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July 9, 2018

2018 MID-YEAR FCPA UPDATE

To Our Clients and Friends:

The steady clip of Foreign Corrupt Practices Act ("FCPA") prosecutions set in 2017 has continued apace into the first half of 2018, largely quieting any questions of enforcement of this important statute under the current Administration. Although this update captures developments through June 30, the enforcers did not have a reprieve for the July 4th holiday, because they announced two corporate enforcement actions in the first week of the month. From our perspective, all signs point to business as usual at the U.S. Department of Justice ("DOJ") and Securities and Exchange Commission ("SEC"), the two regulators charged with enforcing the FCPA.

This client update provides an overview of the FCPA as well as domestic and international anti-corruption enforcement, litigation, and policy developments from the first half of 2018.

FCPA OVERVIEW

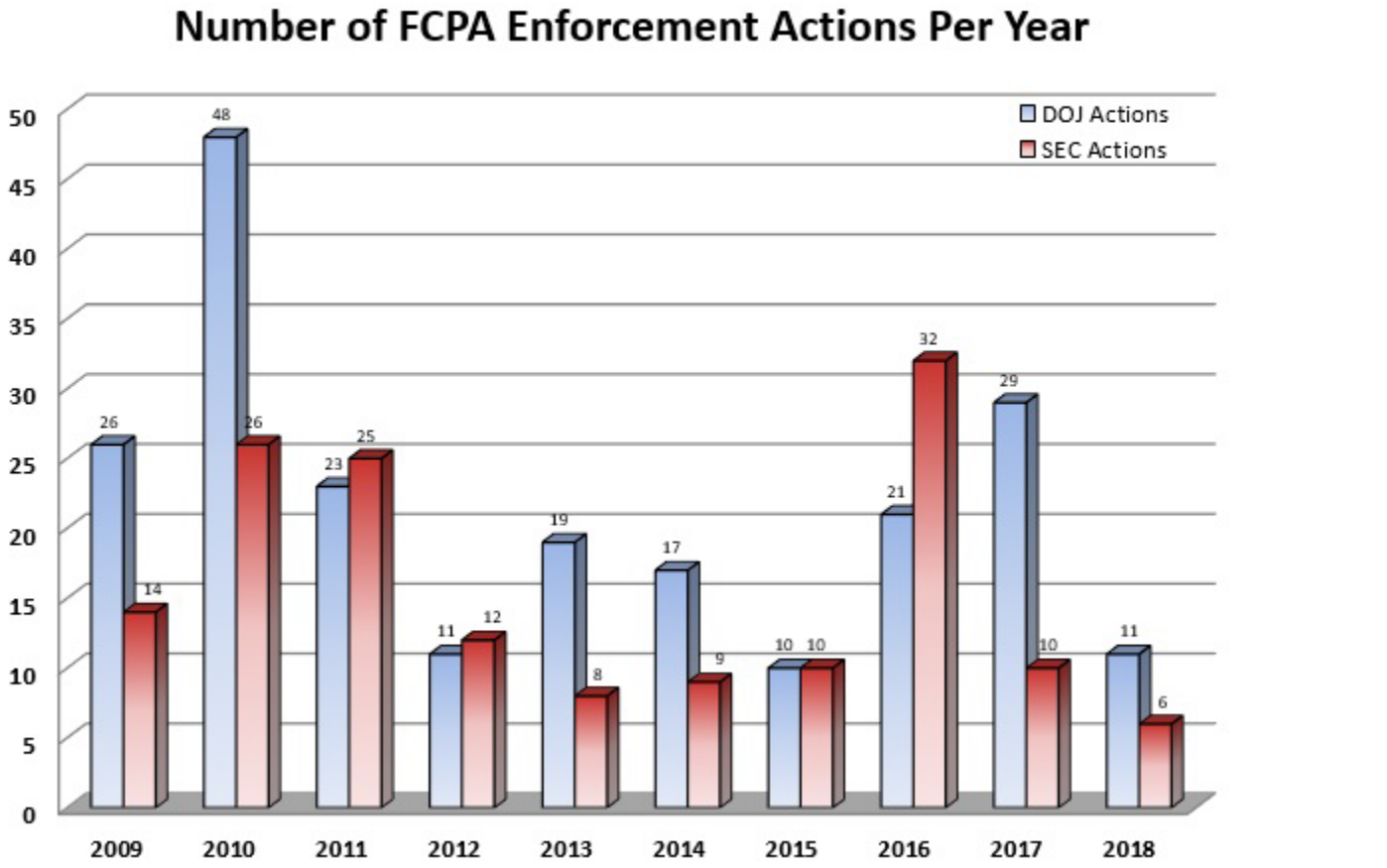
The FCPA's anti-bribery provisions make it illegal to corruptly offer or provide money or anything else of value to officials of foreign governments, foreign political parties, or public international organizations with the intent to obtain or retain business. These provisions apply to "issuers," "domestic concerns," and those acting on behalf of issuers and domestic concerns, as well as to "any person" who acts while in the territory of the United States. The term "issuer" covers any business entity that is registered under 15 U.S.C. § 78*l* or that is required to file reports under 15 U.S.C. § 78o(d). In this context, foreign issuers whose American Depository Receipts ("ADRs") are listed on a U.S. exchange are "issuers" for purposes of the FCPA. The term "domestic concern" is even broader and includes any U.S. citizen, national, or resident, as well as any business entity that is organized under the laws of a U.S. state or that has its principal place of business in the United States.

In addition to the anti-bribery provisions, the FCPA also has "accounting provisions" that apply to issuers and those acting on their behalf. First, there is the books-and-records provision, which requires issuers to make and keep accurate books, records, and accounts that, in reasonable detail, accurately and fairly reflect the issuer's transactions and disposition of assets. Second, the FCPA's internal controls provision requires that issuers devise and maintain reasonable internal accounting controls aimed at preventing and detecting FCPA violations. Prosecutors and regulators frequently invoke these latter two sections when they cannot establish the elements for an anti-bribery prosecution or as a mechanism for compromise in settlement negotiations. Because there is no requirement that a false record or deficient control be linked to an improper payment, even a payment that does not constitute a violation of the anti-bribery provisions can lead to prosecution under the accounting provisions if inaccurately recorded or attributable to an internal controls deficiency.

FCPA ENFORCEMENT STATISTICS

The following table and graph detail the number of FCPA enforcement actions initiated by DOJ and the SEC during each of the past 10 years.

2009		2010		2011		2012		2013		2014		2015		2016		2017		2018 (as of 7/06)	
DOJ	SEC	DOJ	SEC	DOJ	SEC	DOJ	SEC	DOJ	SEC	DOJ	SEC	DOJ	SEC	DOJ	SEC	DOJ	SEC	DOJ	SEC
26	14	48	26	23	25	11	12	19	8	17	9	10	10	21	32	29	10	11	6



2018 MID-YEAR FCPA ENFORCEMENT ACTIONS

The first half of 2018 saw a diverse mix of FCPA enforcement activity, from relatively modest to very large financial penalties, the first-ever coordinated U.S.-French bribery resolution, and numerous criminal prosecutions of individual defendants, particularly for non-FCPA charges arising out of foreign corruption investigations.

Corporate FCPA Enforcement Actions

There have been 11 corporate FCPA enforcement actions in 2018 to date.

Elbit Imaging Ltd.

The year's first corporate FCPA enforcement action involved an aggressive interpretation of the FCPA's accounting provisions resulting in a relatively modest financial penalty. On March 9, 2018, Israeli-based holding company and issuer ***Elbit Imaging*** settled an SEC-only cease-and-desist proceeding for alleged FCPA books-and-records and internal controls violations. According to the SEC's order, between 2007 and 2012 Elbit and an indirect subsidiary paid $27 million to two consultants and one sales agent in connection with real estate projects in Romania and the United States. Without making direct allegations, the SEC intimated corruption in the Romanian projects by asserting that the two consultants were engaged without any due diligence to facilitate government approvals and were paid significant sums of money without any evidence of work performed. In connection with the U.S. project, the SEC again asserted that the sales agent was retained without due diligence and paid significant sums of money without evidence of work performed, but in this case concluded that the majority of those funds were embezzled by Elbit's then-CEO.

Without admitting or denying the allegations, Elbit consented to the cease-and-desist proceeding and agreed to pay a $500,000 civil penalty. The SEC acknowledged Elbit's self-reporting to U.S. and Romanian authorities, as well as the fact that Elbit is in the process of winding down its operations as factors in setting the modest penalty and lack of any post-resolution monitoring or reporting obligations. This resolution marks the lowest monetary assessment in a corporate FCPA enforcement action since June 2016 (Nortek, Inc., covered in our 2016 Mid-Year FCPA Update, in which the company paid just more than $320,000 in disgorgement and prejudgment interest).

Transport Logistics International, Inc.

The first criminal corporate FCPA resolution of 2018 stems from an investigation that we have been following for several years. On March 12, 2018, Maryland transportation company ***Transport Logistics International*** ("TLI") reached a deferred prosecution agreement with DOJ arising from an alleged scheme to make more than $1.7 million in corrupt payments to an official of JSC Techsnabexport ("TENEX")—a Russian state-owned supplier of uranium and uranium enrichment services—in return for directing sole-source uranium transportation contracts to the company. We first reported on this in our 2015 Year-End FCPA Update in connection with guilty pleas by former TLI Co-President Daren Condrey, wife Carol Condrey, TENEX official Vadim Mikerin, and businessman Boris Rubizhevsky. Rounding out the charges, on January 10, 2018 the other former TLI Co-President ***Mark Lambert*** was indicted on 11 counts of FCPA, wire fraud, and money laundering charges.

To resolve the charges of conspiracy to violate the FCPA's anti-bribery provisions, TLI entered into a deferred prosecution agreement and agreed to pay a $2 million criminal penalty, as well as self-report to DOJ on the state of its compliance program over the three-year term of the agreement. Notably, the $2 million penalty represents a significant departure from the DOJ-calculated fine of $21.4 million, based upon an inability-to-pay analysis by an independent accounting firm hired by DOJ that confirmed TLI's representation that a penalty greater than $2 million would jeopardize the continued viability of the company. After a significant colloquy with government and company counsel concerning whether DOJ was being unduly lenient in deferring prosecution, the Honorable Theodore Chuang of the U.S. District Court for the District of Maryland approved of the resolution. Trial in the case against remaining defendant Lambert is currently set for April 2019.

