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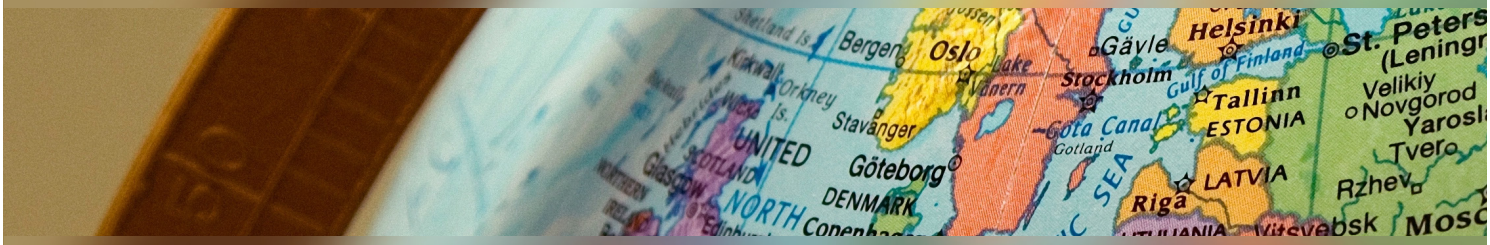

ANTI-BRIBERY AND CORRUPTION REVIEW

JUNE 2018

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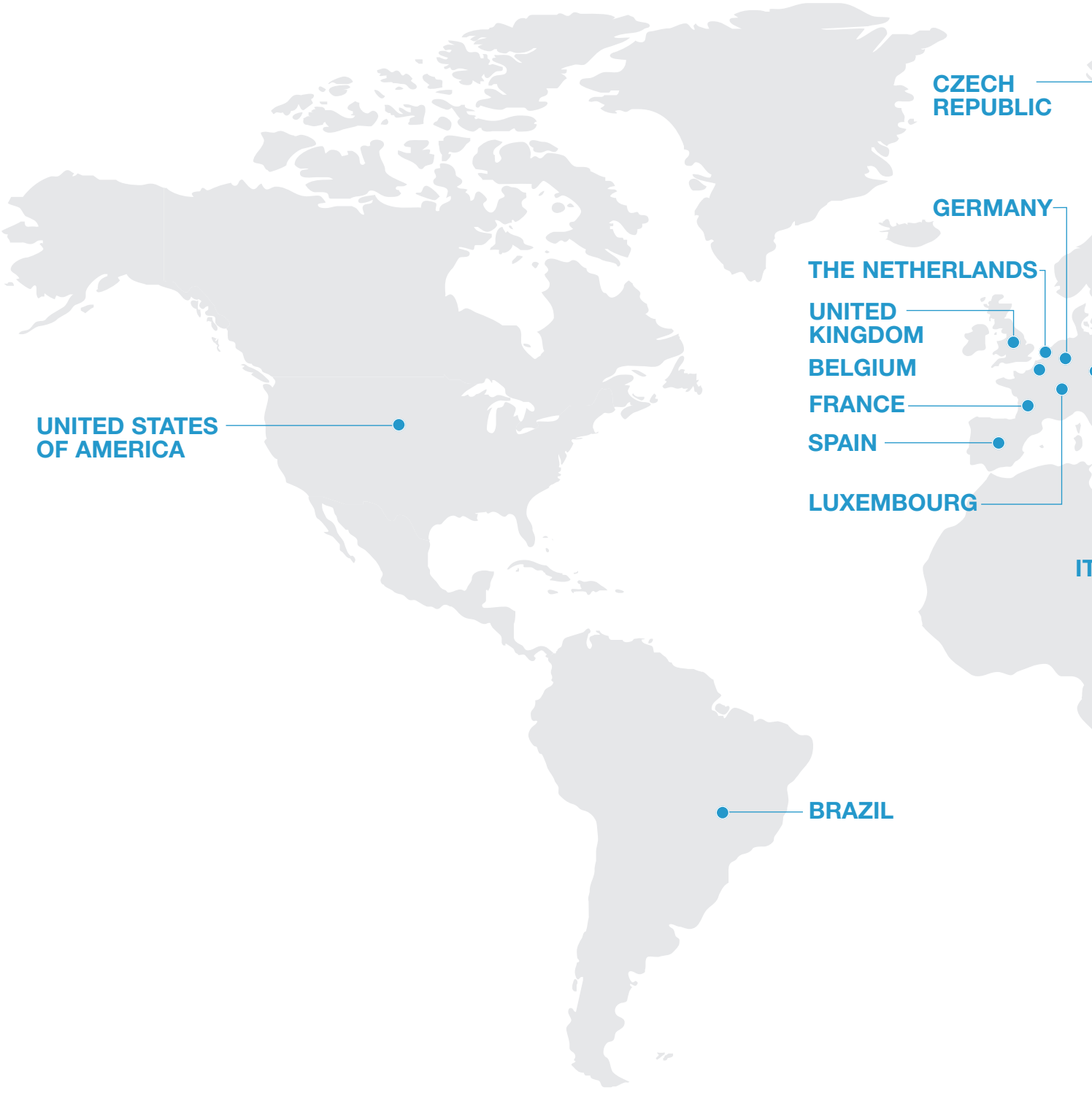
WORLD MAP

Please click on the country name on the interactive map below to take you directly to the relevant chapter.

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THAILAND
UNITED ARAB EMIRATES
SINGAPORE
AUSTRALIA

FOREWORD

Fighting bribery and corruption continues to be high on the agenda for both legislators and enforcement authorities all over the world, with further measures to encourage the reporting of corruption offences, to stem corruption in public procurement and to impose liability for corruption offences on companies.

Germany has introduced a new law to implement a nation-wide central competition register specifically covering corruption-related offences, while the People's Republic of China has introduced stricter rules on commercial bribery. The Australian legislator presented a draft Bill that proposes further strengthening of the criminal offence of bribing foreign public officials, while both Russia and Spain have acted to tighten rules on bribery in public procurement.

Italy has adopted new legislation to facilitate whistleblowing and, at the same time, the US and France have both introduced new incentives for companies to disclose corruption offences voluntarily and to cooperate with prosecutors during investigations, while Japan is proposing to implement a similar regime.

The theme of corporate criminal liability is also a focus for governments with new initiatives in Australia, Germany and Poland. Meanwhile, the UK Government's Anti-Corruption Strategy 2017 – 2022 includes interim freezing orders designed to improve recovery of assets obtained through bribery or corruption.

It remains important for international companies to keep up with these developments in the jurisdictions in which they operate and to keep their compliance programmes up-to-date to address risks to their business.

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EUROPE, THE MIDDLE EAST AND AFRICA

BELGIUM

Changes to legislation

In response to a preliminary reference, the Belgian Constitutional Court recently clarified that, although the Belgian legal provisions on active bribery formally only incriminate the act of 'proposing' an advantage, it has always been the intent of the legislator to also render punishable the actual 'giving' of the advantage. This decision settles the doubts which were raised by the OECD Working Group in 2005 on this point.

The Belgian Court of Cassation furthermore clarified in a recent judgment that the offence of trading in influence is a form of bribery which aims at the exercise by the bribed person of influence to obtain the omission or performance of an act by a public authority or administration, and not at the actual omission or performance of the act by that authority or administration. The request for the use of influence must be addressed to a public official, as determined based on the function which that person exercises (and not his/her qualification). Whilst the request for the use of the public official's influence must furthermore be addressed to him/her in the execution of his/her public mandate, the envisaged, actual or alleged, influence, can exceed the scope thereof.

Prosecutions and enforcement actions

In terms of enforcement actions and prosecutions, several Belgian nationals have become implicated in the so-called "Kazakhgate" scandal involving the (suspiciously) expeditious passing of a Bill in Parliament to extend the possibilities for settlement in criminal cases. It is said that the law was adopted to allow a Belgian national of Kazakh origin to avoid prosecution. It is also alleged that the former French president, Mr Sarkozy, pushed for the adoption of the new law. The facts date back to 2011.

Last year, investigative measures against a magistrate involved in the negotiation of the criminal settlement with the Belgian national were initiated. It is alleged that this magistrate obtained a gift of favour to a non-profit organisation he is in charge of in exchange for the conclusion of the criminal settlement agreement.

The former president of the Belgian Senate and member of the Brussels' Parliament, who is also a lawyer at the Brussels bar, was recently indicted for trading in influence in connection with charges that he (allegedly) pushed for the adoption of the new law. While there have been several indictments in France, this is the first indictment in Belgium. It is alleged that the indicted received EUR 740,000 in exchange for his "services". He was asked by his political party to resign from all his mandates and decided to leave the party.

Kazakhgate has led to the creation of a parliamentary investigation commission, which is currently actively investigating this matter.

Another noteworthy prosecution is that of a Justice of the Peace (the lowest judicial civil instance in Belgium) from Oostende who has been accused of forgery, theft from vulnerable persons, passive bribery, conflict of interest and money laundering. Throughout many years, the judge concerned allegedly abused vulnerable elderly people while supervising their provisional administration. After a three-year judicial inquiry, which commenced with searches at the Justice of the Peace's offices and in the judge's private apartment in 2014, the investigation was completed and, according to the press, a hearing was set for 30 March 2018 before the Court of Appeal of Ghent. The outcome of the proceedings is as yet unknown.

Enforcement trends

Generally speaking, there have been few enforcement cases in Belgium and there is very little case law. Recent years have seen even less activity due to relocations of staff and budget cuts in the judiciary. The lack of resources has led to long delays in the treatment of cases, the expiry of the statute of limitations in some instances (especially international bribery cases) and a lack of prosecution or the closing of cases.

According to the latest statistics published by the Belgian Service for Criminal Policy, there were four convictions for private sector corruption and ten convictions for public sector bribery in 2016[1]. No distinction is made between foreign bribery and domestic bribery.

In addition, the records of the Belgian Financial Intelligence Processing Unit (*Cellule de Traitement des Informations Financières/Cel voor Financiële Informatieverwerking*, or CTIF-CFI), which processes suspicious financial transactions related to money laundering and terrorist financing, show that in 2016 it reported six cases of embezzlement and corruption to the judicial authorities, representing a total amount of EUR 658.99 million, while it reported eight cases in 2015, representing a total amount of EUR 23.3 million.

1 No figures are available for 2017. However, the latest OECD report for Belgium (discussed further below) notes that at least nine investigations into foreign bribery are currently ongoing which, according to the Belgian Government, shows that Belgium is far from closing cases with no action taken. Several investigations (one in 2016 and 2017) appear to have been opened on the basis of information shared by diplomatic missions about Belgian companies with overseas operations.

The files that CTIF-CFI reported to judicial authorities mainly concern instances of bribery of public officials and, to a lesser extent, private sector bribery. The individuals concerned are generally politically exposed persons, mainly foreign nationals and/or individuals residing abroad, or public officials or individuals working in the private sector.

In the files reported to the judicial authorities, CTIF-CFI discovered that there were significant financial flows relating to assets bequeathed to heirs by persons suspected of corruption. The assets, which were held with several banks in neighbouring countries, were repatriated to Belgium by way of transfers to accounts held by the heirs and opened specifically for these operations with banks in Belgium.

Other developments

GRECO report

On 23 March 2018, the Group of States against Corruption (GRECO) published a report evaluating Belgium's implementation of the recommendations in GRECO's Fourth Round Evaluation Report dated 28 August 2014 on the prevention of corruption in respect of Members of Parliament, judges and prosecutors.

GRECO concludes that Belgium has not satisfactorily implemented or dealt satisfactorily with fourteen out of the fifteen recommendations contained in the 2014 Evaluation Report. One recommendation has been satisfactory implemented, while seven recommendations have been partly implemented and seven have still not been implemented.

In particular, as far as Members of Parliament are concerned, GRECO expresses its regret that there is little progress in reforming this area almost four years after the adoption of the Evaluation Report. While certain legislative proposals with various initiatives (such as the creation of lobbyists' registers, introduction of more gradual penalties and publication of the lists of mandates held by Members of Parliament together with their remuneration) were submitted to, and adopted by, the Chamber of Representatives on 1 March 2018, others are still pending, and all these initiatives still need to be further elaborated and executed.

With regard to judges and prosecutors, GRECO states that likewise slow and limited progress has been made in this area. While a draft amendment to the Belgian Judicial Code has been circulated, GRECO considers that this draft is not sufficient to cater for all pending matters. Hence, additional steps are required for nearly all recommendations, in particular: adoption of rules concerning the integrity of the judiciary, an effective supervisory and disciplinary system for substitute judges and an evaluation of the arrangements for assigning cases between judges.

In light of the foregoing, GRECO considers that the measures taken by the Belgian authorities to implement its recommendations are very limited and concludes that the currently very low level of compliance with these recommendations remains globally insufficient. It has explicitly drawn the attention of the head of the Belgian delegation to non-compliance with the relevant recommendations and the need for determined action to achieve concrete progress as soon as possible.

GRECO requested the Belgian delegation to submit a report on progress in implementing the outstanding recommendations by 31 March 2019 at the latest. It has also invited the Belgian authorities to authorise, at their earliest convenience, the publication of this report, which has been done.

OECD Report

By way of a follow-up to its Phase 3 report of February 2016, the Organisation for Economic Cooperation and Development (OECD) published a report on 12 January 2018 with an update of its assessment of the structures put in place by Belgium to enforce the laws and rules implementing the OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions.

In its February 2016 report, the OECD Working Group recommended to the Belgian Government, with respect to investigations and prosecutions of foreign bribery cases, that it urgently make available adequate human and material resources to the judicial and law enforcement authorities so that they can effectively investigate, prosecute and adjudicate foreign bribery cases.

The January OECD report notes that, in order to prevent any more major tax cases running out of time due to a lack of specialised knowledge, Belgium increased its number of specialised tax prosecutors from 15 to 30. These prosecutors engage in the fight against organised economic and financial offences, which includes the fight against bribery and fraud. Further, an additional recruitment process has been initiated for the Federal Criminal Police in order to increase the number of investigators working for the Central Office for the Repression of Corruption. Lastly, the number of officials from tax administrations seconded to the prosecutors' offices was increased from 18 to (currently) 33. These officials are granted the status of judicial police officer and work on bribery and fraud matters.

As for the urgent recommendation of the OECD for the Belgian Government to take measures to extend the possibilities for suspending the limitation period to allow adequate time for investigating and prosecuting foreign bribery, the Belgian State considers that there are already many different possibilities for suspending the limitation period under Belgian law, each "suspensive act" resulting in an extension of the limitation period. The issue of the limitation period is also being dealt with by the working group on the reform of the Code of Criminal Procedure.

With respect to reporting acts of bribery, the OECD Working Group recommended that Belgium should take appropriate measures to protect public and private sector employees who report (actual or potential) acts of foreign bribery to the competent authorities (known as whistleblowers) from any discriminatory or disciplinary action. The most recent report indicates that Belgium has taken several actions to follow-up on this recommendation and to offer better protection to specific categories of whistleblowers.

In July 2017, the Law on the surveillance of the financial sector and financial services was amended and Article 69*bis* was introduced, which requests the financial services and markets watchdog, the Financial Services and Markets Authority (FSMA), to set up effective mechanisms which would allow and encourage people active in the financial sector to report any (alleged) violations of financial law. *Bona fide* whistleblowers in that sector are now officially protected from any civil, criminal or disciplinary action, any (professional) retaliation, discrimination and other forms of unfair treatment for reporting an infringement. Specific protective measures have been implemented for employees, following which an employee has the right to be re-employed by his employer if he was fired because of making an infringement notification, and if not, he can claim indemnification and be assisted by the FSMA in all further proceedings. Any contractual provision under which the employee waives all these rights is null and void. Additionally, a contact point for whistleblowers has been created on the FSMA's website.

In the wake of the data leaks in 2016 exposing offshore dealings and widespread tax evasion (the so-called Panama Papers), a special commission established by Parliament *inter alia* formulated a recommendation to develop a general framework for the protection of whistleblowers in the private and the public sector. Various working groups have subsequently been set up within the federal public services for Foreign Affairs and Finance to examine the current state of whistleblower protection, both nationally and internationally.

BACK TO MAP

CZECH REPUBLIC

Changes to legislation

Transparency and combating corruption remained key political topics in 2017, as reflected in numerous legislative amendments, although some of these changes are not aimed at increasing transparency, but rather at decreasing the allegedly negative effects of such measures.

The Conflict of Interest Act (Act No. 159/2006 Coll.), aimed at preventing conflicts of interests of public officials in relation to their business or personal activities, has been amended several times during the past year. Further amendments have been proposed to mitigate the effects of the requirements on public exposure of assets owned by regional politicians since, apparently, the present regulation may discourage candidates in the regional elections this year.

Since 1 July 2017, sanctions may be imposed for a failure to publish contracts made between public organisations and private businesses. This obligation stems from the Register of Contracts Act (Act No. 340/2015 Sb.), which came into effect in July 2017. This Act requires all contracts with public entities (widely defined) to be disclosed in the Register of Contracts. Such contracts only become effective after they have been disclosed; the main sanction for a breach of this requirement is that contracts that have not been disclosed within three months of having been signed, are invalid and deemed never to have been made[2].

In July 2017, the Register of Contracts Act was amended to include more exceptions to the requirement for contracts to be published. The most controversial exception from the obligation to publicize contracts is the rule excluding contracts made within a competitive environment. As the exception relies on proper interpretation of the rule on a case-to-case basis, the sanction of nullification of a contract has been softened to some extent. If a contract has not been published in good faith that the exception applies to it, the contract may be published within an additional 30 days after the subject obliged to publish the contract finds out that the exception does not apply.

In December 2017, the Constitutional Court of the Czech Republic repealed some of the provisions in the highly controversial Electronic Registration of Sales Act (Act No. 112/2016 Coll,), which places an obligation on all sellers and service providers (with some exceptions) to report information on all sales generating cash revenues to the local financial administration body, and stopped the third and fourth stages of implementation of this Act. These stages were to include registration of the sales of farm markets, food stands, attorneys and doctors. The amendment to this Act, which should reflect the decision of the Constitutional Court, is currently being discussed and drafted.

The draft Public Prosecution Act, prepared by the Ministry of Justice, which proposed significant changes to the organisation of the Public Prosecutor's Office, was rejected by the Czech Parliament after criticism from the Committee on Constitutional and Legal Affairs.

Prosecutions and enforcement actions

The currently most closely followed prosecution relates to a potential misuse of European grants in relation to the rebuilding of a local farm, as this case involves the prosecution of the current Prime Minister, Mr Andrej Babiš. The case was investigated by the European Anti-Fraud Office (OLAF), an authority investigating fraud against the EU budget, corruption and serious misconduct within the European institutions. OLAF concluded that the case may have involved a potential fraud and referred the case to the national authorities. On 4 May 2018, the regional authority dealing with EU grants invited the current direct owner to return the grant voluntarily in 30 days. While related criminal proceedings against several suspects have been cancelled, the prosecution against the current Prime Minister is, however, still pending.

A decision is expected to be issued in June 2018 in relation to the case of a Member of Parliament, Mr David Rath, sentenced to eight and half years in prison in 2015 in one of the most high-profile, current corruption-related cases. The first instance decision was successfully appealed in 2016 on the basis that illegal wiretappings formed the

2 More details can be found in the Clifford Chance Briefing Note *Register of Contracts – Penalties for failure to disclose a contract in the Register of Contracts file:///C:/Users/003532/Downloads/Cliifford_Chance_Client_Briefing___Register_of_Contracts___*Penalties_for_failure_to_disclose_a_contract_in_the_Register_of_Contracts_6036036.pdf .

main evidence in the case; the Supreme Court of the Czech Republic overruled this second instance decision and the case was referred back to the first instance court for further proceedings. The final oral hearing took place in March 2018.

Enforcement trends

Although there has been a significant increase in high-profile corruption investigations during the last few years and a number of high-profile politicians, lobbyists and business leaders have been accused of corruption and bribery, very few of these prosecutions have resulted in final sentences to date. While fighting corruption has been one of the stated priorities of the leading political party, the fact that their leader, the current Prime Minister, is himself being prosecuted on corruption-related charges, has brought the party's anti-corruption commitment into question.

There has been continued focus on combating tax fraud in 2017/early 2018. Several of the decisions taken by the tax authority have, however, been overruled by courts within the court review of the administrative decisions and the tax authority has been widely criticised for applying disproportionate measures.

BACK TO MAP

FRANCE

Changes to legislation

Following the 2016 changes to criminal anti-corruption legislation by the Sapin II Statute[3], there have been no noteworthy changes to French legislation.

