 2016, Nikuv International Projects Global Ltd. became the first company to be indicted⁹⁷ under Israel's Bribery of Foreign Public Officials law.⁹⁸ NIP settled with the Tel Aviv District Attorney, agreeing to pay a NIS 4.5 million forfeiture and fine, as well as additional penalties for paying in excess of \$500,000 in bribes to officials in Lesotho.⁹⁹

7. Italy

On April 7, 2016, an Italian appellate court sentenced former Finmeccanica CEO Giuseppe Orsi to four and one-half years in jail for false accounting and corruption,¹⁰⁰ reversing a 2014 lower court decision acquitting him.¹⁰¹ Orsi had appealed against the conviction,¹⁰² but the prosecution appealed against the acquittal on the corruption charge.¹⁰³ Both charges related to Orsi's role in bribes paid to Indian government officials.¹⁰⁴ Bruno Spagnolini, former CEO of Finmeccanica's helicopter subsidiary AgustaWestland, was also found guilty of both charges and sentenced to four years in prison.¹⁰⁵

8. Norway

On January 7, 2016, Norway's Sovereign Wealth Fund announced the no end-date conduct-based exclusion of Zhongxing Telecommunications Equipment Corporation (ZTE) from the Fund's investment portfolio for "gross corruption."¹⁰⁶

96. DC (TA) 4004/09 State of Israel v. Dan Cohen, (2016) (Isr.), available at http://www.isa.gov.il/Download/IsaFile_5990.pdf.

97. See Ela Levy-Weinrib, NIP Global Ltd. has been charged with bribing an official in Lesotho, GLOBES (Nov. 14, 2016), <http://www.globes.co.il/en/article-first-israeli-co-prosecuted-for-bribery-overseas-1001161089>.

98. Penal Law 5737-1977, LSI (1978) Special Volume 291A (Isr.) available at <https://www.oecd.org/daf/anti-bribery/anti-briberyconvention/43289694.pdf>.

99. See Levy-Weinrib, *supra* note 91.

100. See Eds., *Finmeccanica's ex-boss jailed for corruption*, LOCAL.IT (Apr. 8, 2016), <http://www.thelocal.it/20160408/finmeccanicas-ex-boss-sentenced-to-jail-for-corruption>.

101. See PTI, *Finmeccanica's ex-boss Giuseppe Orsi jailed for graft in Indian chopper deal*, THE ECONOMIC TIMES (Apr. 8, 2016) <http://economictimes.indiatimes.com/news/defence/finmeccanicas-ex-boss-giuseppe-orisi-jailed-for-graft-in-indian-chopper-deal/articleshow/51735773.cms>.

102. *Id.*

103. *Id.*

104. *See id.*

105. *Id.*

106. *Observation and Exclusion of Companies*, NORGES BANK INVESTMENT MANAGEMENT (last updated Mar. 7, 2017), <https://www.nbim.no/en/responsibility/exclusion-of-companies/>.

9. *South Korea*

On December 13, 2016, Jin Kyung-joon, a former vice-ministerial-level federal prosecutor, who was arrested whilst in office in July 2016¹⁰⁷, was sentenced to 4 years in prison for his role in a procurement fraud¹⁰⁸. Jin was convicted of organizing Korean Air to pay in direct over \$12 million in corporate contracts to his brother-in-law¹⁰⁹. The Korean Air official, Suh Yong-won involved retained his job, but was given a two-year suspended sentence¹¹⁰.

10. *United Kingdom*

On February 19, 2016, Sweett Group PLC was sentenced and ordered to pay £1.4m in fine, £851,152.23 in confiscation, and an additional, £95,031.97 in costs¹¹¹ as a result of a conviction arising from its activities in the United Arab Emirates.

