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Anti-Corruption

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Anti-Corruption

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I. U.S. Developments

The intense pace of investigations under the Foreign Corrupt Practices Act (FCPA) continued in 2013. Reports of new and major investigations by the U.S. Department of Justice (DOJ) and the U.S. Securities and Exchange Commission (SEC) continued to surface, as well as unofficial reports of a number of long-standing investigations being closed without enforcement action taken. In a number of instances, enforcement action was taken or disclosed relative to other parties to violations where enforcement action had already been taken. Throughout the year, the DOJ and the SEC brought even greater attention to the importance of cooperation and enhanced compliance in a number of favorable resolutions, including deferred prosecution agreements (DPA).

A. INTERNAL CONTROLS

In a series of resolutions, the DOJ and, in particular, the SEC provided further guidance in describing the nature, contours, and scope of internal controls that are expected in addressing bribery in foreign settings. Given their close relationship with compliance programs, this new guidance with respect to internal controls also has implications for evaluating the adequacy of anti-bribery compliance programs.

1. *Stryker Corporation*

In the SEC's resolution with Stryker Corporation for improper inducements paid by its foreign subsidiaries, accounting and record-keeping violations were identified in the SEC's cease-and-desist order.¹ In particular, expenses were recorded "as legitimate consulting and service contracts, travel expenses, charitable donations, or commissions, when

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1. Stryker Corp., Exchange Act Release No. 70751, 2013 WL 5757376 (ALJ Oct. 24, 2013) (cease-and-desist order).

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in fact the payments were improperly made . . . to obtain or retain business.”² Though anti-bribery policies at the corporate level were found to be adequate, the failure of their implementation in foreign subsidiaries was the critical factor in the internal controls violation. The significance of the SEC’s cease-and-desist order is that, regardless of whether a foreign subsidiary may be subject to the FCPA’s anti-bribery provisions, the internal control provisions still require that foreign subsidiaries of issuers have adequate anti-bribery compliance policies and procedures in place to “provide reasonable assurance that the company maintained accountability for its assets and that transactions were executed in accordance with management’s authorization.”³

2. *Parker Drilling Company*

The allegations associated with Parker Drilling Company’s DPA with the DOJ and its resolution with the SEC stemmed from the activities of a consultant with political influence in Nigeria retained by its outside law firm.⁴ In each instance, Parker Drilling’s substantial cooperation and remedial efforts were noted as critical factors in the resolution. In addition to the violation of the anti-bribery provisions described in the information filed by the DOJ,⁵ the SEC’s complaint alleged violations of the accounting and record-keeping provisions. The SEC complaint specifically referenced the deficiencies in the internal controls that failed to require adequate due diligence in retaining the third party as well as failed to ensure the accuracy and adequacy of the record-keeping associated with the payments to the consultant.⁶

3. *Koninklijke Philips Electronics N.V.*

In the SEC’s cease-and-desist order entered against Koninklijke Philips Electronics N.V. (Philips), subsidiaries of the Netherlands-based issuer were alleged to have made improper inducements to Polish public-contracting officials.⁷ The SEC alleged violations of the FCPA’s record-keeping and accounting provisions as records were falsified to conceal improper payments. Philips was credited for its self-disclosure, cooperation, and remedial efforts, which included making changes to its internal controls. “Philips established strict due diligence procedures related to the retention of third parties, formalized and centralized its contract administration system and enhanced its contract review process, and established a broad-based verification process related to contract payments.”⁸

2. *Id.* ¶ 1.

3. *Id.* ¶ 36.

4. Deferred Prosecution Agreement, *United States v. Parker Drilling Co.*, No. 13-CR-176 (E.D.Va. Apr. 16, 2013), ECF No. 16, *available at* <http://www.justice.gov/criminal/fraud/fcpa/cases/parker-drilling-company/2013-04-16-parkerdrilling-dpa.pdf>; Complaint, *SEC v. Parker Drilling Co.*, No. 1:13CV461 (E.D. Va. Apr. 16, 2013), ECF No. 1, *available at* <http://www.sec.gov/litigation/complaints/2013/comp22672.pdf>.

5. Information, *United States v. Parker Drilling Co.*, No. 13-CR-176 (E.D.Va. Apr. 16, 2013), ECF No. 1, *available at* <http://www.justice.gov/criminal/fraud/fcpa/cases/parker-drilling-company/2013-04-16-parkerdrilling-information.pdf>.

6. Complaint, *SEC v. Parker Drilling Co.*, No. 1:13CV461 (E.D. Va. Apr. 16, 2013), ECF No. 1, *available at* <http://www.sec.gov/litigation/complaints/2013/comp22672.pdf>.

7. *Koninklijke Philips Electronics N.V.*, Exchange Act Release No. 69327 (ALJ Apr. 5, 2013) (cease-and-desist order).

8. *Id.* ¶ 14.

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4. *Total S.A.*

Total S.A., a French company that is an issuer due to its American Depositary Receipts being listed in the United States, entered into a resolution, which included nearly \$400 million in fines, disgorgement, and interest, with the DOJ and the SEC for violations of the FCPA's anti-bribery, record-keeping, and internal controls provisions for improper payments to intermediaries for the purpose of influencing Iranian officials in acquiring oil rights in Iran.⁹ The DOJ alleged internal controls violations for failing to implement adequate anti-bribery compliance policies and procedures; "maintain an adequate system for the selection and approval of consultants"; "conduct adequate audits of payments to purported consultants"; "establish a sufficiently employed and competent compliance office"; "take reasonable steps to ensure the company's compliance and ethics program was followed"; "evaluate regularly the effectiveness of the company's compliance and ethics program"; "provide appropriate incentives to perform in accordance with the compliance and ethics program"; determine "the consulting agreements' true nature and true participants"; perform "due diligence concerning the named or unnamed parties to" the consulting agreements; and have "controls sufficient to provide reasonable assurances that the consulting agreements complied with applicable laws."¹⁰

B. PRIVATE BRIBERY

The DOJ and SEC's resolution with Diebold, Inc. was significant in signaling their interest in addressing private bribery in foreign settings.¹¹ Diebold is an issuer engaged in the manufacture and sale of ATMs through its foreign subsidiaries, including in China, Indonesia, and Russia.