Kinross Gold Corporation

On March 26, 2018, the SEC announced a settled cease-and-desist order against Canadian gold mining company ***Kinross Gold*** for alleged violations of the FCPA's accounting provisions. According to the charging document, in 2010, Kinross acquired two subsidiaries that operated mines in Mauritania and Ghana but, despite due diligence identifying a lack of anti-corruption compliance controls, was slow to implement such controls. Kinross further allegedly failed to respond to multiple internal audits flagging the inadequate controls, and payments continued to be made to vendors and consultants, often in connection with government interactions, without appropriate efforts to ensure that the funds were not used for improper payments. Notably, however, the SEC did not allege any specific corrupt payments made by or on behalf of Kinross.

Without admitting or denying the allegations, Kinross agreed to pay a $950,000 penalty to resolve the charges. The SEC's order does not allege that the company realized profits tied to the misconduct and therefore did not order disgorgement. The SEC acknowledged Kinross's remedial efforts, which the company will continue to self-report to the SEC on for one year. Kinross has stated that DOJ has closed its investigation without taking any enforcement action.

The Dun & Bradstreet Corporation

On April 23, 2018, the business intelligence company ***Dun & Bradstreet*** agreed to settle FCPA accounting charges arising from allegations of improper payments to acquire confidential data in China. According to the SEC, between 2006 and 2012 two Chinese subsidiaries made payments to Chinese officials and third parties to obtain non-public information that was not subject to lawful disclosure under Chinese law. One of the subsidiaries and several of its officers were prosecuted and convicted in China for the unlawful procurement of this data.

Without admitting or denying the allegations, Dun & Bradstreet consented to the entry of a cease-and-desist order and agreed to disgorge $6.08 million of profits, plus $1.14 million in prejudgment interest, and pay a $2 million civil penalty. The SEC's order did not impose ongoing reporting requirements on Dun & Bradstreet and credited the company's self-disclosure, which occurred after local police conducted a raid at one of the subsidiaries. Among other remedial actions, Dun & Bradstreet shuttered one of the subsidiaries. Citing the FCPA Corporate Enforcement Policy, DOJ issued a public letter declining to prosecute Dun & Bradstreet in light of the SEC resolution and other factors.

Panasonic Corporation

On April 30, 2018, the SEC and DOJ announced the first joint FCPA resolution of 2018, with Japanese electronics company ***Panasonic*** and its California-based subsidiary ***Panasonic Avionics Corporation*** ("PAC"), respectively. PAC designs and distributes in-flight entertainment systems and communications services to airlines worldwide. According to the charging documents, PAC agreed to provide a post-retirement consultancy position to an official at a state-owned airline as PAC was negotiating agreements with the state-owned airline worth more than $700 million. PAC allegedly paid the official $875,000 for little to no work. Separately, PAC also allegedly failed to follow its own third-party due diligence protocols in Asia, including by concealing the retention of agents who did not pass screening by employing them as sub-agents to a single qualified agent.

To resolve a one-count criminal information charging PAC with causing the falsification of Panasonic's books and records, PAC entered into a deferred prosecution agreement with DOJ and agreed to pay a $137.4 million criminal fine, a 20% discount from the bottom of the applicable Guidelines range based on

the company's cooperation but failure to voluntarily disclose. To resolve civil FCPA anti-bribery and accounting violations, as well as allegations that it fraudulently overstated its income in a separate revenue recognition scheme, Panasonic consented to an SEC cease-and-desist order and agreed to pay $143.2 million in disgorgement and prejudgment interest. Together, the parent and subsidiary agreed to pay combined criminal and regulatory penalties of more than $280 million.

In addition to the monetary penalties, PAC agreed to engage an independent compliance monitor for a period of two years to be followed by one year of self-reporting. In addition to traditional monitor requirements, such as demonstrated FCPA expertise, the deferred prosecution agreement includes an additional proviso to the list of qualifications for monitor selection—diversity—stating that "[m]onitor selections shall be made in keeping with the Department's commitment to diversity and inclusion."

Société Générale S.A. /Legg Mason, Inc.

Closing out the first half of 2018 corporate enforcement in a big way, on June 4, 2018 DOJ announced two separate but related FCPA enforcement actions with French financial services company ***Société Générale*** ("SocGen") and Maryland-based investment management firm ***Legg Mason, Inc.*** Both resolutions stem from SocGen's payment of more than $90 million to a Libyan intermediary, while allegedly knowing that the intermediary was using a portion of those payments to bribe Libyan government officials in connection with $3.66 billion in investments placed by Libyan state-owned banks with SocGen. A number of those investments were managed by a subsidiary of Legg Mason.

To settle the criminal FCPA bribery and conspiracy charges, SocGen entered into a deferred prosecution agreement and had a subsidiary plead guilty. SocGen also simultaneously resolved unrelated criminal fraud charges of rigging LIBOR rates. Further, in the first U.S.-French coordinated resolution in a foreign bribery case, SocGen also reached a parallel resolution with the Parquet National Financier ("PNF") in Paris. After netting out offsets between the bribery resolutions, SocGen agreed to pay $292.78 million to DOJ and $292.78 to French authorities, in addition to $275 million to resolve DOJ's LIBOR-related allegations. Adding $475 million paid to the U.S. Commodity Futures Trading Commission in the LIBOR case, the total price tag well exceeds $1.3 billion.

Legg Mason had a somewhat lesser role in the alleged corruption scheme, reflected in the fact that it was permitted to enter into a non-prosecution agreement with DOJ with a $64.2 million price tag. Nearly half of the DOJ resolution amount is subject to a potential credit "against disgorgement paid to other law enforcement authorities within the first year of the [non-prosecution] agreement," a seeming anticipatory nod to a forthcoming FCPA resolution with the SEC.

Both companies will self-report to DOJ over the course of the three-year term of their respective agreements. Neither was required to retain a compliance monitor, although the principal reasoning for lack of monitor in the SocGen case appears to be that the bank will be subject to ongoing monitoring by France's *L'Agence Française Anticorruption*.

Beam Suntory Inc.

Trailing into the second half of 2018, on July 2, 2018 the SEC announced an FCPA resolution with Chicago-based spirits producer ***Beam Suntory*** relating to allegations of improper payments to government officials in India. According to the SEC, from 2006 through 2012 senior executives at Beam India directed efforts by third parties to make improper payments to increase sales, process license and label registrations, obtain better positioning on store shelves, and facilitate distribution. The allegations include an interesting cameo by the SEC's 2011 FCPA resolution with Beam competitor Diageo plc (covered in our 2011 Year-End FCPA

Update). The SEC alleged that after the Diageo enforcement action was announced, Beam sent an in-house lawyer to India to investigate whether similar conduct was occurring at Beam India and to implement additional FCPA training. This review led to a series of investigations culminating in a voluntary disclosure to the SEC.

Without admitting or denying the allegations, Beam consented to the entry of a cease-and-desist order to resolve FCPA accounting provision charges and agreed to disgorge $5.26 million of profits, plus $917,498 in prejudgment interest, and pay a $2 million civil penalty. The SEC's order did not impose ongoing reporting requirements on Beam and acknowledged the company's voluntary self-disclosure, cooperation with the SEC's investigation, and the remedial actions taken by the company, including ceasing operations at Beam India until Beam was satisfied it could operate in a compliant manner. Beam has announced that it is continuing to cooperate in a DOJ investigation.

Credit Suisse Group AG

Further trailing into the second half of 2018, on July 5 DOJ and the SEC announced the second joint FCPA resolution of 2018 with Swiss-based financial services provider and issuer ***Credit Suisse***. According to the charging documents, between 2007 and 2013 Credit Suisse's Hong Kong subsidiary hired more than 100 employees at the request of Chinese government officials. These so-called "relationship hires" were allegedly made to encourage the referring officials to direct business to Credit Suisse and despite the fact that, in many cases, these applicants did not possess the technical skills and qualifications of those not referred by foreign officials.

To resolve the criminal investigation, Credit Suisse's Hong Kong subsidiary entered into a non-prosecution agreement and agreed to pay a criminal penalty of just over $47 million. Notably, Credit Suisse received only a 15% discount from the bottom of the Guidelines range (rather than the maximum 25% available under the FCPA Corporate Enforcement Policy for non-voluntary disclosures) because its cooperation was, allegedly, "reactive and not proactive" and "because it failed to sufficiently discipline employees who were involved in the misconduct." Credit Suisse will self-report on the status of its compliance program over the three-year term of the agreement.

To resolve the SEC investigation, the parent company consented to a cease-and-desist proceeding alleging violations of the FCPA's anti-bribery and internal controls provisions and agreed to pay nearly $25 million in disgorgement plus more than $4.8 million in prejudgment interest. This brings the total monetary resolution to nearly $77 million.

Prior examples of so-called "princeling" FCPA resolutions include JPMorgan Chase & Co. (covered in our 2016 Year-End FCPA Update), Qualcomm, Inc. (covered in our 2016 Mid-Year FCPA Update) and Bank of New York Mellon Corp. (covered in our 2015 Year-End FCPA Update).

Individual FCPA and FCPA-Related Enforcement Actions

The number of FCPA prosecutions of individual defendants during the first half of 2018 was a relatively modest half dozen, including the indictment of former TLI Co-President Mark Lambert discussed above. But that number masks the true extent of FCPA-related enforcement as DOJ brought twice that many prosecutions in money laundering and wire fraud actions arising out of FCPA investigations. In large part, these non-FCPA charges are a result of DOJ pursuing the foreign official recipients of bribe payments, who cannot be charged under the FCPA but can be charged with criminal offenses (including money laundering) associated with the receipt of those bribes.

FCPA-Related Charges in Och-Ziff Case

In our 2017 Mid-Year FCPA Update, we covered civil FCPA charges filed by the SEC against former Och-Ziff Capital Management Group LLC executive ***Michael L. Cohen***. On January 3, 2018, a criminal indictment was unsealed charging Cohen with 10 counts of investment adviser fraud, wire fraud, obstruction of justice, false statements, and conspiracy. According to the indictment, Cohen violated his fiduciary duties to a charitable foundation client by failing to disclose his personal interest in investments he promoted relating to an African mining operation and then engaged in obstructive acts to cover up the transaction after the SEC began investigating.

Cohen has pleaded not guilty to all charges. No trial date has been set.