On May 11, 2016, Peter Chapman, a former manager with Securrency PTY Ltd., was convicted of four counts of making corrupt payments to a Nigerian official to secure business.¹¹² Chapman was sentenced to 30 months on each count, to be served concurrently.¹¹³

On July 8, 2016, an unnamed small to medium sized enterprise¹¹⁴ was granted a DPA¹¹⁵, the second approved by the Serious Fraud Office (SFO),¹¹⁶ relating to the company's employees and agents' involvement in the systematic offering and payment of bribes to foreign officials. As a result of the DPA, the company will pay £6,201,085 disgorgement of gross profits and a £352,000 financial penalty.¹¹⁷ The company also agreed to provide reports to the SFO every twelve months for the duration of the DPA.

107. See *Top South Korean Prosecutor Arrested on Charges He Accepted Bribes*, New York Times (July 17, 2016), https://www.nytimes.com/2016/07/18/world/asia/top-south-korean-prosecutor-arrested-on-charges-that-he-accepted-bribes.html?_r=0

108. See *Former South Korean Prosecutor Gets 4 Years for Corruption*, The Associated Press (Dec 12, 2016), <http://www.asahi.com/ajw/articles/AJ201612130062.html>

109. *Id.*

110. *Id.*

111. Press Release, *Sweett Group PLC sentenced and ordered to pay £2.25 million after Bribery Act conviction*, SERIOUS FRAUD OFFICE (Feb. 19, 2016), <https://www.sfo.gov.uk/2016/02/19/sweett-group-plc-sentenced-and-ordered-to-pay-2-3-million-after-bribery-act-conviction/>.

112. Press Release, *Former Securrency Manager Convicted of Corruption*, SERIOUS FRAUD OFFICE (May 11, 2016), <https://www.sfo.gov.uk/2016/05/11/former-securrency-manager-convicted-corruption/>.

113. Press Release, *Former Securrency Manager Convicted of Corruption*, SERIOUS FRAUD OFFICE (May 12, 2016), <https://www.sfo.gov.uk/2016/05/12/former-securrency-manager-sentenced-corruption/>.

114. *Serious Fraud Office v. XYZ Ltd.* [2016] Lloyd's Rep. FC Plus 371 (QB) (UK), available at <https://www.sfo.gov.uk/download/xyz-preliminary-redacted/?wpdmdl=13249>.

115. Press Release, *SFO Secures Second DPA*, SERIOUS FRAUD OFFICE (July 8, 2016), <https://www.sfo.gov.uk/2016/07/08/sfo-secures-second-dpa/>.

116. *Id.*

117. *Id.*

B. ANTI-CORRUPTION LEGISLATION AND INITIATIVES

1. *Colombia*

On February 2, 2016, Colombia passed Law 1778,¹¹⁸ enacting an anti-bribery law that includes a broad definition of public officials,¹¹⁹ creates corporate liability for Colombian companies and their foreign subsidiaries,¹²⁰ sets forth strict penalties,¹²¹ and provides for potential reductions in penalties for evidencing a compliance program,¹²² diligence,¹²³ and for cooperation.¹²⁴

2. *France*

On November 8, 2016, France adopted Sapin II,¹²⁵ new anti-corruption legislation.¹²⁶ It bans influence trafficking;¹²⁷ creates a registry of lobbyists; forms a new enforcement department, the National Agency to Combat Corruption, tasked with the detection and prevention of corruption;¹²⁸ and makes corruptly influencing a foreign public official a criminal offence.¹²⁹ The bill also sets forth obligations for certain companies to implement corruption prevention plans,¹³⁰ expands extraterritorial reach, raises maximum fines for violations,¹³¹ and creates a new system whereby Deferred Prosecution Agreements (DPAs) will be allowed.¹³²

118. L. 1778, febrero 2, 2016, DIARIO OFICIAL [D.O.] (Colom.), available at http://www.secretariasenado.gov.co/senado/basedoc/ley_1778_2016.html, translated in <https://www.global-regulation.com/translation/colombia/6405379/by-establishing-rules-on-liability-of-legal-persons-they-are-dictated-by-acts-of-transnational-corruption-and-other-provisions-in-the-fight-against-co.html?q=bribery>.

119. *Id.* at ch.1, art. 2, ¶ 1.

120. *Id.* ch. 1, art. 2, ¶ 2.