However, recent months have seen a number of interesting developments regarding the implementation of the *Convention judiciaire d'intérêt public* (judicial agreement of public interest or CJIP, a French equivalent of a DPA introduced by the Sapin II Statute[4]) and the practice of the new administrative agency tasked with monitoring the compliance of French companies with the new obligations set forth by the Sapin II Statute (the *Agence française anticorruption* or French anti-corruption agency).

CJIP

On 31 January 2018, the Ministry of Justice issued an administrative circular which set forth the first guidelines for the implementation of the CJIP. These guidelines clarify when and how a CJIP can be initiated as well as how to determine the amount of the fine. In particular, the guidelines indicate that the level of cooperation offered by the company should be taken into consideration by the Prosecutor when he decides the amount of the fine.

First inspections of the *Agence française anticorruption*

The *Agence française anticorruption* (the Agency) was created by a decree issued on 14 March 2017. In the course of October 2017, the Agency published a charter setting out the rights and duties of the Agency and the companies subject to its control regime.

The charter describes the framework of control regime as follows:

- The Agency informs the targeted entity that it is subject to an inspection;
- The Agency issues Requests For Information (RFIs);
- The Agency sets up an on-site review;
- Following the on-site review and assessment of the various answers to the RFIs, the Agency issues a Report (*rapport de contrôle*) which includes, if relevant, observations, recommendations, and/or deficiencies (*manquements*) on the effectiveness of the entity's compliance programme;
- Following the Report, the controlled entity has two months to send its written observations in response to the Report and may ask for a meeting with the team within the Agency in charge of the inspection. The purpose of such meeting is to address and clarify the Report (if necessary) and confirm the main points of concern;
- At the end of the two-month period, the Agency may update its Report to reflect the entity's written observations. If deficiencies remain, the Director of the Agency may refer the case to the Agency's Commission of Sanctions. After an investigation, the Commission of Sanctions may impose a fine of up to a maximum of EUR 1,000,000 for legal persons.

In February 2018, the Agency published an exhaustive list of the RFI's questions. The list includes 163 questions, divided into 11 sections including:

- The commitment of the management against corruption;
- The code of conduct elaborated by the company;
- The risk mapping of corruption risks elaborated by the company;
- Third party evaluations of clients, first-tier suppliers and intermediaries;
- Training of employees regarding anti-corruption matters;
- Possible disciplinary actions within the entity; and
- The various level of controls (including accounting controls) and evaluation of the anti-corruption plan.

The Agency has been very active since it was set up and it has already inspected several major companies, including international firms. It has publicly stated that the frequency of its inspections will increase over the year 2018.

Prosecutions and enforcement actions

In June 2017, an investigation was opened into a leading manufacturer of building materials suspected of financing terrorism. More precisely, the company is suspected of payments to armed groups in order to secure and maintain the activity of one of its plants located in Syria. The company launched an internal

3 For further details, please visit the French section of our Anti-Bribery and Corruption Review 2017 (pages 12 and 13) at https://www.cliffordchance.com/briefings/2017/05/anti-bribery_andcorruptionreview-june2017.html.

4 For further details, please visit the French section of our Anti-Bribery and Corruption Review 2017 (pages 12 and 13) at https://www.cliffordchance.com/briefings/2017/05/anti-bribery_andcorruptionreview-june2017.html.

investigation and issued a statement recognizing part of the facts. As of today, eight executives have already been indicted. The company is also expected to be indicted.

In January 2018, a claim lodged by *Anticor* (an approved association aiming at fighting corruption) was denied in a case involving allegations that a system of false invoices allowed a presidential candidate to omit expenses provided by the candidate's party from the capped campaign expenses. The French Supreme Court (*Cour de cassation*) noted that despite the nature of the facts, none of the specific offences for which *Anticor* may lodge claims were prosecuted and therefore denied the claim.

In March 2018, the French Supreme Court found that double jeopardy should not be a factor in the prosecution, in France, of a company already tried by a foreign jurisdiction. More precisely, the defence used the double jeopardy principle of Article 14(7) of the International Covenant on Civil and Political Rights to argue that it could not be tried again in France for the same offence it pleaded guilty to in the United States. However, the French Supreme Court disagreed, holding that Article 14(7) was not applicable to probes and convictions of foreign sovereign powers. In the same decision, the French Supreme Court gave a rather broad interpretation of article 121-2 of the French Criminal Code saying that a company can be criminally liable for conduct committed by its corporate bodies or representatives. In this matter, the Supreme Court found that the decision, by its very nature, involving corruption risks, was necessarily taken at senior management level and could therefore attract criminal liability for the company.

Enforcement trends

The past year was marked by the very first CJIPs. On 14 November 2017, the Swiss branch of an international bank agreed to pay EUR 300,000,000 to avoid trial in a matter in relation to illegal banking solicitation and aggravated money laundering of tax fraud.

On 23 February 2018, two companies active in the decontamination sector and in the construction sector agreed to pay fines of EUR 800,000 and EUR 2,710,000 respectively.

The number of CJIPs is likely to increase by the end of the year.

BACK TO MAP

GERMANY

Changes to legislation

Following the legislative measures significantly strengthening criminal anti-corruption legislation in both the public sector and the private sector[5] as well as in the healthcare sector and the sports sector[6], which were implemented in the time period from 2014 until the first half of 2017, there have been no further material changes to criminal anti-corruption law. However, the German legislator has adopted a new law to establish a nation-wide central competition register covering, in particular, corruption-related offences. Furthermore, there are current initiatives aiming to reform the German law on corporate penalties and to implement protection for whistleblowers.

German Law on the Establishment of a Competition Register and the Amendment of the Act against Restraints of Competition

On 29 July 2017, the Law on the Establishment of a Competition Register and the Amendment of the Act against Restraints of Competition (*Gesetz zur Einführung eines Wettbewerbsregisters und zur Änderung des Gesetzes gegen Wettbewerbsbeschränkungen*) came into force. This law provides for the implementation of a nation-wide central competition register maintained by the German Federal Cartel Office (*Bundeskartellamt*). The central competition register, which is currently intended to be technically implemented by 2020, aims at fighting corrupt and other illegal business practises and at facilitating fair competition by listing companies that have engaged in relevant activities and, thereby, enabling public sector customers to screen their potential contractors and to exclude "unfair" companies from public procurement processes.

The implementation of the central competition register has to be seen, in particular, in the context of legislative reforms to German public procurement law in 2016. Under provisions implemented at that time (sections 123 *et seq*. of the German Act against Restraints of Competition [*Gesetz gegen Wettbewerbsbeschränkungen*]) public sector customers may, or in some cases, must, exclude companies from public procurement procedures in cases where managers of the company have committed certain criminal or administrative offences, or where the company itself has been subject to a corporate administrative fine (*Unternehmensgeldbuße*) based on such offences. This applies, in particular, to the corruption offences in both the public sector and the private sector.

Up to now, in practice, it has been difficult for public sector customers to ascertain whether there has been such misconduct at the potential contracting companies: although several German Federal States (*Bundesländer*) have been maintaining so called "competition registers", "procurement registers" or "corruption registers", there has been no such register at federal level. Furthermore, the existing nation-wide central commercial register (*Gewerbezentralregister*) lists only some of the relevant offences, but, for instance, does not contain convictions for corruption offences.

Against that background, the purpose of the new nation-wide central competition register, which can only be accessed by public sector customers, is to simplify the assessment by public sector customers by providing relevant information on corrupt or illegal activities at companies in one single register. Consequently, the new law sets out, in particular, the following:

- companies are listed in the central competition register following final convictions of senior managers for certain criminal or administrative offences committed while acting for the companies or following final impositions of corporate administrative fines on the companies based on such criminal or administrative offences;
- companies are listed in the central competition register for a variety of criminal and administrative offences, in particular, for convictions for (i) taking and giving bribes in commercial practice (section 299 German Criminal Code [*Strafgesetzbuch*, StGB]), (ii) taking and giving bribes in the healthcare sector (section 299a and 299b StGB), (iii) bribing delegates

5 Under the German Law on Expansion of the Criminal Offence of Bribing Delegates (*Achtundvierzigstes Strafrechtsänderungsgesetz – Erweiterung des Straftatbestandes der Abgeordnetenbestechung*) of 23 April 2014 and the German Law on Fighting Corruption (*Gesetz zur Bekämpfung der Korruption*) of 20 November 2015. For further details, please visit the German section of our Anti-Bribery and Corruption Review 2015 (pages 11 *et seqq*.) at https://www.cliffordchance.com/briefings/2015/07/anti-bribery_andcorruptionreview-july2015.html and the German section of our Anti-Bribery and Corruption Review 2016 (pages 12 *et seqq*.) at https://www.cliffordchance.com/briefings/2016/05/anti-bribery_andcorruptionreview-may20160.html.

6 Under the German Law on Fighting Corruption in the Healthcare Sector (*Gesetz zur Bekämpfung von Korruption im Gesundheitswesen*) of 30 May 2016 and the German Law on Combating Betting Fraud and Manipulation in the Sports Sector (*Einundfünfzigstes Gesetz zur Änderung des Strafgesetzbuches – Strafbarkeit von Sportwettenbetrug und der Manipulation von berufssportlichen Wettbewerben*) of 11 April 2017. For further details, please visit the German section of our Anti-Bribery and Corruption Review 2017 (pages 14 *et seqq*.) at https://www.cliffordchance.com/briefings/2017/05/anti-bribery_andcorruptionreview-june2017.html.

(section 108e StGB), (iv) granting illegal benefits to public officials (section 333 StGB) and granting bribes to public officials (section 334 StGB);

- public sector customers are required to consult the central competition register if the value of the contract that is supposed to be awarded meets certain thresholds;
- companies must, under certain circumstances, be banned from all public procurement contracts for a maximum term of five years;
- companies can apply for early de-listing through a so-called "self-cleansing" (*Selbstreinigung*) that requires, *inter alia*, cooperation with the enforcement authorities in the investigation of the relevant offences.

Calls for a German law on corporate criminal liability

Following the German parliamentary election in September 2017, the political parties building the governing coalition presented their coalition contract in February 2018. This contract includes a declaration of intent to comprehensively reform the law on corporate sanctions. In particular, in the field of economic crime, the coalition wants to enable courts to impose harsher penalties against corporates for misconduct of employees.[7]

So far, while only individuals can be liable and prosecuted under German criminal law, German administrative offences law stipulates corporate administrative fines (*Unternehmensgeldbußen*) for company-related offences of senior managers (*Leitungspersonen*), which can generally amount to up to EUR 10 million for each individual case or more than this amount if necessary to siphon off a higher economic profit. A determination of corporate administrative fines on the basis of a company's annual revenue is currently only stipulated for violations in certain areas of the law (antitrust law, capital market law, anti-money laundering law and data protection law) but, in particular, not for company-related corruption offences. Furthermore, both German administrative offences law and German criminal law enable a confiscation of economic benefits gained by a corporate from criminal or administrative offences by way of forfeiture orders (*Einziehungsanordnungen*).

Against that background, while it still remains to be seen when and how the new Government will actually implement the announced changes with a concrete draft law, the most important changes announced in the coalition contract are the following:

- introduction of an obligation to enforce and to impose penalties on corporates instead of enforcement authorities making relevant discretionary decisions;
- increase of the general maximum amount for financial penalties to 10 per cent of the corporate's annual revenue;
- introduction of transparent rules for the assessment of corporate pecuniary penalties;
- introduction of "new punitive instruments", including a public announcement of imposed corporate penalties;
- implementation of specific rules and requirements for a termination of investigation proceedings without corporate penalties; and
- implementation of incentives for corporates to cooperate with enforcement authorities and rules for internal investigations.

Calls for a law to protect whistleblowers

Following the presentation of a draft law to promote transparency and the protection against discrimination of whistleblowers (*Whistleblower-Schutzgesetz*) in November 2014[8], there have been various calls for the implementation of a new law to protect whistleblowers, arguing, in particular, that appropriate protection for whistleblowers would require changes to German labour law and civil service law in order to provide certain privileges to whistleblowers in the future.[9] Despite these calls, so far, no further draft of such law explicitly dealing with the protection of whistleblowers has been discussed at parliamentary level and the coalition contract between the currently governing political parties in Germany dated March 2018 does not contain any reference to such legislative initiative.

However, in this context, current developments at EU level might trigger the implementation of amendments to German law in the near future. In the light

7 For further details, please visit our relevant client briefing at https://www.cliffordchance.com/briefings/2018/03/germany_proposesharsherpenaltiesforcorporates.html.

8 For further details, please visit the German section of our Anti-Bribery and Corruption Review 2015 (pages 11 et seqq.) at https://www.cliffordchance.com/briefings/2015/07/anti-bribery_andcorruptionreview-july2015.html.

9 For further details, please visit the German section of our Anti-Bribery and Corruption Review 2017 (pages 14 et seqq.) at https://www.cliffordchance.com/briefings/2017/05/anti-bribery_andcorruptionreview-june2017.html.

of car manufacturers' alleged manipulations in connection with emissions testing of diesel engines, of tax dumping and tax avoidance schemes in Luxembourg revealed by the so-called "Luxleaks" and of tax evasion schemes arising from the so-called "Panama Papers", on 23 April 2018, the European Commission presented a proposal for a Directive on the Protection of Persons Reporting on Breaches of Union Law. This draft directive aims at improving the protection of whistleblowers in the public sector and the private sector and at harmonising such protection throughout the EU by, for instance, requiring certain companies to implement clear internal and external reporting channels allowing anonymous reporting. Under the current draft, EU member states would have to bring into force all laws and provisions necessary to comply with the directive by 15 May 2021. Particularly in light of the fact that the EU Commissioner of Justice, Vera Jourová, recently criticised the German regulations regarding the protection of whistleblowers, the proposal of the European Commission could increase the pressure on the German legislator to implement comprehensive protective measures for whistleblowers.

In a related development in March 2018, the German Ministry of Justice presented a draft law to protect business and trade secrets (*Gesetz zur Umsetzung der Richtlinie [EU] 2016/943 zum Schutz von Geschäftsgeheimnissen vor rechtswidrigem Erwerb sowie rechtswidriger Nutzung und Offenlegung*), intended to implement Directive (EU) 2016/943 on the Protection of Undisclosed Know-How and Business Information of 8 June 2016. The draft law provides for some protection of whistleblowers disclosing business secrets against civil law claims and criminal prosecution. However, under the current draft, such protection would only apply in cases where the whistleblower discloses a business secret to reveal an unlawful act or other misconduct with the intention of protecting the public interest. As this wording falls short of the protection provided for in the relevant EU Directive, the draft law has drawn criticism.

Prosecutions and enforcement actions

Several investigations and court cases have caught the attention of the media.

In June 2017, in the context of investigation proceedings initiated in 2013 against 17 individuals regarding allegations of granting bribes to foreign public officials, the Bremen prosecution authority issued a forfeiture order (*Verfallsanordnung*) of approximately EUR 48 million against a German armament company aiming at siphoning off the profits allegedly generated by the company from the relevant transactions. Among the charges brought by the Bremen prosecution authority was that, in the context of the sale of sonar systems for submarines to Greece, the armament company had paid EUR 13 million to a Greek commercial agent and, out of this amount, several million Euros were transferred to Greek public officials to secure the award of the armament order. As a result of negotiations between the Bremen prosecution authority and the company, a forfeiture order, but no corporate administrative fine (*Unternehmensgeldbuße*), was imposed on the company. The forfeiture order was based on an alleged negligent violation of supervisory duties by a managing director of the armament company due to failure to implement appropriate compliance measures to prevent the alleged corrupt activities. According to the Bremen prosecution authority, investigation proceedings against individuals are continuing.

In January 2018, it became public that the Munich prosecution authority is conducting investigation proceedings against a former manager of a German car manufacturer based in Munich and eight individuals regarding allegations of taking and giving bribes in commercial practice (section 299 StGB), embezzlement (section 266 StGB) and tax evasion (section 370 German Tax Code [*Abgabenordnung*]) since mid-2016. In particular, the former manager of the car manufacturer is suspected of having demanded and accepted at least EUR 4.2 million from service providers over an eight year period in return for awarding contracts to the service providers on behalf of the car manufacturer. The Munich prosecution authority stated that it had already searched the premises of the car manufacturer several times in relation to these allegations.

In February 2018, following negotiations between the Munich prosecution authority and a German aviation company, a corporate administrative fine of EUR 81.25 million was imposed on the aviation company in the context of investigation proceedings initiated in 2012 against, *inter alia*, several (former) employees of the aviation company with respect to allegations of granting bribes to foreign public officials in relation to the sale of combat aircraft to Austria. Following the imposition of this fine, in March 2018 the Munich prosecution authority discontinued the investigation proceedings against six of the individuals under investigation. The relevant individuals had been under suspicion of

having transferred funds of more than EUR 100 million to shell companies for corrupt purposes. However, although the Munich prosecution authority regarded it as proven that such payments had been made for unclear purposes and without evidence of counter-performance, bypassing the company's internal controls, it could not prove the elements of bribery. The corporate administrative fine was based on alleged negligent violations of supervisory duties by senior managers due to failure to implement appropriate controls to prevent such cash flows for obscure purposes. In addition, in light of these circumstances, the competent tax authorities had previously denied the tax-deductibility of these payments and issued a tax repayment order of EUR 26.3 million to the aviation company.

In April 2018, the Council of Europe published an investigation report prepared by an external investigation committee, which stated that several current and former members of the Parliamentary Assembly of the Council of Europe are suspected of having accepted payments from Azerbaijan in return for supporting Azerbaijan's interests in the Council of Europe. Individuals suspected include two German politicians, which is why the investigation report has attracted media attention in Germany. It is to be seen whether prosecution authorities will pick up on the alleged involvement of the German politicians in corrupt activities and initiate relevant investigation proceedings.

In May 2018, several German press articles addressed investigation proceedings of the Stuttgart prosecution authority initiated several years ago against employees of a German armament company regarding allegations of granting bribes to both domestic and foreign public officials in the context of the sale of assault rifles to Mexico. Although the Stuttgart prosecution authority stated that the investigation proceedings regarding an alleged bribe to domestic public officials had been discontinued in January 2017, according to the recent press articles there are indications that the armament company had made payments of EUR 20,000 in total to German political parties in order to influence the decision of certain members of the German Parliament regarding the granting of an export licence for the sale of the assault rifles to Mexico. It is to be seen whether these allegedly new findings will impact the investigation proceedings of the Stuttgart prosecution authority.

In May 2018, the Frankfurt prosecution authority charged three former top-level managers of the German Football Association (*Deutscher Fußball-Bund, DFB*) and a former manager of the Fédération Internationale de Football Association (FIFA) with tax evasion in a particularly severe case (or aiding and abetting in this context) in connection with the payment of EUR 6.7 million by the German Football Association's organisation committee for the football World Cup 2006 to the former CEO of a German sportswear company in 2005. In addition, according to press articles, the Frankfurt prosecution authority also applied to join the German Football Association to the proceedings with the intention of imposing a corporate administrative fine on the German Football Association. It is now for the Frankfurt District Court (*Landgericht*) to decide whether main criminal court proceedings (*Hauptverfahren*) will be initiated. Although the facts underlying the relevant payment have not been clarified so far, according to researches by a German news magazine, the payment was allegedly made from a slush fund to secure the award of the football World Cup 2006 to Germany by bribing members of the FIFA executive committee.[10] However, the Frankfurt prosecution authority did not investigate the allegations of giving bribes in (international) commercial practice (section 299 StGB) or embezzlement (section 266 StGB) as it found that a prosecution regarding such offences would, in any event, be time-barred (the limitation period for both offences being five years), but did investigate the allegations of tax evasion. As in other jurisdictions, there is a provision in German tax law that prohibits tax deductibility for corrupt payments (section 4 para. 5 sentence 1 no. 10 sentence 1 German Income Tax Act [*Einkommensteuergesetz*]). The individuals under investigation allegedly concealed the background of the payment of EUR 6.7 million and deducted it as business expenses by declaring it as a financial contribution to a World Cup gala event in the German Football Association's 2006 tax return. In light of these circumstances, the competent tax authorities denied the non-profit status of the German Football Association for 2006 (the year of the World Cup) and issued a tax repayment order of EUR 19.2 million to the German Football Association in November 2017.

10 For further details, please visit the German section of our Anti-Bribery and Corruption Review 2016 (pages 12 *et seqq*.) at https://www.cliffordchance.com/briefings/2016/05/anti-bribery_andcorruptionreview-may20160.html.

