Anti-Corruption

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I. Anti-Corruption Developments in the United States

Enforcement of the Foreign Corrupt Practice Act ("FCPA") held steady in 2018. Together, the United States ("U.S.") Department of Justice ("DOJ") and Securities and Exchange Commission ("SEC") brought a total of twenty-one corporate enforcement actions against 16 companies over the course of the year, which is on par with the median of approximately twenty such cases a year over the past ten years. Penalties averaged approximately U.S. $62 million per company (for a total of more the U.S. $996 million), which is slightly below the average of U.S. $69.5 million per company over the same ten-year period. Notably, however, many of the enforcement actions wrapped up long-running, multi-year investigations, with charges stemming from conduct that occurred years ago. With regard to FCPA-related litigation, the U.S. Supreme and appellate courts continued to narrow U.S. prosecutors’ broad but largely untested interpretations of the FCPA, most notably by limiting the jurisdictional nexus required for prosecution of FCPA conspiracy charges.

A. Significant Policy Developments in the United States

1. FCPA Corporate Monitor Policy

The major FCPA policy development in 2018 is a new internal DOJ policy memorandum on corporate monitors. Announced by Assistant Attorney General for the DOJ Criminal Division Brian Benczkowski on October 11, 2018, the new policy sets forth a series of factors the DOJ will consider when determining whether a compliance monitor will be required as a condition of an FCPA settlement, including whether the corporation has made significant investments in, and improvements to, its corporate compliance program and internal control systems.

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largely a formalization of pre-existing DOJ practices. But they may produce a monitor selection process that is more predictable and, potentially less burdensome on the company reaching a settlement.2 The new memorandum also formalizes the DOJ’s process for reviewing and approving monitor candidates.3

B. CORPORATE ENFORCEMENT ACTIONS IN THE UNITED STATES

1. Elbit Imaging Ltd.

On March 8, 2018, the U.S. publicly traded, Israel-based real estate development company Elbit Imaging Ltd., reached a U.S. $300,000 settlement with the SEC to resolve FCPA books-and-records and internal-accounting-controls charges.4 The charges arose out of the Elbit’s alleged failure to conduct due diligence on two real estate valuation consultants in Romania, whom the company had engaged from 2006 to 2011 in connection with efforts to develop shopping and entertainment centers in Central and Eastern Europe.5 According to the SEC’s Cease-and-Desist order, the lack of due diligence created the risk that consultants may have passed on a portion of their fees to government officials.6

2. Transport Logistics International Inc.

On March 13, 2018, Maryland-based Transport Logistics International Inc. (“TLI”) reached a Deferred Prosecution Agreement (“DPA”) with the DOJ to settle charges of conspiring to violate the anti-bribery provisions of the FCPA.7 According to the DPA, the company was at the center of a conspiracy from 2004 to 2014 to pay bribes to an executive at JSC Techsnabexport (“TENEX”), the overseas trading arm of the Russian state-owned nuclear energy corporation Rosatom.8 As part of the agreement with the DOJ, TLI was required to pay a penalty of U.S. $2 million, reduced from U.S. $28 million due to the company’s inability to pay. A TENEX official and TLI executives have faced separate FCPA and money laundering charges in connection with the alleged scheme.9

2. Id.
3. Id.
5. Id.
6. Id.
8. Id.
3. **Kinross Gold Corporation**

On March 26, 2018, the U.S. publicly traded Canadian mining company, Kinross Gold Corporation, agreed to pay U.S. $950,000 to settle books-and-records and internal-accounting-controls charges by the SEC. The charges arose out of a variety of alleged accounting and controls weaknesses that affected the company’s newly acquired Ghana and Mauritania mines from 2010 to 2015, including lack of supporting documentation for payments to consultants in connection with government interactions, as well as circumvention of existing procurement processes to select preferred vendors of government officials.

4. **Dun & Bradstreet Corporation**

On April 23, 2018, the SEC issued a Cease-and-Desist Order to the New Jersey based business intelligence provider Dun & Bradstreet Corporation, under which the company agreed to pay a total of approximately U.S. $9 million to settle alleged FCPA books-and-records and internal-accounting-controls violations. According to the SEC, before 2012 Dun & Bradstreet failed to ensure that employees at two of its China affiliates—a joint venture with a Chinese partner and a recently acquired Chinese subsidiary—had not made improper payments to government officials to obtain corporate and personal data useful for Dun & Bradstreet’s business intelligence products. On April 23, the DOJ also issued an official declination from prosecution to Dun & Bradstreet, based in part on the company’s voluntary disclosure of the alleged misconduct to the agency.