121. Up to twenty years sanction, prohibiting them from doing business with the State. *See id.* at ch. 2, art. 5, ¶ 2.

122. *Id.* at ch. 2, art. 7, ¶ 7-8.

123. *Id.* at ch. 2, art. 7, ¶ 9.

124. *Id.* at ch. 2, art. 7, ¶ 6, 10.

125. The requirement of companies to implement an anti-corruption compliance and training program will go into effect June 1, 2017. Loi 2016-1691 du 10 décembre 2016 relative à la transparence, à la lutte contre la corruption et à la modernisation de la vie économique [Law 2016-1691 of December 10, 2016 on Transparency, the Fight Against Corruption, and the Modernization of Economic Life], JOURNAL OFFICIEL DE LA RÉPUBLIQUE FRANÇAISE [J.O.] [OFFICIAL GAZETTE OF FRANCE], Dec. 10, 2016, available at https://www.legifrance.gouv.fr/jo_pdf.do?id=JORFTEXT000033558528.

126. The requirement of companies to implement an anti-corruption compliance and training program will go into effect May 2017.

127. *Id.* at art. 18 § I.

128. *Id.* at art. 1.

129. *Id.* at art. 25, § I.

130. *Id.* at art. 17, § II, ¶ 1.

131. *Id.* at art. 22.

132. *Id.*

3. *Germany*

On June 4, 2016, Germany affected a new law¹³³ aimed at combating bribery and corruption in the healthcare sector, broadly defining “healthcare provider,” and making it a criminal offence¹³⁴ to give or receive bribes in the healthcare sector.

4. *Greenland*

On June 6, Greenland passed Parliament Act No. Fifteen on Sport and Exercise.¹³⁵ The new Act includes provisions requiring sports organizations and sports clubs to ensure that they and their athletes do not engage in match-fixing or other similar types of manipulations of outcomes¹³⁶ and prohibiting bribery by anyone involved in or carrying out missions associated with any nationwide or international competitions.¹³⁷

5. *India*

The Supreme Court of India made two important rulings¹³⁸ related to the prosecution of Indian civil servants involved in the taking of bribes.¹³⁹ The Court considered whether public servants continue to have protection from prosecution¹⁴⁰ if they remain public servants but have left the office under which they took a bribe. The court affirmed that protection is lost, and also upheld the requirement¹⁴¹ that further investigation and prosecution of public servants necessitates advance approval¹⁴² from the court.

6. *Mexico*

On July 18, 2016, the President of Mexico signed into law a sweeping set of new laws and amendments to its constitution under the banner of the

133. Gesetz zur Bekämpfung von Korruption im Gesundheitswesen [KorrBekGG] [Law on Combatting Corruption in Healthcare] May 13, 2016, BUNDESGESETZBLATT, Teil I [BGBl. I] at 1254 (Ger.), available at [http://www.bundesrat.de/SharedDocs/drucksachen/2016/0101-0200/181-16\(B\).pdf?__blob=publicationFile&v=1](http://www.bundesrat.de/SharedDocs/drucksachen/2016/0101-0200/181-16(B).pdf?__blob=publicationFile&v=1).

134. *Id.* at ¶ 2.

135. Inatsisartutlov nr. 15 af 6. juni 2016 om idræt og motion [Parliament Act No. 15 of 6 June 2016 on Sport and Exercise] June 6, 2016 (Green.), available at <http://lovgivning.gl/lov?rid{96DE056F-619E-4865-A341-41D5A80E5556}>, translated in <https://www.global-regulation.com/translation/greenland/5961242/parliament-act-no.-15-of-6-june-2016-on-sport-and-exercise.html?q=bribery>.

136. *Id.* at ch. 2, § 5.

137. *Id.* at ch. 2, § 6, ¶ 1-2.

138. L Narayana Swamy v. State of Karnataka, (2016) 2016(8) SCALE 560 (India), available at <https://indiankanoon.org/doc/187807399/>.

139. Prevention of Corruption Act, No. 49 of 1988, INDIA CODE (1988), vol. 4, available at <https://indiankanoon.org/doc/1331755/>.