Additional FCPA and FCPA-Related Charges in PDVSA Case

We have been reporting on DOJ's investigation of a corrupt pay-to-play scheme involving Venezuela's state-owned energy company, Petróleos de Venezuela S.A. ("PDVSA"), since our 2015 Year-End FCPA Update. On February 12, 2018, DOJ unsealed and announced charges against five new defendants for their alleged participation in the scheme: ***Luis Carolos De Leon Perez***, ***Nervis Gerardo Villalobos Cardenas***, ***Cesar David Rincon Godoy***, ***Rafael Ernesto Reiter Munoz***, and ***Alejandro Isturiz Chiesa***. All five defendants are charged with money laundering; De Leon and Villalobos are additionally charged with FCPA conspiracy.

According to the indictment, in 2011 PDVSA found itself in significant financial distress relating to the sharp reduction in global oil prices. Knowing that the agency would be unable to pay all of its vendors, the five defendants (the three non-FCPA defendants with PDVSA and the two FCPA defendants as brokers) concocted a scheme to solicit PDVSA vendors to obtain preferential treatment in payment only if they agreed to kickback 10% of the payments to the defendants.

Four of the five defendants were arrested in Spain in October 2017, whereas Isturiz remains at large. Cesar Rincon was extradited from Spain in early February and, on April 19, 2018, pleaded guilty to one count of money laundering conspiracy and was ordered to forfeit $7 million, pending a summer sentencing date. De Leon, a U.S. citizen, has been extradited to the United States and has pleaded not guilty, although pre-trial filings suggest that a plea agreement may be in the works. Villalobos and Reiter remain in Spanish custody pending extradition proceedings.

These charges bring to 15 the number of defendants charged (publicly) in the wide-ranging PDVSA corruption investigation. With Cesar Rincon, 11 of the 15 have now pleaded guilty.

Additional FCPA Charges in U.N. Bribery Case

We have been reporting on FCPA and non-FCPA charges associated with a scheme to bribe U.N. ambassadors to influence, among other things, the development of a U.N.-sponsored conference center in Macau, since our 2015 Year-End FCPA Update. On April 4, 2018, ***Julia Vivi Wang***, a former media executive who promoted U.N. development goals, pleaded guilty to three counts of FCPA bribery, conspiracy, and tax evasion in connection with her role in the scheme. Wang was originally charged in March 2016, but a superseding charging document was filed in 2018. Wang's sentencing has been set for September 5, 2018.

Additional FCPA and FCPA-Related Charges in Petroecuador Case

In our 2017 Year-End FCPA Update, we reported on the money laundering indictment of ***Marcelo Reyes Lopez***, a former executive of Ecuadorian state-owned oil company Petroecuador. Lopez pleaded guilty on April 11, 2018 to money laundering conspiracy in connection with his alleged receipt of bribes.

On March 28, 2018, another former Petroecuador executive, ***Arturo Escobar Dominguez***, likewise pleaded guilty to one count of conspiracy to commit money laundering. Then, on April 19, 2018, a grand jury in the Southern District of Florida returned an indictment charging two additional defendants: ***Frank Roberto Chatburn Ripalda*** and ***Jose Larrea***. Chatburn is charged with FCPA bribery, money laundering, and conspiracy in connection with his alleged payment of $3.27 million in bribes to Petroecuador officials to obtain $27.8 million in contracts for his company. Larrea is charged with conspiracy to commit money laundering in connection with the scheme. Chatburn has yet to be arraigned, and Larrea has pleaded not guilty with a current trial date of August 2018.

New FCPA and FCPA-Related Charges in Setar Case

In April 2018, charges against a former Florida telecommunications company executive, ***Lawrence W. Parker, Jr.***, and a former official of the Aruban state-owned telecommunications company Servicio di Telecomunicacion di Aruba N.V. ("Setar"), ***Egbert Yvan Ferdinand Koolman***, were unsealed in the U.S. District Court for the Southern District of Florida. According to the charging documents, Koolman accepted $1.3 million in bribes from Parker and others, for several years, in exchange for providing confidential information concerning Setar business opportunities. Parker was charged with one count of FCPA conspiracy and Koolman with one count of money laundering conspiracy.

Both Parker and Koolman have pleaded guilty and have been sentenced to 35 and 36 months in prison, in addition to $700,000 and $1.3 million in restitution, respectively.

New FCPA-Related Charge in HISS Case

In our 2015 Mid-Year FCPA Update, we covered DOJ's civil action to forfeit nine New Orleans properties—worth approximately $1.5 million—filed in the U.S. District Court for the Eastern District of Louisiana. On April 27, 2018, a grand jury sitting in the same district returned an indictment criminally charging ***Carlos Alberto Zelaya Rojas***, the nominal owner of those properties, with 12 counts of money laundering and other offenses associated with the impediment of the civil forfeiture proceedings. According to the indictment, Zelaya is the brother of the former Executive Director of the Honduran Institute of Social Security ("HISS"). The brother, who according to press reports was criminally charged in Honduras, allegedly received millions of dollars in bribes from two Honduran businessmen. Zelaya then assisted with the laundering of at least $1.3 million of those bribe payments, including through the purchase of the nine properties.

On June 27, 2018, Zelaya pleaded guilty to a single count of money laundering conspiracy and has been detained pending an October sentencing date. As part of this plea, Zelaya consented to the forfeiture of the nine properties.

Additional FCPA-Related Charges in Rolls-Royce Case

In our 2017 Mid-Year FCPA Update, we covered the multi-jurisdictional resolution of criminal bribery charges against UK engineering company Rolls-Royce. The corporate charges were then supplemented by FCPA and FCPA-related charges against five individual defendants as reported in our 2017 Year-End FCPA

Update. On May 24, 2018, DOJ announced a superseding indictment that charged two new defendants—***Vitaly Leshkov*** and ***Azat Martirossian***—with money laundering charges associated with the Rolls-Royce bribery scheme.

According to the indictment, Leshkov and Martirossian were employees of a technical advisor to a state-owned joint venture between the governments of China and Kazakhstan, formed to transport natural gas between the two nations. In this capacity, they allegedly "had the ability to exert influence over decisions" by the state-owned joint venture and accordingly qualified as foreign officials even though they had no official government positions. They then participated in a scheme to solicit bribes on behalf of employees of the state-owned joint venture from employees of Rolls-Royce.

Neither Martirossian nor Leshkov have made a physical appearance in U.S. court to answer the charges. Nevertheless, Martirossian already has moved to dismiss the indictment as described immediately below.

2018 MID-YEAR CHECK-IN ON FCPA ENFORCEMENT LITIGATION

Martirossian Motion to Dismiss

As just described, Azat Martirossian was indicted on May 24, 2018 on money laundering charges associated with the alleged Rolls-Royce bribery scheme in China and Kazakhstan. Although Martirossian reportedly remains in China and has yet to make a physical appearance in U.S. court, he very quickly filed a motion to dismiss the indictment on the grounds that it insufficiently alleges a U.S. nexus. The motion also contests the "aggressive theory" that Martirossian qualifies as a "foreign official" under the FCPA based on his work as a technical advisor to a state-owned entity.

DOJ's initial response briefly contests Martirossian's arguments on the merits, but focuses more on DOJ's contention that the motion should be held in abeyance until Martirossian submits himself to the jurisdiction of the Court pursuant to the fugitive disentitlement doctrine. The motion remains pending before Chief Judge Edmund A. Sargus of the U.S. District Court for the Southern District of Ohio.

Ho Motion to Dismiss

We reported in our 2017 Year-End FCPA Update on the December 2017 indictment of ***Chi Ping Patrick Ho***, the head of a Chinese non-governmental organization that holds "special consultative status" at the United Nations, on FCPA and money laundering charges associated with his alleged role in corruption schemes involving Chad and Uganda. After pleading not guilty earlier this year, on April 16 Ho filed a motion to dismiss certain of the counts. Ho argues, among other things, that the indictment inconsistently charges him with violating both 15 U.S.C. § 78dd-2, which applies to "domestic concerns," and § 78dd-3, which applies to persons who act within U.S. territory in furtherance of a bribe. Ho additionally contends that the money laundering charges fail because they cannot be based on wires sent from one foreign jurisdiction to another foreign jurisdiction—here Hong Kong to Dubai and Uganda—with no U.S. nexus other than the fact that they passed through a New York bank account. DOJ, as one would expect, opposed the motion, which remains pending before the Honorable Loretta A. Preska of the U.S. District Court for the Southern District of New York.

Denial of Ng Seng's Motion for New Trial / Sentencing

We covered in our 2017 Year-End FCPA Update the conviction after trial of Macau billionaire ***Ng Lap Seng*** on FCPA, federal programs bribery, and money laundering charges associated with his role in a scheme to pay more than $1 million in bribes to two U.N. officials in connection with, among other things, a plan to build a U.N.-sponsored conference center in Macau. Seng subsequently filed a Rule 33 motion for a new trial, arguing that DOJ introduced a new theory of liability at trial, constituting an amendment of or prejudicial variance from the indictment, as well as that the Government's key witness, cooperating defendant Francis Lorenzo, committed perjury at trial, which DOJ failed adequately to investigate and correct.

On May 9, 2018, the Honorable Vernon S. Broderick of the U.S. District Court for the Southern District of New York denied the motion. In a lengthy opinion, steeped in the facts of the four-week trial, the Court found that there was no constructive amendment of or prejudicial variance from the superseding indictment based on the evidence adduced at trial, and further that Seng failed to meet his burden of establishing perjury by Lorenzo, and that even if there had been perjury it was not material to the jury's verdict.

Judge Broderick subsequently sentenced Seng to 48 months in prison and ordered approximately $1.8 million in forfeiture and restitution. Seng has appealed to the Second Circuit, which in an early ruling denied Seng's motion for bail pending appeal but ordered his appeal to be expedited.

In the same case, on February 28, 2018, Judge Broderick sentenced Seng's co-defendant and former assistant, ***Jeff Yin***, to 7 months in prison and nearly $62,000 in restitution for his tax evasion conviction.