5. **Panasonic Corporation and Panasonic Avionics Corporation**

On April 30, 2018, the DOJ announced a DPA with the California-based manufacturer of in-flight entertainment and aircraft communications systems, Panasonic Avionics Corporation (“PAC”). Simultaneously, the SEC issued a Cease-and-Desist Order to Panasonic Corporation—PAC’s...
Japan-based, U.S. publicly traded parent.\textsuperscript{16} Altogether, Panasonic and PAC paid the U.S. government U.S. $280 million in penalties to resolve charges that PAC caused its parent Panasonic Corporation to violate the books-and-records and internal-accounting-controls provisions of the FCPA, in addition to the Panasonic Corporation itself having violated anti-bribery and accounting provisions of the FCPA and other U.S. securities and tax laws.\textsuperscript{17} The FCPA-related charges arose out the company’s “Office of the President Budget,” a fund for executive travel, corporate entertainment, and consultancy expenses, which, from 2008 to 2014, was allegedly used to make payments to a consultant with improper connections to a Middle East state-owned airline customer.\textsuperscript{16}

6. \textit{Société Générale and SGA Société Générale Acceptance N.V.}

On June 4, 2018, the French financial services company Société Générale (“SocGen”) and its subsidiary SGA Société Générale Acceptance N.V. (“SGA SocGen”) reached agreements with the U.S. DOJ and the French Parquet National Financier (“PNF”) to resolve anti-corruption charges in both countries.\textsuperscript{19} Specifically, the two French financial service companies will pay a total of nearly U.S. $293 million under a DPA with the DOJ to resolve FCPA anti-bribery conspiracy charges arising out of an alleged scheme to make payments to a close relative of Libyan leader Muammar Gaddafi from about 2006 to 2009.\textsuperscript{20} In exchange, the Gaddafi relative allegedly used his influence to cause the Libyan government to invest with SocGen. SocGen and SGA SocGen will also pay another penalty worth nearly U.S. $293 million to resolve similar French anti-corruption charges brought by the PNF.\textsuperscript{21} The corruption-related charges were part of a broader U.S. $1.3 billion settlement with the DOJ, PNF, and U.S. Commodity Futures Trading Commission, which also covered charges that SocGen had helped to manipulate the London Interbank Offered Rate (“LIBOR”), a U.K. benchmark interest rate that has been at the center of numerous criminal charges against large financial institutions.\textsuperscript{22}

\textsuperscript{17} See Panasonic Avionics Corporation Agrees to Pay $137 Million to Resolve Foreign Corrupt Practices Act Charges, \textit{supra} note 15.
\textsuperscript{18} Id.
\textsuperscript{20} Id.
\textsuperscript{21} Karen Freifeld & Sudip Kar-Gupta, \textit{SocGen to pay $1.3 billion to settle Libya, Libor probes}, \textit{REUTERS} (June 4, 2018, 1:28AM), https://www.reuters.com/article/us-soecgen-lawsuit/soegen-to-pay-1-3-billion-to-settle-libya-libor-probes-idUSKCN1J00KU.
7. Legg Mason, Inc.

On June 4, 2018, the DOJ announced a Non-Prosecution Agreement (“NPA”) with the Baltimore, Maryland-based investment management firm Legg Mason, Inc., under which the company agreed to pay U.S. $64.2 million. According to the NPA, a Legg Mason subsidiary—Permal Group Ltd. (“Permal”)—partnered with SocGen to solicit business from Libyan state-owned institutions between 2004 and 2010; during this time, SocGen allegedly made payments to a Gaddafi family member to influence the Libyan government to invest with the company. The NPA also made clear that the DOJ saw Legg Mason as less culpable than SocGen in the Libya bribery scheme, in part because Legg Mason’s alleged misconduct had involved only two mid-to-lower level employees of Permal, whereas SocGen was responsible for originating and leading the scheme.

8. Beam Suntory, Inc.

On July 2, 2018, the SEC issued a Cease-and-Desist Order to Beam Suntory, Inc. (“Beam”), a Chicago, Illinois-based producer of several well-known brands of distilled spirits, including Jim Beam bourbon. According to the SEC, from 2006 to 2012 employees at Beam’s subsidiary in India used fabricated and inflated invoices to reimburse third-party sales promoters and distributors, with the understanding that these illicit payments would be passed on to employees at government-controlled Indian alcohol depots and retail stores to increase sales orders, get better positioning on store shelves, and facilitate the distribution of Beam products. Beam voluntarily disclosed this alleged misconduct to the SEC and agreed to pay a total of approximately U.S. $8.3 million to resolve the resulting FCPA books-and-records and internal-accounting-controls charges. Beam also disclosed misconduct to the DOJ, although the outcome of any resulting DOJ investigation is not yet public.