In the information filed by the DOJ in conjunction with the DPA, Diebold is alleged to have conspired to bribe foreign public officials in China and Indonesia and to have engaged in record-keeping violations relating to the activities of its subsidiaries in China, Indonesia, and Russia. Records of the Chinese and Indonesian subsidiaries associated with the bribes were falsified to conceal the bribes to foreign public officials. Records of the Russian subsidiary were alleged to have been falsified to conceal bribes to officials of privately-held banks. In addition to violations of the anti-bribery provisions, the SEC's complaint alleged record-keeping and internal control violations related to both the bribery of foreign public officials and officials of the private banks.¹²

9. Press Release, U.S. Dep't of Justice, French Oil and Gas Company, Total, S.A., Charged in the United States and France in Connection with an International Bribery Scheme (May 29, 2013), *available at* <http://www.justice.gov/criminal/fraud/fcpa/cases/totalsa/2013-05-29-total-press-release-final.pdf>; Press Release, SEC, No. 2013-94, SEC Charges Total S.A. for Illegal Payments to Iranian Official (May 29, 2013), *available at* <http://www.sec.gov/News/PressRelease/Detail/PressRelease/1365171575006#.UpJqgo06JBI>.

10. Information ¶ 18, United States v. Total, S.A., No. 1:13-CR-239 (E.D. Va. May 29, 2013), ECF No. 1, *available at* <http://www.justice.gov/criminal/fraud/fcpa/cases/totalsa/2013-05-29-total-information-filed.pdf>.

11. Deferred Prosecution Agreement, United States v. Diebold, Inc., No. 5:13-CR-464 (N.D. Ohio, Oct. 22, 2013), ECF No. 13; Complaint, SEC v. Diebold, Inc., No. 1:13-cv-01609 (D.D.C., Oct. 22, 2013), ECF No. 1.

12. Deferred Prosecution Agreement, United States v. Diebold, Inc., No. 5:13-CR-464, ECF No. 13; Complaint, SEC v. Diebold, Inc., No. 1:13-cv-01609, ECF No. 1.

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The DOJ has at times relied upon the Travel Act¹³ in situations where it is unclear whether the intended recipient was a foreign public official. The record-keeping provisions are applicable, and have been applied, in other contexts, both foreign and domestic, where inaccurate record-keeping was involved. But here there is specific reference to the bribery of officials of a foreign private bank. Moreover, the SEC's complaint further alleges a violation of the internal controls provisions for the failure to have adequate policies and procedures in place relative to addressing the bribery of the officials of the private bank.¹⁴

C. SEC NON-PROSECUTION AGREEMENTS

Both the DOJ and the SEC entered into non-prosecution agreements (NPA) with Ralph Lauren Company after a potential violation of the FCPA's anti-bribery provisions was discovered involving customs issues associated with its Argentinean subsidiary. The potential violation surfaced after Ralph Lauren implemented an anti-bribery compliance program. As publicly acknowledged by the DOJ and the SEC, the NPAs were found appropriate due to the prompt disclosure of the potential violation and rather extensive remedial efforts by Ralph Lauren. This was the first NPA entered into by the SEC.¹⁵

D. FOREIGN RECIPIENTS OF BRIBES

Three officials of a New York-based broker-dealer pled guilty to conspiring to violate the FCPA and the Travel Act and to engage in money laundering, as well as substantive counts of these offenses, relating to the scheme whereby bribes in the form of kickbacks were funneled to an official of a state-run economic development bank in Venezuela in exchange for directing the bank's trading business to the broker dealer. Later, the official of the state-run bank entered a plea to conspiring to violate the Travel Act and to commit money laundering, as well as substantive counts of each of these offenses.¹⁶ The case demonstrates that the Travel Act may be applied in situations where it is unclear as to whether the foreign official is a public official. Similarly, it further demonstrates how the Travel Act and money laundering violations may be applied to recipients of bribes in foreign settings.

E. HIRING RELATIVES

Though unofficial disclosures are not necessarily indicative of a violation, reports of an internal investigation and public filings of JPMorgan Chase & Co. suggest a DOJ and SEC investigation of JPMorgan Chase & Co.'s hiring practices in China. The implication

13. 18 U.S.C.A. § 1952 (West 2014).

14. Complaint, SEC v. Diebold, Inc., No. 1:13-cv-01609, ECF No. 1.

15. Non-Prosecution Agreement, *In re* Ralph Lauren Corp., DOJ No. 13-456 (Dep't of Justice Apr. 22, 2013), <http://www.justice.gov/criminal/fraud/fcpa/cases/ralph-lauren/Ralph-Lauren.-NPA-Executed.pdf>; Non-Prosecution Agreement, *In re* Ralph Lauren Corp., SEC No. 2013-65 (SEC Apr. 22, 2013), *available at* <http://www.sec.gov/news/press/2013/2013-65-npa.pdf>.

16. Press Release, U.S. Dep't of Justice, High-Ranking Bank Official at Venezuelan State Development Bank Pleads Guilty to Participating in Bribery Scheme (Nov. 18, 2013), *available at* <http://www.justice.gov/opa/pr/2013/November/13-crm-1229.html>.

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of the disclosures suggests that relatives of government officials may have been hired as a means of having business directed to the U.S. bank.¹⁷ The public reports of the presumed focus of the investigation have prompted many companies to re-examine their hiring practices.