Enforcement trends

The German prosecution authorities continue their strict enforcement practice regarding corruption in both the public and the private sector. Furthermore, as a general trend, prosecution authorities are focusing more and more not only on individuals, but also on companies engaged in corrupt activities in order to impose significant corporate administrative fines or forfeiture orders siphoning off the profits generated from the alleged corruption offences. Against the background of the declared intention of the governing political parties to comprehensively reform the law on corporate sanctions and to enable the imposition of harsher penalties against corporates, it is expected that this trend will continue.

At the same time, despite a lack of a relevant formal legal framework, German prosecution authorities and courts are increasingly willing to consider cooperation and voluntary disclosure as well as the implementation of compliance measures by the relevant corporates, specifically when exercising their discretion regarding whether to take enforcement actions against corporates in connection with criminal offences and administrative offences allegedly committed by senior managers and, in that case, whether and to what extent they actually impose relevant penalties. In particular, in a judgement of 9 May 2017, the German Federal Supreme Court (*Bundesgerichtshof, BGH*) pointed out that, when determining corporate administrative fines, the implementation of compliance measures designed to prevent repeated violations of laws is an important positive indicator, including compliance measures introduced after the wrongdoing was uncovered and an investigation initiated.

Furthermore, as a general trend in the field of corruption and economic crime, German prosecution authorities continue to increase the level of cooperation and the exchange of information both with other German authorities, such as tax authorities or regulatory authorities, and with foreign enforcement authorities.

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ITALY

Changes to legislation

Italy has adopted new legislation concerning whistleblowing both in the public and in the private sector. Law No. 179/2017 sets out "provisions for the protection of persons reporting offences or breaches which they found out about in the course of a private or public sector relationship" and aims at: (i) ensuring that the whistleblower's identity remains confidential; and (ii) prohibiting retaliation for whistleblowing actions.

The legislation amended article 54-*bis* of the Consolidated Legislation on the Civil Service (Legislative Decree 165/2001), and, with respect to the private sector, article 6 of Law No. 231/2001. Whistleblowers do, however, remain subject to various punitive measures where they act wilfully, or with gross negligence, in making an unfounded report.

Private sector

Article 2 of Law No. 179/2017 amended article 6 of Law No. 231/2001, which now includes paragraphs 2-*bis*, 2-*ter* and 2-*quarter*.

In particular, the changes set forth by Law No. 179/2017 require entities to amend the internal systems and controls put in place to prevent the comission of certain criminal offences in order to ensure:

- one or more channels that enable directors and employees to act, in guaranteed confidence, by way of safeguard to the company's integrity in presenting particularised reports of unlawful conduct relevant to Law No. 231/2001, based upon precise and consistent factual evidence, or of breaches of the 231 Systems and Controls, where they have become so aware by reason of the duties they have performed; and
- at least one other reporting channel, with information technology equally capable of ensuring that the whistleblower's identity remains confidential.

Additionally:

- acts of retaliation or discrimination against the whistleblower, for reasons directly or indirectly linked to the reporting, are prohibited and such acts may be reported to the national labour inspectorate, either by the whistleblower or by a trade union identified by the whistleblower;
- in a complete reversal of the usual burden of proof, in the event of any dispute relating to disciplinary measures, demotion or reductions in employment duties, dismissals, transfers, or other organisational measures that directly or indirectly adversely affect the whistleblower's employment conditions, it is for the employer to show that those measures were based on grounds that had nothing to do with the whistleblowing;
- the disciplinary system set forth in the systems and controls must provide for sanctions against:
  - any person who breaches the measures protecting the whistleblower; and
  - any whistleblower who acts wilfully, or with gross negligence, in making a report that turns out to be unfounded.

Public sector

Article 1 of Law No. 179/2017 amended article 54-bis of Legislative Decree 165/2001, which already provided for some safeguards for public employees who reported unlawful conduct which had come to their attention through their employment. The article also applies to employees of private sector entities that are subject to public control, and those working within and assisting businesses that supply goods or services in the execution of works for general government.

Law No. 179/2017 lays down provisions that are more detailed. In particular,

- in the context of disciplinary procedure, the whistleblower's identity may be revealed only where the key allegation in that procedure is based entirely or in part upon their report, and knowledge of the whistleblower's identity is essential to the ability of the reported person to defend themselves, without prejudice to the whistleblower having consented to disclosure of their identity. In criminal proceedings, article 329 of the Code of Criminal Procedure applies;
- the new law's safeguards are not assured where the whistleblower has been found either criminally liable for offences of slander or libel, or otherwise for offences committed in the whistleblowing reporting, or civilly liable for having acted wilfully or with gross negligence in the whistleblowing reporting.

Prosecutions and enforcement actions

While there have not been new cases of national importance this year, corruption cases of a smaller relevance are still frequently reported in the Italian press.

At the same time, investigations and proceedings concerning Eni – a company controlled by the Ministry of Economy – and its operations in Africa have developed since last year. In July 2016 a Milan Court indicted Eni, Saipem and the former chief executive of Eni, in relation to allegations that Saipem, or an intermediary, paid bribes in Algeria in 2010 to obtain oil and gas contracts. The trial was due to start on 5 December 2016. An Italian judge had acquitted Eni and two ex-Eni senior executives in October 2015 on the same charges, but a higher court overturned that judgment in February 2016 and sent the case back to prosecutors for further investigation. In February 2018, the Public Prosecutor requested an indictment asking for six years and four months of imprisonment for the former chief executive of Eni, together with the sanction of EUR 900,000 for both Eni and Saipem.

A number of other companies being investigated in connection with the allegations were apparently set up by Mossack Fonseca, according to papers published by the International Consortium of Investigative Journalists, as part of the Panama Papers. It was also reported that Eni and Shell had been charged in connection with a controversial acquisition of an offshore block in Nigeria in 2011. After investigations, the case was recently sent to trial, which is expected to begin shortly before the Milan Court. The Prosecution Service of Milan has also opened another investigation concerning operations in Congo, with the allegation that Eni agreed to involve in its operations some local companies suggested by the Congolese Government, in order to obtain the renewal of an oil licence. Searches were conducted by the Italian Finance Police in April 2018.

In addition, Italian Authorities have recently been dealing with some cases of corruption involving important hospitals and companies working in the medical and pharmaceutical sector. The most recent case involves two important Milan hospitals, Gaetano Pini-Cto and Galeazzi. In April 2018, some Head Physicians of these hospitals were arrested on charges that they had accepted bribes and facilitations by medical and pharmaceutical companies to obtain supply contracts with the hospitals. There are further cases related to sponsorships and grants made available by pharmaceutical companies for expenses actually borne for research activities.

Enforcement trends

The Italian Government continues to focus on the prevention of corruption. The National Anticorruption Authority (ANAC) has often been appointed by the Government to carry out a preliminary review and analysis of the main Italian public tenders (i.e. Milan's Expo trade fair and Jubilee 2016).

Moreover, ANAC has recently issued a new plan to prevent bribery and corruption activities for the years 2018-2020. This new plan reflects some legislative innovation such as the Legislative Decree No. 56/2017 (Code of Public Contracts) and the Law No. 179/2017 on whistleblowing, as explained above.

The new plan:

- in light of the positive outcome of 2017, confirms the previous mathematical methodology used to assess the risk areas in relation to Government activities;
- reorganizes the general measures to be adopted in order to prevent bribery and corruption activities, e.g., the adoption of a Code of Conduct, specific duties of disclosure in case of conflict of interests and protection measures for whistleblowers; and
- lays down some specific objectives in three specific fields, i.e., transparency and anti-corruption activities, public contracts and communication and management.

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LUXEMBOURG

Changes to legislation

There have been no material changes to anti-corruption legislation since our last Anti-Bribery and Corruption Review in June 2017.

Prosecutions and enforcement actions

There has been one noteworthy case involving bribery and corruption which has caught the attention of the media.

In May 2017 – ten years after the facts occurred and after seven years of investigation – the criminal division (*chambre correctionnelle*) of the Luxembourg District Court (*tribunal d'arrondissement*) delivered its judgement, further to the prosecution (in March 2017) of four men and four women involved in a network of forgery, falsification, bribery and influence peddling.

The facts of this case were as follows: between 2002 and 2007, approximately 200 companies/individuals were granted business licences (*autorisations d'établissement*) in Luxembourg, using fake certificates of professional competence, although they did not meet the required professional qualifications. To this end, one member of the network used his connections in Portugal in order to get hold of falsified diplomas and certificates, supposedly delivered and certified by the Portuguese Industrial Confederation (*Confederacão da Indústria Portuguesa*). These falsified documents were then transmitted to a former official of the Ministry of Economy, who introduced them to the *ad hoc* advisory commission – through two other former officials of the Ministry.

The individuals disbursed between EUR 3,000 and EUR 28,000 in order to receive their business licences. They usually paid an advance to the former official and the remaining amount would be paid once the file was processed by the commission and the business licence was granted. Thanks to this profitable traffic, the former and retired official of the Ministry of Economy received bribes of more than EUR 400,000.

The former official was given a four-year suspended prison sentence and received a EUR 130,000 fine. This first instance judgement has been appealed.

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POLAND

Changes to legislation

The Polish Government is currently working on two draft acts: (i) the draft Act on Transparency in the Public Sphere, which will, if implemented, require companies to apply internal anti-corruption procedures; and (ii) the new draft Act on Liability of Collective Entities for Acts Prohibited under Penalty, which is intended to make the procedure of bringing corporate entities to account more efficient (under the current Act on Liability of Collective Entities for Acts Prohibited under Penalty of 2002, the procedure has been ineffective in practice).

Work on both draft acts is at an early stage, but it is expected that they could come into force during 2018.

Anti-corruption compliance obligation

Under the draft Act on Transparency in the Public Sphere, the requirement to introduce internal anti-corruption procedures is to apply to entities that have 50 or more employees and a net annual turnover or sum of assets on their balance sheet of EUR 10,000,000 or more.

Anti-corruption compliance is to consist of, among other things, the following:

- a code of ethics (to be signed by all employees, consultants and all entities acting for the company);
- internal procedures and guidelines on gifts and other benefits received by employees;
- procedures for reporting corruption allegations to the entity's bodies and procedures for dealing with such reports;
- mechanisms to prevent the costs of giving economic and personal benefits from being financed by the entity;
- the use of anti-corruption clauses in agreements;
- training for employees on criminal liability for corruption offences.

If the public prosecutor's office brings corruption charges against a person acting for or on behalf of the entity, the Central Anti-corruption Bureau (CBA) will be obliged to inspect that entity's anti-corruption compliance procedures. If the CBA's inspection finds that internal anti-corruption procedures were not applied, or were ineffective or only superficial, the entity will be liable to a fine of up to PLN 10,000,000 (approximately USD 2.7 million).

The entity will have 30 days to voluntarily pay the fine initially set by the CBA. If it does so, the CBA will not apply to the President of the Office of Competition and Consumer Protection (OCCP) for the imposition of a fine. Otherwise, proceedings to impose a fine will be instituted before the President of the OCCP. The President of the OCCP's decision to impose a fine will be subject to an appeal. However, if the decision becomes final, then in addition to being fined, the entity will also be banned from taking part in public tenders for five years.

The draft Act on Transparency in the Public Sphere also proposes to introduce measures for protecting whistleblowers. Currently the Polish legal system does not provide for protection such as that available under, for example, the Dodd-Frank Act in the United States.

Protection would be granted to whistleblowers providing credible information on specific suspected offences (including corruption offences and fraud). The public prosecutor would decide whether to grant someone whistleblower status. The whistleblower would be protected primarily against termination of his/her employment or similar measures.

Corporate criminal liability

The purpose of the new draft Act on Liability of Collective Entities for Acts Prohibited under Penalty is, first of all, to introduce corporate criminal liability for all offences, including corruption offences and treasury offences (currently, corporate criminal liability is limited to the offences specifically mentioned in the Act on Liability of Collective Entities for Acts Prohibited under Penalty). It will be possible to conduct criminal proceedings against a corporate entity, irrespective of criminal proceedings pending against an individual, and conviction of an individual will not be a criterion for instituting criminal proceedings against a corporate entity (which is the case at present). The new draft Act on Liability of Collective Entities for Acts Prohibited under Penalty would also considerably increase the maximum penalty for criminal liability of corporate entities to PLN 30,000,000 (approximately USD 8.3 million). Currently the maximum fine is PLN 5,000,000 (approximately USD 1.4 million).

The main provisions of the new draft Act on Liability of Collective Entities for Acts Prohibited under Penalty are:

- A corporate entity may be liable for any offence or treasury offence (current legislation sets out a list of offences for which a corporate entity may be held liable).

- The criminal liability of a corporate entity is to be independent of any previous conviction of an individual (the direct perpetrator) and is possible even without establishing who the direct perpetrator of the offence was – currently corporate entities are liable for specific offences committed by specific individuals and only after the final conviction of individuals.
- It will be possible to conduct preparatory proceedings against a corporate entity simultaneously with the proceedings conducted against an individual or even before the proceedings against an individual have been instituted – this is to reverse the current rule.
- A fine of up to PLN 30,000,000 (approximately USD 8.3 million) could be imposed on a corporate entity (currently the fine is up to PLN 5,000,000 [approximately USD 1.4 million]) and the amount will not be related to revenue (at present, the fine cannot be higher than 3% of the corporate entity's revenues generated in the year the offence was committed).
- In criminal proceedings against a corporate entity, the entity will have to prove that it has introduced efficient procedures preventing the commission of offences (to demonstrate absence of fault).
- Measures will be introduced to protect whistleblowers, along with an obligation for the corporate entity to conduct internal investigations in order to verify irregularities reported by whistleblowers. Failure to conduct internal investigations could result in a fine being increased to a maximum of PLN 60,000,000 (approximately USD 16.6 million).
- Corporate entities will be subject to criminal liability notwithstanding any merger, demerger or transformation of the corporate entity.
- It will be possible for corporate entities to voluntarily admit liability in order to avoid holding a trial and agree a more lenient fine with the public prosecutor (this might be a similar mechanism to the UK/US deferred prosecution agreements).

Prosecution and enforcement actions

No significant prosecutions or enforcement actions have been reported since our last Anti-Bribery and Corruption Review in June 2017.

Other developments

The Polish Government's Anti-Corruption Strategy 2018-2020

The Polish Government published its Anti-Corruption Strategy 2018-2020 in December 2017. The main objective of the Strategy is to considerably reduce corruption and to promote social awareness in respect of counteracting corrupt practices. Specific priorities to achieve this overall objective are:

- the strengthening of educational and preventive activities;
- the improvement of monitoring mechanisms regarding corruption-prone issues and monitoring the application of the anti-corruption regulations; and
- improving cooperation and coordination between the law enforcement authorities, including international cooperation.

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ROMANIA

Changes to legislation

Expected changes following the Constitutional Court's decisions

The Romanian Constitutional Court (CCR) has been very active recently, pleas of unconstitutionality being raised in several court files set up following criminal investigations conducted by the National Anticorruption Directorate (DNA) in cooperation with the Romanian Intelligence Services (also known as SRI). As reported in our June 2017 Review, public disclosures revealed that various judiciary institutions and the Intelligence Services had cooperated over a period of almost ten years, resulting in illegally mixed investigation teams running criminal investigations.

In this respect, two decisions of the Constitutional Court (Decision no. 802/5.12.2017 and Decision no. 91/28.02.2018) are worth mentioning. In brief, the Constitutional Court has ruled that:

- SRI is prohibited from conducting criminal investigation activities alongside criminal investigation bodies with regard to offences that do not represent a threat to national security. The Constitutional Court expressly stated that SRI may not be involved in criminal investigations that target corruption offences (i.e., giving/taking a bribe, influence peddling, abuse in office, tax evasion, money laundering) where such offences do not represent a threat to national security; and
- With regard to past investigations carried out by SRI in which evidence was gathered through special means used by the Intelligence Services (mainly by interception of communications), defendants may seek to have such evidence declared inadmissible before the criminal courts.

As a consequence of these decisions, it is expected that several trials (some of them at the level of the High Court of Cassation and Justice) will either be put on hold, returned to the Prosecutor's Office to resume the criminal investigation, or closed based on lack of evidence (as the illegal evidence must be removed from the files and there are several files where the only or main evidence is derived from interceptions by the Intelligence Services).

Another relevant ruling of the CCR is Decision No. 392/06.06.2017, regarding the criminal offence of abuse in office (applicable to both public and private servants). In addition to the CCR decision reported in our June 2017 Review (which established that the term "misconduct in performance of duties" should be read as "performance of duties by breaching a law") the Constitutional Court found that Parliament must set a threshold for the damages resulting from the non-performance of duties or the performance of duties by breaching a law, in order that such acts be considered criminal offences.

The Secretary of State for Justice has informed the special parliamentary committee tasked with ensuring that the Criminal Codes are in line with CCR decisions that the Justice Ministry is working on a separate Bill on abuse of office and neglect of duty in order to align the criminal legislation with the Constitutional Court's decisions.

Other changes envisaged to the Criminal Legislation and the Statute of Judges and Prosecutors

A special committee has been constituted at the level of the Parliament to bring forward changes to the Criminal Codes as well as to the Laws regarding the Statute of Judges and Prosecutors and the Supreme Magistracy Council.

The most important changes to the Law regarding the Statute of Judges and Prosecutors are intended to:

- clearly regulate the liability of judges and prosecutors, civil or criminal, in the event of serious negligence, judicial error or any act committed with malicious intent, while running an investigation/trial or when issuing a decision;
- establish a special investigation unit, independent of the existing Prosecutor's Office, with the specific remit of investigating criminal offences perpetrated by magistrates;

The changes envisaged to the Criminal Procedure Code seek to implement several recent Constitutional Court decisions intended to ensure a fair trial especially relating to preventative measures and measures under Directive 2014/42/EU of the European Parliament and of the Council of 3 April 2014 on the freezing and confiscation of instrumentalities and proceeds of crime in the European Union. Furthermore, the changes seek to provide greater protection for witnesses in criminal trials and to enhance the rights of defence lawyers.

Changes to the Criminal Code focus particularly on the repeal of the offence of negligence in office and the amendments to the offence of abuse in office mentioned above.

The amendments to these laws are still being debated in the special committee and must be passed by Parliamentary before being enacted by the President. There is no timeline as yet.

Prosecutions and enforcement actions

High-Profile Criminal Cases

Senate's President Calin Popescu Tariceanu

National Anticorruption Directorate (DNA) prosecutors had, in 2016, indicted the Senate's President Calin Popescu Tariceanu on charges of perjury, on the grounds that he had, while testifying under oath in a criminal investigation regarding the illegal restitution of former royal properties (an area of the Snagov forest and Baneasa Farm), made false statements (on15 April 2016) regarding essential aspects of the case and did not say all he knew about essential circumstances, with the aim of preventing or hindering the criminal prosecution of the defendants. The prosecutors alleged that Tariceanu unrealistically claimed that he had no knowledge of the retrocession to Paul Philippe of Romania of some land plots in Baneasa (the former royal farm) and Snagov forest, about the involvement of defendants Tal Silberstein, Beny Steinmetz, Moshe Agavi and others in the restitution proceedings, nor about the sale-purchase documents for these goods.

Last month (May 2018), after a trial lasting almost two years, the High Court of Cassation and Justice acquitted the Senate's President. This first court decision may be challenged with appeal by the prosecutors.

Liviu Dragnea, the president of the Social Democratic Party (PSD) (the largest political party in the Parliament, currently at power)

Lower House Speaker and national leader of the Social Democratic Party (PSD) Liviu Dragnea is currently being tried by the High Court of Cassation and Justice following charges brought by DNA of establishing a criminal organisation and abuse of office while he was chairman of the Teleorman County Council. According to DNA, Dragnea, Chairman of the Teleorman County Council at the time the alleged acts took place, is being tried for establishing an organised crime group, two criminal offences of use or presentation in bad faith of misleading, inaccurate or incomplete statements or documents with the purpose of obtaining undue European funds, and two criminal offences of abuse of office (by obtaining undue benefits for himself or others).

The DNA has also said that the case was opened following a complaint from OLAF (European Anti-Fraud Office) on 30 September 2016 regarding several suspected offences, including the fraudulent acquisition of European funds for county road repair works. Eight other individuals are being investigated in the same case.

The prosecutors are asking for a seven year sentence for Liviu Dragnea and a first court decision is expected later this month (June 2018).

Former Prime Minister Victor Ponta

The former Prime Minister Victor Ponta (former PSD leader) was indicted on 17 September 2015, alongside ex-Senator Dan Sova, Laurentiu Ciurel (CEO of the Rovinari Energy Holding at the time the alleged offences took place) and Dumitru Cristea (CEO of the Turceni Energy Holding at the time the alleged offences took place).