9. Credit Suisse Group AG and Credit Suisse (Hong Kong) Limited

On July 5, 2018, the SEC issued a Cease-and-Desist Order to the Zurich, Switzerland-based investment bank and financial services company Credit

24. Id.
25. Id.
27. Id.
28. Id.
29. Id.
Suisse Group AG ("CASG").\textsuperscript{30} The same day, the DOJ announced an NPA with CASG’s Hong Kong subsidiary Credit Suisse (Hong Kong) Limited ("CSHK").\textsuperscript{31} The charges against CASG and CSHK arose out of CSHK’s hiring program in the Asia Pacific region from 2007 to 2013, which allegedly gave preferential hiring treatment to family members of influential government officials and executives at Chinese state-owned entities ("SOEs") at a time when such SOEs were clients of CSHK.\textsuperscript{32} According to the SEC, this hiring practice demonstrated that CASG’s internal accounting controls were insufficient to reasonably enforce the bank’s policy against such relationship-based hires.\textsuperscript{33} According to the DOJ, these relationship or referral hires were part of a \textit{quid pro quo} with government and SOE officials to win business.\textsuperscript{34} In settling with enforcement authorities, CASG and CSHK agreed to pay a total of U.S. $76 million in fines and disgorgement.\textsuperscript{35}

10. \textit{Sanofi S.A.}

On September 4, 2018, the SEC issued a Cease-and-Desist Order to the Paris, France-based pharmaceutical company Sanofi S.A.\textsuperscript{36} From 2011 to 2015, employees and agents at Sanofi subsidiaries in Central Asia and the Middle East allegedly made improper payments to healthcare professionals in order to be awarded public tenders and increase prescriptions of Sanofi products.\textsuperscript{37} The funds used for these payments were allegedly generated through fake documentation for travel and entertainment expenses, such as clinical trial and consulting fees, which were recorded as legitimate expenses in Sanofi’s books and records.\textsuperscript{38} Based on this alleged misconduct, the SEC found that Sanofi failed to devise and maintain a sufficient system of internal accounting controls in violation of the FCPA.\textsuperscript{39} Sanofi agreed to pay more than U.S. $25 million to resolve charges arising out of the alleged misconduct.\textsuperscript{40} Previously, in March 2018, Sanofi separately disclosed that

\begin{footnotesize}
\begin{enumerate}
\item Id.
\item Id.
\item Id.
\item FCPA Review Autumn 2018, supra note 33.
\item Id.
\item Id.
\item Id.
\end{enumerate}
\end{footnotesize}
the DOJ had closed a four-year investigation into the company without enforcement.  

11. **United Technologies Corporation**

On September 12, 2018, the SEC issued a Cease-and-Desist Order to the Farmington, Connecticut-based technology conglomerate United Technologies Corporation ("UTC"). The allegations in the SEC Order related to a range of reported misconduct by the company’s subsidiaries. For example, from 2012 to 2014, UTC’s wholly-owned subsidiary Otis Elevator Company allegedly executed contracts for the sale of elevator equipment with sham subcontractors and intermediaries with the understanding that the equipment would subsequently be sold to Azerbaijan public housing authorities at inflated prices, thereby creating a pool of money for kickbacks to government officials. Similarly, from 2006 to 2013, UTC’s affiliates Pratt & Whitney and International Aero Engines allegedly engaged a sales agent for the sale of airplane engines in China, conducted no due diligence on the sales agent, and agreed to pay him a “success fee commission” of between 1.75 percent to 4 percent of sales to Chinese state-owned airlines, which created a pool of money that could be used for bribes to government officials. UTC agreed to pay a total of U.S. $13.9 million to resolve anti-bribery, books-and-records, and internal-accounting-controls FCPA allegations arising out of this conduct.