140. *Id.* at § 19(1).

141. Code of Criminal Procedure, No. 2 of 1974, CODE CRIM. PROC. (1974), at para. 173(2) (India); L Narayana Swamy v. State of Karnataka, (2016) 2016(8) SCALE 560, at ¶ 25 (India).

142. *Id.* at ¶ 157(1).

National Anti-Corruption System (SNA).¹⁴³ The newest set of rules¹⁴⁴ establishes an enforcement scheme;¹⁴⁵ creates a means to impose sanctions upon public servants, as well as individuals and companies who violate anti-bribery laws;¹⁴⁶ creates a national public registry of all parties and public officials banned from participating in government contracting processes;¹⁴⁷ requires public officials to disclose (a) existing assets, (b) potential conflicts of interest, and (c) tax returns;¹⁴⁸ and creates defense options for companies under adequate procedures, self-reporting, and cooperation.¹⁴⁹

7. *South Korea*

On September 28, 2016, South Korea's Improper Solicitation and Graft Act¹⁵⁰ went into effect. In addition to increased penalties,¹⁵¹ the Act broadly defines "public institutions" and "public officials" (which includes teachers¹⁵² and their spouses¹⁵³ as well as journalists¹⁵⁴) and imposes severe value restrictions on the receipt of "advantages,"¹⁵⁵ including the gifts and meals they may receive.¹⁵⁶

8. *Slovakia*

In alignment with the EU public procurement rules,¹⁵⁷ and as part of the country's anti-corruption efforts under a law passed April 15, 2016,¹⁵⁸ on

143. Ley General del Sistema Nacional Anticorrupción de México [SNA], Diario Oficial de la Federación [DOF] 18-7-2016 (Mex.), available at http://www.dof.gob.mx/nota_detalle.php?codigo=5445048&fecha=18/07/2016.

144. *Id.*

145. *Id.* at tit. 2.

146. *Id.* at tit. 1, ch. I, art. 2(III).

147. *Id.* at tit. 4, art. 53.

148. *Id.* at tit. 3, ch. 1, art. 49.

149. Broadly defined throughout the legislation. See, e.g., *id.* at tit.2, ch. 1, art. 21.

150. Improper Solicitation and Graft Act, Act No. 13278, Mar. 27, 2015 (S. Kor.), available at <http://law.go.kr/engLsSc.do?menuId=0&subMenu=5&query=%EB%B6%80%EC%A0%95%EC%B2%AD%ED%83%81#liBcolor0>.

151. *Id.* at ch. 5, art. 22-23.

152. *Id.* at ch. 1, art. 2, ¶ 2(c).

153. *Id.* at ch. 3, art. 8, ¶ 3.

154. *Id.* at ch. 1, art. 2, ¶ 2(d).

155. *Id.* at ch. 1, art. 2, ¶ 3(a-c).

156. KRW 30,000 (± USD 27) for each meal; KRW 50,000 for gifts; KRW 100,000 cash gifts. *Id.* at ch. 3, art. 8, ¶ 1.

157. Directive 2014/23/EU of the European Parliament and of the Council of 26 February 2014 on the Award of Concession Contracts, 2014 O.J. (L94) 1; Directive 2014/24/EU of the European Parliament and of the Council of 26 February 2014 on Public Procurement and Repealing Directive 2004/18/EC, 2014 O.J. (L 94) 65; Directive 2014/25/EU of the European Parliament and of the Council of 26 February 2014 on Procurement by Entities Operating in the Water, Energy, Transport, and Postal Services Sectors and Repealing Directive 2004/17/EC, 2014 O.J. (L 94) 243.

158. See *Law Against Shell Companies is Empty*, THE SLOVAK SPECTATOR (Apr. 15, 2015), <http://spectator.sme.sk/c/20056920/dennik-n-law-against-shell-companies-is-empty.html>.