Prosecutors charged Victor Ponta with having received RON 181,439 (approximately EUR 40,000) between October 2007 and December 2008 from the Sova & Associates law firm, through his own law firm, for services that are listed in the paperwork but that were allegedly never rendered. Victor Ponta was charged with forgery of private documents and complicity in tax evasion and money laundering, offences allegedly committed in his capacity as lawyer. Dan Sova, who was coordinating lawyer at the Sova & Associates law firm at the time the alleged offences were committed, was charged with abuse of office, forgery of deeds under private signature, tax evasion and money laundering. Laurentiu-Dan Ciurel was charged with three counts of abuse of office, while Dumitru Cristea and former Turceni Energy Holding CEO Laurentiu-Octavian Graure were charged with abuse of office.

In a recent decision of the High Court of Cassation and Justice Victor Ponta was acquitted on the charges of forgery in deeds by private signature, complicity in tax evasion and money laundering, while Dan Sova was acquitted of the charges of forgery in deeds by private signature, tax evasion, and money laundering. The

decision of the High Court is not final and may be appealed by the prosecutors.

High Court judge Gabriela Birsan, the wife of the former ECtHR Romanian judge Corneliu Birsan

Gabriela Bîrsan, chairman of the Administrative and Taxation Division of the High Court of Cassation and Justice, at the time of the facts, was sent to trial in July 2014 charged with two offences of abuse of public interest, bribery, use, in any way, directly or indirectly, of information not intended to be made public, allowing unauthorized persons to access that information and influence peddling. Iuliana Puşoiu, judge of the same section, was charged with bribery and forgery.

On 3 May 2018, Ms. Birsan was finally acquitted of the charges by the High Court of Cassation and Justice. During the investigation carried out by DNA, Ms. Birsan's spouse was acting as judge at the European Court for Human Rights and it was found that DNA had illegally conducted surveillance and searches on Ms. Birsan despite the immunity given to her husband by ECHR Statute.

Enforcement trends

Enforcement activity in Romania has decreased in comparison to previous years. This is mainly the result of the CCR finding that the Prosecutor's Office (DNA and other units of the Prosecutor's Office) and the Intelligence Services had illegally cooperated in criminal cases for the past ten years, and the consequential annulment of evidence produced by the mixed teams of prosecutors and Intelligence Services officers.

There has also been considerable public debate over the legality of cooperation protocols between the judiciary and the Intelligence Services, the existence of which was brought to light over the past year through disclosures in the local and international media by individuals close to or linked to either DNA or SRI. It was recently revealed that the Supreme Magistracy Council, Judicial Inspection, the High Court of Cassation and Justice and the Prosecutor's Office attached to the High Court of Cassation and Justice had all concluded cooperation protocols with SRI.

In this respect, the Romania's Justice Minister, Mr Tudorel Toader, expressed his view that "*We must analyse if the protocols have been illegal and if wrongful convictions were issued based on their application*".

Over the same period, as described above, there has been a significant number of acquittals in high-profile cases (where the charges were brought by DNA) which has led to severe public criticism of DNA.

Further, on some pending high-profile criminal cases, several defendants (including the President of the Social Democratic Party and the Chamber of Deputies, Mr Liviu Dragnea, Ex-Minister Elena Udrea, and the former head of the Directorate for Investigating Organized Crime and Terrorism, Ms Alina Bica) have requested that the High Court of Cassation and Justice seek clarification from DNA on the involvement of SRI in their criminal cases.

It is worth mentioning that some defendants in the high-profile cases investigated by DNA recently left Romania for jurisdictions such as Costa Rica and Madagascar, where they have requested asylum on the grounds that they have been politically prosecuted, wrongfully indicted, sent to trial or even convicted.

Following the disclosures on the cooperation protocols, and the declassification of some protocols (the declassification procedure is still pending for others), a new trend is anticipated, namely, the launch of civil or criminal claims by defendants and other interested parties against the signatories to the protocols and/or the criminal investigation bodies based on the infringements of law and human civil rights.

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RUSSIA

Changes to legislation

Criminal Code

Preventing Corruption in Public Procurement

Amendments to the Criminal Code of the Russian Federation regarding criminal liability for bribery in public procurement (Article 200.5) came into effect on 4 May 2018. The amendments establish criminal liability for bribe-giving/bribe-taking in relation to the following persons representing interests of the customer in the procurement of goods, services or works for state or municipal needs:

- contracting service employees,
- contracting administrators,
- persons responsible for the acceptance of goods, services or works and
- other authorised representatives.

The offence here is acting (or omitting to act) in the interests of a bribe-giver or other person in connection with the procurement of goods, services or works for state or municipal needs (in the absence of elements of the offence of bribery [Article 290] or commercial bribery [Article 204]). The maximum penalty for giving a bribe in public procurement is imprisonment for up to eight years, with or without a fine of 40 times the value of the bribe and / or disqualification from certain positions or certain activities for up to five years.

The maximum penalty for accepting a bribe in public procurement is imprisonment for up to 12 years, with or without a fine of 50 times the value of the bribe and/or disqualification from certain positions or certain activities for up to seven years.

Incitement of a bribe in public procurement is also now criminally punishable (Article 304).

Bringing the Criminal Code into line with the GRECO Recommendations

Recent draft laws currently under review by the Russian State Duma (scheduled to be considered in May 2018) would, if adopted, incorporate into the Criminal Code the following amendments, which are aimed, amongst other things, at aligning the Criminal Code with recommendations by the Council of Europe Group of States against Corruption (GRECO) published in March 2018:

(a) Strengthening criminal liability for corruption-related offences by:

(i) establishing criminal liability for the following offences: (1) commercial bribery committed by or in relation to an employee of a commercial or other organisation, (2) promising, proposing or requesting participation in commercial bribery, (3) a promise, proposal or request for a bribe to be taken or given and (4) abuse of influence in return for unlawful remuneration; and

(ii) extending the maximum main penalty for accepting (Article 290(1)) and giving (Article 291(1)) a bribe from three and two years' imprisonment, respectively, to four years' imprisonment, where there are no special aggravating circumstances and the bribe does not exceed RUB 25,000 (approximately EUR 337). The amendments would, if adopted, reclassify these crimes, now minor offences, as moderately serious offences and, therefore, extend the limitation period for criminal prosecution from two years to six years.

(b) Criminalizing the giving and taking of intangible bribes (nematerialniye vzyatki) by broadening the definitions of bribery and commercial bribery.

(c) Criminalizing commercial bribery committed by Russian and foreign arbitrators.

Administrative Offences Code

On 31 March 2018, a draft law that would, if adopted, make the following changes to the Administrative Offences Code of the Russian Federation was submitted to the Russian State Duma:

(a) Measures to enable a legal entity to be exempted from administrative liability for providing, offering or promising unlawful remuneration (Article 19.28) where (1) the legal entity had assisted in detecting the offence by conducting an administrative investigation and/or detecting, disclosing and investigating a crime relating to the offence or (2) the unlawful remuneration had been extorted from the legal entity.

However, this exemption would not apply to offences committed in relation to foreign officials and officials of public international organizations in the conduct of commercial transactions.

(b) Measures to enable the property of a legal entity charged with providing, offering or promising unlawful remuneration (Article 19.28) to be seized in order to secure the enforcement of any administrative penalty (if imposed).

(c) Measures to require a legal entity given an administrative fine for providing, offering or promising unlawful remuneration (Article 19.28) to pay the fine within seven days (as opposed to 60 days under the law currently in force) from the date that the decree imposing the fine came into force.

The reading of the draft law is currently pending in the Russian State Duma.

On 21 December 2017, the Russian State Duma agreed a first reading of a draft law that would impose administrative liability on companies for providing, offering or promising unlawful remuneration (Article 19.28) in the interests of one of their related legal entities (e.g., a subsidiary or affiliate of the company). The current law only enables companies to be held administratively liable for this offence where it has been committed on behalf or in the interest of the company itself.

Anti-Money Laundering Law

New amendments to Federal Law No. 115-FZ dated 7 August 2001 On Preventing the Legalisation (Laundering) of the Proceeds of Crime and the Financing of Terrorism (the Anti-Money Laundering Law) and Federal Law No. 307-FZ dated 30 December 2008 On Auditing (the Auditing Law) came into force on 4 May 2018. Under these amendments, auditing organizations and individual auditors are obligated to notify the Federal Financial Monitoring Service (*Rosfinmonitoring*) if they have reason to suspect that a transaction or financial operation of the audited entity might have been or might be carried out in order to legalise the proceeds of crime or finance terrorism (Article 7.1(2.1) of the Anti-Money Laundering Law and Article 13(2)(3.2) of the Auditing Law). Before that, a similar obligation was placed upon lawyers (*advokaty*), notaries public and persons carrying on business in the sphere of legal and accounting services.

The reporting procedure is to be set down by the Government of the Russian Federation. Auditing organizations and individual auditors may not disclose the fact that the information is being reported to Rosfinmonitoring.

Anti-Corruption Law

On 13 December 2017, the Russian State Duma agreed a first reading of a draft law amending Federal Law No. 273-FZ On Preventing Corruption (the Anti-Corruption Law). This Bill aims to protect people who report corruption offences (for more details please see the Anti-Bribery and Corruption Review of June 2017).

Prosecutions and enforcement actions

Over the past year there have been numerous cases widely publicized in the mass media where public officials have been sentenced to lengthy imprisonment and fined heavily for committing corruption-related offences. For example:

(d) On 15 December 2017 former Economic Development Minister Alexei Ulyukaev was, amongst other things, sentenced to 8 years' imprisonment in a strict regime prison (*koloniya strogogo rezhima*) and fined RUB 130 million (approximately EUR 1.7 million) for accepting a bribe of USD 2 million. As established by the court, Mr Ulyukaev had accepted the bribe to facilitate the issuance of an affirmative opinion by the Ministry of Economic Development allowing PJSC Rosneft Oil Company to enter into an agreement on acquisition of the Government's 50% stake in PJSC Bashneft Oil Company. On 12 April 2018, the appellate court upheld the sentence in that part concerning the term of imprisonment and the fine imposed against Mr Ulyukaev. It should be noted that the appellate court questioned Mr Sechin, CEO of PJSC Rosneft Oil Company, for the first time at the trial stage of the criminal proceedings (he failed to appear before the first instance court due to his workload). Mr Sechin's testimony was important to the case because he was the person from whom Mr Ulyukaev accepted the bribe and the main witness in the case.

(e) On 1 February 2018 former governor of the Kirov region Nikita Belykh was, amongst other things, sentenced to 8 years' imprisonment in a strict regime prison (*koloniya strogogo rezhima*) and fined RUB 48.2 million (approximately EUR 650,000) for accepting a bribe of EUR 400,000. Mr Belykh received the bribe to protect the interests of two companies based in the Kirov region and controlled by Mr Yuriy Zudhaimer: JSC Novovyatsky Ski Factory and LLC Forestry Management Company. On 10 May 2018, the appellate court upheld the sentence in that part concerning the term of imprisonment and the fine imposed against Mr Belykh.

(f) On 20 April 2018 former head of the General Directorate of Internal Affairs of the Investigative Committee of the Russian Federation Mikhail Maksimenko was sentenced to 13 years' imprisonment in a maximum-security prison and fined RUB 165 million (approximately EUR 2.2 million) for accepting two bribes totalling USD 550,000. In 2016 Mr Maksimenko received a USD 500,000 bribe from businessman Mr Oleg Sheikhametov to reduce the charges against criminal 'boss' Mr Andrey Kochyikov and arrange his release from pre-trial detention. In 2015 Mr Maksimenko was given a USD 50,000 bribe by a businessman, Mr Badri Shengeliya, to arrange the illegal prosecution of employees of the General Directorate of the Ministry of Internal Affairs of the Russian Federation for St. Petersburg and the Leningrad Region.

(g) Another prominent case concerning the bribing of public officials was that brought against Dmitry Zakharchenko, the former deputy chief of the 'T' Department[11] of the Anti-Corruption Directorate of the RF Ministry of Internal Affairs, in September 2016. Mr Zakharchenko is charged with accepting multiple bribes (on four occasions). In December 2017, at the suit of the General Prosecutor, the court seized assets worth a total of more than RUB 9 billon (approximately EUR 121.3 million) that belonged to Mr Zakharchenko and relatives and friends of his. The assets seized included cash, 27 items of immovable property (flats and parking spaces) in wealthy areas, four expensive cars and a gold bar weighing approximately half a kilo.

In recent months there has been a significant increase in criminal prosecutions initiated in the sphere of public procurement. Amongst the most notable cases are the following:

(h) In December 2017 criminal proceedings were initiated against former general director of state-owned aviation company JSC Krasavia Valery Mordan for accepting a bribe of approximately RUB 4 million (approximately EUR 54,000). Mr Mordan reportedly accepted a bribe from a commercial entity that supplied special-purpose machinery to JSC Krasavia. The bribe was allegedly equal to 10% of the price of the contract between JSC Krasavia and the commercial entity and included 'remuneration' for protecting the entity's interests in public procurement in the future.

(i) In November 2017 criminal prosecution was launched against former Minister of Health of the Zabaikalskiy Region Mikhail Lazutkin on suspicion of accepting a bribe of approximately RUB 16 million (approximately EUR 216,000 at the current exchange rate). Mr Lazutkin purportedly arranged the awarding of contracts to commercial entities in public tenders for the supply of medical equipment to regional organisations.

As regards criminal prosecution of officers of commercial organisations, recent cases that have caught the attention of the media include the following:

(i) In April 2018 criminal proceedings were opened against deputy general director of PJSC Interregional Distribution Network Company of the North-West (the largest grid operator in North-West Russia) Valeriy Draidt and his deputy for investment activity issues Evgeniy Sesuk. They are accused of accepting a commercial bribe of more than RUB 5 million (approximately EUR 67,400) from commercial entities for unverified acceptance of and payment for works under construction contracts.

(ii) In December 2017 former general director of JSC Gazpromneft-Noyabrskneftegaz Pavel Kryukov was arrested on suspicion of accepting a commercial bribe of more than RUB 1 million (approximately EUR 13,500 at the current exchange rate). Rumour had it that this commercial bribe was given to Mr Kryukov by the general director of LLC Naftagaz-Burenie (a contractor) for "dealing with a rock drilling incident"

(iii) On 11 October 2017 former bankruptcy administrator of the Plodoviy agricultural production cooperative Andrei Saveliev was fined RUB 6.5 million (approximately EUR 88,000 at the current exchange rate) for accepting a commercial bribe of RUB 1.48 million (approximately EUR 20,000). Mr Saveliev accepted the bribe from businessmen for withdrawing appeals against court judgments rendered in favour of the businessmen and stating that the latter are entitled to certain immovable property which the bankruptcy administrator had indicated in the appeals was to be returned to Plodoviy.

Enforcement trends

It appears that over the past year Russian law enforcement authorities have followed the continuing trend of focusing on corruption offences by public officials rather than in the commercial sector. It should be noted that public officials, if sentenced, have generally been imprisoned for lengthy terms and subjected to hefty fines. In line with this trend there has also been an increase in scrutinising data on the income, material liabilities and expenses, etc. of public officials and their close relatives, with the materials from such verification exercises being passed on to law enforcement authorities if violations are identified.

Another trend in the prosecution of public officials is the increasing number of criminal proceedings in the sphere of public procurement.

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11 This department (now liquidated) was responsible for combating corruption in the fields of fuel and energy complex and chemistry.

SLOVAK REPUBLIC

Changes to legislation

On 15 March 2018, an amendment to Act No. 297/2008 Coll. on the Prevention of Legalization of Proceeds of Criminal Activity and Terrorist Financing came into effect. The new law introduces several changes to the Slovak AML legal framework and a number of new obligations towards Slovak entities.

The main objective of the new amendment is to transpose Directive 2015/849/EU of the European Parliament and of the Council of 20 May 2015 on the prevention of the use of the financial system for the purposes of money laundering or terrorist financing, amending Regulation 648/2012/EU and repealing Directive 2005/60/EC of the European Parliament and of the Council and Commission Directive 2006/70/EC (the fourth AML Directive). The purpose of the transposition of the fourth AML Directive is primarily to adjust the basic requirements of *Customer Due Diligence* or *Enhanced Customer Due Diligence*.

The amendment imposes an obligation to disclose the ultimate beneficial owner(s) (UBO) in performing basic care in relation to the client. In the light of the recommendations of the Financial Action Task Force and the Council of Europe's MONEYVAL Committee, the legislative amendment tightens the obligations of property associations that may be misused to finance terrorism. These entities should, in addition to identifying UBOs, also identify donors and natural persons and legal persons to whom they have provided a gift of at least EUR 1,000.

Perhaps the most significant change introduced by the amendment is the new obligations of privately held companies to identify their UBO and maintain up-to-date records of that identification for the period of the duration of its UBO status and for an additional five years.

In addition to the above, as part of the Government's efforts to increase transparency, the National Council of the Slovak Republic is preparing a new Act on the Protection of Whistleblowers, which should take effect on 1 January 2019. The Act is aiming to establish an independent office for the protection of whistleblowers.

Prosecutions and enforcement actions

In October 2017, two former Ministers were convicted of corruption in the so-called bulletin–board tender. The Specialised Criminal Court in Pezinok sentenced Mr Marian Janušek and Mr Igor Štefanov, both former Ministers of Regional Development, to long prison terms. The court established that they had deliberately given advantage to a group of contractors, bypassing due processes in public procurement. While Janušek was sentenced to twelve years in prison, Štefanov will serve his nine years sentence with minimum security. Both were also banned from holding a public office and sentenced to pay a significant financial penalty.

In March 2017, the Senate of Specialized Criminal Court sentenced two former policemen to five and a half and six years of imprisonment for accepting bribes and misusing the power of public officials. The court further imposed a fine of EUR 500 and a ban on the practising of any service in the police for a period of five years for both.

In March 2017, the Mayor of Devínska Nová Ves, part of Bratislava district, was accused of corruption. The Mayor allegedly served as the intermediary of corruption between a waste processing company and the District Office. The Mayor was supposed to provide the company with a waste permit. Charges were brought by the investigator of the National Criminal Agency who referred the case to the prosecutor of the Special Prosecutor's Office.

Enforcement trends

While the cases highlighted above indicate some movement in the Slovak Republic in the field of fighting corruption in the public sector, according to an analysis of Transparency International Slovakia, Slovakia's fight with corruption has been stagnating.

In June 2017, the Corruption Prevention Department was created in the Prime Minister's Office, headed by an experienced police investigator Peter Kovařík, who launched the Government's anti-corruption intentions. The Corruption Prevention Department monitors and creates reports on corruption, promotes transparency and organizes anti-corruption training.

While the Slovak authorities continue struggling in their fight against corruption, there has been a significant development in past months in Slovak public attitudes. The murder of investigative journalist Ján Kuciak, who had been working on cases covering corruption of public officials, and his fiancée Martina Kušnírová, in February 2018 sparked public outrage. The murders led to a series of public protests that exceeded the 1989 *Velvet Revolution* protests in size and have resulted in Prime Minister Robert Fico and Minister of Interior Robert Kaliňák stepping down.

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SPAIN

Changes to legislation

Due to the political situation in Spain there have not been many changes to legislation in the past two years, with the exception of laws required to be introduced by European Union legislation, such as the Fourth Money Laundering Directive or the Data Protection Regulation.

In the field of public and private corruption, relevant changes have been introduced, from a public and administrative law perspective, by the Public Sector Agreements Law (Law 9/2017, 8 November, updating Spanish legislation following the EU Directives 2014/23/EC and 2014/24/EU, on 26 February 2014), which came into force on 9 March 2018.

The new Public Sector Agreements Law sets out a more restrictive approach to the public tendering process and new rules for obtaining public contracts. These modifications and changes are highly relevant for anti-corruption matters, given that a number of the most high-profile proceedings in recent years have related to this type of contract with the public administration (such as the *Gürtel* Case, the *Púnica* Case, or the most recent *Lezo* Case).

Finally, the Public Sector Agreements Law provides, following previous case law jurisprudence from the Spanish Supreme Court, that state-owned companies (companies in which the state holds more than the 50% of the shares) are considered public companies and therefore must apply all the preventative measures for transparency and neutrality applied by the administration to public contracts.

Prosecutions and enforcement actions

The specialized Anti-Corruption Prosecution Office is starting prosecutions related to donations and bribes to political parties, considering this conduct to be public bribery. A number of companies are currently being investigated for paying bribes in order to obtain public contracts.