Motion to Intervene in Och-Ziff Sentencing Proceedings

As reported in our 2016 Year-End FCPA Update, New York-based hedge fund ***Och-Ziff Capital Management Group LLC***, together with its investment advisor subsidiary, reached a coordinated FCPA resolution with DOJ and the SEC in September 2016, pursuant to which the entities agreed to pay just over $412 million in total. After several adjournments of the sentencing hearing, on February 20, 2018 a self-styled victim of Och-Ziff's alleged corruption, Africo Resources Limited, filed a letter with the Court asserting that it is entitled to a share of the proceeds collected by DOJ pursuant to the Mandatory Victim Restitution Act. Och-Ziff, represented by Gibson Dunn, has filed a submission disputing Africo Resources' claims. The Honorable Nicholas G. Garaufis of the U.S. District Court for the Eastern District of New York has yet to rule.

SEC Proceedings Against Och-Ziff Defendants Stayed

As reported in our 2017 Year-End FCPA Update, former Och-Ziff executive Michael Cohen and analyst Vanja Baros filed motions to dismiss the civil FCPA proceedings brought against them by the SEC. After those motions were fully briefed and argued, but pending ruling, DOJ unsealed an indictment that charged Cohen criminally as discussed above.

On February 9, 2018, DOJ filed a motion to intervene and stay the SEC civil suit on the grounds that the facts of the civil cases overlap substantially with the criminal case, even though the indictment does not allege FCPA violations. Cohen and Baros did not object to a stay of the SEC case, but requested that the Court rule on their pending motions to dismiss first. On May 11, 2018, the Honorable Nicholas G. Garaufis granted DOJ's motion to stay discovery in the SEC's case, but denied the request to stay ruling on the motions to dismiss. A decision on those motions remains pending.

Khoury's Motion to Unseal Indictment

We reported in our 2017 Year-End FCPA Update on the unorthodox motion filed by ***Samir Khoury*** to unseal an indictment against him that may or may not exist. Khoury, a former consultant named in prior FCPA corporate resolutions as "LNG Consultant," contends that it is likely that there is an indictment pending against him under seal since approximately 2009, waiting for him to travel to the United States or another country with an extradition treaty. Khoury asserts that the indictment should be unsealed and then dismissed given the prejudicial effect of the passage of time.

Oral argument on the motion was heard before the Honorable Keith P. Ellison of the U.S. District Court for the Southern District of Texas on March 22, 2018. At the hearing, Khoury's counsel presented argument that 12 potential defense witnesses have died since 2009, and that Khoury has been unable to open bank accounts in his native Lebanon and has lost business opportunities because of his perceived affiliation with the Bonny Island scheme. In response, attorneys for DOJ refused to acknowledge whether Khoury had or had not been indicted, but indicated that if an indictment did exist it could hold the indictment under seal indefinitely.

On June 11, 2018, Judge Ellison issued a Memorandum Opinion and Order. He first pushed aside DOJ's "issue preclusion" arguments that decisions from several years prior resolve this matter, holding that the three years that has passed since that litigation represent a changed circumstance warranting another look. Similarly, the Court rejected DOJ's "fugitive disentitlement" argument, holding that Khoury is not a fugitive because he did not abscond from the United States but rather has at all relevant times been living in his native Lebanon. Judge Ellison gave DOJ 20 days to submit to the Court, *in camera*, any evidence it "wishes to adduce in opposition to Mr. Khoury's Motion to Unseal."

DOJ filed a sealed pleading on July 2, 2018. The next day, Khoury filed a motion to unseal any portion of that pleading that was beyond the contours of what the Court permitted. This motion, as well as the underlying motion to unseal and dismiss, remain pending.

Guilty Plea in Vietnamese Skyscraper Case

In our 2017 Mid-Year FCPA Update, we reported on the indictment of New Jersey real estate broker ***Joo Hyun Bahn*** in connection with a feigned plot to bribe an official of the sovereign wealth fund of a Middle Eastern country (subsequently identified as Qatar) to induce the official to cause the fund to purchase a skyscraper in Hanoi. The alleged agent of the sovereign wealth fund subsequently admitted that the bribery plot was a sham and that he pocketed the bribe payment.

On January 5, 2018, Bahn pleaded guilty to one count of FCPA conspiracy and one count of violating the FCPA in the U.S. District Court for the Southern District of New York. His sentencing is scheduled for September 6, 2018 before the Honorable Edgardo Ramos.

Guilty Plea in Siemens Case

As reported in our 2017 Year-End FCPA Update, former Siemens executive ***Eberhard Reichert*** was extradited to the United States, following his arrest in Croatia, to face a December 2011 indictment charging him and seven others in relation to their alleged roles in a scheme to bribe Argentine officials in connection with a $1 billion contract to create national identity cards.

On March 15, 2018, Reichert pleaded guilty in the U.S. District Court for the Southern District of New York to one count of conspiring to violate the anti-bribery, internal controls, and books-and-records provisions of the FCPA and to commit wire fraud. Reichert awaits a sentencing date before the Honorable Denise L. Cote.

2018 MID-YEAR FCPA-RELATED DEVELOPMENTS

In addition to the enforcement activity covered above, the first six months of 2018 saw DOJ issue important guidance on how it will administer criminal enforcement, as well as a Supreme Court decision with significant ramifications for FCPA whistleblowers.

DOJ Announces "Piling On" Policy

On May 9, 2018, Deputy Attorney General Rod J. Rosenstein introduced a new DOJ "Policy on Coordination of Corporate Resolution Penalties." Announcing the policy at a New York City Bar event, Rosenstein said that it attempts to discourage "piling on" by different enforcement authorities punishing the same company for the same conduct.

Incorporated in Sections 1-12.100 and 9-28.1200 of the U.S. Attorneys' Manual, the new policy directs federal prosecutors to "consider the totality of fines, penalties, and/or forfeiture imposed by all Department components as well as other law enforcement agencies and regulators in an effort to achieve an equitable result." The policy has four key components:

- First, prosecutors may not use the specter of criminal prosecution as leverage in negotiating a civil settlement;
- Second, if multiple DOJ components are investigating the same company for the same conduct, they should coordinate to avoid duplicative penalties;
- Third, DOJ should coordinate with and consider fines, penalties, and/or forfeiture paid to other federal, state, local, or foreign enforcement authorities investigating the same company for the same conduct; and
- Fourth, the policy sets forth factors DOJ should consider in determining whether multiple penalties are appropriate, including the egregiousness of wrongdoing, statutory requirements, the risk of delay in achieving resolution, and the adequacy and timeliness of a company's disclosures to and cooperation with DOJ.

In our view, the policy largely reflects pre-existing DOJ practice in the FCPA arena, where DOJ routinely coordinates resolutions with the SEC and, increasingly, participates in cross-border resolutions by, among other things, crediting a company's payments to foreign enforcement authorities in calculating the U.S. criminal fine. We covered this latter phenomenon in our 2017 Year-End FCPA Update.

Supreme Court Decision Resolves Dispute Over Who is a "Whistleblower"

On February 21, 2018, the U.S. Supreme Court unanimously held in *Digital Realty Trust, Inc. v. Somers* that the anti-retaliation provision of the 2010 Dodd–Frank Wall Street Reform and Consumer Protection Act covers only those who report an alleged violation of the federal securities laws to the SEC. The Court's decision reversed a Ninth Circuit ruling that Dodd-Frank's anti-retaliation provision also covers employees who report such issues internally without reporting them to the SEC. Although the statutory definition of a

"whistleblower" as "any individual who provides . . . information relating to a violation of the securities laws to the [SEC], in a manner established . . . by the [SEC]," appeared to be clear to all nine justices, this issue had sharply divided the lower courts in recent years.

The holding in *Digital Realty* has been interpreted by some as a harbinger of future potential whistleblowers bypassing internal reporting channels and going directly to the SEC to ensure they are protected. Although we agree that the Court's decision could affect the decision-making calculus of a would-be whistleblower, studies routinely show that the vast majority of employees report their concerns internally first, and that they report externally only after they feel their concerns have not been adequately addressed. We are not certain that this phenomenon will change, at least dramatically, and we thus advise our clients and friends that it is more important now than ever for companies to scrutinize their internal policies and procedures to ensure that they encourage internal reporting, protect those who do, and robustly investigate the concerns expressed. For more on the Supreme Court's decision, please see our Client Alert, "Supreme Court Says Whistleblowers Must Report to the SEC Before Suing for Retaliation Under Dodd-Frank."

2018 MID-YEAR KLEPTOCRACY FORFEITURE ACTIONS

We continue to follow DOJ's Kleptocracy Asset Recovery Initiative, spearheaded by DOJ's Money Laundering and Asset Recovery Section. The initiative uses civil forfeiture actions to freeze, recover, and, in some cases, repatriate the proceeds of foreign corruption. The first half of 2018 saw continued coordination between attorneys from MLARs and DOJ's FCPA Unit, as they have been frequently appearing in one another's enforcement actions, working hand-in-glove across section lines. As stated by then-Acting Deputy Assistant Attorney General (now Gibson Dunn partner) M. Kendall Day in his February 6, 2018 testimony before the Senate Committee on the Judiciary, "One of the most effective ways to deter criminals . . . is to follow the criminals' money, expose their activity and prevent their networks from benefitting from the enormous power of [the U.S.] economy and financial system."

In our 2016 and 2017 Year-End FCPA Updates, we reported on DOJ's massive civil forfeiture action seeking to recover more than $1 billion in assets associated with Malaysian sovereign wealth fund ***1Malaysia Development Berhad*** ("1MDB"). In February 2018, a 300-foot superyacht allegedly bought with money stolen from 1MDB was impounded on behalf of U.S. authorities off the coast of Bali. DOJ seeks to bring the yacht to the United States where it can be taken into U.S. government custody and sold. In March, Hollywood production company Red Granite Pictures (the company that produced *The Wolf of Wall Street*) agreed to pay $60 million to resolve a civil lawsuit stemming from the DOJ's investigation. Red Granite was co-founded by the stepson of the Malaysian prime minister, and DOJ alleged that three of Red Granite's productions were funded with money stolen from 1MDB.

2018 MID-YEAR FCPA-RELATED PRIVATE CIVIL LITIGATION

We continue to observe that although the FCPA does not provide for a private right of action, various causes of action are employed by civil litigants in connection with losses allegedly associated with FCPA-related conduct. A selection of matters with developments in the first half of 2018 follows.

Shareholder Lawsuits

- **Centrais Electricas Brasileiras S.A. ("Eletrobras"):** On May 2, 2018, Eletrobras entered into a $14.75 million settlement agreement with shareholders to resolve claims that the government-controlled utility made misrepresentations in its public filings regarding the company's financials and internal controls in connection with a bid-rigging scheme for service and engineering contracts. In a press release, Eletrobras stated that it made no admission of wrongdoing or misconduct, but entered

into the agreement for the best interests of its shareholders. A hearing on the proposed settlement is scheduled before the Honorable John G. Koeltl of the U.S. District Court for the Southern District of New York on July 17, 2018.