12. **Petróleo Brasileiro S.A.**

“On September 27, 2018, the Brazilian national oil company Petróleo Brasileiro S.A. (“Petrobras”) reached FCPA settlements with the DOJ and SEC as part of a coordinated settlement with Brazilian authorities to resolve anti-corruption charges arising out of its role at the center of the “Operation Car Wash” scandal in Brazil.” Operation Car Wash has already resulted in several massive global corruption settlements, including the U.S. $2.6 billion global settlement between the engineering companies Odebrecht and Braskem with U.S. and Brazilian authorities, currently the largest in anti-

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43. FCPA Review Autumn 2018, supra note 33.
44. Id.
45. Id.
46. Id.
48. Press Release, Dep’t of Just., Odebrecht and Braskem Plead Guilty and Agree to Pay at Least $3.5 Billion in Global Penalties to Resolve Largest Foreign Bribery Case in History (Dec.
corruption history. As a part of these settlements, prosecutors alleged that these companies made improper payments to Brazil’s political elite in exchange for Petrobras’s awarding inflated engineering and oilfield service contracts. Now Petrobras has been charged with violating the FCPA’s accounting provisions by failing to make and keep accurate books and records, and “knowingly and willfully” failing to implement internal financial and accounting controls—failures that enabled Petrobras executives to facilitate the bribery of Brazilian politicians and Brazilian political parties. In total, Petrobras has agreed to pay approximately U.S. $1.7 billion in fines and disgorgement to settle U.S. and Brazilian charges, including a total of U.S. $108 million to be paid to U.S. authorities.

13. Stryker Corp.

On September 28, 2018, the SEC issued a Cease-and-Desist Order to Stryker Corp., a Kalamazoo, Michigan-based medical device company. According to the SEC, at the time of the alleged misconduct, Stryker had implemented various anti-corruption policies and procedures but failed to follow them in India, China, and Kuwait at various times between 2010 and 2017, resulting in books-and-records and internal-accounting-controls violations. The company agreed to pay a total of U.S. $7.8 million to settle these charges. The company previously settled with the SEC in 2013 for FCPA allegations in connection with its business in Mexico, Poland, Romania, Argentina, and Greece.

14. Vantage Drilling International

On November 19, 2018, the SEC issued a Cease-and-Desist Order to Vantage Drilling International, a Houston-based offshore drilling company. According to the SEC, the company failed to devise a system of internal accounting controls relating to a former outside director and the company’s use of third-party marketing agents. These failures resulted in the former director, who was the company’s largest shareholder and sole source of drilling assets, making questionable payments to former Petrobras officials in Brazil in connection with a $1.8 billion drilling services
Vantage agreed to disgorge U.S. $5 million to resolve charges arising out of the alleged misconduct. The company previously disclosed that the DOJ had closed its parallel investigation in 2017 without enforcement.

15. *Centrais Eletricas Brasileiras S.A.*

On December 26, 2018, the SEC issued a Cease-and-Desist Order to Centrais Eletricas Brasileiras S.A., a Brazilian state-controlled power generation, transmission, and distribution company. According to the SEC, the company violated the books-and-records and the internal-accounting-controls provisions of the FCPA, allowing former officers at the company’s nuclear power subsidiary to engage in a bid-rigging scheme with private Brazilian construction companies in connection with the Angra III nuclear power plant. The company will pay civil money penalty of $2.5 million to resolve the SEC’s charges.


On December 26, 2018, the SEC issued a Cease-and-Desist Order issued to Polycom, Inc., a San Jose, California-based voice and video communications provider. According to the SEC, from 2006 through 2014, senior executives at Polycom Inc.’s China subsidiary provided discounts to distributors and resellers, knowing and intending that these third parties would use the discounts to make payments to officials at Chinese government agencies and government-owned enterprises. The SEC alleged that this conduct violated the internal-accounting-controls and books-and-records provisions of the FCPA, and imposed a penalty of approximately $16 million in disgorgement, prejudgment interest, and civil penalties. The DOJ also released a letter formally declining to prosecute Polycom, Inc., in exchange for the company agreeing to disgorge approximately $30 million, of which approximately $10.7 million was offset by disgorgement paid to the SEC.

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58. *Id.*
59. *Id.*
62. *Id.*
63. *Id.*
65. *Id.*
66. *Id.*
67. *Id.*
C. RECENT LITIGATION IN THE UNITED STATES

1. United States v. Hoskins

On August 24, 2018, the United States Court of Appeal for the Second Circuit held in United States v. Hoskins: that the U.S. government cannot use an alleged FCPA conspiracy with U.S. persons to bring FCPA charges against a foreign national not otherwise within the statute’s jurisdiction. Specifically, U.S. prosecutors brought FCPA conspiracy charges against the defendant, Hoskins, a British national operating outside the United States, on the theory that his participation in a corrupt scheme involving the U.S. subsidiary of a multinational company provided grounds for jurisdiction. The Second Circuit disagreed, holding that the FCPA’s textual limits on extraterritoriality precluded such conspiracy charges when the defendant was not otherwise subject to U.S. jurisdiction. U.S. prosecutors have not appealed the decision but have asserted that it creates a “circuit split” where different U.S. appellate courts have reached contrary interpretations of the same law.