In particular, the *Operación Lezo* case is currently one of the most relevant corruption-related investigations. The National Investigation Court (which is a specialized court for investigating certain crimes of national importance) believes that *Canal de Isabel II*, the Region of Madrid water supplier company controlled by the regional Government of Madrid, was involved in several suspicious transactions, including the acquisition of assets in Latin America far above their market value.

This case implicated several high-profile figures in Spain, including a former regional president of the Region of Madrid, Ignacio González, and a Spanish business tycoon and chairman and CEO of the Spain-based multi-national construction company OHL. Reportedly, in order to secure a commission for an infrastructure project, OHL paid EUR 1.4 million to the former regional president of Madrid, who had been in charge of state-owned company Canal Isabel II during his time as vice president of the region between 2003 and 2012.

Another relevant case is the investigation known as *Caso Zaplana* in which Eduardo Zaplana, the former Spanish Minister for Employment and Social Security and former Mayor of Benidorm, was arrested by Spanish Civil Guards on charges of bribery and the embezzlement of public funds, followed by money laundering.

The Anti-Corruption Prosecution Office is also starting prosecutions for private sector bribery involving football clubs. In this regard, *Operación Soule* is an investigation conducted against the former President of the Spanish Football Federation (RFEF), as well as members of his family and other managers of RFEF who allegedly received bribes or irregular commissions in exchange for 'fixing' the results of football games. The estimated damage caused to RFEF is EUR 45 million.

There are several prosecutions related to the bribery of foreign public officials, including the *Angola* and *Mercasa* cases. The *Angola* case is a complex criminal investigation, as a result of which more than 30 individuals have been brought before the National Court in Madrid in connection with allegations that the Spanish semi-public company Defex, which entered into an agreement with the Angolan Government for the supply of police equipment for EUR 153 million, was involved in offences of bribery of foreign public officials, money laundering, tax fraud, falsehood and criminal association.

The *Angola* case is closely connected to the *Mercasa* case, which relates to allegations of bribing public officials in Angola, Panama and the Dominican Republic in order to obtain public contracts in these countries.

Finally, several important judicial rulings were issued in 2018, after years of investigation. The most important ruling, issued in May 2018, is the first and the most high-profile

part of the *Gürtel* Case in which a number of business-persons, as well as the Treasurer and other individuals from a political party had been convicted of public bribery. The political party was held civilly liable for obtaining benefit from the corrupt practices.

Enforcement trends

Prosecutions for both public and private sector corruption have become increasingly regular recently. As in previous years, the most important prosecutions (and those attracting most media comment) are those involving politicians and political parties. This trend is likely to be maintained in the following years given that a couple of new relevant prosecutions were launched in 2017/2018. In the past few years, there has also been a strong interest in prosecuting cases of bribery of foreign public officials and corruption in official sports competitions.

There is additionally a trend for public authorities to send claims against a contractor directly to the Public Prosecutor's Office, because of two main factors: (i) the reluctance of the public officials to take responsibility themselves, and (ii) because criminal proceedings are a faster way to pursue a claim against a contractor than other methods. A number of prosecutions have been commenced in Barcelona related to the construction works of the AVE (high-speed trains) where the administration has made a claim against the contractors because the final costs of the works were in excess of the initial budget. A number of different contractors and sub-contractors of the Ministry of Transport have been held under investigation.

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THE NETHERLANDS

Changes to legislation

Registration in the UBO-register as required by Directive 2015/849

In March 2017, a legislative proposal was introduced to Parliament to implement part of Directive 2015/849[12], in particular, the obligation to maintain a central register with information on the ultimate beneficial owner (UBO) of companies and other legal entities. The obligation to register UBOs will apply to private and public limited companies, partnerships, general partnerships, limited partnerships, associations, foundations, and other legal entities. Listed companies are exempted. The Dutch Chamber of Commerce (*Kamer van Koophandel*) will operate the register. A UBO-registration must contain the following details:

- Name;
- Month and year of birth;
- Nationality;
- Country of residence;
- Scope and nature of the held interest; and
- Information such as address details and Citizen Service Numbers (these will only be available to a limited set of specifically authorized institutions).

The UBO-register will be accessible to:

- Authorities such as the National Bank (DNB), the Authority for Financial Markets (AFM) and the Financial Intelligence Unit (FIOD) and equivalent organizations from other EU member states;
- Within the scope of their client acceptance due diligence efforts: institutions with an obligation to notify, such as lawyers, civil law notaries, real estate agents and banks; and
- All people and organizations with a legitimate interest.

This legislative proposal is expected to be adopted by mid-2018.

European Public Prosecutor's Office

Furthermore, the current Dutch coalition Government announced, in its coalition agreement of late 2017, that the Netherlands will become a party to the European Public Prosecutor's Office (EPPO). The EPPO will be in charge of investigating, prosecuting and bringing to justice the perpetrators of offences against the Union's financial interests. It is currently still unclear when the EPPO will become operational.

Other

Laws are being introduced and/or amended to provide a more effective framework for the pursuing of corrupt individuals. An example is the recent Dutch lobbying for an EU or national Magnitski-law, through which national Governments may prosecute foreigners in relation to large scale corruption. The Municipalities Act is also being amended to prevent integrity issues within municipal authorities. Furthermore, as from July 2018, the FIOD can use new surveillance powers (including phone taps and undercover surveillance) for serious violations without prior police permission, subject to a judge's sign off of the investigation.

Prosecutions and enforcement actions

Dutch oil-engineering company SBM Offshore remains in the spotlight. In November 2014, SBM Offshore settled with the Dutch authorities for USD 240 million to bring an end to the investigations into alleged bribery in Angola, Brazil and Equatorial Guinea. Investigations were re-opened in the United States. SBM Offshores settled with the US Department of Justice for USD 238 million in November 2017. A request by Jonathan Taylor, a former SBM Offshore in-house lawyer, for preliminary witness hearings of senior SBM offshore executives with a view to establishing certain facts was dismissed by a Dutch Court on 17 January 2018. Such hearings are a preliminary procedural tool to establish whether there is enough evidence to bring a lawsuit. The Dutch Court ruled that the requested witness hearings would not be allowed as it follows from the US settlement that the facts in question are no longer disputed. In Brazil, the prosecutors rejected leniency agreements in September 2016 and the investigation is still ongoing.

Accountancy firm Ernst & Young (EY) is being prosecuted by the Dutch Public Prosecution Service (DPPS) following the bribery scandal related to its client VimpelCom (currently, Veon). In 2016, VimpelCom settled for a record sum of USD 795 million with the DPPS and the US Department of Justice after it was accused of bribing Gulnara Karimova, the oldest daughter of the former president of Uzbekistan. The DPPS alleges that EY

12 Directive (EU) 2015/849 of the European Parliament and of the Council of 20 May 2015 on the prevention of the use of the financial system for the purposes of money laundering or terrorist financing (Fourth Anti-Money Laundering Directive).

purposely did not, not timely or not completely, notify suspicious transactions by VimpelCom, whilst they had an obligation to do so. The DPPS is also reported to be investigating whether ING, in the same bribery scandal, complied with the applicable rules as financial transfers are reported to have been made from an ING account.

In a judgment dated 19 April 2018, a Dutch Court ruled that the DPPS' case against three former accountants of KPMG, in relation to the Ballast Nedam corruption scandal, was inadmissible. In short, the court deemed it incomprehensible that the accountants were prosecuted, but not those actually responsible for the bribery of public officials in Saudi Arabia and Suriname. The case against the eight directors of Ballast Nedam allegedly responsible for the bribery had previously been settled with the DPPS. Furthermore, the prosecutors had factually already agreed upon a settlement with the former accountants. The DPPS indicated that it intends to appeal this judgement.

The Dutch Fiscal Information and Investigation Service (FIOD) is reported to be conducting criminal investigations into three subsidiaries of SHV, the largest family-owned business in the Netherlands. These include technical components company Econosto (over controversial payments in the Middle East) and heavy transport company Mammoet (in relation to alleged bribery in Africa and Iraq), which are thus implicated in an investigation into fraud, bribery, forgery and sanctions violations. The Dutch Authority for Financial Markets (AFM) brought complaints against two accountants from PwC before a specialized disciplinary court in relation to their alleged involvement with Econosto. No ruling has been made yet.

Enforcement trends

There remains a strong focus on the role of auditors and other 'facilitators' in the prevention of bribery and corruption in the Netherlands. It is expected that this will continue during the coming years.

The Netherlands has risen to place 14 in the Financial Secrecy Index of 2018, 27 places higher than its ranking in 2015. This higher ranking may largely be attributed to failing to implement the UBO-register by the deadline in 2017. Financial secrecy is considered a significant contributing factor to corruption. Numerous institutions with controlling powers are likewise contributing to the control and the pursuit of bribery and corruption. The Dutch Central Bank (DNB) has stated, in its Vision on Supervision 2018-2022 report of November 2017, that combating financial-economic crime is of the highest priority as it may diminish trust in the financial system. The DNB specifically refers to its measures against trust offices.

Furthermore, new International Financial Reporting Standards have been introduced for listed companies. For example, so-called Public Interest Entities (e.g. housing corporations, pension funds, etc.) with more than 500 employees must include in their annual reporting information on their anti-bribery/anti-corruption policies. From 2018 onwards, the AFM monitors compliance with these rules.

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TURKEY

Changes to legislation

In the last couple of years, Turkey has gone through back-to-back elections and a few corruption scandals that received global attention, as well as a failed coup attempt in July 2016. As a result of this, the Government declared a state of emergency on 20 July 2016 which has been extended for successive three months periods and is still ongoing.

Studies dated late-2017 and early-2018 have concluded that the 2016 – 2019 Government action plan introduced by the Circular No. 2016/10 on Increasing Transparency and Strengthening the Combat against Corruption has not been duly followed and Turkey has not yet succeeded in fully implementing the United Nations Convention Against Corruption, to which it is a party. Although Turkey's Public Procurement Law is broadly aligned with EU public procurement Directives, in 2017 several derogations were introduced for defence, security and intelligence related procurements.

Prosecutions and enforcement actions

The Public Officials Ethics Board declared in its 2016 annual report that 145 petitions were received in connection with breach of ethical principles by public officials. Out of these 145 petitions, 121 were rejected due to procedural reasons, 24 have been accepted and reviewed by the board and only five of these 24 cases resulted in a board decision confirming ethics violation. It should also be noted that governmental units such as the Public Officials Ethics Board send only a limited number of suspicious cases to the prosecutor's office to launch a criminal trial.

According to data provided by the European Council, corruption related sentences by Turkish courts have decreased from 5,497 in 2016 to 3,889 in 2017. Corruption and bribery cases generally involve either the central or regional administrations of title deed registries, public procurement bodies and other governmental entities primarily engaged in construction and transportation sectors. According to data provided by the European Council, as a result of investigations for corruption in public procurement, there were 583 convictions in 2017, decreased from 1,115 in 2016. In 2017, new anti-corruption and bribery investigations were initiated against 123 traffic police officers, who were allegedly bribed by truck drivers for permitting transportation with excessive load, and 12 officers in the Turkish Standard Institute, who allegedly issued certificates to several companies without conducting the necessary audits on such companies.

Further, the criminal trial which was launched in mid-2016 remains ongoing against public officials at İzmir Bayraklı Municipality, including the Mayor himself, who are accused of rigging tenders and illegally accepting gifts including mobile phones and plane tickets.

Enforcement trends

As analysed under various studies including the European Commission's Turkey 2018 Progress Report and Transparency Turkey's 2017 Transparency Report, the Turkish public procurement legislation still falls short of being in line with EU regulations particularly for tenders by municipalities or for public-private partnerships concerning significant investments. This is mainly due to significant exceptions granted under the framework law (i.e. Public Procurement Law [Law No. 4749]), which is not fully, but rather broadly, aligned with the 2004 EU public procurement Directives.

Further, legal protections are given to public officials such as the requirement of having the authorisation of the relevant public official's superior prior to prosecution. The European Commission's Turkey 2018 Progress Report further underlines the fact that legal provisions continue to be inadequate in terms of preventing conflicts of interest as well as in relation to disclosure of assets for the public officials conducting tenders.

In terms of harmonisation with global standards, there are still a few shortcomings in the Turkish corruption-related legislation. Particularly, certain provisions of the Turkish Criminal Code (Law No. 5237) do not meet the standards put in place by the Criminal Law Convention on Corruption. For instance, constituents of the crime of active bribery, although covered as an offence, is still not aligned with international conventions. Also, provisions regarding corruption in the private sector fail to meet the international standards.

Other developments

International corruption ranking

In 2017, Turkey has continued to descend in ranking on the Corruption Perception Index published by Transparency International, which aims to measure the perception of corruption in the public sector. Turkey was ranked 81st out of 180 countries, which is a slight decline from its former ranking of 75th out of 176 countries in 2016. Turkey continues to decline in ranking since 2013, the year which marks the publicly exposed allegations against high-ranking public officials.

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UKRAINE

Changes to legislation

Recent anti-corruption legislative changes in Ukraine have included the establishment of specialised anti-corruption courts, electronic wealth declarations for public officials (E-Declarations) and a range of other anti-corruption preventive measures.

E-Declarations

Following the introduction of E-Declarations for public officials (implemented in practice in August 2016), which all state officials, MPs and officials of local Government bodies must complete with details of their assets, income, expenditure and financial obligations, the Parliament of Ukraine extended the E-Declarations requirement to members of anti-corruption NGOs, presidential candidates and parliamentary candidates in March 2017.

They were ordered to submit their E-Declarations by 1 May 2017. These measures are controversial since they appear to target specifically anti-corruption NGOs which receive foreign funding. On 3 April 2018, the Parliament failed to vote for abolition of E-Declarations for NGOs, notwithstanding the criticism of international institutions. At the same time, Parliament abolished an obligation to submit E-Declarations for some categories of military servicemen participating in the Anti-Terrorist Operation in the East of Ukraine.

All senior Ukrainian Government and parliamentary officials had to complete and submit their most recent E-Declarations by 1 April 2018. Around 1,140,000 E-Declarations were filed in 2017, revealing that a large number of Ukrainian top officials/politicians and their family members keep millions of dollars in cash and own valuables such as luxury watches, expensive cars and vintage wine collections. Ukraine's Prosecutor General has vowed to investigate all politicians/officials who declared savings in excess of USD 100,000 and/or gifts of over USD 10,000.

Anti-corruption courts

A new law 'On the Judicial System and Status of the Judges' (adopted in June 2016) provides a basis for the introduction of specialised anti-corruption courts, in particular, the Higher Anti-Corruption Court. The draft law 'On Anti-Corruption Courts' has been adopted at the first reading and is expected to be finally passed this year, although the date of voting for the Bill has been delayed several times. The rationale for the introduction of anti-corruption courts is that the general courts are too overloaded with cases and are vulnerable to threats or influence from high-ranking corrupt officials who may be charged with bribery or other corruption offences.

Prosecutions and enforcement actions

During 2017 the National Anti-Corruption Bureau of Ukraine (the NABU) investigated a constantly increasing number of cases. As of 31 March 2018, NABU directed 127 indictments to the courts and obtained 19 verdicts. Overall, NABU is currently investigating 609 criminal cases. The most recent and famous cases are described below.

New investigations based on the data provided in electronic declarations

In 2017, the total number of investigations based on the information set out in the E-Declarations was 27. Out of these, ten E-Declarations were transferred to NABU. The subjects of these investigations are mainly judges, MPs and heads of local authorities.

Investigation against the Head of Parliamentary Faction

Since October 2017, NABU and NAPC have investigated the winning of three suspicious lottery prizes of aggregate UAH 571,000 (USD 21,800) by the Head of Parliamentary Faction Oleg Lyashko, which were declared in his E-Declaration. On 26 February 2018, the local court granted NABU's petition to get access to the documents underlying Mr Lyashko's winnings. The investigation is still ongoing.

Charges against the son of the Minister of Interior

On 31 October 2017, NABU conducted a search at the premises of Oleksandr Avakov, the son of the Minister of Interior Arsen Avakov. The search related to the criminal investigation of procurement of 5,000 military backpacks by the Ministry of Interior at inflated prices from a company controlled by Arsen Avakov.

NABU apprehended Oleksandr Avakov and the former Deputy Minister of Interior, who was allegedly involved in the illicit procurement. However, the local court released both of them on personal commitment, the softest form of restraint in criminal proceeding, while the prosecutors sought the pre-trial detention. On 5 April 2018, NABU announced that the investigation against Oleksandr Avakov and his alleged accomplice was ready for trial.

The criminal investigation against Oleksandr Avakov is very notable for Ukrainian enforcement system, since his father Arsen Avakov belongs to the ruling coalition and is known as one of the most powerful politicians in Ukraine.

Criminal case against the Member of Parliament

In 2017, NABU arrested the Member of Parliament Mykola Martinenko on charges of embezzlement of property of the state enterprise in the amount of USD 17 million. NABU and the Anti-corruption Prosecutor's office alleged that the state enterprise had purchased uranium through intermediary companies controlled by Mr Martinenko and established for the sole purpose of reselling the goods at a higher price. The investigation is still in progress.

The local court released Mykola Martinenko on bail of the Members of Parliament from his own faction. Mr Martinenko is known as one of the most influential and wealthy Members of Parliament.

Bribery case

NABU and the Anti-corruption Prosecutor's office are proceeding against Judge Chaus on allegations of accepting a USD 150,000 bribe. The money was found in two glass jars, which Judge Chaus had buried in the yard of his residence. Since judges in Ukraine have immunity from prosecution, the NABU's detectives could not detain the judge at the time. Later, the Ukrainian Parliament supported the petition of the Prosecutor General's Office to detain and arrest Judge Chaus. However, by that time Judge Chaus had fled the country. He was later arrested in Moldova and is now facing extradition to Ukraine.

Enforcement trends

The NABU continues to focus on allegations of corruption, particularly by Ukrainian officials. However, there have been no investigations against top officials resulting in convictions yet. Moreover, based on a recent NABU report, most indictments of corrupt officials remain unscheduled for hearing for over ten months, highlighting the urgent need for the introduction of the anti-corruption court.

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UNITED ARAB EMIRATES

Changes to legislation

There have been no significant changes to anti-corruption legislation since our last update in June 2017.

Prosecutions and enforcement actions

The UAE authorities do not typically publish information on prosecutions or enforcement actions. However, the following recent high profile bribery case attracted considerable media attention. The case involved a father who was subject to a travel ban paying AED 120,000 (approximately USD 32,670) to a Dubai airport official in order to leave the country so that his stem cells could be used in an operation intended to save his son, who was suffering from leukaemia. The Emirati airport official was jailed for one year and fined the same amount as the bribe. On appeal, the father received a lenient judgement; he was handed a suspended sentence of three months and fined AED 60,000 (approximately USD 16,335) after the judge accepted the defence's argument that the defendant had acted on "fatherly and humane" grounds.

Enforcement trends

The UAE authorities do not tend to publish information about enforcement actions, or enforcement strategy. However, there has been speculation that the recent events in the Kingdom of Saudi Arabia may trigger additional scrutiny of such payments in the United Arab Emirates, and companies would be prudent in taking a conservative approach when it comes to any form of payments to public officials.

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UNITED KINGDOM

Changes to legislation

The Criminal Finances Act 2017 introduced a number of anti-bribery related measures which have now been brought into effect. The new powers to issue 'unexplained wealth orders' and the supporting 'interim freezing orders' came into force on 31 January 2018. A UWO requires persons reasonably suspected of involvement in, or of being connected to a person involved in, serious crime, to explain the nature and extent of their interest in particular property, and to explain how the property was obtained, where there are reasonable grounds to suspect that the respondent's known lawfully obtained income would be insufficient to allow the respondent to obtain the property. A UWO may also be used against politically exposed persons, without having to meet the requirement of reasonable suspicion of being involved in serious crime. Failure to respond to a UWO may give rise to a presumption that the property is recoverable under any subsequent civil recovery action. The new power has already been used; on 28 February the UK National Crime Agency announced that it had secured two UWOs to investigate assets totalling GBP 22 million (approximately USD 29.4 million)believed to be ultimately owned by a politically exposed person, and relating to two properties in London and South East England.[13]

The Sanctions and Anti-Money Laundering Act 2018 received Royal Assent on 23 May 2018. The Act is intended to enable the UK to continue to implement United Nations sanctions regimes and to use sanctions to meet national security and foreign policy objectives, as well as to enable anti-money laundering and counter-terrorist financing measures to be kept up-to-date and in line with international standards following the withdrawal of the UK from the European Union. The Act includes a provision requiring the Secretary of State to publish reports on progress towards establishing a register of beneficial owners of overseas entities that own or want to buy property in the UK, or want to participate in UK Government procurement, an anti-corruption measure (a Government statement in March 2018[14] said the Government intends to publish a draft Bill to implement this measure in summer 2018, and for the register to be operational in 2021.) There are also provisions in the Sanctions and Anti-Money Laundering Act relating to public registers of beneficial ownership of companies registered in British Overseas Territories.