- **Cobalt International Energy, Inc.:** On April 5, 2018, the U.S. Bankruptcy Court for the Southern District of Texas approved a Chapter 11 plan by Cobalt on the heels of a consolidated class action against the exploration and production company for material misrepresentations regarding an alleged bribery scheme involving Angolan officials and the true potential of the company's Angolan wells. In June 2017, the Honorable Nancy F. Atlas certified a class of investors who purchased the company's securities between March 2011 and November 2014. In February 2018, the plaintiffs voluntarily dismissed the class action without prejudice because of the bankruptcy proceedings.

- **Embraer S.A.:** On March 30, 2018, the U.S. District Court for the Southern District of New York dismissed a class action lawsuit against Brazilian-based aircraft manufacturer Embraer, which had contended that Embraer made false statements in its securities filings pertinent to its 2016 FCPA resolution. In dismissing the suit, the Honorable Richard M. Berman explained that a company's filings need not constitute a wholesale "confession" and that companies "do not have a duty to disclose uncharged, unadjudicated wrongdoing." The Court found that Embraer properly disclosed that it might have to pay fines or incur sanctions as a result of the investigation, that the company's financial statements were accurate, and that because Embraer's code of ethics was "inherently aspirational," an undisclosed breach of the code was not actionable under the securities laws.

- **Petróleo Brasileiro S.A. – Petrobras:** On June 4, 2018, the U.S. District Court for the Southern District of New York held a final settlement hearing for a securities class action brought against Brazil's state oil company Petrobras. As previously reported in our 2017 Mid-Year FCPA Update, the class action plaintiffs—purchasers of Petrobras securities in the United States—alleged that Petrobras made materially false and misleading statements about its earnings and assets as part of a far-reaching money laundering and bribery scheme in Brazil. The settlement, which does not involve any admission of wrongdoing or misconduct by Petrobras and, in fact, includes an express denial of liability, resolves these claims for a total of $2.95 billion paid by Petrobras plus an additional $50 million paid by its external auditor, PricewaterhouseCoopers Auditores Independentes ("PwC Brazil"). In a series of opinions and orders from June 25 to July 2, 2018, the Honorable Jed S. Rakoff approved of the settlement, but reduced counsel fees for the plaintiffs by nearly $100 million, to just over $200 million total.

Civil Fraud / RICO Actions

Bermuda

As reported in our 2017 Mid-Year FCPA Update, the ***Government of Bermuda*** filed a Racketeer Influenced and Corrupt Organizations Act ("RICO") lawsuit in U.S. District Court for the District of Massachusetts against ***Lahey Clinic, Inc.***, alleging that, for nearly two decades, the defendants conspired with Dr. Ewart Brown—the former Premier of Bermuda, a member of Bermuda's Parliament, and the owner of two private health clinics in Bermuda—to receive preferential treatment. On March 8, 2018, the Honorable Indira Talwani granted Lahey's motion to dismiss, finding the Government of Bermuda had failed to demonstrate that it had suffered an injury to its U.S.-held business or property as a result of the alleged schemes.

EIG Global Energy Partners Litigation

In our 2017 Mid-Year FCPA Update we covered the civil fraud lawsuit against Petrobras filed by various investment funds, including ***EIG Global Energy Partners***, alleging the funds lost their investment in an offshore drilling project known as "Sete" as a result of the Operation Car Wash scandal. On March 30, 2017, the U.S. District Court for the District of Columbia largely denied Petrobras's motion to dismiss, finding in relevant part that Petrobras was not immune from civil lawsuit under the Foreign Sovereign Immunities Act ("FSIA") because the suit concerned Petrobras's commercial activities having a "direct effect" in the United States. Petrobras took an interlocutory appeal of the FSIA ruling.

On July 3, 2018, the U.S. Court of Appeals for the District of Columbia Circuit affirmed the judgment of the district court in a 2-1 decision authored by the Honorable Karen L. Henderson. "Although a foreign state is presumptively immune from the jurisdiction of United States courts," the Court held that the "direct-effect" exception to the FSIA applied on the facts as alleged by EIG in its complaint, while at the same time acknowledging that other "third-party lenders might have also injured EIG" and that the "locus" of the tort was foreign. The Honorable David B. Sentelle filed a dissenting opinion in which he concluded that the requisite "direct effect" on U.S. commerce had not been established sufficiently to divest Petrobras of its presumptive right to immunity from suit in the U.S. courts.

This is not the only RICO litigation initiated by EIG arising out of its failed Brazilian investment. As summarized in our 2017 Year-End FCPA Update, in December 2017 ***Keppel Offshore & Marine Ltd.*** paid more than $422 million in penalties for its alleged bribery scheme with Brazilian government officials, including officials at Petrobras. On February 6, 2018, EIG funds that had invested with Keppel filed suit in the U.S. District Court for the Southern District of New York seeking more than $660 million in damages for alleged RICO violations. Plaintiffs allege that Keppel did not disclose its scheme to bribe Brazilian officials to secure contracts for the Sete project, and, after being discovered, the bribery scheme effectively wiped out EIG's $221 million investment. EIG has since amended its complaint to add additional predicate acts, and a briefing schedule for the motion to dismiss has been issued by the Honorable Paul G. Gardephe.

Harvest Natural Resources

On February 16, 2018, a recently-defunct Texas-based energy company, ***Harvest Natural Resources, Inc.***, filed suit in the U.S. District Court for the Southern District of Texas against various individuals and entities affiliated with the Venezuelan government and Venezuela's state oil company, ***PDVSA***. The complaint alleges that, because Harvest refused to pay four separate bribes to Venezuelan officials in the pay-to-play scheme resulting in criminal prosecutions as described above, the Venezuelan government wrongfully refused to approve the sale of Harvest's energy assets, forcing Harvest to sell the assets to a different buyer at a loss of approximately $470 million. The complaint further alleges that by requiring bribes to approve sales, Venezuela tainted the market and made it impossible for law-abiding companies to conduct business within the country. The complaint claims that the defendants violated both the RICO and antitrust laws.

On April 30, 2018, the defendants moved to dismiss the suit for failure to state a claim. On May 11, 2018 Chief Judge Lee H. Rosenthal granted Harvest's motion for jurisdictional discovery to test defendants' jurisdictional ties and contacts.

Setar

On March 3, 2017, Setar, N.V., filed a civil suit in the U.S. District Court for the Southern District of Florida against several individuals and entities, including ***Lawrence W. Parker, Jr.*** and former Setar official ***Egbert Yvan Ferdinand Koolman***, who as discussed above pleaded guilty to one count of FCPA conspiracy and

one count of money laundering conspiracy, respectively. In relevant part, an amended complaint filed in February 2018 alleges that Koolman orchestrated a years-long scheme to steal more than $15 million from Setar through kickbacks and other improper means. According to Setar's amended complaint, when the Panama Papers (covered in our 2016 Mid-Year FCPA Update) became public and linked Koolman to a British Virgin Islands company, this led to an internal investigation that resulted in Koolman's termination and the identification of the scheme. Various motions to dismiss have been filed, and the proceedings are ongoing.

FCPA-Related FOIA Litigation

100Reporters LLC

We have been covering for several years the Freedom of Information Act ("FOIA") lawsuit filed by media organization ***100Reporters*** against DOJ in the U.S. District Court for the District of Columbia. 100Reporters sought records relating to DOJ's 2008 FCPA resolution with Siemens AG and the monitorship reports prepared by Dr. Theo Waigel and his U.S. counsel, F. Joseph Warin of Gibson Dunn.

As discussed in our 2017 Mid-Year FCPA Update, on March 31, 2017, the Honorable Rudolph Contreras granted defendants' motions for summary judgment, in part, and denied in its entirety 100Reporters' cross-motion for summary judgment. The Court accepted Gibson Dunn's position on behalf of Dr. Waigel that the "consultant corollary" to the deliberative process privilege may extend to communications between a government agency and an independent monitor and thereby shield information from disclosure under FOIA Exemption 5—the first time a court has applied the consultant corollary to a compliance monitor. Judge Contreras denied summary judgment on these grounds because DOJ did not specifically identify the deliberative process at issue with respect to each type of documents withheld by DOJ, and left the door open for defendants to submit further affidavits to support this argument. The Court also ordered DOJ to submit a copy of one monitorship work plan and one monitorship report for *in camera* review to assess whether any of the withheld materials could be segregated from non-exempt material.

In response to the Court's order, DOJ submitted two new declarations from DOJ personnel involved in the monitorship, an amended chronology of events supporting the deliberative process privilege, and the materials required for *in camera* review. DOJ and 100Reporters filed renewed cross-motions for summary judgment.

On June 18, 2018, the Court granted in part and denied in part both sets of cross-motions for summary judgment. Judge Contreras scrutinized the materials submitted by DOJ and held that DOJ's Exemption 4 withholdings were overbroad and although DOJ had justified withholding certain information under Exemption 5, those withholdings also were overbroad. Ultimately, the Court determined that certain materials should be produced to 100Reporters; however, the Court determined that DOJ properly withheld the monitorship reports themselves (aside from a single, brief "best practices" subsection of each report), as well as draft work plans, presentations by the Monitor to DOJ, and correspondence among the Monitor, monitorship team, and DOJ. Thus, the core monitorship materials, including the monitorship reports, will be withheld. Judge Contreras ordered DOJ to reexamine its withholdings and redactions in light of the Court's guidance and disclose the newly identified non-exempt information to 100Reporters.

Monitor Candidates

As covered in our 2016 Year-End and 2017 Mid-Year FCPA Updates, *GIR Just Anti-Corruption* journalist ***Dylan Tokar*** filed a December 2016 FOIA lawsuit in the U.S. District Court for the District of Columbia seeking disclosure of the names of corporate compliance monitor candidates submitted by 15 companies

that settled FCPA charges through agreements that contained a monitorship requirement, as well as information regarding the DOJ committee tasked with evaluating and selecting such candidates. In 2017, DOJ provided the identity of some of the firms associated with the monitorship candidates and certain information about the DOJ committee—but withheld the names of the candidates who were not selected, citing privacy concerns reflected in FOIA Exemptions 6 and 7(C). When DOJ refused to answer a second request for the candidate names, the parties cross-moved for summary judgment.