October 26, 2016, Slovakia announced that it had begun banning companies with undisclosed ownership from bidding on projects or conducting business with the state.¹⁵⁹

9. *Switzerland*

On September 15, 2016, Swiss authorities announced the launch of a new web-based platform www.fightingcorruption.ch that will enable anyone with information on possible acts of corruption to report their suspicions anonymously to Swiss law enforcement.¹⁶⁰

10. *Thailand*

On October 4, 2016, Thailand announced the establishment of its first anti-corruption court.¹⁶¹ The Thai Legislative Assembly unanimously approved the formation of the court June 17, 2016¹⁶²

III. Treaties and International Organizations

A. TREATIES

1. *Council of Europe's Criminal Law Convention on Corruption*

a. New Members

In August, San Marino ratified the Criminal Law Convention on Corruption and its Additional Protocol.¹⁶³

b. Reports & Announcements

In June 2016, the Group of States Against Corruption (GRECO) issued its Sixteenth General Activity Report¹⁶⁴ concerning eliminating corruption among parliamentarians, judges, and prosecutors, which included “an

159. See Tatiana Jancarikova, *Slovakia Steps Up Anti-Corruption Drive*, REUTERS (Oct. 26, 2016), available at <http://www.reuters.com/article/us-slovakia-corruption-idUSKCN12Q2BI>.

160. *New Anti-Corruption Reporting Platform*, FED. OFFICE OF POLICE (Sept. 15, 2016), <https://www.fedpol.admin.ch/fedpol/en/home/aktuell/news/2015/2015-09-15.html>.

161. Establishment of Criminal Court of Corruption and Malfeasance Cases 2559, GOV'T GAZETTE 133 71 A (Aug. 16, 2016) (Thai.), available at http://acop.ops.moc.go.th/ewt_dl_link.php?nid=106&filename=index.

162. See Thai PBS, *NLA Approves Bill to Create Criminal Court to Deal Exclusively with Corruption Cases*, PATTAYA MAIL (June 17, 2016), <http://www.pattayamail.com/thailandnews/nla-approves-bill-create-criminal-court-deal-exclusively-corruption-cases-139656>.

163. San Marino ratified the Criminal Law Convention on Corruption (ETS No. 173), and the Additional Protocol to the Criminal Law Convention on Corruption (ETS No. 191), COUNCIL OF EUROPE (Aug. 30, 2016), <http://www.coe.int/en/web/human-rights-rule-of-law/-/san-marino-ratified-the-criminal-law-convention-on-corruption-ets-no-173-and-the-additional-protocol-to-the-criminal-law-convention-on-corruption-ets->.

164. GROUP OF STATES AGAINST CORRUPTION (GRECO), 16TH GENERAL ACTIVITY REPORT (2015), <https://fm.coe.int/CoERMPublicCommonSearchServices/DisplayDCTMContent?documentId=09000016806cb949>.

overview of the impact of its recommendations concerning the legislation, practices[,] and institutional framework in the states it evaluated in 2015.”¹⁶⁵

GRECO also announced that the theme of its Fifth Evaluation Round would be “the prevention of corruption and the promotion of integrity in central governments . . . and law enforcement agencies.”¹⁶⁶

2. *Organization for Economic Co-Operation and Development (OECD)* *Anti-Bribery Convention*

a. Reports & Announcements

In October 2016, the OECD announced a collaborative effort with the African Development Bank (“AfDB”).¹⁶⁷ The OECD-AfDB Joint Initiative to Support Business Integrity and Anti-Bribery Efforts in Africa developed the “Anti-Bribery Policy and Compliance Guidance for African Companies,” which aims to provide “practical, concise” guidance on bribery prevention to African companies.¹⁶⁸

In November 2016, the OECD Working Group on Bribery published its report¹⁶⁹ on enforcement data spanning 1999 to December 2015.¹⁷⁰ The findings revealed that since 1999, “397 individuals and 133 entities have been sanctioned in criminal proceedings for foreign bribery in [seventeen] Parties.”¹⁷¹ Of the individuals, at least 115 were sentenced to prison.¹⁷²

165. *GRECO's Annual Report: Progress Needed in Preventing Corruption in Respect of MP's, Judges, and Prosecutors*, COUNCIL OF EUROPE (June 1, 2016), <https://www.coe.int/en/web/human-rights-rule-of-law/-/greco-s-annual-report-progress-needed-in-preventing-corruption-in-respect-of-mp-s-judges-and-prosecutors>.