In a related development, the new corporate criminal offences of failing to prevent facilitation of UK or non-UK tax evasion came into force on 30 September 2017.

Prosecutions and enforcement actions

In the first instance of a company pleading not guilty to the corporate offence of failing to prevent bribery (under section 7 of the Bribery Act 2010), a small UK interior refurbishment company was convicted on 21 February 2018 of failing to prevent its former managing director from bribing a project manager in a property company in connection with office refurbishment contracts worth GBP 6 million. Skansen Interior Limited (with staff of only 30 employees) conducted its own internal investigation, proactively brought matters to the attention of the City of London Police and cooperated with their investigation, but was not offered a deferred prosecution agreement (DPA). Skansen sought to rely on the defence that it had adequate procedures in place to prevent bribery which were proportionate to its (small) size. However the jury did not accept that the company's general policies and procedures on ethics, which required everybody to act honestly and ethically, or its financial controls on the payment of invoices, amounted to adequate procedures. There was no specific anti-bribery policy in place at the time of the conduct, no proper training and no individual with specific responsibility for ABC compliance.[15] No penalties could be imposed on the company, which has been dormant since 2014. Two senior executives at the company pleaded guilty to bribery and corruption offences.

As part of the SFO's investigation into Unaoil, launched in March 2016, a number of individuals were charged in November 2017 with conspiracy to make corrupt payments (under pre-Bribery Act legislation) to secure the award of contracts in Iraq to Unaoil's client SBM Offshore, between June 2005 and August 2011. Further charges of

13 See https://www.cliffordchance.com/briefings/2018/03/uk_authorities_secureunexplainedwealthorder.html for more information about UWOs.

14 https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachmentdata/file/681844/ROEBO_Gov_Response_to_Call_for_Evidence.pdf.

15 See https://www.cliffordchance.com/briefings/2018/03/first_contested_prosecutionforfailuret.html for more information about the case.

conspiracy to give corrupt payments were announced by the SFO in the Unaoil investigation on 22 May 2018 in connection with the award of a contract worth USD 733 million to Leighton Contractors Singapore PTE Ltd for a project to build two oil pipelines in southern Iraq.

On 19 April 2018 the SFO announced it has opened a criminal investigation into suspected corruption in the conduct of business in Algeria by Ultra Electronic Holdings plc, its subsidiaries, employees and associated persons, following a self-report by Ultra. On 18 January the SFO said it had opened investigations into bribery, corruption and money laundering arising from the conduct of business by Chemring Group PLC, its subsidiary, Chemring Technology Solutions Limited and officers, employees, agents and persons associated with them, following a self-report.

On 22 March 2018 the High Court granted the SFO's Civil Recovery Order of GBP 4.4 million (approximately USD 5.8 million) in relation to a Property Freezing Order originally granted in July 2014, over the proceeds of sale of company shares held by Mrs Saleh, the wife of a former Chadian diplomatic official. The underlying case involved bribes by Griffiths Energy to Chadian diplomats to secure exclusive contracts via a front company, Chad Oil. Griffiths Energy self-reported the corrupt payments and pleaded guilty to corruption charges brought by the Canadian authorities. Following the takeover by Griffiths Energy by a UK corporation and share sale via a UK broker, the corrupt proceeds came under UK jurisdiction. The SFO said the recovered money would be transferred to the Department for International Development, who would identify key projects to invest in to benefit the poorest in Chad.

In September 2017 F.H. Bertling Ltd and six current and former employees were convicted (following guilty pleas) of conspiracy to make corrupt payments to an agent of the Angolan state oil company, Sonangol, in relation to F.H. Bertling's freight forwarding business in Angola and a contract worth approximately GBP 20 million (approximately USD 26.7 million).

Enforcement trends

Mr David Green, Director of the SFO, stepped down on 20 April 2018 when his term of office came to an end. Mr Mark Thompson, Chief Operating Officer, took over as Interim Director on 21 April, and will continue in post until 3 September when Mr Green's successor, Lisa Osofsky, will begin her five-year tenure. The personality and priorities of the Director can be influential in terms of prosecution strategy and the new Director's focus will be a matter of considerable interest. Ms Osofsky is a former US federal prosecutor, pursuing a range of white collar crime, and joins the SFO from Exiger, a risk and compliance consultancy. In the short to medium term, it is expected that the SFO will continue to work to existing priorities, as outlined recently in a speech on 18 March 2018 by Camilla de Silva, Joint Head of Bribery and Corruption at the SFO.

On where the SFO's attention was directed, Ms de Silva said that the SFO did not focus their sights on a particular sector: "However, looking at our casework, you could identify clusters of work focused around certain industries, for example, and by no means limited to, the Financial Services Industry and recently early pension release ("pension liberation") schemes, extractives industry, Aerospace and Defence cases. This will, I expect, continue."

Discussing international cooperation, Ms de Silva said the SFO continued to work closely with partners in Europe, the Americas, Australasia and beyond: "The trans-border nature of financial crime means that our links will only strengthen, not just in the area of operational cooperation, but also in the exchange of ideas, such as DPA regimes and how they are suitably adapted into other jurisdictions.

Ms de Silva said the SFO continued to be open to the possibility of DPAs but they would not be appropriate for every case; they would consider the Code of Practice and assess whether the Defendant company had self-reported, remediated and how it cooperated.

Ms De Silva said that their casework came from a variety of sources, increasingly from self-reports but also from intelligence sharing initiatives, SARS regime, JIMLIT and the use of whistleblower and other forms of foreign and domestic intelligence.

Finally, in relation to corporate compliance, Ms de Silva said "Since the passing of [the Bribery Act], we, the SFO, have yet to encounter a corporate with sufficient confidence in its compliance programme to persuade us of its adequacy or run a section 7 defence argument in court. (…) We saw last week the argument run for the first time and a jury rejecting a section 7 defence in a CPS prosecution. (…) The case [Skansen, see above] is perhaps a salient reminder to corporates to ensure their compliance procedures are sufficiently robust and the high bar that will need to be reached for a section 7 defence to succeed. The starting point is about having bespoke compliance procedures

in place, but it is more about the substance of the procedures and about them actually working in the first place."

Ms de Silva highlighted a number of compliance related issues which could be gleaned from the Rolls-Royce and Standard Bank DPAs – "for example the interaction between and impact of the compliance team on the business unit, a top level commitment from the Board for proper governance and organisation of compliance and this effort being properly resourced, and crucially, a bedding in of a compliance culture."

The SFO announced on 19 April 2018 that its budget had been increased from GBP 34.3 million (previously planned for 2018/19) to GBP 52.7 million (approximately USD 45.9 million to USD 70.5 million). There is expected to be a reduction in so-called "blockbuster" funding, and the criteria for allocation of blockbuster funding has also changed. Previously the SFO applied to HM Treasury for blockbuster funding when a case was forecast to cost more than 5% of core funding. Blockbuster funding will now be available where the spend is over GBP 2.5 million (approximately USD 3.3 million) on a single case in a given year. The previous arrangements had been criticised by the OECD as providing potential for political intervention in the criminal prosecution process.

In April the SFO announced that it would make artificial intelligence available for all of its new casework. In a press release, the SFO said "The move to use AI across SFO cases comes after its successful use in a live pilot in the Rolls-Royce case, at the time, the SFO's largest investigation with 30 million documents submitted for review, and the UK's first criminal case to make use of AI. …The SFO will begin managing all new cases with the technology from this month, with one case already exceeding Rolls-Royce in size with over 50 million documents requiring review and another larger than both cases combined."

Other developments

United Kingdom Anti-Corruption Strategy 2017 – 2022

The UK Government published its Anti-Corruption Strategy 201 – 2022 in December 2017[16]. The strategy sets out the Government's anti-corruption priorities, both domestic and international, and establishes a long-term framework for tackling corruption up to 2022. The Government's six priorities under the strategy are:

- reducing the insider threat in high risk domestic sectors such as borders and ports;
- reducing corruption in public procurement and grants;
- promoting integrity across the public and private sectors;
- strengthening the integrity of the UK as an international financial centre;
- improving the business environment globally; and
- working with other countries to combat corruption.

The Prime Minister also announced the appointment of John Penrose MP as the new anti-corruption champion. Mr Penrose will be responsible for challenging and supporting the Government in implementing the strategy, as well as promoting the UK's response to corruption both domestically and internationally.

A new national economic crime centre within the National Crime Agency is to coordinate the national response to economic crime. New legislation is proposed to allow the NCA to directly task the SFO to investigate the worst offenders. The Home Secretary will personally chair a new economic crime strategic board to drive action.

Joint principles to compensate victims of economic crime overseas

Following the launch of the Anti-Corruption Strategy, new joint principles to compensate victims of economic crime overseas[17] were published on 1 June 2018. The agreement, between the Crown Prosecution Service, the National Crime Agency and the Serious Fraud Office, is intended to establish a common framework to identify cases where compensation is appropriate.
The announcement pointed to five cases since 2014 in which GBP 49.2 million (approximately USD 65.8 million) had been secured as compensation for overseas victims, including GBP 28.7 million (approximately USD 38.4 million) recovered following the conviction of Ao Man Long, former Secretary of Transport and Public Works in the Macao Special Administration Region for corruption offences. Mr Ao's UK-based assets were returned to the Region's authorities.

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16 https://www.gov.uk/government/publications/uk-anti-corruption-strategy-2017-to-2022.

17 https://www.sfo.gov.uk/download/general-principles-to-compensate-overseas-victims-including-affected-states-in-bribery-corruption-and-economic-crime-cases/.

THE AMERICAS

BRAZIL

Changes to legislation

Brazil's main anti-bribery legislation is Law No. 12,846/2013, referred to as the *Lei Anticorrupção* (the Brazilian Anti-Corruption Law), and various associated regulations and rules made since 2013. There have been no new laws or substantive changes to the Brazilian Anti-Corruption Law since our last Anti-Bribery and Corruption Review in June 2017.

Prosecutions and enforcement actions

There has been a significant number of investigations and prosecutions involving corruption in the past year; some of these stemmed from the well-known *Operação Lava Jato* (Car Wash Investigation), which started in March 2015 and reached its 51st stage as of May 2018, while others involved other instances of corruption in the country.

Operação Unfairplay – October 2017. The Brazilian Federal Police and the Public Prosecutor's Office investigated and arrested the former president of the Brazilian Olympic Committee and Rio 2016 Committee Carlos Arthur Nuzman and his right hand man, Leonardo Gryner. Nuzman was accused of bribing officials in order to bring the Olympic Games to Rio de Janeiro. During the same investigation, Sergio Cabral, Rio de Janeiro's former governor, was accused of being the mastermind behind this scheme. Once Rio de Janeiro was selected to host the Olympic Games, Sergio Cabral would then over-invoice on public constructions.

Operação Tesouro Perdido – September 2017. This is the second stage of the Cui Bono investigation, commanded by the Brazilian Federal Police. This specific investigation has been trying to discover the relationship between the BRL 51 million dollars (approximately USD 13.5 million) found in cash at the house of former Congressman Geddel Vieira Lima and the supposed corruption schemes involving Caixa Econômica Federal.

Operação Bullish – May 2017. The Brazilian Federal Police and the Public Prosecutor's Office are investigating possible frauds and irregularities involving subsidies given by Banco Nacional de Desenvolvimento Econômico e Social (BNDES) between the period of 2007 to 2011 to the Brazilian company JBS, involved in various other corruption schemes.

Operação Rizoma – April 2018. The Brazilian Federal Police and the Public Prosecutor's Office investigated the crimes of money laundering, corruption and unreported remittance of money across the border that ended up causing financial damages to the Social Security Service of the Brazilian Post Office (Postalis) and the Brazilian Federal Data Processing Agency.

Operação Déjà Vu – May 2018. This is the 51st stage of the Car Wash Investigation. During this stage, three former Petrobras executives and three financial operators were arrested. The investigation is into reports that Odebrecht made payments of around BRL 200 million between 2010 and 2012 (approximately USD 54 million) in order to obtain a contract with Petrobras worth USD 825 million. It is alleged that the money was addressed to the company executives and politician's representatives linked to the Brazilian Democratic Movement (MDB) party.

Operação Câmbio Desliga – May 2018. The Brazilian Federal Police and the Public Prosecutor's Office are investigating 45 alleged money dealers (*doleiros*), 35 of which were arrested for money laundering and tax evasion. These financial operators may be involved with Brazilian politicians such as Sergio Cabral, Rio de Janeiro's former Governor and other Government officials. Even though this operation is still at the beginning, the police are estimating that USD 1.6 billion has been illegally managed by these suspects.

Operação Prato Feito – May 2018. The Brazilian Federal Police are investigating the embezzlement of public funds that were destined to go to public schools in various Brazilian states. How much money was embezzled is still unknown, because the operation is still in its early stages. However, officials suspect the involvement of thirteen mayors, four former mayors, one city councilman, 27 non-elected Government officials and a further 40 individuals from the private sector.

Enforcement trends

Plea bargains were introduced into Brazilian legislation through Law No. 12,850/2013. Since then, approximately fifty plea bargains have been made and six have been approved and accepted by the Brazilian Supreme Court.

The most famous of these, and one which attracted the attention of the worldwide media in April 2017, was the plea bargain relating to the Odebrecht Group, which involved 78 officers and ex-officers of the engineering and construction global business, as well as Senators, Federal Deputies, the President of the Congress and of the Senate, a Minister of the Federal Court of Auditors

and Ministers of President Michel Temer. The most common crimes described in the bargains were corruption, money-laundering, fraudulent misrepresentation, collusion, and bid-rigging. Brazilian President Temer was also mentioned in the plea bargains, but the Public Prosecutor's Office did not include him in the investigations because he is entitled to temporary immunity due to his current position as President of Brazil, which means he cannot be investigated for crimes that are not a consequence of his mandated activities.

Earlier this year, on April 2018, in one of the most important corruption-related events of recent times, Brazilian ex-president, Luiz Inácio da Silva, commonly referred to as Lula, was ordered to commence a 12-year prison sentence for corruption and money laundering. The evidence used to convict the ex-president came as a result of the Car Wash Investigations, during which the Brazilian Department of Justice found out that construction company OAS had given Lula an apartment valued at BRL 2.2 million, in exchange for his help in obtaining state-owned Petrobras' construction contracts for OAS.

The use of leniency agreements, introduced by Law No. 12,846/2013, has not been as widespread as expected because of problems arising from the fact that government entities have had to come to an agreement as to which one of them would enter into the agreement with the company. This has meant that companies which have signed a leniency agreement with one government entity may still be prosecuted by another government entity, thus giving companies little incentive to come forward. However, on April 2018, the first leniency agreement signed by all anti-corruption government entities, including the Public Prosecutor's Office (MPF), National Comptroller General (*Ministério da Transparência* and *Controladoria Geral da União*), the Attorney General's Office (*Advocacia Geral da União*) and the General Accounting Office (*Tribunal de Contas da União*) was entered into with Interpublic, an American communications company with activities in Brazil. This represents a major breakthrough in the fight against corruption because now that these government entities have shown they can work together, it is expected that companies will feel more comfortable in entering into these types of agreements with the Government.

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UNITED STATES OF AMERICA

Changes to legislation

Kokesh v. SEC

The Supreme Court's interpretation of 28 U.S.C. § 2462 in *Kokesh v. SEC* has the potential to significantly alter the Securities and Exchange Commission's (SEC) approach to investigating and pursuing complex cases, including those involving foreign bribery and corruption.[18] In *Kokesh*, the SEC alleged that the defendant, Charles Kokesh, misappropriated USD 34.9 million between 1995 and 2009 through two investment-adviser firms and "in order to conceal the misappropriation … caused the filing of false and misleading SEC reports and proxy statements."[19] The SEC prevailed in a jury trial and Kokesh was ordered to, among other things, disgorge the full USD 34.9 million he had misappropriated.

Kokesh appealed the trial court's disgorgement award, arguing that the full award of USD 34.9 million was inappropriate because the majority of that sum – USD 29.9 million – "resulted from violations outside the limitations period."[20] He based his argument on 28 U.S.C. § 2462, which states that unless specified by Congress, any "action, suit or proceeding for the enforcement of any civil fine, penalty or forfeiture" shall have a five-year statute of limitation. In Kokesh's case, the trial court applied the five-year statute of limitations to the civil monetary penalties, but not disgorgement or prejudgment interest (an additional USD 18.1 million) because the SEC had long argued that disgorgement was remedial and not a penalty or forfeiture. On appeal, the Tenth Circuit upheld the trial court's award;[21] the Supreme Court granted certiorari to resolve a circuit split.

Finding that the imposition of the full disgorgement amount against Kokesh was both punitive and intended to address a public wrong, the Supreme Court held that "SEC disgorgement thus bears all the hallmarks of a penalty."[22] Consequently, the five-year default statute of limitations contained in § 2462 was applicable and Kokesh could not be forced to disgorge the sums from before the five-year period.

The SEC's Co-Director of the Enforcement Division, Steven R. Peikin, responded to the Supreme Court's decision stating "*Kokesh* is a very significant decision that has already had an impact across many parts of our enforcement programme. I expect it will have particular significance for our FCPA matters, where disgorgement is among the remedies typically sought."[23]

As a result of the *Kokesh* decision, we expect to see an increase in the tempo of SEC investigations and requests for tolling agreements at much earlier stages of negotiation. We also expect defendants to more aggressively negotiate with the SEC when determining settlement terms given the time limits now imposed on disgorgement, which is often the largest penalty amount imposed on defendants. Finally, the decision leaves open the possibility of further litigation – in footnote three of the Supreme Court's decision, the court wrote, "nothing in this opinion should be interpreted as an opinion on whether courts possess authority to order disgorgement in SEC enforcement proceedings or on whether courts have properly applied disgorgement principles in this context,"[24] which some have suggested indicates the court may further constrain the SEC's ability to obtain disgorgement in the future.

Prosecutions and enforcement actions

In 2017, there were 11 Foreign Corrupt Practices Act (FCPA) corporate enforcement actions and USD 1.92 billion in settlements collectively for the Department of Justice (DOJ) and the SEC. While these enforcement numbers reflect a decrease from 2016 (which saw 27 enforcement actions and USD 2.48 billion in settlements), we do not have any reason to believe that the US authorities have reduced their

18 137 S. Ct. 1635 (2017).

19 *Id*.

20 *Id*.

21 *Kokesh v. SEC*, 834 F.3d 1159 (2016).

22 *Id*.

23 Steven R. Peikin, "Reflection on the Past, Present, and Future of the SEC's Enforcement of the Foreign Corrupt Practices Act," New York University School of Law, New York, NY (9 November 2017).

24 137 S. Ct. at FN 3.

FCPA-related enforcement efforts. Included among the 2017 settlements is the largest resolution in FCPA history, which involved a combined settlement of more than USD 965 million to be paid to US, Dutch, and Swedish authorities.[25] As Deputy Attorney General Rod Rosenstein affirmed in a prepared statement, "The FCPA is the law of the land. We will enforce it against both foreign and domestic companies that avail themselves of the privileges of the American marketplace."[26]

Enforcement trends

FCPA Pilot Program Made Permanent

The DOJ formally incorporated the FCPA Pilot Program, which was first announced on 5 April 2016, into the U.S. Attorney's Manual on 29 November 2017.[27] As the permanent successor to the Pilot Program, the FCPA Corporate Enforcement Policy strongly encourages voluntary disclosure: "when a company has voluntarily self-disclosed misconduct in an FCPA matter, fully cooperated, and timely and appropriately remediated… there will be a presumption that the company will receive a declination …."[28] Significantly, "if a criminal resolution is warranted," the DOJ will not require a monitor if the company has adequately remediated the misconduct and strengthened its internal controls.[29]

In addition to its long-term impact on the DOJ's FCPA enforcement strategy, the policy is also likely to reshape the Criminal Division's broader approach to voluntary disclosures. According to Benjamin Singer, the securities and financial fraud unit chief at the DOJ, the policy regarding declinations will be expanded to encourage voluntary disclosures in other areas of criminal fraud enforcement, which have historically been lower than the FCPA rate of self-disclosure.[30]

DOJ's Newly Announced "Piling On" Policy

On 9 May 2018, Deputy Attorney General Rod Rosenstein announced a new non-binding DOJ policy regarding "Piling On" – the simultaneous imposition of multiple penalties for the same underlying misconduct by different regulatory or criminal authorities. Rosenstein explained, "our new policy discourages 'piling on' by instructing Department components to appropriately coordinate with one another and with other enforcement agencies in imposing multiple penalties on a company in relation to investigations of the same misconduct.[31] He further noted:[32]

"*In highly regulated industries, a company may be accountable to multiple regulatory bodies. That creates a risk of repeated punishments that may exceed what is necessary to rectify the harm and deter future violations.*

Sometimes government authorities coordinate well. They are force multipliers in their respective efforts to punish and deter fraud. They achieve efficiencies and limit unnecessary regulatory burdens.