F. DODD-FRANK'S ANTI-RETALIATION PROVISION

In one U.S. District Court decision, *Meng-Lin Liu v. Siemens A.G.*,¹⁸ the anti-retaliation provision of the Dodd-Frank Act was determined to not have extra-territorial application. The decision related to a compliance official of a Chinese subsidiary of Siemens who had made a disclosure to the SEC after being terminated for raising concerns relating to improper inducements to foreign officials.¹⁹ It coincided with the holding of another U.S. District Court in *Asadi v. G.E. Energy (USA), LLC*,²⁰ which also held that Dodd-Frank's anti-retaliation provision did not apply extra-territorially. In *Asadi*, a U.S.-based employee of GE Energy, who was both a U.S. and Iraqi citizen, was temporarily relocated to Jordan to coordinate with Iraq's governing bodies to secure and manage energy service contracts for GE. After reporting concerns to senior officials within GE relative to the possibility of improper inducements to foreign public officials, the employee was subjected to unfavorable ratings and, in time, terminated in the United States under U.S. law as an at-will, U.S.-based employee.²¹

G. FORFEITURE

A civil forfeiture complaint has been filed in U.S. District Court for the Southern District of New York against the assets of nine corporations controlling real estate in Manhattan, as well as against the assets of two related companies; the complaint is also seeking the imposition of civil money laundering penalties. The complaint alleges that these corporations laundered a portion of the proceeds of a \$230 million Russian tax refund fraud scheme involving corrupt Russian officials that was uncovered by Sergei Magnitsky, a Russian lawyer who died in pretrial detention in Moscow under suspicious circumstances. The Russian criminal organization that engaged in the elaborate scheme included two Russian tax officials.²²

17. Emily Flitter & David Henry, *JPMorgan's Internal Bribery Investigation Reviewing 200 Asia Hires*, REUTERS (Aug. 29, 2013, 3:57 PM), available at <http://www.reuters.com/article/2013/08/29/us-jpmorgan-bribery-list-idUSBRE97S14H20130829>; Dawn Kopecki, *JPMorgan Bribe Probe Said to Expand in Asia as Spreadsheet Is Found*, BLOOMBERG (Aug. 28, 2013, 10:51 PM), available at <http://www.bloomberg.com/news/2013-08-29/jpmorgan-bribe-probe-said-to-expand-in-asia-as-spreadsheet-found.html>.

18. *Liu v. Siemens A.G.*, 2013 WL 5692504, at *1 (S.D.N.Y. Oct. 21, 2013).

19. *Id.* at *7.

20. *Asadi v. G.E. Energy (USA), LLC*, 2012 WL 2522599 (S.D. Tex. June 28, 2013), *aff'd on other grounds*, 720 F.3d 620 (5th Cir. 2013).

21. *Id.*

22. Press Release, U.S. Attorney's Office, S. Dist. of N.Y., Manhattan U.S. Attorney Announces Civil Forfeiture Complaint Against Real Estate Corporations Allegedly Involved In Laundering Proceeds of Russian Tax Refund Fraud Scheme (Sept. 10, 2013), available at <http://www.justice.gov/usao/nys/pressreleases/September13/PrevezonHoldingsForfeiturePR.php>.

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II. Enforcement Actions Abroad

Globally, enforcement actions on private to public bribery in 2013 were down. Whilst the U.K. Serious Fraud Office charged four individuals in what they described as the first Bribery Act charges ever laid by the agency²³, trial isn't scheduled to begin until September 2014²⁴. The SFO transferred no other cases to the Crown Court, despite stating that they had opened several investigations into possible corrupt activities by various companies. No cases involving a corporate entity under the UKBA were sent for trial in 2013. Other countries such as Russia and China, despite having amended or passed more stringent anti-corruption laws, have seen little enforcement action taken.²⁵ Accusations of corruption brought by incumbent governments against political opponents in many countries increased, but many of these actions could be taken more for political expediency and less as a genuine attempt to tackle corruption in any meaningful way.

A. CASES

1. Canada

On January 25, 2013, as a result of the first example of self-reporting under Canada's Corruption of Foreign Public Officials Act (CFPOA), Griffiths Energy International Inc. (GEI) pled guilty to bribery under section 3(1)(b).²⁶ The plea was part of a negotiated settlement by GEI after an internal investigation found evidence of payments in excess of \$2 million made by former company executives to the then Chadian ambassador to Canada, Mahamoud Adam Bechir, and his wife, Nourachem Niam, via one of her companies. The bribes had been paid between August 2009 and February 2011 to secure oil and gas contracts in the Republic of Chad. GEI was fined CA \$9 million and assessed a 15 percent victim surcharge. Justice Brooker of the Alberta Queen's Bench, in discussing the size of the fine, observed that "the penalty imposed must be sufficient to show the Court's denunciation of such conduct as well as provide deterrence to other potential offenders," but placed emphasis on the fact that GEI self-reported as a mitigating factor.²⁷

23. Press Release, Serious Fraud Office, Four Charged in Bio-fuel Investigation (August 14, 2013) (U.K.), available at <http://www.sfo.gov.uk/press-room/latest-press-releases/press-releases-2013/four-charged-in-%27bio-fuel%27-investigation.aspx>

24. Serious Fraud Office, Case Progress, Sustainable Agroenergy Plc and Sustainable Investments UK Ltd, Case Update (November 15, 2013) (U.K.), available at <http://www.sfo.gov.uk/our-work/our-cases/case-progress/sustainable-agroenergy-plc-and-sustainable-wealth-investments-uk-ltd.aspx>

25. See TIMUR AITKULOV & OLGA SEMUSHINA, RUSSIA ENACTS NEW LAW ON ANTI-CORRUPTION (2013), available at http://www.cliffordchance.com/publicationviews/publications/2013/04/russia_enacts_newlawonanti-corruption.html (follow "Download PDF" link); Philippe Montigny, *Will China Really Enforce Anti-Corruption Laws?*, ANTI-CORRUPTION COMPLIANCE NEWSL. (Ethic Intelligence, Paris, France) available at <http://www.ethic-intelligence.com/compliance-tools/related-publications/newsletters/272-will-china-really-enforce-anti-corruption-laws> (last visited Jan. 29, 2013).

26. Corruption of Foreign Public Officials Act, S.C. 1998, c. 34 (Can.), available at <http://laws-lois.justice.gc.ca/eng/acts/C-45.2/page-1.html>.