II. Anti-Corruption Developments Abroad

A. ANTI-CORRUPTION LEGISLATION AND INITIATIVES ABROAD

1. Argentina

On March 1, 2018, Argentina’s new anti-corruption regulation, Law 27.401 (“Criminal Liability of Legal Persons for Corruption Offenses”) went into effect. Enacted in December 2017, the new law for the first time establishes a criminal liability regime applicable to private legal persons, whether of national or foreign capital, with or without state ownership. The law also makes it mandatory for any company wishing to contract with the national government to put in place an adequate “integrity program.”

2. Brazil

In Brazil, local authorities are increasingly adopting rules and regulations that introduce mandatory compliance programs for companies. For example, in February 2018, the Federal District of Brazil passed Law n°

69. FCPA Review Autumn 2018, supra note 33.
70. United States v. Hoskins, 902 F.3d at 97.
71. FCPA Review Autumn 2018, supra note 33.
73. Id.; see also Law No. 27.401, Mar. 1, 2018, R.O.(Arg.).
74. Law No. 27.401, Mar. 1, 2018, R.O. (Arg.).
The law mandates any company that enters into a contract, partnership, agreement, concession, or public-private partnership with the public administration of the Federal District to implement a compliance program within 180 days of entering into such a contract or partnership. The requirement applies only to contracts that meet a specified monetary threshold. In October 2017, the Rio de Janeiro state government approved a somewhat similar law – Law n° 7,753/17.

3. **China**

On March 20, 2018, the National People’s Congress (“the “NPC”) of the People’s Republic of China (“China”) approved a constitutional amendment creating what is now China’s highest anti-corruption agency, the National Supervision Commission (the “NEW COMMISSION”). To govern the operation of the New Commission, the NPC passed the Supervision Law. The law has been criticized by some as a potential threat to individual rights and fundamental freedoms.

4. **India**

On July 26, 2018, India’s Prevention of Corruption (“Amendment”) Act, 2018, entered into force. The new law introduces some important amendments to the Prevention of Corruption Act of 1988. Among other things, it adds a new Section 17A that requires public officers to obtain prior approval from the union or state government before commencing any inquiry or investigation into an offense alleged to have been committed by a public servant.
5. **Ireland**

Ireland’s new Criminal Justice (“Corruption Offenses”) Act 2018 was signed into law on June 5, 2018 and entered into force on July 30, 2018. The law consolidates anti-corruption legislation from as far back as 1889 and modernizes a host of other legislation relevant to corruption. The law also creates a number of new offenses and a new strict liability offense for corporate bodies where any specified individual connected with the company has been found guilty of corruption.

6. **Malaysia**

The Malaysian Anti-Corruption Commission (“Amendment”) Act was passed and gazetted on May 4, 2018, introducing significant changes to the Malaysian Anti-Corruption Commission (“MAAC”) Act of 2009. The Act went into effect on October 1, 2018, except for Section 4, which introduces new rules for corruption offenses by corporations and will enter into force in 2020.

7. **Tanzania**

On July 13, 2018, the Tanzanian Government, acting under Section 106(3) of the Mining Act 2010, issued the Mining (“Integrity Pledge”) Regulation, 2018. The regulation requires every holder of mineral rights who undertake prospecting and mining activities in Tanzania mainland to sign an Integrity Pledge. An Integrity Pledge is defined as “a formal and concrete expression of commitment by a mineral right holder to abide in ethical business practices and support a national stand against corruption.”

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integrity, accountability and proper management of anti-corruption programme” and to “complement the Prevention and Combating of Corruption Bureau’s efforts to set up the best business practice in Tanzania.”

8. Thailand

On July 21, 2018, the Thailand Government Gazette published the Act Supplementing the Constitution Relating to the Prevention and Suppression of Corruption, B.E. 2561. The Act, which went into effect on July 22, repeals and replaces the 1999 Organic Act on Counter Corruption. One of the most significant changes in the new law is the expansion of the definition of persons who commit bribery to include foreign juristic persons registered abroad but operating a business in Thailand.

9. United Kingdom

On January 31, 2018, the new powers of “unexplained wealth orders” ("UWOs") and the supporting “interim freezing orders" commenced. The UWO is both a civil power and an investigation tool that:

Requires a person who is 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 failure to provide a response to a UWO may give rise to a presumption that the property is recoverable under any subsequent civil recovery action.