Other times, joint or parallel investigations by multiple agencies sound less like singing in harmony, and more like competing attempts to sing a solo".

25 DOJ Press Release, "Telia Company AB and Its Uzbek Subsidiary Enter Into a Global Foreign Bribery Resolution of More Than USD 965 Million for Corrupt Payments in Uzbekistan" (21 Sept. 2017), available at: https://www.justice.gov/opa/pr/telia-company-ab-and-its-uzbek-subsidiary-enter-global-foreign-bribery-resolution-more-965; SEC Press Release, "Telecommunications Company Paying USD 965 Million For FCPA Violations" (21 Sept. 2017), available at: https://www.sec.gov/news/press-release/2017-171.

26 Deputy Attorney General Rosenstein Delivers Remarks at the 34th International Conference on the Foreign Corrupt Practices Act (29 Nov. 2017), available at https://www.justice.gov/opa/speech/deputy-attorney-general-rosenstein-delivers-remarks-34th-international-conference-foreign.

27 Rod Rosenstein, Deputy Attorney General, Remarks at Remarks at the 34th International Conference on the Foreign Corrupt Practices Act (29 Nov. 2017), available at https://www.justice.gov/opa/speech/deputy-attorney-general-rosenstein-delivers-remarks-34th-international-conference-foreign.

28 United States Attorneys' Manual, §9-47.120, available at: https://www.justice.gov/criminal-fraud/file/838416/download.

29 *Id*.

30 Kelley Swanson, "DOJ Expanding use of FCPA declination policy principles," Global Investigations Review (Mar. 2, 2018), available at: https://globalinvestigationsreview.com/article/1166274/doj-expanding-use-of-fcpa-declination-policy-principles.

31 Rod Rosenstein, Remarks to the New York City Bar White Collar Crime Institute (9 May 2018), available at: https://www.justice.gov/opa/speech/deputy-attorney-general-rod-rosenstein-delivers-remarks-new-york-city-bar-white-collar.

32 *Id*.

33 *Id*.

34 *Id*.

Of particular importance for multi-national corporations is the directive that DOJ attorneys should "coordinate with other federal, state, local, and foreign enforcement authorities seeking to resolve a case with a company for the same misconduct."[33] The DOJ will consider a number of factors when applying the policy, including the "egregiousness of the wrongdoing; statutory mandates regarding penalties; the risk of delay in finalizing a resolution; and the adequacy and timeliness of a company's disclosures and cooperation with the Department."[34] While the actual impact of the new policy has yet to be seen, members of the defence bar have already voiced their skepticism over whether the policy will result in a notable reduction in DOJ penalties. Where the policy may have the most significant impact is in cases where foreign entities are subject to enforcement actions in their home or other non-US jurisdictions.

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33 *Id*.

34 *Id*.

ASIA PACIFIC

AUSTRALIA

Changes to legislation

On 6 December 2017, the Crimes Legislation Amendments (Combatting Corporate Crime) Bill 2017 was introduced into the Australian Parliament. It proposes amendments to Australia's federal Criminal Code (the Criminal Code Act 1995 [Cth]) by amending the offence of bribery of a foreign public official, extending the definition of "foreign public official" and removing or replacing certain parameters for the commission of the offence; it also adds a new offence of failure of a body corporate to prevent foreign bribery by an associate. The Bill was referred to the Legal and Constitutional Affairs Legislation Committee who published their report on 20 April 2018. The report ultimately concluded that the Bill should pass and recommended certain policy changes to implement the amendments. The Bill has to be passed by both Houses of Parliament before it becomes legislation. Amendments to the Bill may occur during this process.

There has also been a proposal to change corporate misconduct legislation and to introduce significantly increased criminal and civil penalties. In December 2017, the Australian Securities and Investments Committee (ASIC) Enforcement Review Taskforce recommended that penalties for some offences and contraventions under Australia's federal corporations legislation (the Corporations Act 2001 [Cth]) be increased, including increasing the maximum criminal penalty for corporations from AUD 1,000,000 to AUD 9,450,000 (approximately USD 760,600 to USD 7.2 million) and the maximum civil penalties from AUD 1,000,000 to AUD 10,500,000 (approximately USD 760,600 to USD 8.0 million). Increases are also proposed for individuals who are found to have breached the Corporations Act. At the time of this publication, no draft Bill has been released. It is likely that there will be an extensive consultation process before this occurs.

Prosecutions and enforcement actions

In our 2017 publication, we alerted readers to the AWB Limited case, where two executives, including the former chairman, were alleged by ASIC to have breached their directors' duties under the Corporations Act, in violating United Nations sanctions against Iraq. ASIC had brought proceedings against both executives and had been successful against the former chairman of AWB. Proceedings against the other executive were dismissed. ASIC appealed the dismissal and on 23 April 2018, the NSW Court of Appeal dismissed ASIC's appeal. The Court of Appeal found that ASIC's case against the executive was weaker than the case brought against the former chairman and that the trial judge had not erred in concluding that the evidence was not sufficient to establish the executive knew about the breaches of UN sanctions against Iraq. ASIC has indicated they are "currently reviewing" the decision, which indicates they may be considering a further appeal.

In September 2017, three individuals were convicted in Australia's first public sentence of conspiracy to bribe a foreign public official, following guilty pleas shortly before trial. The defendants were not the original targets of the investigation; investigators were looking into their business associate when they happened upon intercepted telephone conversations involving the planned bribery of Iraqi officials. Each of the accused received a custodial sentence of four years, with a minimum two year non-parole period. Two of the individuals were also fined AUD 250,000 (approximately USD 190,150).

Enforcement trends

As at 29 August 2017, the AFP had received 87 complaints of foreign bribery. Of these, two separate proceedings (involving seven individuals in total) were brought during 2017/18 following the AFP's investigations, including that which resulted in the three convictions referred to above. At last report, the AFP had 19 active investigations, 13 allegations under evaluation by the Fraud and Anti-Corruption Centre and 20 allegations that had been closed.

In a press conference on 14 December 2017, AFP Commissioner Andrew Colvin said that foreign bribery investigations "present a significant challenge to [AFP's] resourcing with an average seven year duration from the beginning of an investigation to its conclusion."

In our 2017 review, we referred to the Senate Committee inquiry into foreign bribery. The inquiry has been running since June 2015. On 28 March 2018, the Committee's 234-page report was released making 22 recommendations on how Australia can improve its performance in the anti-foreign bribery space. Recommendations include prioritising the implementation of the recommendations in the OECD Phase 4 report, ensuring legislative changes for foreign bribery are consistent with that report, amending the definition of "foreign public official" to include candidates for office, a corporate offence for failing to prevent foreign bribery, the introduction of deferred prosecution agreements for corporations, which should be published, and the introduction of a debarment framework to ensure companies are required to disclose if they have been found guilty of foreign bribery offences. Many of these recommendations have been adopted or are being implemented via legislative reform.

In February 2018, the Australian Federal Police (AFP) and the Commonwealth Director of Public Prosecutions (CDPP) released a new joint guideline on self-reporting of foreign bribery by corporations. The guideline outlines AFP's and CDPP's principles and processes for self-reporting. The guideline reflects the recommendations made in the OECD Phase 3 report released in 2012.

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HONG KONG

Changes to legislation

Although a number of defects in Hong Kong's main anti-bribery statute, the Prevention of Bribery Ordinance (POBO), have been identified in recent case law (see below) there have been no significant changes to legislation, or new legislative proposals, in relation to bribery and corruption since our last Anti-Bribery and Corruption Review in June 2017.

Prosecutions and enforcement actions

Kwok and Hui lose final appeal

Hong Kong's Court of Final Appeal (CFA) has rejected an appeal by former Sun Hung Kai Properties (SHKP) co-chairman Thomas Kwok Ping-kwong and former Chief Secretary Rafael Hui Si-yan against their convictions for corruption.

Kwok and Hui, who were jailed in December 2014 for five and seven and a half years respectively for bribery offences, lost their initial appeals against conviction in February 2016.

The CFA had granted the pair leave to appeal to determine "*whether in the case of a public officer, being or remaining favourably disposed to another person on account of pre-office payments, is sufficient to constitute the conduct element of the offence of misconduct in public office?*"

Central to the issue was the validity of the so-called "*sweetener*" doctrine, which says it is not necessary for prosecutors to prove a specific *quid pro quo* to establish misconduct in public office offences.

Prosecutors had successfully argued that Hui received HKD 8.5 million (approximately USD 1.1 million) from Kwok shortly before he took office, to help ensure that the Government maintained a "*favourable disposition*" towards SHKP. The Court of Appeal dismissed an appeal against the convictions in February 2016, in which the appellants argued that prosecutors had not been able to point to any specific act that Hui had done to favour SHKP.

In their ruling in June 2017, the five CFA judges said that, despite the lack of a specific act, Ho had placed himself in a *"hopelessly compromised"* position during his time in office, saying *"that inclination was improper since it was wholly inimical to his duties as chief secretary ... and involved a serious abuse of office and abuse of public trust"*. The payment was made to secure an ongoing inclination on the part of Hui towards SHKP while in the *"golden fetters"* constituted by the payment.

Hui and Kwok are now serving the remainder of their jail terms. In March 2018, it was announced that Kwok and Hui had been stripped of civic honours awarded to them in 2007 in recognition of their services to Hong Kong. Recipients of awards who are convicted of offences that result in jail of one year or more may have their honours forfeited under Government regulations.

Francis Kwan Hung-sang, a former Hong Kong Stock Exchange official described as a *"middleman"* in handling the payments, was released from prison twenty months early in April 2018, his sentence having been reduced by one-third on grounds of good behaviour.

Tsang freed over bribery charge

Prosecutors have decided not to put former Chief Executive Donald Tsang Yam-kuen on trial for a third time on a bribery charge after a jury found itself unable to reach a majority decision in early November 2017.

Tsang was convicted of one count of misconduct in public office and was sentenced in February 2017 to twenty months' imprisonment. Tsang, who served from 2005 to 2012, is the highest-ranking official ever to be convicted of a criminal offence and imprisoned in Hong Kong. He is presently on bail pending an appeal.

The misconduct verdict related to his concealment of private negotiations with a property tycoon to rent a luxury apartment in Shenzhen, while at the same time approving a digital radio broadcast licence application submitted by a company in which the tycoon, Bill Wong Cho-bau, was a major shareholder.

The jury cleared Tsang of a second count of misconduct in public office in relation to his failure to disclose his connection with the interior designer of the apartment when proposing him for an honour under the city's public honours system.

The bribery charge (on which juries twice failed to reach a verdict) related to the alleged acceptance of an advantage by accepting free renovations on the apartment worth HKD 3.8 million (approximately USD 485,000), as a

reward for considering and making decisions in relation to the broadcast applications. The High Court agreed to a request by prosecutors that the charge be left on the court file, should prosecutors decide to seek a retrial in the light of new evidence.

In March 2018, Tsang was ordered to pay HKD 4.6 million (approximately USD 585,000), a third of the Government's HKD 13.7 million (approximately USD 1.7 million) legal costs, after counsel for the prosecution David Perry QC insisted that Tsang *"had given no assistance whatsoever"* to investigators, which had increased the cost of the case. The amount Tsang has to pay is in addition to what he would have spent on his own legal team, estimated to be in the region of HKD 25 million (approximately USD 3.2 million).

Mr Justice Andrew Chan Hin-wai also reproached Tsang for seeking to influence the jury by bringing prominent public figures into the public gallery, however the claim was dismissed by former Finance Minister John Tsang Chun-wah and former Justice Secretary Wong Yan-lung, who said they had come to court to support Tsang on their own initiative.

Tsang was arrested on 5 October 2015 following a long investigation by the Independent Commission Against Corruption (ICAC). Critics queried the length of time it had taken to arrest him.

Tsang's arrest highlighted what a former judge has described as a "*fundamental defect*" in the city's main anti-corruption legislation. POBO contains clear rules against gifts but they do not apply to the chief executive. Under section 3 POBO, soliciting and accepting an advantage without the permission of the chief executive is a crime, but the giver of the permission is not covered by the wording. The Chief Executive is also exempt from section 8, which states that anyone who offers an advantage to a *"prescribed officer"* while having dealings with the Government is committing an offence.

The situation is further complicated by the fact that the ICAC reports directly to the Chief Executive. Despite repeated attempts to rectify the situation, the Government has still to commit to a timetable to address the issue.

In August 2017, the ICAC's Director of Investigation (Government Sector) Ricky Yun Chun-cheong said he hoped that the Independent Commission Against Corruption Ordinance could be reviewed in light of the Tsang verdict, saying that the agency should have the same powers when investigating misconduct in public office as it does when tackling other forms of corruption. At present the ICAC has search and seizure powers in respect of a defined list of offences set out in section 10 of the Ordinance. The offence of misconduct in public office is not included on the list.

Any legislative change may assist the ICAC into what is reported to be an investigation of the receipt by former chief executive Leung Chun-ying of a HKD 50 million (approximately USD 6,4 million) payment by an Australian company UGL, after its purchase in 2011 of an insolvent property company, DTZ, of which Leung was a director. It is reported that Leung took the money after he was elected chief executive in 2012 but did not declare it to his cabinet.

Contractors arrested at world's longest bridge

In May 2017, 21 employees of a government contractor building the Hong Kong-Zhuhai-Macau bridge were arrested for allegedly faking test results on the concrete used in the construction. The employees allegedly altered time stamps and switched samples in order to demonstrate that compression strength standards had been met. Despite the arrests, Government authorities insist the bridge, due to open in the autumn of 2018, is safe.

Agencies collaborate in dawn raids

The Securities and Futures Commission (SFC) joined forces with the ICAC in December 2017 to raid the offices of two listed companies, heralding a new approach towards regulation and enforcement in Hong Kong. The two agencies collaborated closely to gather evidence in the run-up to a raid on eight locations, including the homes and offices of senior executives Lerado Financial Group and Convoy Global Holdings. Four executives were arrested including Convoy chairman Quincy Wong Lee-man, vice-chairman Rosetta Fong Sut-sam, executive director Christie Chan Lai-yee and Laredo's chairman Mark Mak Kwong-yiu. The SFC ordered the suspension of Convoy's shares on 27 November 2017.

Enforcement trends

Hong Kong was ranked 13th among 180 jurisdictions surveyed by Transparency International (TI) in their 2017 Corruption Perceptions Index, two places up from the 2016 ranking. The report coincided with the ICAC's latest opinion survey in which a large majority of citizens questioned said they had not personally encountered corruption in the past 12 months.

According to the 2017 ICAC Annual Survey, 99.1% of people polled said they had not encountered corruption in the past 12 months, while only 0.6% said they had encountered corruption. 78% of respondents said they would report corruption to the ICAC if they came across it, similar to previous years.

A spokesperson for the ICAC said that *"corruption in Hong Kong remains well under control. The Commission will continue to pursue all corruption cases without fear or favour and in accordance with the law, so as to safeguard Hong Kong's reputation as one of the cleanest places around the world".*

The survey was carried out through face-to-face household interviews of 1,516 randomly selected citizens between May and August 2017.

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JAPAN

Changes to legislation

The amended Code of Criminal Procedure establishing a plea-bargaining system is due to come into effect on 1 June 2018. This is Japan's first ever plea-bargaining regime.

The system will only apply to certain offences (known as Specified Offences) including the bribery of Japanese Government officials and bid-rigging. The bribery of foreign public officials, which is prohibited under Japan's Unfair Competition Prevention Law, is not included among the Specified Offences.

In short, the plea-bargaining system permits a prosecutor to enter into an agreement with a defendant (either an individual or a legal entity) whereby, in return for the defendant assisting prosecutors and police in investigating a Specified Offence allegedly committed by a third party (a separate individual or legal entity), the prosecutor can agree to drop or amend charges or can agree on the penalty for the individual or legal entity to be recommended to the court.

There have been two other changes of note to Japan's corporate criminal law regime.

First, on 21 June 2017, the Act on the Punishment of Organized Crimes and Control of Criminal Proceeds was amended to the effect that the illegal proceeds obtained by a person who bribes a foreign public official in breach of Japan's Unfair Competition Prevention Law can be confiscated together with the illegal proceeds received by such foreign public official.

Second, the Penal Code was also amended in June 2017 to reflect the aforementioned amendment to the Act on the Punishment of Organized Crimes and Control of Criminal Proceeds. This means that the Penal Code now applies to Japanese nationals who offer bribes to Japanese public officials even when such conduct occurs outside Japan.

Prosecutions and enforcement action

There have been a number of noteworthy judgments by Japanese courts in bribery cases recently.

First, on 22 December 2017, the Osaka District Court sentenced Shuji Tsukiyama, a former high level official of a public hospital, to 18 months imprisonment (suspended for three years) plus a fine of JPY 500,000 (approximately USD 5,000). Tsukiyama had received a JPY 500,000 bribe from the president of a landscape gardening company in exchange for engaging the company to landscape the hospital garden. The media reported that Tsukiyama had obtained a quotation only from the landscaping business in question despite the municipal rules requiring him to obtain more than one fee estimate.

In another bribery case also involving a public hospital, on 17 August 2017, the Kobe District Court sentenced Machi Kumano and two other officials of a public hospital to 30 months in prison (suspended for four years) plus a fine of over JPY 1 million (approximately USD 10,000). Kumano had received a JPY 1,188,000 bribe from the president of a heating and cooling installation company in exchange for conspiring with that company so that it could submit a fee quotation proposing a lower fee than other bidders for the job. Further, Kumono had unlawfully collaborated with the company so that it received a commission to demolish a former public hospital building.

Another recent case involved an even heavier punishment. On 23 March 2018, the Saitama District Court sentenced Joh Shimamura, the former Mayor of Ageo-city in Saitama Prefecture, to 30 months in prison (suspended for four years) plus a fine of JPY 600,000 (approximately USD 6,000). Shimamura had received bribes totalling JPY 600,000 from the president of a facilities management company in exchange for arranging for such company to "win" the commission to operate an environmental centre in Ageo-city. Shimamura did this by illicitly manipulating the entry qualifications in the bidding process.

Other developments

Amendment to the guidelines against Bribery of Foreign Public Officials

Japanese companies refer to official guidelines published by the Government to assist them in bribery prevention. The guidelines in relation to the bribery of foreign public officials were originally published in May 2004 in response to the May 2004 amendment to Japan's Unfair Competition Prevention Law which made it an offence for Japanese nationals to offer or provide bribes to foreign public officials even when such nationals are outside Japan when the conduct occurs. The guidelines were more recently amended to reflect the above-mentioned June 2017 amendment to the Act on the Punishment of Organized Crimes and Control of Criminal Proceeds.

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PEOPLE'S REPUBLIC OF CHINA

Changes to legislation

Amended Anti-Unfair Competition Law

The Standing Committee of the National People's Congress (NPC) of the PRC has taken a noteworthy step in dealing with commercial bribery in China by promulgating an amended Anti-Unfair Competition Law (AUCL). The AUCL, which governs commercial bribery, was amended on 4 November 2017; this amendment, which took effect on 1 January 2018, is the first change to the law since it originally came into force in 1993.

Under the 1993 version of the AUCL and its subsidiary regulations, commercial bribery was vaguely defined, leading to inconsistent interpretation by national and local regulators. Certain types of payments between commercial counterparties were categorised as bribes, even though they did not fall within the traditional and widely accepted understanding of bribery.

One example is the so-called "shelf fee", where a supplier pays a sum of money to a supermarket or a retailer in exchange for a more prominent location on the shelves for its products. While accepted as usual practice in many countries, such payments have been targeted by some PRC local regulators as commercial bribery, on the basis that such payments may not have been accurately recorded in contracts, books or records. Some of these regulators have expressed an even more aggressive view, that even if such payments have been properly documented, they should still be treated as commercial bribes under the 1993 AUCL because of a concern that they are inherently anti-competitive.