27. Transcript of Proceedings Taken in the Court of Queen's Bench of Alberta, Judicial Centre of Calgary, Her Majesty the Queen v. Griffiths Energy International, E-File No.:CCQ13GRIFFITHSENER, Action No.130057425Q1, Jan. 25, 2013.

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On August 15, 2013, in the first trial to occur under the CFPOA, Nazir Karigar was convicted of conspiring to bribe a foreign public official under section 3(2) of that Act.²⁸ Karigar was found guilty of paying in excess of \$450,000 in bribes to Indian government officials to obtain favorable treatment in the awarding of a contract to provide security software by Cryptometrics Canada (Cryptometrics) to Air India between June 1, 2005, and January 1, 2008. Although many of the transactions and business were conducted outside of Canada, including in the U.S. and India, presiding Justice Hackland ruled that territorial jurisdiction was not limited to the essential elements of the offense and that the bribery could not be treated as a separate and discrete issue excluding the legitimate aspects of the transaction when applying the substantial connection test. Karigar, a Canadian resident and businessman, initially approached Cryptometrics and at all material times was employed or acted as the Canadian company's agent. Unusually, the contract for which the bribes had been paid was never awarded.²⁹

2. *Italy*

On June, 11, 2013, a Milanese court found Saipem SpA guilty of corruption in Nigeria. The court fined the company _600,000 (U.S. \$780,000) and ordered the confiscation of assets, worth _24.5 million, that had been held on deposit with the Milanese Prosecutors Office by Snamprogetti Netherlands B.V. since 2011. The sentence related to Snamprogetti's conduct in pursuing gas contracts in Nigeria's Bonny Island between 1994 and 2004.³⁰ Snamprogetti was a wholly-owned subsidiary of the Italian extraction company Eni until 2006. The two companies ultimately merged. Saipem is appealing.³¹

3. *Kazakhstan*

On July 23, 2013, a court in Kazakhstan sentenced two executives from the Ukrainian company, Ukrspesexport, to six years in prison for having paid the equivalent of U.S. \$200,000 in bribes to Kazakh General (now former) Almaz Asenov to secure the award of a contract with the Kazakh Defense Ministry. Asenov was sentenced to eleven years in prison, and his property was ordered confiscated. The circumstances are unusual in that Kazakhstan detained the Ukrspesexport employees and held them until the conclusion of the prosecution. The Ukraine is said to be currently negotiating their release.³²

28. R. v. Karigar, [2013] O.J. No. 3661 (Can Ont. Sup. Ct.).

29. *Id.* ¶ 3.

30. Sara Rossi, *Tangenti Nigeria, Saipem Condannata a Confisca 24,5 mln* [Saipem Bribes Nigeria, Sentenced to Confiscation of 24.5 Million], REUTERS ITALIA (July 11, 2013, 5:41 PM), available at <http://it.reuters.com/article/topNews/idITMIE96A02W20130711>.

31. Press Release, Saipem: Nessun Impatto Cinanziario dalla Decisione Odierna del Tribunale di Milano. Saipem Ricorrerà in Appello Contro la Decisione del Tribunale di Milano [Saipem: No Financial Impact of Today's Decision by the Court of Milan. Saipem will Appeal Against the Decision of the Court of Milan] (July 11, 2013, 4:00 PM), <http://www.saipem.com/site/it/home/press/per-anno/articolo6326.html>.

32. *Investigation into the Case on Taking Bribery by the Kazakh Generals from Ukrspesexport Completed*, KAZAKHSTAN TODAY (May 1, 2013), http://kt.kz/eng/security_bodies/investigation_into_the_case_on_taking_bribery_by_the_kazakh_generals_from_ukrspesexport_completed_1153571782.html; *Foreign Ministry: Bribery Charges Brought against Ukrspesexport Employees in Kazakhstan*, INTERFAX UKRAINE (Feb. 12, 2013, 4:11 PM), <http://en.interfax.com.ua/news/general/140254.html>; *Ukrspesexport Looking for Legal Options to Return to Ukraine Two Employees Convicted in Kazakhstan for Bribery*, KYIV POST (July 25, 2013, 12:54 PM), <http://www.kyivpost.com>.

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4. *Switzerland*

On August 30, 2013, Switzerland's Federal Criminal Court ruled that Riadh Ben Aissa could be extradited to Canada to stand trial on charges of bribery and money laundering. Aissa was the senior executive of SNC Lavalin's (Lavalin) construction division.³³ He had been detained without charge by Swiss authorities since April 2012. Canada's Department of Justice sought his extradition alleging, amongst other charges, that Aissa had organized bribes paid to the son of former Libyan President Moammar Gaddafi in excess of \$160 million to secure engineering contracts for Lavalin.³⁴

5. *The World Bank Group*

On April 17, 2013, the World Bank Group (the Bank) announced the imposition of the longest debarment period ever agreed to in a settlement action. The Bank debarred Canada's SNC-Lavalin Inc. and 100 of its subsidiaries for a ten-year period. Lavalin is itself a subsidiary of Canadian conglomerate SNC-Lavalin Group (the Group). Initially prompted by allegations of Lavalin being engaged in bribery on a Bank-sponsored project in Bangladesh, as the investigation grew, additional incidents of corruption involving Lavalin's subsidiaries in Bank-financed projects in other countries such as Cambodia, Libya, and Algeria came to be known.³⁵ Lavalin reached a Negotiated Resolution Agreement with the Bank that included conditional non-debarment for the Group and an agreement not to dispute the bribery charges, which means that the debarment qualifies for cross-debarment by other multilateral development banks. The Bank also referred its findings to the Canadian authorities. Following the Agreement, the "Bank cancelled its \$1.2 billion Padma Bridge loan to Bangladesh . . . after the Bangladeshi government refused to take measures against corrupt officials involved in the project."³⁶

In total, the Bank debarred and cross-debarred 285 individuals and firms in 2013.³⁷ One hundred of them were subsidiaries of Lavalin.³⁸

kyivpost.com/content/ukraine/ukrspecexport-looking-for-legal-options-to-return-to-ukraine-two-employees-convicted-in-kazakhstan-for-bribery-327489.html.