One month later, in February, the National Crime Agency secured its first two UWOs to investigate assets totaling £22 million (U.S. $30 million).
10. Deferred Prosecution Agreement – A Growing Internationalization: Australia, Canada, Singapore

The year 2018 saw the continued expansion of the deferred prosecution agreement (“DPA”) as a tool used by enforcement authorities to resolve corporate criminal investigations. First introduced in the United States, the DPA has in recent years been adopted by jurisdictions such as Brazil, France, and the United Kingdom.100 Continuing this trend, in March 2018, the Singaporean parliament approved an amendment to the Criminal Justice Reform Act that creates, for the first time, a DPA framework for scheduled crimes.101 The same month, the Canadian Government announced that it had introduced legislative amendments to create a “made-in-Canada” version of the DPA, to be known as a Remediation Agreement Regime.102 In a “Backgrounder” released in September, the Canadian Government gave details of the new Remediation Agreement Regime.103 On September 19, 2018, amendments to Criminal Code creating the Remediation Agreement Regime entered into force.104 Similarly, on June 8, 2018, the Australian Government released a draft Deferred Prosecution Agreement (“DPA”) Scheme Code of Practice for public consultation.105 The DPA is a controversial enforcement tool and has been criticized as both too harsh and too lenient on corporate offenders.106

B. ENFORCEMENT ACTIONS ABROAD

1. Italy

Oil giants Royal Dutch Shell and Eni are currently on trial in Italy in what has been dubbed “one of the biggest corruption cases in corporate history.” In June 2018, “Italy’s Supreme Court threw out an appeal from Shell and four former Shell managers to stymie” the trial.

2. Japan

On October 19, 2018, Nissan Motor Co. Chairman Carlos Ghosn was arrested in Japan over claims of financial misconduct and alleged corruption along with Greg Kelly, a representative director at Nissan. According to a company statement, Ghosn and Kelly had been under-reporting Ghosn’s compensation in the company’s securities filings for years. Ghosn also serves as chairman and chief executive of France’s Renault and chairman of Mitsubishi.

3. Malaysia

In July 2018, former Malaysian Prime Minister Najib Razak, “was charged with three counts of criminal breach of trust and one charge of abuse of power” for embezzling money from 1Malaysia Development Berhad (“1MDB”), a Malaysian strategic development company. Additional counts of money laundering and other corruption-related offenses have since been brought against Razak.

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111. Id.
4. South Korea

In April 2018, a district court in Seoul sentenced former South Korean President Park Geun-hye to twenty-four years in prison and imposed a fine of U.S. $16.8 million in connection with charges of bribery, extortion, abuse of power, and other charges. In August, a South Korean high court extended Park Geun-hye’s sentence and increased her fine. On October 5, 2018, another former President of South Korea, Lee Myung-bak, was convicted and sentenced to fifteen years in prison for involvement in a separate corruption scandal.

5. South Africa

On March 16, 2018, the director of South Africa’s National Prosecuting Authority announced that Former South African President Jacob Zuma would face charges for corruption, racketeering, and fraud related to a government arms deal in the late 1990s. According to the eighty-nine page indictment in the case of State v. Jacob Gedleyihlekisa Zuma and Thales South Africa (Pty) Ltd., Zuma now faces one count of racketeering, two counts of corruption, one count of money laundering, and twelve counts of fraud.

6. China

In September 2018, Mr. Meng Hongwei, the head of the global crime-fighting agency Interpol disappeared in China while on a trip to the country. In a statement released on October 8, 2018, the Chinese Ministry of Public Security acknowledged that the Chinese government was holding Hongwei on charges of corruption.

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115. Id.
served as a Vice Minister of Public Security in China, is accused of “accepting bribes and committing unspecified other crimes.”

III. Treaties and International Organizations

A. Treaties

1. African Union Convention on Preventing and Combating Corruption (“AUCPCC”)

a. New Members

Mauritius became the fortieth signatory to ratify the Convention on May 4, 2018.

b. Reports and Announcements

The African Union has dubbed 2018 as the year for “winning the fight against corruption,” and, for the first time ever, all fifty-five of its members have collectively sought to raise anti-corruption awareness through symbolically designating an “Anti-Corruption Day.”