166. *Council of Europe's Anti-Corruption Body GRECO to Monitor Prevention of Corruption in Respect of Top Government Officials and Law Enforcement*, COUNCIL OF EUROPE (Oct. 24, 2016), <https://www.coe.int/en/web/human-rights-rule-of-law/-/prevention-of-corruption-in-respect-of-top-government-officials-and-law-enforcement>.

167. *OECD and AfDB Launch Powerful Tool to Help African Companies Prevent Bribery*, OECD (Oct. 28, 2016), <http://www.oecd.org/corruption/oecd-and-afdb-launch-powerful-tool-to-help-african-companies-prevent-bribery.htm>.

168. *Id.*

169. *OECD WORKING GROUP ON BRIBERY, 2015 DATA ON ENFORCEMENT OF THE ANTI-BRIBERY CONVENTION* (2016), <http://www.oecd.org/daf/anti-bribery/WGB-Enforcement-Data-2015.pdf>.

170. *Data on Enforcement of the Anti-Bribery Convention*, OECD (Nov. 22, 2016), <http://www.oecd.org/corruption/anti-bribery/data-on-enforcement-of-the-anti-bribery-convention.htm>.

171. *Id.*

172. *Id.*

3. *United Nations Convention Against Corruption (UNCAC)*

a. New Members

In September 2016, Bhutan ratified the Convention and the Holy See acceded to it, bringing the number of State Parties to 180.¹⁷³

b. Reports & Announcements

In July 2016, the UNCAC Implementation Review Group issued its report on the Seventh session, held in Vienna on June 20-24, 2016.¹⁷⁴ The reviews' outcomes include (1) that challenges were most often related to the (a) "prosecution, adjudication, and sanctioning of corruption-related offenses"; (b) "freezing, seizure, and confiscation of assets"; and (c) "bribery of national public officials";¹⁷⁵ (2) the ongoing need for skill-development and training for judges, the legal profession, and law enforcement;¹⁷⁶ and (3) the critical role of capacity-building with respect to international cooperation and asset recovery.¹⁷⁷

B. INTERNATIONAL ORGANIZATIONS

1. *African Development Bank (AfDB)*

In November, the AfDB announced the establishment of the Africa Integrity Fund (AIF), a Fund that will provide grant funding to public entities such as law enforcement agencies, public audit institutions, and tax authorities, as well as civil society organizations and educational institutions.¹⁷⁸

The Fund is financed with penalties collected from the settlement of investigations conducted by the Bank's Integrity and Anti-Corruption Department (IACD).¹⁷⁹

173. *United Nations Convention Against Corruption Signature and Ratification Status as of 12 December 2016*, UNITED NATIONS OFFICE ON DRUGS AND CRIME (Dec. 12, 2016), <https://www.unodc.org/unodc/en/treaties/CAC/signatories.html>.

174. CONFERENCE OF THE STATES PARTIES TO THE UNITED NATIONS CONVENTION AGAINST CORRUPTION: IMPLEMENTATION REVIEW GROUP, REPORT OF THE IMPLEMENTATION REVIEW GROUP ON ITS SEVENTH SESSION, HELD IN VIENNA FROM 20 TO 24 JUNE 2016 (2016), <https://www.unodc.org/documents/treaties/UNCAC/WorkingGroups/ImplementationReviewGroup/20-24June2016/V1604450e.pdf>.

175. *Id.* at ¶ 47.

176. *Id.* at ¶ 50.

177. *Id.* at ¶ 57.

178. *AfDB Establishes Africa Integrity Fund*, AFRICAN DEV. BANK GROUP (Nov. 10, 2016), <http://www.afdb.org/en/news-and-events/article/afdb-establishes-africa-integrity-fund-16359/>.