33. Catherine McLean & Stewart Bell, *Former SNC-Lavalin Executive Riadh Ben Aissa Returning to Canada to Face Fraud, Bribery and Money Laundering Charges*, NATIONAL POST (Sept. 24, 2013, 8:59 PM), <http://news.nationalpost.com/2013/09/25/former-snc-lavalin-executive-riadh-ben-aissa-returning-to-canada-to-face-fraud-bribery-and-money-laundering-charges/>.

34. *Id.*

35. Greg McArthur, *World Bank Locks out SNC-Lavalin over Bangladesh Bribery Scandal*, THE GLOBE AND MAIL (Apr. 18, 2013, 4:15 PM), <http://www.theglobeandmail.com/report-on-business/snc-reaches-deal-with-world-bank-in-bangladesh-bribery-probe/article11349133/>.

36. *SNC-Lavalin Receives World Bank's Longest Debarment*, INT'L ANTICORRUPTION COMMITTEE NEWSL. (ABA Section of International Law, Ada, Ohio), Apr. 2013, at 1, available at <http://meetings.abanet.org/webupload/commupload/IC700600/newsletterpubs/April2013.pdf>.

37. See *World Bank Listing of Ineligible Firms & Individuals*, WORLD BANK, <http://web.worldbank.org/external/default/main?theSitePK=84266&contentMDK=64069844&menuPK=116730&pagePK=64148989&piPK=64148984> (last visited Jan. 23, 2014).

38. *Id.*

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B. ANTI-CORRUPTION LEGISLATION AND INITIATIVES

1. *Austria*

On January 1, 2013, amendments made in 2012 to the Strafgesetzbuch, StGB (Austrian Criminal Penal Code), expanding the nation's anti-corruption law (Korruptionsstrafrecht-sänderungsgesetz 2012),³⁹ went into effect. The most significant changes to the law include extending the length of sentences to up to ten years for those who bribe public officials, as well as broadening the definition of individuals considered public officials to embrace, amongst others, employees of both foreign and domestic companies controlled directly *or indirectly* by any administrative body that holds at least 50 percent of the ownership and individuals employed by other countries and international organizations.⁴⁰ The amended law now applies to Austrian citizens working or living in foreign countries, irrespective of the laws in the host country, and extends to both givers and takers of bribes. It also sets a maximum of _100 for acceptable gifts such as meals to public officials (providing the relationship is professional).⁴¹

2. *Brazil*

In August of 2013, Brazil enacted Law no. 12,846/13.⁴² The law, which goes into effect on January 1, 2014, addresses corruption as well as illegal acts involving public procurement. The law imposes civil liability and administrative sanctions on private companies found to benefit from bribery involving government officials. The Law no. 12,846/13 envisions fines ranging from 0.1 percent to 20 percent of the offending company's gross revenues and publication of reproving decision.⁴³ Additionally, the civil portion of the law grants seizure authority to regulators of assets related to the illegal activity, provides for forced dissolution of the entity, denial of benefits from the government, and restitution by the offending company or party. There are, however, incentives for cooperating with authorities and for having an adequate compliance program already in place, including the possibility of a reduction of fines by up to two-thirds.⁴⁴

3. *Canada*

On June 19, 2013, Canada passed the amendment, Fighting Foreign Corruption Act (CFA), to significantly increase its prosecution power under the country's Corruption of

39. STRAFGESETZBUCH [StGB][PENAL CODE] BUNDESGESETZBLATT [BGBl] No. 61/2012, as amended, §§ 304–307 (Austria), translated in *Legislationonline*, LEGISLATIONONLINE.ORG, <http://www.legislationonline.org/documents/section/criminal-codes/country/44>.

40. Nationalrat [NR] [National Council] Gesetzgebungsperiode [GP] 24 Beilagen [Blg] No. 1833 (Austria).

41. For further discussion of S. Art. I Z10 (§ 6305 StGB) and S. 8 to Art.I Z 11 & 13 (§306 and §307b StGB), see Letter from Dr. Franz Fiedler & DDr. Hubert Sickinger, Transparency Int'l Austrian Chapter, to z.Hd. Frau Mag. Nicola Sekyu, Justizausschuss des Nationalrats [Justice Committee of the National Council], available at http://www.ti-austria.at/uploads/media/TI-AC_Kommentar_zum_StrRAEG_2012.pdf (last visited Jan. 28, 2014); Bundesrat [BNR] [Federal Council] Gesetzgebungsperiode [GP] 24 Antrag No. 559 (Austria).

42. Lei No. 12.846, de 1 de Agosto de 2013, DIARIO OFICIAL DA UNIAO [D.O.U.] de 1.8.2013 (Braz.).

43. *Id.*

44. *Id.*

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Foreign Public Officials Act (CFPOA).⁴⁵ The CFA escalates the maximum allowable imprisonment to the offense of bribing a foreign public official to fourteen years and establishes nationality jurisdiction to all offenses under the Act.⁴⁶ Additionally, similar to provisions under the United Kingdom Bribery Act, the CFA abolishes the exception for facilitation payments and, like the United States Foreign Corrupt Practices Act (FCPA), establishes new books and records offenses.⁴⁷

On June 3, 2013, Canada's Royal Canadian Mounted Police, the country's federal investigative force, announced the formation of a new National Division dedicated to investigating corruption both within the country's borders and internationally.⁴⁸

4. *China*

On January 1, 2013, the People's Republic of China's 2012 guidance interpreting certain elements of its anti-corruption statutes went into effect.⁴⁹ The guidance allows for reduction of sentences where the accused bribers cooperate with the investigation, clarifies the definition of foreign officials, and establishes some baseline dollar thresholds justifying criminal prosecution of bribery.⁵⁰ The guidance also establishes the difference between an entity on whose behalf a bribe is given and that of the actual individual engaged in the bribery. The former is likely to only be fined while the individual may be prosecuted to the full extent of the law, including imprisonment.⁵¹

5. *European Union*

On June 12, 2013, the European Parliament announced that it had approved two new regulations designed to increase transparency involving the extraction industries in an effort to combat corruption in the sector. The new rules require that all payments above €100,000 will have to be published and that large extractive companies will now have to disclose the details of all payments they make to governments.⁵² The provisions apply to companies involved with oil, gas, minerals, and timber logging. An anti-evasion clause is

45. See Corruption of Foreign Public Officials Act, S.C. 1998, c. 34 (Can.), available at <http://laws-lois.justice.gc.ca/eng/acts/C-45.2/>; see also Fighting Foreign Corruption Act, S.C. 2013, c. 26 (Can.), available at http://laws-lois.justice.gc.ca/eng/annualstatutes/2013_26/FullText.html.