On March 29, 2018, the Honorable Rudolph Contreras granted *GIR Just Anti-Corruption*'s motion for summary judgment. The Court rejected DOJ's contention that the FOIA request would not lead to enhanced public understanding of the monitor selection process, instead concluding that *GIR Just Anti-Corruption* "sufficiently demonstrated that the public interest will be significantly served by the release of these names." The Court also rejected DOJ's argument that its refusal to disclose the names of monitorship candidates fell under FOIA exemption 7(C), which traditionally shields individuals from the stigma of being associated with an ongoing investigation. The Court denied the majority of DOJ's cross-motion for summary judgment with the exception of granting DOJ's argument regarding redaction of information relating to efforts by one of the companies to enhance its compliance program on trade secrets grounds. DOJ released the names to *GIR Just Anti-Corruption* in June 2018.

2018 MID-YEAR INTERNATIONAL ANTI-CORRUPTION DEVELOPMENTS

World Bank Integrity Vice Presidency Expands Consideration of Monitor Candidates

In March 2018, the World Bank—through Integrity Vice Presidency ("INT") head Pascale Hélène Dubois—changed course regarding those it will allow to serve as a compliance monitor for companies sanctioned by the World Bank. Ms. Dubois explained in a written response to *GIR Just Anti-Corruption* that the World Bank now will consider representatives of law firms with concurrent cases before INT, so long as the individuals proposed as monitors are not currently advising on those cases. By revising the prior approach of informally disqualifying candidates from firms that had faced INT as adversaries in sanctions proceedings, the World Bank has broadened the pool of potential candidates.

Also in March, the World Bank Office of Suspension and Debarment ("OSD") released a 10-year update of metrics regarding OSD's role in World Bank enforcement. The report illustrates the depth and breadth of efforts by the World Bank to ensure that those who participate in projects financed with World Bank funds play by World Bank rules, but also shows the difficulty of successfully challenging INT allegations of misconduct: historically, OSD has agreed with the preliminary determinations of INT—agreeing in 96% of cases that INT had presented sufficient evidence for at least one claim set forth, and in 62% of cases that INT had presented sufficient evidence for all claims set forth.

Europe

United Kingdom

As we reported in our 2017 Year-End United Kingdom White Collar Crime Update, last year six individuals were charged by the UK Serious Fraud Office ("SFO") in connection with investigations of Unaoil. The first half of 2018 brought additional developments in this investigation. On May 22, 2018, the SFO announced charges against ***Basil Al Jarah*** (Unaoil's Iraq partner) and ***Ziad Akle*** (Unaoil's territory manager for Iraq) for conspiracy to pay alleged bribes to secure a $733 million contract to build two oil pipelines in Iraq. And on June 26, 2018, the SFO announced charges against ***Unaoil Monaco SAM*** and ***Unaoil Ltd***. Unaoil Ltd was charged in connection with the same oil pipeline project, while Unaoil Monaco SAM was charged with

conspiracy to make corrupt payments to secure the award of contracts for SBM Offshore. Unaoil has been summoned to appear at the Westminster magistrates court in London on July 18, 2018.

In other enforcement developments, following a three-day trial in the High Court in London, in March 2018 the SFO secured recovery of £4.4 million from two senior Chad diplomats to the United States who received bribes from Canadian oil and gas company ***Griffiths Energy International*** in exchange for securing oil development rights. This is the first time that money was returned overseas in a civil recovery case. As reported in our 2013 Year-End FCPA Update, on January 22, 2013 Griffiths entered a guilty plea in Canada and paid a CAD $10.35 million fine in connection with the alleged bribery.

Look for much more on UK white collar developments in our forthcoming 2018 Mid-Year United Kingdom White Collar Crime Update, to be released on July 16, 2018.

France

As discussed above, in June 2018 SocGen entered into a deferred prosecution agreement with DOJ and reached a parallel settlement with the French PNF in the first coordinated enforcement action by DOJ and French authorities in an overseas anti-corruption case. SocGen will also be subject to ongoing monitoring by the *L'Agence Française Anticorruption*.

In two decisions this year, France's Supreme Court—the *Cour de Cassation*—limited the use of "international double jeopardy" as a viable defense to criminal prosecution. French law provides that a criminal conviction in another country will preclude prosecution in France if no act related to the conduct took place in France. But in March 2018, the French Court ruled that the Swiss company ***Vitol*** could be prosecuted for charges related to its involvement in the U.N. Oil-for-Food Program, despite having entered a guilty plea for grand larceny in New York based on the same facts. The case spent more than five years in French courts before the Supreme Court ruled that the International Covenant on Civil and Political Rights, to which France is a signatory, prevents double jeopardy on similar charges for "unique facts" and applies "only in cases where both proceedings were initiated in the territory of the same State." The decision thus appears to end the protection against prosecution in France for the same conduct that had given rise to proceedings in the United States.

The 2018 *Vitol* decision resembled another recent ruling in which the French Supreme Court overturned a lower court's refusal to hear the case against British-Israeli lawyer ***Jeffrey Tesler***, who pleaded guilty in the United States to charges of bribing Nigerian officials. As we reported in our 2017 Mid-Year FCPA Update, the Paris Court of Appeals had previously held that the prosecution of Tesler was precluded by his 2011 plea agreement entered in U.S. court, suggesting that the U.S. plea was essentially involuntary and precluded him from fairly defending himself in France. On January 17, 2018, the French Supreme Court reversed that ruling, noting that Tesler had not been deprived of his right to a fair trial because his appearance in French courts was not dictated by the terms of the U.S. plea agreement. Furthermore, because some of the corrupt acts had been committed in France, the U.S. plea deal did not preclude French prosecution.

Germany

In February 2018, the German unit of French aerospace multinational ***Airbus SE*** agreed to pay $99 million to resolve a six-year bribery investigation by German prosecutors into a 2003 deal to sell fighter jets to Austria. Although prosecutors conceded that they had identified no evidence that bribes were used to secure the 2003 contract, they accused Airbus management of supervisory negligence in allowing employees to make large payments linked to the deal for "unclear purposes." Airbus continues to face ongoing litigation

in Austria, where the Austrian government is seeking more than $1 billion in damages from Airbus in connection with the 2003 deal.

Russia

One of Russia's semiautonomous republics, Dagestan, has become embroiled in a major corruption scandal, with the arrest of numerous high-ranking local government officials, including the acting prime minister, his two deputies, and the mayor of Makhachkala (Dagestan's capital). In Moscow, Alexander Drymanov, a high-level official within Russia's Investigative Committee ("IC") known to be very close to Alexander Bastrykin, the head of the IC, resigned from his position in early June. His resignation has been widely linked to allegations that Drymanov and other IC officers accepted bribes from the ringleader of a prominent criminal syndicate to ensure the release of a member of this syndicate. Additionally, in March 2018, Drymanov's former deputy told federal investigators of payments he had made in exchange for favorable treatment from Drymanov. Drymanov has characterized his departure as retirement; however, news reports suggest his removal is part of a coordinated attack against Bastrykin by other law enforcement agencies, such as the General Prosecutor's Office and the FSB (the KGB's successor).

Ukraine

Ukraine's parliament passed a bill to establish an anti-corruption court on June 7, 2018, which President Petro Poroshenko signed into law four days later. This court will become the fourth anti-corruption institution launched in Ukraine since 2014, following the establishment of the National Anti-Corruption Bureau of Ukraine ("NABU"), the Specialized Anti-Corruption Prosecutor's Office ("SAPO"), and the National Agency on Corruption Prevention ("NAZK"). There is hope that the new court will address one of the NABU's key complaints: that, despite investigations into and arrests of corrupt officials, these efforts are being wasted due to corrupt judges who help the officials escape justice. The newly passed law creates certain mechanisms intended to ensure that the anti-corruption court's judges remain impartial and do not become beholden to political or financial influence. Most notably, candidates for appointment to this court are subject to vetting by and interviews with a panel of six international experts. If three of the six raise concerns about a nominee's integrity or background, they may vote to block the candidacy, which result can be reversed only following further deliberations and a repeat vote.

Despite the generally positive reaction to this piece of legislation, commentators have voiced concerns over one provision added to the bill at the last moment, whereby regular courts will retain jurisdiction over ongoing corruption cases, and any resulting appeals also will be heard in courts of general jurisdiction, rather than the appellate branch of the anti-corruption court. Anti-corruption activists have expressed outrage at the furtive way in which this provision became part of the law—it was absent from the version of the law read to members of parliament prior to their vote—and have suggested its purpose is to enable the acquittal of certain indicted individuals, already on (or awaiting) trial, by courts of general jurisdiction.

The Americas

Argentina

A federal magistrate in Argentina has charged former President ***Cristina Fernández de Kirchner*** and her children with money laundering and ordered millions in assets seized. In another enforcement proceeding, the Anticorruption Office is seeking a prison sentence of five-and-a-half years, along with permanent disqualification from public office, against ex-Vice President and former Minister of Finance ***Amado Boudou*** after his conviction for "passive bribery" and "transactions incompatible with the exercise of public functions." The sentencing follows a trial concerning Boudou's purchase of 70% of a then-bankrupt

government contractor and his subsequent actions to have the bankruptcy lifted so that the contractor could again participate in federal government contracts.

As covered in our Key 2017 Developments in Latin American Anti-Corruption Enforcement client alert, Argentina has passed sweeping new anti-corruption legislation under which legal entities are strictly liable for crimes such as bribery, extortion, or illicit enrichment of public officials that are committed, directly or indirectly, in their name, interest, or benefit. Punishment for violating the law may result in one or a combination of criminal fines, suspension of state benefits, debarment, and dissolution. To be exempt from penalties and administrative responsibility under the new law, legal entities must be able to demonstrate that they reported the wrongdoing as a result of a proper internal investigation; implemented a compliance program prior to commission of the act in question; and returned the benefit that was wrongfully obtained. Companies facing possible sanctions may mitigate their punishment by cooperating in an active investigation. Such cooperation includes disclosing accurate, actionable information that sheds further light on potential wrongdoing, recovery of assets, or identification of individual offenders.