179. *Id.*

2. *Asian Development Bank (ADB)*

The 2015 Annual Report¹⁸⁰ released by the ADB's Office of Anticorruption and Integrity (OAI) in March revealed that it sanctioned ninety entities for integrity violations and cross-debarred 106 entities.¹⁸¹

In July, the ADB announced plans to update its Anticorruption Policy in an effort to address "tax integrity issues" that have arisen as a consequence of recent global developments.¹⁸²

3. *World Bank Group*

According to the Annual Update for FY 2016 issued by the independent Integrity Vice Presidency (INT), the World Bank Group's investigations included forty-three substantiated projects, involving 124 contracts amounting to \$633 million.¹⁸³ In addition to sanctioning fifty-eight entities and entering eighteen Negotiated Resolution Agreements, the World Bank Group saw an uptick in compliance efforts through the lifting of debarment for a record twenty companies.¹⁸⁴

IV. Civil Society Efforts

A. TRANSPARENCY INTERNATIONAL (TI)

In January, TI released its annual Corruption Perceptions Index (CPI).¹⁸⁵ The CPI is compiled on the basis of global expert opinions of perceived levels of corruption in the public sector in one hundred sixty-eight countries.¹⁸⁶ No country assessed achieved a perfect score on TI's zero (very corrupt) to 100 (highly clean) scale.¹⁸⁷ Findings indicate that over six billion people worldwide live in a nation with a serious corruption problem.¹⁸⁸ Denmark ranked at the top of the Index for the fourth year running,

180. OAI INTEGRITY 2015 ANNUAL REPORT, ASIAN DEV. BANK: OFFICE OF ANTI-CORRUPTION AND INTEGRITY (2016), <https://www.adb.org/sites/default/files/institutional-document/181639/oai-annual-rpt-2015.pdf>.

181. *ADB Sanctioned 90 Entities for Integrity Violations in 2015*, ASIAN DEV. BANK (Mar. 16, 2016), <https://www.adb.org/news/adb-sanctioned-90-entities-integrity-violations-2015-oai>.

182. *ADB Updates Policy in Wake of Global Tax Developments*, ASIAN DEV. BANK (July 7, 2016), <https://www.adb.org/news/adb-updates-policy-wake-global-tax-developments>.

183. ANNUAL UPDATE FISCAL YEAR 2016, WORLD BANK GROUP: INTEGRITY VICE PRESIDENCY 4 (2016), <http://pubdocs.worldbank.org/en/118471475857477799/INT-FY16-Annual-Update-web.pdf>.

184. *Id.* at 4–5.

185. 2015 CORRUPTION PERCEPTIONS INDEX, TRANSPARENCY INT'L (2015), https://issuu.com/transparencyinternational/docs/2015_corruptionperceptionsindex_rep?e=2496456/33011041.

186. *Id.* at 3.

187. *Id.*

188. *Id.*

followed by Finland.¹⁸⁹ North Korea and Somalia were ranked at the bottom.¹⁹⁰

The TI Transparency in Corporate Reporting: Assessing Emerging Market Multinationals¹⁹¹ analyzed the disclosure practices of 100 major emerging market multinational companies.¹⁹² Entities evaluated were headquartered in fifteen and active in nearly 200 countries.¹⁹³ The report found that those reviewed were not meeting the corporate transparency standards expected of companies operating internationally.¹⁹⁴ Country-by-country reporting remains an area of weakness.¹⁹⁵ Tax disclosure is also a deficiency.¹⁹⁶ Seventy-two percent of emerging market companies evaluated failed to disclose to citizens any information about tax payments in foreign countries.¹⁹⁷

B. EXTRACTIVE INDUSTRIES TRANSPARENCY INITIATIVE (EITI)

As of 2016, fifty-one countries have implemented the EITI standard, promoting transparency in the governance of oil, gas, and mineral resources.¹⁹⁸ Participating countries disclose information on taxes, licenses, contracts, and other payments.¹⁹⁹

The EITI standard was revised in 2016 in three significant ways.²⁰⁰ The 2016 standard requires beneficial ownership reporting,²⁰¹ encourages mainstreamed reporting,²⁰² and introduces quality assurance by way of EITI's new Validation system.²⁰³

189. *Id.* at 4.