46. Fighting Foreign Corruption Act, S.C. 2013, c. 26 (Can.).

47. See Bribery Act 2010, 2010, c. 23 (U.K.); see also, Foreign Corrupt Practices Act, 15 U.S.C. § 78dd-1(a)(1)(B) (2012).

48. Press Release, Royal Canadian Mounted Police, RCMP's New Nat'l Div. to Focus on Sensitive and Int'l Investigations (June 3, 2013), available at <http://www.rcmp-grc.gc.ca/ottawa/ne-no/pr-cp/2013/0603-launch-lancement-eng.htm>.

49. Guanyú shíshì xíngshì sùsòng fǎ ruògān wèntí de guīdìng (关于实施刑事诉讼法若干问题的规定) [Issues Concerning the Implementation of the Provisions of the Criminal Procedure Law] (promulgated by the Ministry of Public Security, Supreme People's Court, Supreme People's Procuratorate, Dec. 26, 2012, effective Jan. 1, 2013) 2012 Standing Comm. Nat'l People's Cong. Gaz. (China), translated in LawinfoChina, <http://www.lawinfochina.com/display.aspx?lib=law&id=13295&CGid=> (last visited Jan. 28, 2014).

50. *Id.*

51. *Id.*

52. Press Release, European Parliament, Oil, Gas, Mineral and Logging Firms Obligated to Disclose Payments to Gov'ts (June 12, 2013), available at <http://www.europarl.europa.eu/news/en/news-room/content/20130607IPR11387/html/Oil-gas-mineral-and-logging-firms-obliged-to-disclose-payments-to-governments>.

designed to thwart efforts by companies from artificially dividing or combining payments to avoid disclosure. EU member states will have two years to transpose the rules into their own national legislation.⁵³

6. *Russia*

On January 1, 2013, amendments to Russia's anticorruption law, Federal Law No. 273-FZ "On Preventing Corruption," to require companies to have compliance officers and programs, went into effect.⁵⁴ The new rules require companies and organizations to create and operate specific departments dedicated to combating corruption and compliance with Russian anti-bribery provisions. The law now requires cooperation with enforcement authorities, the promulgation of a code of ethics for both employees and the company itself, and controls to prevent falsification of books and records, among other provisions.⁵⁵

7. *Ukraine*

In July 2013, the Ukraine passed an amendment to its existing anti-corruption laws. Of significance to foreign companies, the new law removes safeguards from liability from companies. Additionally, it introduces whistleblower protection laws, provides remedies for asset seizure and forfeiture, and significantly broadens the definition of "public official," adding auditors, commercial court judges, and others who are deemed to provide public services. The Act also forces public officials to disclose their assets and those of their families. Parts of the Act will take effect in September 2014, but other parts of the laws will be brought into force incrementally.⁵⁶

8. *United Kingdom*

On June 27, 2013, the U.K. authorities published a draft Code of Practice offering specific guidance on their intended use of Deferred Prosecution Agreements (DPAs). The use of DPAs has been a tool for U.S. federal prosecutors' arsenal for a number of years. DPAs are often viewed as a form of incentive for companies to self-report and cooperate with regulators. The idea of adopting DPAs was first introduced under the Crime and Courts Act 2013. Authorities held an open consultation in 2013, but noted in their formal

53. *Id.*

54. O vnesenii izmeneniy v otchel'nyye zakonodatel'nyye akty Rossiyskoy Federatsii v svyazi s prinyatiem Federal'nogo zakona «O kontrole za sootvetstviyem raskhodov lits, zameshchayushchikh gosudarstvennyye dolzhnosti, i inykh lits ikh dokhodam [On Amending Certain Laws of the Russian Federation in Connection with the Adoption of the Federal Law on the Control of the Conformity of Expenses of Persons Holding Public Offices and Other Persons to Their Income], ROSSIYSKAYA GAZETA [ROS. GAZ.] [Russian Newspaper], Dec. 7, 2012, p. 11 (Russ.), *available at* <http://www.rg.ru/2012/12/07/kontrol-dok.html>.

55. *Id.*

56. Pro vnesennyya zmín do deyakikh zakonodavchikh aktiv Ukraïni shchodo vikonannya Planu díy shchodo liberalizatsiï Evropeys'kim Soyuzom vízovogo rezhimu dlya Ukraïni stosovno vídpovídal'nosti yuridichnikh osíb [On Amendments to Certain Legislative Acts of Ukraine to Implement the Action Plan for the European Union Liberalization of the Visa Regime for Ukraine, Regarding Liability of Legal Entities], VIDOMOSTI VERKHOVNOY RADY UKRAYNY [Official Bulletin of the Verkhovna Rada of Ukraine], May 23, 2013, No. 314-VII (Ukr.), translated in VERKHOVNA RADA OF UKRAINE [Parliament of Ukraine], <http://zakon4.rada.gov.ua/laws/anot/en/314-18>.