Articles 22 and 23 of the new law outline requirements for compliance or "integrity" programs. The programs should be designed to prevent, detect, and correct irregularities and illicit acts taken by the corporation, its representatives, or third parties that confer a benefit to the company. To receive exemption from any penalties under the law, companies must create internal compliance reporting methods and develop procedures to investigate reports. The law requires that the compliance or integrity program contain at least (1) a code of conduct; (2) rules and procedures to prevent illicit acts in the course of bidding for administrative contracts, or in any other interaction with the public sector; and (3) periodic training programs for directors, administrators, and staff.

Brazil

Despite facing economic and political uncertainty, Brazil remains a driving force in global anti-corruption efforts. Brazilian law enforcement entities across the country increasingly are cooperating with each other, as well as with dozens of foreign enforcement authorities. Operation *Lava Jato* (Car Wash), now in its fifth year, continues to accumulate convictions related to a vast corruption scheme that exploited contracts with Brazil's state-owned oil company, Petrobras. So far, prosecutors have charged approximately 400 individuals and obtained more than 200 convictions on charges including corruption, money laundering, and abuse of the international financial system. Building on its previous efforts, the Car Wash Task Force has initiated four new phases of Car Wash in 2018, many of which dig deeper into allegations that came to light in previous phases.

We discussed in our 2017 Year-End FCPA Update the conviction of President ***Luiz Inácio Lula da Silva*** on corruption and money laundering charges. Despite his conviction, Lula remained the front-runner for Brazil's October 2018 presidential election. In April 2018, however, Lula was ordered to turn himself in and begin serving his 12-year prison sentence. Now in prison and with little hope of successfully appealing his conviction, it is unlikely Lula will be eligible to run for the presidency.

Brazilian authorities also have expanded Operation *Carne Fraca* ("Weak Flesh"), which covers allegations of bribery in the Brazilian meatpacking industry to evade food safety inspections. After launching the investigation in 2017, authorities carried out a third investigative phase in March 2018. The new phase focused on Brazilian food processing giant ***BRF***, with police arresting former BRF CEO ***Pedro de Andrade Faria***, former BRF Vice President of Global Operations ***Helio dos Santos***, and other executives. Meanwhile, authorities have continued to investigate Brazilian meatpacking company ***JBS*** and its parent company, ***J & F Investimentos***. Its former executives and part owners ***Joesley and Wesley Batista***—who were targets of earlier phases of Weak Flesh, as reported in our 2017 Year-End FCPA Update,

and had been in prison since 2017—were released from prison after their prison sentences were commuted to house arrest in February 2018. In May 2018, Brazilian authorities again arrested Joesley Batista, charging him with corruption, money laundering, and obstruction of justice. Additional charges are expected, particularly as additional Brazilian law enforcement entities join the investigations.

Canada

In February 2018, Public Services and Procurement Canada ("PSPC"), the division of the Canadian government responsible for internal administration, announced that it would introduce legislation to adopt the use of deferred prosecution agreements as a new tool to penalize corporate wrongdoing. The proposed program, known as the Remediation Agreement Regime, is intended to encourage companies to voluntarily disclose potential misconduct by offering a potential alternative to criminal conviction and debarment. Legislation to adopt the Regime was introduced in March 2018. Under the proposed bill, "remediation agreements" would be subject to prosecutorial discretion and, as in the United Kingdom, would require judicial approval and oversight. Notably, only certain economic crimes—bribery, fraud, insider trading, and books-and-records violations, among others—would be eligible for deferred prosecution under the current draft of the bill.

In addition to proposing the adoption of deferred prosecution agreements, PSPC in March further announced it would work to enhance the government-wide "Integrity Regime" debarment program. Under the current program, companies convicted of certain white collar offenses are banned from bidding on government contracts for a period of 10 years, which can be reduced to a five-year ban in certain circumstances. According to a March 2018 press release, enhancements to the program will include increasing the number of triggers that can lead to debarment, as well as introducing greater flexibility in debarment decisions. A detailed description of the Integrity Regime's new provisions will be included in a revised Ineligibility and Suspension Policy to be published on November 15, 2018. The enhanced program will come into effect on January 1, 2019.

Colombia

As reported in our 2017 Mid-Year FCPA Update, former National Director of Anti-Corruption for Colombia's Office of the Attorney General ***Luis Gustavo Moreno Rivera*** was charged in U.S. federal court with conspiracy to commit money laundering and related charges in June 2017. On May 18, 2018, Moreno was extradited from Bogotá to Miami on charges stemming from an alleged bribery scheme. Moreno and his purported middleman, Colombian attorney ***Leonardo Luis Pinilla Gomez***, are accused of receiving a $10,000 bribe in a Miami mall bathroom in exchange for confidential information, including witness statements, from Moreno's corruption investigation of former Córdoba governor ***Alejandro Lyons Muskus***. The exchange allegedly was a down payment for a $132,000 deal, in which Moreno agreed to discredit a witness in a case against Lyons before the IRS. Recorded conversations purportedly capture Moreno and Pinilla discussing Moreno's ability to control and obstruct the investigation. Moreno and Pinilla were arraigned in Miami in late May and face wire fraud and money laundering-related charges.

In August 2018, Colombia will hold a public referendum allowing citizens to vote on seven proposals aimed at combating graft and corruption. The referendum will include provisions amending prison sentences and imposing lifelong bans on government employment for individuals found guilty of corruption, lower salaries for legislators and senior government officials, terms limits for holding office in public companies, and greater transparency in the bidding processes for government contracts.

Guatemala

Corruption investigations in Guatemala continued to face obstacles in early 2018. As noted in our 2017 Year-End FCPA Update, President Jimmy Morales attempted to expel from Guatemala Iván Velásquez, a Colombian prosecutor and head of the International Commission Against Impunity (known by its Spanish acronym "CICIG"), on August 27, 2017. CICIG is a U.N. commission created in 2006 to investigate corruption in the Guatemalan government. The attempted expulsion came after Velásquez and Guatemalan Attorney General Thelma Aldana announced an investigation into Morales for illegal campaign financing. Though the Guatemalan Supreme Court blocked the expulsion and other attempts to prevent investigations into Morales, CICIG remains embattled.

In March 2018, the Guatemalan government removed 11 national police investigators from CICIG, disrupting the investigation into Morales and other high-ranking government officials. Additionally, U.S. Senator Marco Rubio has placed $6 million in U.S. aid to CICIG, which represents a third of its annual budget, on hold, citing suspected manipulation of CICIG by Russian bank VTB to politically persecute a Russian family. Rubio's concerns stem from CICIG's involvement in the criminal conviction of the Bitkov family, Russian nationals found guilty of purchasing false Guatemalan passports and entering Guatemala illegally after the state-owned Russian bank targeted their paper business.

Despite these challenges, CICIG has moved forward with other investigations. In February, former President ***Álvaro Colom*** and nine members of his cabinet were arrested. Among them is ***Juan Alberto Fuentes Knight***, a former finance minister and current chairman of Oxfam International. The investigation concerns a $35 million deal for a public bus system in Guatemala City. Prosecutors allege that nearly a third of the funding was spent on equipment that went unused.

Honduras

The Organization of American States Mission to Support the Fight Against Corruption and Impunity in Honduras (known by its Spanish-language acronym, "MACCIH") has faced a number of setbacks over the past six months. In December 2017, MACCIH and the Public Ministry (national prosecutors) indicted five outgoing members of the Honduran Congress for misappropriating public funds in a case known as *Red de Diputados*. Around the time of the announcement, then-Spokesman and Head of MACCIH Juan Jiménez Mayor said that between 60 and 140 additional legislators were under investigation as part of the corruption probe. Shortly thereafter, Congress passed a law blocking MACCIH from assisting the Public Ministry, and ordering the Tribunal Superior de Cuentas ("TSC")—a government body dominated by ruling party stalwarts—to engage in an audit of the funds that Congress members have received since 2006. The new measure shields members of Congress from legal action until the TSC concludes its investigation, which may take several years. Citing the new law, the judge overseeing the *Red de Diputados* case released the five indicted congresspersons and postponed their trial. On February 15, 2018, MACCIH's director, Jiménez Mayor, announced in an open letter that he was resigning from the organization as a result of the challenges of working with the Honduran government and a lack of support from OAS Secretary General Luis Almagro Lemes.

In late May 2018, the Honduran Supreme Court partially invalidated an agreement that created the Fiscal Unit Against Impunity and Corruption ("UFECIC"), the entity within the Public Ministry that worked with MACCIH. The controversial ruling came in response to a legal challenge to MACCIH brought by three individuals accused by prosecutors and MACCIH of embezzling money in connection with the *Red de Diputados* case. The plaintiffs argued that MACCIH should be declared unconstitutional because it violated Honduras' sovereignty and the independence of its governmental organizations. Though the court rejected that argument, it determined that the UFECIC, by serving as MACCIH's investigative arm, impermissibly

delegated constitutional functions to MACCIH and thus should be invalidated. The Supreme Court's decision followed lobbying by members of Honduras's Congress—many of whom were being investigated by MACCIH—to invalidate the entire anti-corruption mission. The opinion has been criticized by anti-corruption advocates.

Mexico

On May 18, 2018, the Mexican government published new requirements for companies wishing to contract with Petróleos Mexicanos ("PEMEX"), the Mexican state-owned oil company and a subject of numerous FCPA enforcement actions. The new rules require parties contracting with PEMEX to have compliance programs designed to prevent and detect any instances of corruption. The compliance program must remain in force for the duration of the contract with PEMEX and PEMEX has the power to verify the program. The newly published regulations do not specify requirements for the compliance program, though one guidepost may be the Mexican Ministry of Public Administration's Model Program for Company Integrity in the recently passed General Law of Administrative Responsibility ("GLAR"). As discussed in our Key 2017 Developments in Latin American Corruption Enforcement client alert, the Model Program calls for clearly written anti-corruption policies and procedures, training, and avenues for reporting potential misconduct.

In October 2017, Santiago Nieto was fired from his post as Special Prosecutor for Electoral Crimes. Nieto claimed that his firing was politically motivated to halt his investigation into whether funds solicited by ***Emilio Lozoya Austin***—CEO of PEMEX—were used to finance President Enrique Peña Nieto's 2012 campaign. This May, the Mexican government initiated an investigation against Lozoya, which remains ongoing. Lozoya is alleged to have requested and received millions of dollars of improper payments from the Brazilian construction firm ***Odebrecht***. Nevertheless, the Mexican government has thus far not pursued further investigations into whether government officials accepted bribes from Odebrecht. In April, Mexico issued administrative sanctions against Odebrecht, barring the company from doing business in the country for at least two years and three months. The Mexican government also has fined Odebrecht $30 million.