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

a. New Members

Peru joined the OECD Anti-Bribery Convention on July 27, 2018, becoming the forty-fourth party to the treaty.

b. Reports and Announcements

In February 2018, the OECD released a report on Illicit Financial Flows: The Economy of Illicit Trade in West Africa, which examines thirteen


criminal economies to identify the drivers behind them.126 In March 2018, the OECD released a report on The Role of the Media and Investigative Journalism in Combating Corruption,127 building on its 2017 study on the Detection of Foreign Bribery. That same month, the OECD also released its Strategic Approach to Combating Corruption and Promoting Integrity, a reflective report aimed at increasing the effectiveness of the organization’s future work.128

Continuing with its work on Phase 4 of the peer-review process, the OECD Working Group on Bribery released its reports on Australia,129 Switzerland,130 Germany,131 and Norway,132 which, among other things, reviewed the progress made by these countries and tracks outstanding issues from past reports.


a. New Members

In April 2018, Samoa133 acceded to the UNCAC, followed by Equatorial Guinea134 in May and Chad135 in June. Currently, there are 186 state parties to the Convention.136

134. Id.
135. Id.
136. Id.
b. Reports and Announcements

The Conference of the States Parties to the UNCAC held its seventh session from November 6 to 10, 2017.137 The report on the Conference emphasized the links between anti-corruption efforts and the sustainable development agenda, and highlighted the threat corruption holds against the 2030 Agenda for Sustainable Development in reference to Goal 16,138 which aims to promote peaceful and inclusive societies for sustainable development, provide access to justice for all, and build effective, accountable and inclusive institutions at all levels.139

The Conference adopted eight new resolutions which, among others, address the need to strengthen mutual legal assistance for international cooperation and asset recovery140, the necessity to use a multidisciplinary approach in fighting corruption141, enhance synergies between multilateral organizations responsible for review mechanisms in the field of anti-corruption142, and strengthen the implementation of the UNCAC in small island developing nations.143 In addition, it also adopted Resolution 7/8144, which for the first time addressed the issue of corruption in sport.145

4. Organization of American States ("OAS") Inter-American Convention Against Corruption ("IACAC")

a. New Members

Barbados ratified the IACAC in January 2018, after previously having signed the Convention in April 2001.146

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138. Id.
139. G.A. Res. 70/1, ¶ 8-9 (Oct. 21, 2015).
b. Reports and Announcements

In February 2018, more than 20 years after the adoption of the IACAC on March 29, 1996, OAS released a report on the institutional framework of the Mechanism for Follow-up on Implementation of the IACAC (“MESICIC”). The report elaborated MESICIC’s missions and the activities it conducts to meet its objectives, outcomes, and the challenges identified as a result of its analysis. The report contained information from the MESICIC Committee of Experts as well as the Conference of the State Parties.

B. INTERNATIONAL ORGANIZATIONS

1. Asian Development Bank (“ADB”)

In March 2018, the ADB’s Office of Anticorruption and Integrity released its annual report for 2017, highlighting its enforcement and prevention methods, including its numerous outreach programs. According to the report, thirty firms and twenty individuals were debarred in 2017, compared to ninety-eight firms and forty individuals in 2016. Another 153 firms and thirty-six individuals were cross debarred. A further three firms and four individuals were in turn submitted to other multilateral development banks for cross debarment.

2. European Bank for Reconstruction and Development (“EBRD”)

In April 2018, the EBRD’s Office of the Chief Compliance Officer (“OCCO”) released its annual report for 2017. The report discussed the various trainings, investigations, and standards and policies of the EBRD in the field of anti-corruption, including completing a formal review of its Code of Conduct for EBRD Personnel and Code of Conduct for Officials of the Board of Directors. According to the report, the EBRD Enforcement

149. Id. at 4.
150. Id.
152. Id.
153. Id. (Cross debarment refers to the debarment of individuals and entities based on notifications received from other participation international financial institutions (“IFIs”), pursuant to the Agreement for Mutual Enforcement of Debarment Decisions.)
154. Id.
156. Id. at 1.
Commissioner debarred six individuals and entities, compared to sixteen in 2016. It further cross debarred ninety-one corporations and twenty-eight individuals. The OCCO also helped to implement twenty-one compliance action plans, where clients agreed to improve their internal controls as a condition of EBRD financing.

3. European Investment Bank ("EIB")

In January 2018, the EIB entered into a settlement agreement with the Spanish company, IBERINCO, in connection with an EIB-financed thermal power plant project contracted in Latvia in 2005. Under the agreement, IBERINCO was debarred from entering into EIB-financed projects for twelve months. IBERINCO also agreed to implement a sponsorship program to support anti-corruption efforts and exchange best practices concerning compliance standards with EIB.