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statement that the use of DPAs would likely be most appropriate “where the public interest is not best served by mounting a prosecution.” The DPAs may be used for fraud, bribery, and other economic crimes. As this is a draft and the consultation closed in September 2013, the full Code is not expected to be issued until 2014.⁵⁷

9. *Vietnam*

In June 2013, Vietnam announced a decree aimed at combating corruption and money laundering. Amongst other requirements, the decree mandates that government officials, lawmakers, military officers, and those attached to state security offices must declare their income and assets over 50 million dong (approximately U.S. \$2,300) on an annual basis.⁵⁸ First disclosures must be made by December 31, 2013.⁵⁹ Included in the list of assets are vehicles, land, cash, and properties held outside of Vietnam.⁶⁰

10. *Joint Efforts*

On June 11, 2013, the Australian Federal Police, the City of London Police, the FBI, and the Royal Canadian Mounted Police announced the formation of a new cross-border task force to combat corruption and bribery on an international scale.⁶¹ The City of London Police's Overseas Anti-Corruption Unit joins the other agencies as a partner in the International Foreign Bribery Taskforce. The group is expected to share information and strengthen the agencies' ability to work together.⁶²

On May 22, 2013, the U.K. and France announced they were jointly signing on to the Extractive Industries Transparency Initiative (EITI) designed to help the two countries work in harmony to address corruption in the extraction industries. The dual effort will be primarily aimed at exposing corruption in Africa.⁶³ The two countries' decision to sign the initiative sees them joining forty other countries engaged in combating systemic corruption on the continent.⁶⁴ Through EITI's efforts, countries can see the amount of taxes

57. Press Release, Serious Fraud Office, Deferred Prosecution Agreements: Consultation on Draft Code of Practice (June 27, 2013) (U.K.), *available at* <http://www.sfo.gov.uk/press-room/latest-press-releases/press-releases-2013/deferred-prosecution-agreements-consultation-on-draft-code-of-practice.aspx>.

58. Nghị định số 61/2013/NĐ-CP Về việc ban hành Quy chế giám sát tài chính và đánh giá hiệu quả hoạt động và công khai thông tin tài chính đối với doanh nghiệp do Nhà nước làm chủ sở hữu và doanh nghiệp có vốn nhà nước [Decree No. 61/2013/ND-CP of June 25, 2013, Promulgating the Regulation on Financial Supervision Operational Efficiency Assessment and Publication of Financial Information of State-Owned Enterprises and State-Invested Enterprises], CÔNG BÁO nos. 391-392, June 25, 2013, p. 3 (Viet.), *translated in* VIETNAM L. & LEGAL FORUM, http://vietnamlaw.vn.net.vn/index3.asp?CATEGORY_ID=11&SUBCATEGORY_ID=16&NEWS_ID=5677 (last visited Jan. 28, 2014).

59. *Id.*

60. *Id.*

61. Press Release, Royal Canadian Mounted Police, New Int'l Taskforce Combats Foreign Bribery (June 11, 2013), *available at* <http://www.rcmp-grc.gc.ca/ottawa/ne-no/pr-cp/2013/0611-iftb-grice-eng.htm>.

62. *Id.*

63. Press Release, Extractive Indus. Transparency Initiative, Fr. and U.K. Commit to Global Transparency (May 22, 2013), *available at* <http://eiti.org/news/france-and-united-kingdom-commit-global-transparency-standard>.

64. *Id.*

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paid by oil and mineral companies engaged in extraction efforts in African nations and what the host government declares has been paid.⁶⁵

III. Treaties and International Organizations

A. INTERNATIONAL CONVENTIONS

The year 2013 marked the 10th anniversary of the United Nations Convention Against Corruption (UNCAC).⁶⁶ During 2013, three new countries (Guinea, Kiribati, and Saudi Arabia) ratified the Convention, bringing the number of its state parties to 168.⁶⁷ With this many ratifications, UNCAC is undoubtedly the most important international anti-corruption instrument.

The UNCAC Implementation Review Group, the body charged with an overview of the Convention review process, held its Fourth Session meetings in May and November 2013.⁶⁸ The Implementation Review Group adopted country reviews for Algeria, Burundi, Cuba, Dominican Republic, Hungary, Lao PDR, Lesotho, Malaysia, Mauritius, Panama, Papua New Guinea, Peru, Portugal, Romania, Rwanda, United Arab Emirates, and Zimbabwe.⁶⁹ Based on the information included in the review reports on thirty-four state parties that had been completed, or were close to completion, at the time of the meetings, several thematic reports on the implementation of Chapters III (Criminalization and Law Enforcement) and IV (International Cooperation) of UNCAC were prepared for the Fifth Session of the Conference of the States Parties to the UNCAC held in November 2013 in Panama.⁷⁰ Despite remarkable progress in the UNCAC review process, it is significantly behind schedule, with approximately 120 country reviews to be completed in the two years remaining in the first cycle of reviews—a goal that appears unattainable.⁷¹

65. *Id.*

66. United Nations Convention Against Corruption, Oct. 31, 2003, 2349 U.N.T.S. 41.

67. *United Nations Convention Against Corruption Signature and Ratification Status as of 29 November 2013*, UNITED NATIONS OFF. ON DRUGS AND CRIME, <http://www.unodc.org/unodc/en/treaties/CAC/signatories.html> (last visited Jan. 28, 2014).

68. *Implementation Review Group of the United Nations Convention Against Corruption*, UNITED NATIONS OFF. ON DRUGS AND CRIME, <http://www.unodc.org/unodc/en/treaties/CAC/IRG-sessions.html> (last visited Jan. 28, 2014).

69. The country reviews are available at *Implementation Review Group of the United Nations Convention against Corruption, Resumed Fourth Session (Panama City, 26-27 November 2013)*, UNITED NATIONS OFF. ON DRUGS AND CRIME, <http://www.unodc.org/unodc/en/treaties/CAC/IRG-session4-resumed.html> (last visited Jan. 28, 2014).

70. Thematic reports on the implementation of Chapters III and IV are available at *Fifth Session of the Conference of the States Parties to the United Nations Convention against Corruption*, UNITED NATIONS OFF. ON DRUGS AND CRIME, <http://www.unodc.org/unodc/en/treaties/CAC/CAC-COSP-session5.html> (last visited Jan. 28, 2014).