The amended AUCL appears to suggest a departure from this position. Paragraph 1 of Article 7 narrows the definition of "bribery recipients" as including (a) employees of the transaction counterparties, (b) entities or individuals entrusted by the transaction counterparties to handle relevant matters, and (c) entities or individuals that take advantage of their positions or influence to affect the transactions.

This could be read as excluding the direct commercial counterparties from being considered as potential bribery recipients, an interpretation supported by some officials from PRC enforcement agencies.

However, other limbs of the legislation cast doubt on this interpretation. Paragraph 2 of Article 7 maintains the same books and records provision as contained in the 1993 version. Article 19 appears to indicate that any violation of Article 7 will be viewed as a bribery issue. Accordingly, the law may still treat as commercial bribery any direct payments between transaction counterparties if the provision or receipt of benefits is not properly documented in contracts or accurately recorded in the parties' books and records.

In addition, the transmission of certain types of benefits between parties to a transaction remains prohibited by industry-specific regulations. In the healthcare sector, for example, the current PRC Pharmaceutical Administration Law prohibits pharmaceutical manufacturers, dealers and medical institutions from offering or accepting kickbacks or other benefits off the books.

In light of the above, it may be premature to conclude that Article 7 of the amended AUCL has fundamentally changed the definition of commercial bribery. Further clarification from the law enforcement agency, the PRC State Administration for Market Regulation (SAMR), will be necessary if the inconsistent understandings and practices of local regulators are to be standardised.

Another notable feature of the amended AUCL is the express provision regarding employers' vicarious liability. According to Paragraph 3 of Article 7, where an employee commits bribery, this shall be deemed to be an act undertaken by the employer, unless the employer can prove that the employee's action was irrelevant to the employer's seeking transaction opportunities or a competitive advantage.

The law is not crystal clear on the applicable test for this exception, whether the focus is on the objective impact of the employee's conduct on the employer's interests, or on the subjective intent of the employer and/or the employee. This again calls for further practical guidance from the SAMR and its local branches. In any event, with the introduction of this new provision, PRC regulators may have more incentive to pursue employers in respect of their employees' misconduct in the bribery sphere.

Supervision Law

On 20 March 2018, the NPC adopted a new Supervision Law with immediate effect. The NPC is also reviewing proposed amendments to related legislation such as the PRC Criminal Procedural Law to align the existing legal framework with the Supervision Law.

The Supervision Law creates a new centralised anti-graft authority, the PRC National Supervisory Commission (NSC), which incorporates the anti-corruption watchdog of the Communist Party of China (CPC) – Central Commission for Discipline Inspection (CCDI) and integrates the anti-corruption and supervisory functions that were divided among different authorities including the Anti-Corruption Bureau of the Supreme People's Procuratorate, the Ministry of Supervision and the National Audit Office.

The Supervision Law vests the NSC and its local branches with broad powers to supervise all functionaries exercising public power, including the CPC members, legislators, the judiciary, the prosecutors, political advisory bodies, management personnel of State-owned enterprises, and personnel undertaking management responsibilities in state-run institutions in sectors such as education, science and research, culture, healthcare and sports. The NSC has a high rank in the PRC Government structure – it is at the same level as the State Council, the Supreme People's Court and the Supreme People's Procuratorate, and above all ministries and law enforcement agencies.

The NSC and its local branches are authorized to investigate crimes in relation to abuse of office (including bribery and corruption) committed by functionaries exercising public power. The NSC may take a broad array of investigative measures, such as detaining and interrogating the suspects, questioning witnesses, accessing and freezing assets. The Supervision Law requires the NSC to comply with evidentiary rules in criminal procedures when collecting and using the evidence.

The NSC is established against the broader background of organisational reforms taking place in China to streamline governmental authorities and enhance administrative efficiency. Its establishment is also perceived as CPC's commitment to continue the anti-corruption crackdown that commenced in 2012.

Prosecutions and enforcement actions

The pharmaceutical sector has continued to be under heightened scrutiny by PRC regulators. For example, at the end of 2017, the Shanghai Administration of Industry and Commerce (Shanghai AIC) announced a series of administrative penalties imposed on multinational pharmaceutical companies including Bristol-Myers Squibb, China NT Pharma Group, and Chiesi Farmaceutici for commercial bribery. The enforcement actions targeted the pharmaceutical companies' provision of benefits to doctors in the form of conference sponsorship, meals, gifts, travel and related expenses for the purpose of promoting sales of pharmaceuticals to relevant hospitals. The penalties were mainly disgorgement of revenues obtained through offering bribery ranging from CNY 300,000 to 11,400,000 (approximately USD 47,000 to 1,800,000), as well as administrative fines ranging from CNY 100,000 to 180,000 (approximately USD 16,000 to 28,000).

Enforcement trends

In addition to the establishment of the NSC, another notable change in anti-corruption law enforcement is the creation of SAMR. SAMR has been founded by consolidating State Administration of Industry and Commerce (SAIC, previously the major PRC law enforcement agency of commercial bribery and other market misconduct), China Food and Drug Administration (CFDA), General Administration of Quality Supervision, Inspection and Quarantine and relevant anti-trust authorities. As such, SAMR will assume SAIC's powers in investigating commercial bribery and CFDA's powers in supervising the pharmaceutical sector. Hence it is worth observing whether SAMR will take a more integrated and unified approach in dealing with commercial bribery in the pharmaceutical sector.

As envisaged in our review in June 2017, the nation-wide anti-corruption crackdown that started in 2012 continues. According to CCDI, as of October 2017, over 1.5 million corruption-related cases have been docketed, over 1.5 million individuals have been disciplined, including approximately 8,900 officials at or above department-head level or above, 63,000 officials at or above county-head level, and 58,000 individuals were prosecuted.[35]

China is also determined to enhance cross-border cooperation to hunt down corruption suspects who have fled overseas. According to CCDI, 3,453 fugitives have been extradited from more than 90 countries and regions, and about CNY 9.51 billion (approximately USD 1.5 billion) has been recovered since 2014. Given the pressures exerted, the number of officials who fled overseas has seen a drastic decrease: four fugitive suspects fled China during January to September 2017, compared with 19 in 2016, 31 in 2015 and 101 in 2014.

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35 See the CCDI report dated 24 October 2017, available at http://www.xinhuanet.com/politics/2017-10/29/c_1121873020.htm.

SINGAPORE

Changes to legislation

There have been no relevant legislative changes in Singapore since the last Review in June 2017.

Prosecutions and enforcement actions

There have been further developments in one of the biggest corruption matters in Singapore; the Singapore District Court had found six leaders of a 'mega-church' (City Harvest Church) guilty of conspiracy to commit criminal breaches of trust by conducting sham investments and round-tripping transactions. They were found guilty notwithstanding the absence of evidence of wrongful gain and their belief that they were acting in the best interests of the church and in obedience to their trusted pastor, and were sentenced to jail terms ranging from 21 months to 8 years.

On appeal, the High Court constituting three judges in a decision of 7 April 2017 revised the original charges brought against the key church leaders under section 409 of the Penal Code (for aggravated criminal breach of trust), and convicted them of a lesser charge under section 406 of the Penal Code (for criminal breach of trust *simpliciter*). The High Court found that section 409 of the Penal Code was not triggered as the church leaders did not fall within the meaning of "agent" as contemplated under that provision. As a result, their sentences were significantly reduced to jail terms of between 7 months and 3.5 years[36].

The Attorney General's Chambers (AGC) was dissatisfied with the High Court's decision of 7 April 2017, and on 10 April 2017 filed a criminal reference to the Court of Appeal, to clarify the law under which the High Court made its decision to reduce the jail terms of all six church leaders[37]. The AGC's move came after Law and Home Affairs Minister K Shanmugam stressed the Singapore Government's need to uphold its "zero-tolerance approach" towards corruption[38].

On 1 February 2018, the Court of Appeal (Singapore's apex court) constituting five judges unanimously affirmed the High Court's view that an "agent" within the meaning of section 409 of the Penal Code refers to a professional agent (i.e. one who professes to offer his agency services to the community at large and from which he makes his living). Therefore, the church leaders could not be convicted under section 409 of the Penal Code. This has wider implications for future misappropriation cases: it would mean that the prosecution of individuals under section 409 of the Penal Code (which attracts enhanced penalties as compared to section 406 of the Penal Code) would be limited to those who are engaged in commercial activity in the conduct of their profession or trade, which is the offering of their agency services to the community at large, through which they make their living[39].

Later on the same day, the AGC issued a statement saying that it would work with relevant Government ministries "on the appropriate revisions to the Penal Code, to ensure that company directors and other persons in similar positions of trust and responsibility are subject to appropriate punishments if they commit criminal breach of trust"[40].

In a separate corruption investigation involving a corporate entity, Keppel Offshore & Marine (Keppel O&M) stated in a press release issued on 23 December 2017 that it would pay a record fine (for a Singapore-listed entity) totalling SGD 567 million (approximately USD 422 million) as part of a global resolution with authorities in the United States, Brazil and Singapore. According to court documents released by the US Department of Justice, Keppel O&M "knowingly and wilfully conspired" to pay bribes as part of a scheme lasting from 2001 to around 2014 to win 13 contracts with two Brazilian oil companies, Petrobas and Sete Brasil[41]. Millions of

36 See Selina Lum, Ng Huiwen, "City Harvest appeal verdict: Six church leaders get reduced jail terms, Kong Hee gets 3.5 years", The Straits Times (7 April 2017), please see: *https://www.straitstimes.com/singapore/courts-crime/city-harvest-appeal-verdict-six-church-leaders-get-reduced-jail-terms-kong*.

37 See Angela Tan, "AGC file criminal reference with Court of Appeal over City Harvest Church verdict", The Business Times (10 April 2017), please see: *http://www.businesstimes.com.sg/government-economy/city-harvest-trial/agc-file-criminal-reference-with-court-of-appeal-over-city.*

38 See Charissa Yong, "City Harvest appeal: Ruling may have implications on corruption cases, says Shanmugam", The Straits Times (9 April 2017), please see: *https://www.straitstimes.com/politics/ruling-may-have-serious-implications-shanmugam.*

39 See at *PP v Lam Leng Hung and others* [2018] SGCA 7 at [165].

40 See Selina Lum, Gracia Lee, Tan Tam Mei, "City Harvest case: Apex Court dismisses bid for longer sentences for Kong Hee, former church leaders", The Straits Times (1 February 2018), please see: *https://www.straitstimes.com/singapore/city-harvest-case-queue-starts-at-330am-to-listen-to-final-verdict*.

41 See Tang See Kit, "Keppel O&M briber case: What you need to know", Channel NewsAsia (7 January 2018), please see: *https://www.channelnewsasia.com/news/singapore/keppel-o-m-bribery-case-what-you-need-to-know-9836154*.

dollars in bribes were disguised as large commissions to a consultant in Brazil under legitimate consulting agreements, which were eventually transferred to Petrobras officials and politicians at the then-governing Workers' Party in Brazil. As part of the global resolution, Keppel O&M was issued with a conditional warning from the Singapore Corrupt Practices Investigation Bureau (CPIB) in lieu of prosecution for corruption offences punishable under the Prevention of Corruption Act (PCA) in Singapore. Several former executives of Keppel Corporation were arrested by the CPIB and are out on bail pending investigations by the AGC and CPIB.

In another recent case, a former general manager and secretary of a town council, Wong Chee Meng, was charged with corruption on 14 March 2018 for accepting bribes amounting to SGD 107,000 from directors of two building companies in exchange for advancing the business interests of the companies with the town council[42]. In connection with this case, the CPIB released a statement emphasizing that "[c]ompanies and employees are responsible for the lawful conduct of their businesses. Those who run afoul of laws and engage in corrupt practices will have to bear the full brunt of the law"[43].

In *Public Prosecutor v Mok Chee Kin* [2018] SGDC 118, the leader of a cigarette smuggling syndicate was sentenced to five months' imprisonment for bribing a Certis CISCO senior protection officer, amongst other sentences. Mok was found guilty of abetment by engaging in a conspiracy to give a Certis CISCO senior protection officer gratification amounting to a total of USD 4,500 as a reward for facilitating the smuggling of duty-unpaid cigarettes out of a port in Singapore. The CPIB in a statement reiterated that "Singapore adopts a zero tolerance approach towards corruption and other criminal acts", and that it "takes a serious view of any corrupt practices and will not hesitate to take action against any party involved in such acts"[44].

Enforcement trends

Overall, according to statistics released by the CPIB on 11 April 2018[45], the number of corruption complaints and cases investigated by the CPIB remained low in 2017. In 2017, CPIB received 778 complaints, a 3.7% decrease compared to the number received in 2016. A total of 103 cases were subsequently pursuable, an all-time low, down from 118 cases in 2016. The majority of non-pursuable cases were because of insufficient, vague or unsubstantiated information. In 2017, there were 141 individuals prosecuted for corruption offences and 94% of them were private sector employees. Custodial sentences were meted out to a majority of them.

Singapore also continues to increase its levels of cooperation with other governments. In June 2017, two Singaporeans were charged in court for offences under the PCA and Corruption, Drug Trafficking and Other Serious Crimes (Confiscation of Benefits) Act for, amongst other things, obtaining gratification in Shanghai involving about CNY 11.1 million (approximately USD 1.7 million) as a reward for assisting two Chinese logistics companies in securing contracts with Seagate Technology International. In the course of its investigation, the CPIB worked with the Chinese authorities and received valuable assistance from them, leveraging on its framework for international cooperation with overseas legal, law enforcement and regulatory agencies.

Other Developments

On 5 July 2017, the CPIB joined law enforcement agencies from Australia, Canada, New Zealand, the UK and US in launching a new International Anti–Corruption Coordination Centre (IACCC). The multinational centre is intended to coordinate law enforcement action against global grand corruption.

Grand corruption includes acts of corruption by politically exposed persons that may involve vast quantities of assets and those that threaten political stability and sustainable development. These can comprise bribery of public officials, embezzlement, abuse of functions or the laundering of the proceeds of crime. The London–based IACCC is envisaged to improve information sharing by bringing together specialist law enforcement officers from multiple jurisdictions into a single location. As part of its commitment as a founding member, CPIB will be contributing an officer to serve at the IACCC.

42 See Yuen Sin, "Ex-GM of AMKTC faces graft charges", The Straits Times (15 March 2018), please see: https://www.straitstimes.com/singapore/courts-crime/ex-gm-of-amktc-faces-graft-charges.

43 https://www.cpib.gov.sg/press-room/press-releases/no-place-corruption.

44 https://www.cpib.gov.sg/press-room/press-releases/syndicate-leader-sentenced-five-years-and-eight-months%E2%80%99-imprisonment-and.

45 https://www.cpib.gov.sg/press-room/press-releases/corruption-singapore-remains-low.

Global assessment

In the Rule of Law 2017-2018 Index compiled by the World Justice Project, Singapore was ranked thirteenth overall worldwide, falling four ranks from 2016. Singapore was ranked second under *"regulatory enforcement"*, fourth under "*absence of corruption"*, fifth under *"criminal justice"* and *"civil justice"*, and third in the Asia-Pacific region overall[46].

The Corruption Perceptions Index 2017 compiled by Transparency International gave Singapore a score of 84 (out of 100) for the perceived levels of public sector corruption, placing it sixth in the world rankings. While Singapore's score maintained at 84 from 2016, its ranking moved up a spot from 2016.

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46 https://worldjusticeproject.org/sites/default/files/documents/WJP_ROLI_2017-18_Online-Edition_0.pdf.

THAILAND

Changes to legislation

On 15 December 2017, the Notification of the National Anti-Corruption Commission Re: Guidelines on Appropriate Internal Control Measures for Juristic Persons to Prevent Bribery of State Officials, Foreign Public Officials and Agents of Public International Organisations (Notification) was officially enacted in the Government Gazette, with principles largely mirroring those of the handbook unofficially launched by the Office of National Anti-Corruption Commission (NACC) on 23 March 2017. This Notification officially mandated the NACC to prepare the guidelines on appropriate internal control measures for juristic persons to prevent bribery of state officials, foreign public officials and agents of public international organisations (NACC Guidelines) which were already published on 26 September 2017. The NACC Guidelines set out the following fundamental principles which constitute effective internal control that a juristic person must have:

- strong, visible, and clear policy and support from top-level management to fight bribery;
- risk assessment to effectively identify and evaluate exposure to bribery;
- enhanced and detailed measures for high-risk and vulnerable areas;
- application of anti-bribery measures to business partners;
- accurate book-keeping and accounting records;
- human resource management policies complementary to and supporting anti-bribery measures;
- communication mechanisms and internal protocols that encourage reporting of incidents and protection of whistleblowers; and
- periodic review and evaluation of anti-bribery measures and their effectiveness.

The NACC Guidelines also include an introductory discussion of the scope of section 123/5 and some illustrative case studies on its application, including circumstances leading to potential liability of persons such as directors or senior management for improper acts of employees.

In addition, the NACC has established the Anti-Bribery Advisory Service (ABAS) under the Bureau of International Affairs of the Office of NACC to provide advice on anti-bribery measures and good internal practices for juristic persons to be in line with international standards.

To support its anti-bribery procedures, the NACC has issued the Rule of the NACC on Cooperation with Relevant Offices to increase effectiveness of the Organic Act on Anti-Corruption by collaborating with other state offices and appointing officials at other offices to support anti-bribery cases. The NACC has furthermore launched a new policy prescribing additional special compensation for investigators to attract talented individuals, on 26 September 2017.

Besides additional regulations under the Organic Act on Anti-Corruption, the new Public Procurement Act, which became effective on 23 August 2017, is centred on preventing corrupt behaviours, with an increased level of transparency and monitoring. Under the new Public Procurement Act, all bidders shall sign an integrity pact prepared by the relevant governmental department before entering into any agreement with the state and must also have in place an internal policy against corruption.

On 14 May 2018, the Act on Administrative Measures on the Prevention and Suppression of Corruption (No.3), B.E. 2561 (2018) became effective. This law encourages collaboration with the private sector and introduces new protection for witnesses who were involved in the commission of offences with state officials, and who assist the state in cases against such officials. It also provides for the Public Sector Anti-Corruption Commission (PACC) to set up a new committee which will include representatives from the private sector and experts to support, advise and collaborate with the PACC.

Prosecutions and enforcement actions

The NACC received reports of 4,896 cases of bribery in 2017 (during the period of 1 October 2016 – 30 September 2017) which represented an increase from previous years. Most of the cases involved offences by local politicians and public officials.

On 27 September 2017, former Prime Minister Yingluck Shinawatra was found guilty by the Supreme Court of dereliction of duty over a controversial rice subsidy scheme, and was sentenced to five years in prison *in absentia* (as she had already fled the country on 25 August 2017).

On 18 January 2018, the Central Criminal Court for Corruption and Misconduct Cases delivered the verdict of the Appeal Court for Corruption Cases for the Black Case No. OrThor. 143/2560. According to the Appeal Court and Central Criminal Court, Mr Pongwit Luengchuaychot, the former Vice President of the Marketing Organization for Farmers (OrTorGor) and Mr Wicha Sajjawan, shipping operator, had asked the plaintiff in the case to pay a bribe of THB 1.5 million (approximately EUR 40,500) in exchange for approving a transfer. Mr Pongwit was sentenced to imprisonment of eight years, while Mr Wicha received five years and seven months, the lesser sentence reflecting the fact that it was not Mr Wicha's duty to approve the transfer, and that he just supported Mr Pongwit in committing this act. Mr Wicha was therefore not considered to be the offender, but an accomplice, liable to be punished by two-thirds of the offender's penalty as provided under section 86 of the Criminal Code.

Enforcement trends

Based on the announcement regarding the Government's policy and vision, Zero Tolerance & Clean Thailand, in the next five years Thailand will become a country where corruption is no longer tolerated. This strategy sets out six sub-strategies, both domestic and international, and establishes a long-term framework for tackling corruption up to 2021. The six sub-strategies under the strategy are:

- to create a society which does not tolerate corruption;
- to promote political will to fight corruption;
- to deter corruption in public policy;
- to develop proactive corruption prevention systems;
- to reform corruption suppression mechanisms and processes; and
- to improve Thailand's score on the Corruption Perceptions Index.

In line with the above, the National Anti-Corruption Strategy Phase III (2017-2021) prescribes the establishment of a committee on the integration of national anti-corruption efforts to set policies and operational procedures with a supporting committee and a national strategy in collaboration with all sectors including the private sector.

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