190. *Id.* at 5.

191. TRANSPARENCY IN CORPORATE REPORTING: ASSESSING EMERGING MARKET MULTINATIONALS, TRANSPARENCY INT'L (2016), https://issuu.com/transparencyinternational/docs/2016_transparencyincorporatereporti?e=2496456/37122985.

192. *Id.* at 6.

193. *Id.*

194. *Id.* at 7-8.

195. *Id.* at 8.

196. *Id.* at 5.

197. *Id.*

198. EITI FACT SHEET 2016, EXTRACTIVE INDUS. TRANSPARENCY INITIATIVE (EITI) (Oct. 31, 2016), https://eiti.org/sites/default/files/documents/eiti_factsheet_en.pdf.

199. *Id.*

200. Jonas Moburg, *The EITI 2016 Standard is Different – the EITI In a Minute and Recent Focus*, EXTRACTIVE INDUS. TRANSPARENCY INITIATIVE (EITI) (Nov. 11, 2016), https://eiti.org/node/8135?utm_source=EITI+Newsletter&utm_campaign=a261ffebe0-EITI_Newsletter_November_2016&utm_medium=email&utm_term=0_6aa20b6ee3-a261ffebe0-65321285.

201. *Id.*

202. *Id.*

203. *Id.*

According to the 2016 EITI Fact Sheet, thirty-one total countries are currently compliant with the EITI requirements.²⁰⁴ Twenty “candidate” countries also have pledged to adhere to the EITI standard.²⁰⁵

C. INTERNATIONAL ORGANIZATION FOR STANDARDIZATION (ISO)

In October, ISO published ISO 37001 anti-bribery management systems standard, the first such global standard.²⁰⁶ The requirements standard is designed to help organizations design, implement, and improve an anti-bribery management system.²⁰⁷

Fifty-six countries and seven liaison organizations participated in drafting the standard.²⁰⁸

Organizations will be able to seek third party certification.²⁰⁹ Auditor competency is governed by ISO 37001-specific standards.²¹⁰

D. WORLD JUSTICE PROJECT

The World Justice Project (WJP) released its sixth annual Rule of Law Index.²¹¹ The 2016 Index ranks the rule of law in 113 countries, based on more than 110,000 resident and legal expert surveys.²¹² Each country is scored and ranked regionally and globally, using forty-seven indicators across nine categories.²¹³

This year, Denmark, Norway, and Finland achieved the top rankings.²¹⁴ The lowest three rankings were occupied by Afghanistan, Cambodia, and Venezuela.²¹⁵

204. *Id.*

205. *Id.*

206. Samuel Rubinfeld, *Anti-Bribery Compliance Gets Global Standard*, WALL STREET J. (Oct. 21, 2016), <http://blogs.wsj.com/riskandcompliance/2016/10/21/anti-bribery-compliance-gets-global-standard/>.

207. *ISO 37001 – Anti-Bribery Management Systems*, INT’L ORGANIZATION FOR STANDARDIZATION (ISO) (Oct. 31, 2016), <http://www.iso.org/iso/home/standards/management-standards/iso37001.htm>.

208. THE CENTER FOR RESPONSIBLE ENTERPRISE AND TRADE (CREATE), *TOP 10 TAKEAWAYS OF THE NEW ISO 37001 ANTI-BRIBERY MANAGEMENT SYSTEMS STANDARD 8 (2016)* (ebook), available at <https://create.org/resource/top-10-takeaways-new-iso-37001-anti-bribery-management-systems-standard/>.

209. *Id.* at 14.

210. *Id.*

211. WORLD JUSTICE PROJECT, *WORLD JUSTICE PROJECT: RULE OF LAW INDEX 2016*, http://worldjusticeproject.org/sites/default/files/media/wjp_rule_of_law_index_2016.pdf.

212. *Id.* at 4.

213. *Id.* at 10–13.

214. *Id.* at 5.

215. *Id.*