4. Inter-American Development Bank ("IDB")

The IDB’s Office of Institutional Integrity ("OII") issued its annual report for 2017. Among other things, the report evaluates the evolution and status of integrity, fraud, and corruption risk management in IDB Group operations during the last fifteen years. The report showcased the organization’s move from a reactive stance to a more risk-based approach, exemplified by the development of IDB’s Anti-Money Laundering Framework in 2017. OII also improved its efficacy in investigations and in its filtering mechanisms, with data showing that it took approximately ten percent less time to process matters compared to 2016. A key milestone is that 2017 was the first year the updated Sanctions Procedures, amended in 2015, were implemented in decisions.

157. Id. at 25.
158. Id. at 26.
159. Id. at 5.
161. Id.
162. Id.
164. Id. at 6.
165. See id. at 17.
166. Id. at 129.
167. Id. at 110, 112.
5. **World Bank Group**

In October 2018, the World Bank Group’s Integrity Vice Presidency (“INT”), Office of Suspension and Disbarment (“OSD”), and Sanctions Board jointly released the first ever World Bank Group Sanctions System Annual Report for the 2018 fiscal year. According to the report, seventy-eight firms and individuals were debarred, five were sanctioned with conditional non-debarment, and seventy-three cross-debarments from other multilateral banks were recognized. Of this number, twenty were sanctioned by the Sanctions Board on appeal.

INT’s Integrity Compliance Office (“ICO”) found fifteen firms and individuals to have met conditions required to be released from sanctions and provided guidance to a further eighty parties on reform in accordance with the Bank Group’s Integrity Compliance Guidelines.

IV. **Civil Society Efforts**

A. **Transparency International (“TI”)**

In February 2018, TI released its annual Corruption Perception Index (“CPI”) for 2017, which scores countries based on perceived levels of corruption. For 2017, TI indicated that “a majority of countries are making little or no progress in ending corruption.” As a result, the CPI for 2017 demonstrates striking similarities to preceding years. For example, Denmark, New Zealand, and Finland all scored at the very top, while South Sudan, Somalia, and Syria scored at the very bottom, similar to their positions in 2016.

For this most recent publication of the CPI, TI also highlighted the relationship between corruption and freedom of expression. The countries that performed better in the CPI generally have better protection for media and activists. The countries at the bottom of the index have
persistently sought to restrict journalists and citizens from exposing corruption and the injustice that it causes.\textsuperscript{181}

In September, TI released its 2018 Progress Report, which serves as an independent assessment of the status of enforcement of the OECD Anti-Bribery Convention.\textsuperscript{182} The report assesses enforcement of prohibitions on the bribery of foreign public officials in forty-one out of forty-four signatory countries.\textsuperscript{183} Additionally, TI's report assessed enforcement by non-OECD parties—China, Hong Kong, India, and Singapore—for the first time.\textsuperscript{184} TI classified countries into four enforcement levels, from Active to Moderate to Limited to Little/No enforcement.\textsuperscript{185} Since the last Progress Report in 2013, “there has been little change in the overall enforcement level.”\textsuperscript{186}

B. Extractive Industries Transparency Initiative ("EITI")

The EITI, a standard that promotes transparency, accountability, and good governance for oil, gas and mineral resources, both added and lost members in 2018, leaving the number of countries that have implemented the standard at fifty-one.\textsuperscript{187}

In June 2018, The Netherlands, which has been involved with the EITI since inception, moved from a supporting to an implementing country.\textsuperscript{188} The Solomon Islands' withdrew from the initiative due to limited activities in the extractive sector.\textsuperscript{189} In August 2018, Liberia was suspended for failure to comply with the EITI Standard.\textsuperscript{190}

Finally, in September 2018, Ukraine’s Parliament passed a law on “Ensuring transparency in extractive industries” in an effort to harmonize its

\textsuperscript{181} Id.


\textsuperscript{183} Id. at 9.

\textsuperscript{184} Id. at 6.

\textsuperscript{185} Id.

\textsuperscript{186} Id.


domestic legislation with the EITI standard. Among other things, the law establishes the payment disclosure norms and mandates ultimate beneficial ownership transparency by extractive companies.

C. **World Justice Project ("WJP")**

This year the WJP published its seventh annual report entitled the WJP The Rule of Law Index 2017–2018. The report provides a portrait of the rule of law in 113 countries based on “the experience and perception of the general public and in-country experts.” The European Union, European Free Trade Association, and North America region ranked at the top of the report’s rule of law index, while South Asia ranked at the bottom. The highest improvement in the index’s performance was registered by France, Argentina, and Burkina Faso.

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192. Id.


194. Id. at 5.

195. Id. at 22.

196. Id. at 30.