Peru

Peruvian President ***Pedro Pablo Kuczynski*** resigned on March 21, 2018, the day before a scheduled congressional impeachment vote. As reported in our 2017 Year-End FCPA Update, Kuczynski has been the subject of an investigation involving former Odebrecht CEO ***Marcelo Odebrecht***'s alleged payment of $29 million in bribes to Peruvian officials, including Kuczynski and former presidents ***Ollanta Humala*** and ***Alejandro Toledo***. Kuczsynski's resignation followed quickly after surreptitiously recorded videos purported to show his colleagues, including Peruvian congressman ***Kenji Fujimori***, bribing opponents with public contracts in exchange for voting against his impeachment in the 2018 vote. Martín Vizcarra, the Vice-President, assumed the Peruvian presidency in Kuczynski's place and will serve out his term through 2021.

On June 10, 2018, Peruvian prosecutors formally opened an investigation into Kuczynski, Toledo, and former president ***Alan García*** for allegedly accepting bribes from Odebrecht. The three former Peruvian Presidents are suspected of promising construction contracts in exchange for undeclared campaign contributions. Humala already was under investigation for similar allegations; he and his wife were arrested in July 2017 but were released in May 2018 because no formal charges had yet been filed against them. Toledo, who has been living in the United States, continues to fight extradition to Peru.

Asia

Bangladesh

Bangladesh's former two-term Prime Minister, ***Khaleda Zia***, was sentenced to a five-year prison term in February 2018. Zia had been convicted of embezzling donations meant for an orphanage trust established during her term as Prime Minister. In March 2018, a Bangladeshi court granted bail to Zia, prompting hopes that she could participate in a December general election. Despite a decision by the Bangladeshi Supreme Court upholding a lower court's decision to grant Zia bail, Zia remains imprisoned as her bail related to other charges has been denied. Zia faces more than 30 separate inquiries into allegations of violence and corruption.

China

China's anti-corruption campaign continues to be a priority as Xi Jinping moves into his second term. Following the nationwide pilot scheme of the National Supervisory System rolled out in November 2017, in March 2018 the National People's Congress ("NPC") passed the Supervision Law of the People's Republic of China ("PRC Supervision Law") and at the same time amended the Chinese Constitution. This provided legal and constitutional foundation for the National Supervisory System. Supervisory Commissions at national and local levels are a new organ of the state and have jurisdiction to investigate corruption by all public servants in China, including those who are not party members. Supervisory commissions have broad investigative powers to conduct interviews and interrogations, carry out inquiries and searches, freeze assets, obtain, seal/block and seize properties, records and evidence, conduct inquests, inspections and forensic examinations, and to detain individuals under a new mechanism known as "Liu Zhi." The 2018 NPC also approved a wide ranging reorganization of the Ministries under the State Council. This means that enforcement of commercial bribery offenses under the Anti-Unfair Competition Law will now be carried out by the new State Administration for Market Regulation and its local counterparts.

The first half of 2018 has also seen prosecution and sentencing of a number of high-profile individuals for corruption offenses. Most notably in May 2018, ***Sun Zhengcai***, a former member of the Politburo, was sentenced to life for bribery. Sun had served as party chief of Chongqing, succeeding Bo Xilai who was sentenced to life imprisonment for corruption offenses in 2013. He is the first serving member of the Politburo to be targeted by the campaign. ***Xiang Junbo***, the former Chairman of China's now-defunct insurance regulator and the highest-ranking finance official snared in China's anti-corruption campaign, has pleaded guilty to taking bribes and is awaiting sentencing.

India

In February 2018, the Central Bureau of Investigation ("CBI") registered a case against executives of the Indian subsidiary of U.S.-based engineering and construction firm ***CDM Smith***, as well as officials of the National Highways Authority of India ("NHAI"). According to the CBI, CDM Smith paid bribes through its Indian subsidiary to various officials of the NHAI to secure infrastructure contracts between 2011 and 2016. The CDM Smith executives that stand accused allegedly disguised their bribes as "allowable business expenses" on their income tax returns. The CBI enforcement action follows the 2016 Pilot Program declination with CDM Smith (covered in our 2017 Mid-Year FCPA Update) in which CDM Smith agreed to disgorge just over $4 million in profits in connection with the alleged improper payments to the NHAI.

On April 4, 2018, the Indian government sought to pass the Prevention of Corruption (Amendment) Bill, 2013 (discussed in our 2016 Year-End FCPA Update) at a parliamentary session held at the Rajya Sabha (otherwise known as the Council of States, the upper house of the Indian Parliament). The proposed law

would introduce specific offenses and fines for commercial organizations engaging in bribery in India, create a specific offense for offering a bribe, and provide for criminal liability for company management of companies engaging in corrupt practices. However, the Bill failed to be passed. The Bill's prospects of passage remain unclear.

Korea

The first half of 2018 saw a number of high-profile charges and convictions for corruption-related offenses. As reported in our 2017 Year-End FCPA Update, then-President ***Park Geun-Hye*** was impeached in December 2016 amid allegations of influence peddling and corruption. In April 2018, Park was convicted of 16 corruption-related offenses, including abuse of power, bribery, and coercion. She was sentenced to 24 years' imprisonment and a fine of KRW 18 billion (approximately $16 million). Park decided not to appeal her sentence and is currently serving her jail term. ***Choi Soon-Sil***, Park's friend and advisor who was accused of coercing Korean conglomerates into donating millions of dollars to charitable organizations connected to the former President, was sentenced in February 2018 to 20 years' imprisonment for influence peddling, abuse of power, and corruption.

In March 2018, another former Korean President, ***Lee Myung-Bak***, was arrested on multiple charges of corruption, including bribery, embezzlement, tax evasion, and abuse of power. Lee allegedly received more than KRW 11 billion (approximately $10 million) in bribes before and during his presidency. Lee's trial began at the end of May 2018 and is ongoing.

As reported in our 2017 Year-End FCPA Update, Samsung Electronics Vice Chairman ***Lee Jae Yong*** was convicted of bribery and related charges and sentenced to five years' imprisonment in August 2017. In an unexpected turn of events, Lee was released from prison in February 2018, after the Seoul High Court halved his jail term to 2.5 years and suspended his sentence on appeal. In contrast, Lotte Group's Chairman ***Shin Dong Bin*** was convicted of bribery and sentenced to 30 months' imprisonment and a fine of KRW 7 billion (approximately $6.5 million) in February 2018. The court found that he paid KRW 7 billion (approximately $6.5 million) to Choi Soon-Sil's K Sports Foundation in return for Park's support of reissuing Lotte's business permit to operate its duty-free stores. Shin remains imprisoned while his appeal of the sentence continues.

Middle East and Africa

Israel

In January 2018, the Office of Israel's Tax and Economic Prosecutor announced that it reached a Conditional Agreement with ***Teva Pharmaceuticals Industries Ltd***, the world's largest manufacturer of generic pharmaceutical products. The agreement arose from alleged corrupt payments made between 2002 and 2012 to high-ranking ministry of health officials in Russia and Ukraine to influence the approval of drug registrations, as well as to state-employed physicians in Mexico to influence the prescription of products. As part of the agreement with Israeli authorities, Teva agreed to pay a fine of approximately $22 million, on top of the $519 million it paid to resolve FCPA charges arising from the same conduct, as covered in our 2016 Year-End FCPA Update. This was the second enforcement action brought under Israel's foreign bribery statute and the first involving a Conditional Agreement. Israeli prosecutors stated that the decision to enter into a Conditional Agreement with Teva was based on various factors, including the large penalty already paid to U.S. authorities, Teva's cooperation and remediation, and recent financial hardships incurred by Teva.

Saudi Arabia

Earlier this year, Saudi officials began taking steps to conclude a large anti-corruption probe initiated in November 2017 by Saudi Arabian Crown Prince ***Mohammed bin Salman*** that involved the detainment and questioning of hundreds of influential Saudis (covered in our 2017 Year-End FCPA Update). According to one prosecutor, the government reached settlements worth $106 billion as a result of the probe. Although most detainees have been released, some remain in custody pending trial. Some analysts have viewed the corruption campaign as a power grab by Prince Mohammed, but the Saudi government insists its focus is combating endemic corruption. In March 2018, Saudi officials announced that new anti-corruption departments were added to the Attorney General's office in furtherance of King Salman and Crown Prince Mohammed's goal to eradicate corruption.

South Africa

In April 2018, South African officials announced the reopening of a corruption investigation involving alleged abuse of public funds for a dairy farm in Vrede. The investigation initially focused on ***Ace Magashule***, secretary general of the African National Congress, and ***Mosebenzi Joseph Zwane***, the former minister of mineral resources. According to prosecutors, the dairy farm project was intended to help black farmers but instead funneled $21 million to business allies of the African National Congress. As part of the investigation, prosecutors seized $21 million from three brothers known to be family friends and political allies of South Africa's former President ***Jacob Zuma***, who was ousted in February 2018 in connection with corruption allegations.

CONCLUSION

As is our semiannual tradition, over the following weeks Gibson Dunn will be publishing a series of enforcement updates for the benefit of our clients and friends as follows:

- Tuesday, July 10 – 2018 Mid-Year Update on Corporate NPAs and DPAs;
- Wednesday, July 11 – 2018 Mid-Year False Claims Act Update;
- Thursday, July 12 – Developments in the Defense of Financial Institutions;
- Friday, July 13 – 2018 Mid-Year Class Actions Update;
- Monday, July 16 – 2018 Mid-Year UK White Collar Crime Update;
- Tuesday, July 17 – 2018 Mid-Year Media and Entertainment Update;
- Wednesday, July 18 – 2018 Mid-Year Securities Litigation Update;
- Thursday, July 19 – 2018 Mid-Year Government Contracts Litigation Update;
- Monday, July 23 – 2018 Mid-Year UK Labor & Employment Update;
- Tuesday, July 24 – 2018 Mid-Year Shareholder Activism Update;
- Thursday, July 26 – 2018 Mid-Year Healthcare Compliance and Enforcement Update – Providers;

- Friday, July 27 – 2018 Mid-Year Securities Enforcement Update; and

Wednesday, August 1 – 2018 Mid-Year FDA and Health Care Compliance and Enforcement Update – Drugs and Devices.

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