71. United Nations Conference of the State Parties to the United Nations Convention Against Corruption, Fifth Session, Pan. City, Pan., Nov. 25–29, 2013, *Statement Submitted by Transparency International, a Non-Governmental Organization in Consultative Status with the Economic and Social Council*, U.N. Doc. CAC/COSP/2013/NGO/2, p. 4, (Nov. 6, 2013), available at <http://www.unodc.org/documents/treaties/UNCAC/COSP/session5/V1387616e.pdf>.

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Efforts under the Inter-American Convention Against Corruption⁷² expanded beyond reviewing the implementation of the Convention to include providing its member states with a set of useful and practical legal cooperation tools, in the form of model laws, to help build a culture of integrity and transparency in the region. The Twenty-First Meeting of the Committee of Experts of the Mechanism for Follow-Up to the Implementation of the Inter-American Convention against Corruption (MESICIC) in March 2013 adopted the Model Law on Declaration of Interests, Income, Assets and Liabilities of Persons Performing Public Functions⁷³ and the Model Law to Facilitate and Encourage the Reporting of Acts of Corruption and to Protect Whistleblowers and Witnesses.⁷⁴ The Model Law on the Declaration of Interest is based on the legislation of the member countries, the recommendations made by MESICIC, the legislative guide on the basic elements on statements of net worth and interests prepared by the Organization of American States (OAS) Department of Legal Cooperation, and best international standards.⁷⁵ The Model Law on Whistleblowers provides a set of provisions for protection of public officials and private citizens who report acts of corruption, including the protection of their identities, as provided by the Inter-American Convention Against Corruption.⁷⁶ In the framework of the Fourth Round of country reviews, MESICIC also adopted country reports on the implementation of the Convention by Argentina, Chile, Colombia, Costa Rica, Guatemala, Honduras, Panama, Peru, Trinidad and Tobago, and Uruguay.⁷⁷

The Organization for Economic Co-Operation and Development (OECD) continued its efforts to end foreign bribery. In January 2013, the OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions officially entered into force for Colombia, the Convention's fortieth member state.⁷⁸ During the year, the OECD Working Group on Bribery in International Business Transactions conducted peer reviews and adopted Phase 3 reports on Belgium and the Netherlands and a Phase 2 report on the Russian Federation.⁷⁹

72. Inter-American Convention Against Corruption, Mar. 29, 1996, 35 I.L.M. 724, available at <http://www.oas.org/juridico/english/Treaties/b-58.html>.

73. Organization of American States, Model Law on the Declaration of Interests, Income, Assets and Liabilities of Persons Performing Public Functions, Mar. 22, 2013, OEA/Ser.L, SG/MESICIC/doc.344/12 rev. 2, available at http://www.oas.org/juridico/PDFs/model_law_declaration.pdf.

74. Organization of American States, Model Law to Facilitate and Encourage the Reporting of Acts of Corruption and to Protect Whistleblowers and Witnesses, Mar. 22, 2013, OEA/Ser.L, SG/MESICIC/doc.345/12 rev. 2, available at http://www.oas.org/juridico/PDFs/model_law_reporting.pdf.

75. *OAS Model Law on Sworn Declarations of Net Worth*, ANTI-CORRUPTION NEWSL., (Org. of Am. States, Dep't of Legal Cooperation Secretariat of Legal Affairs, Washington, D.C.), Mar. 2013, No. 126, available at http://www.oas.org/juridico/newsletter/nl_en_126.htm.

76. *OAS Anti-Corruption Mechanism Approves Model Law to Protect Whistleblowers of Corruption*, ANTI-CORRUPTION NEWSL., (Org. of Am. States, Dep't of Legal Cooperation Secretariat of Legal Affairs, Wash., D.C.), Mar. 2013, No. 125, available at http://www.oas.org/juridico/newsletter/nl_en_125.htm.

77. *Country Reports: Reports Adopted by the Committee of Experts on the Provisions Selected for Analysis in the Framework of the Fourth Round*, ORG. OF AM. STS., http://www.oas.org/juridico/english/mesicic4_rep.htm (last visited Jan. 28, 2014).

78. Org. for Econ. Coop. and Dev., *Convention on Combating Bribery of Foreign Public Officials in International Business Transactions: Ratification Status as of 20 November 2012*, ORG. FOR ECON. CO-OPERATION AND DEV., <http://www.oecd.org/daf/anti-bribery/antibriberyconventionratification.pdf> (last visited Jan. 28, 2013).

79. ORG. FOR ECON. COOP. AND DEV., *PHASE 3 REPORT ON IMPLEMENTING THE OECD ANTI-BRIBERY CONVENTION IN BELGIUM*, ORG. FOR ECON. CO-OPERATION AND DEV. (Oct. 2013), available at <http://www.oecd.org/daf/anti-bribery/BelgiumPhase3ReportEN.pdf>; ORG. FOR ECON. COOP. AND DEV., *PHASE 3*

The Council of Europe's Group of States against Corruption (GRECO), charged with monitoring compliance with the implementation of the Council of Europe's Criminal Law Convention on Corruption, published the Fourth Evaluation Round Reports, which focus on prevention of corruption in respect to members of parliament, judges, and prosecutors for Estonia, Finland, Iceland, Latvia, Luxemburg, the Netherlands, Poland, Slovakia, Slovenia, Sweden, and the United Kingdom.⁸⁰ The third round compliance reports were issued on Cyprus, Czech Republic, Georgia, Hungary, Moldova, the Netherlands, Norway, and Portugal.⁸¹ Albania, Lithuania, and Spain were evaluated in the second round,⁸² and Liechtenstein received the joint first and second evaluation round report.⁸³

B. INTERNATIONAL ORGANIZATIONS

Recovery of illicitly gained assets hidden abroad remained in the center of international anti-corruption efforts in 2013. The Seventh Intersessional Meeting of the Conference of the States Parties to the United Nations Convention against Corruption, which took place in Vienna on August 29–30, 2013, adopted the report of the Intergovernmental Working Group on Asset Recovery and called upon state parties to increase the exchange of information and to collect and systematize good practices and tools in the cooperation for asset recovery, including the use and expansion of secure information-sharing tools.⁸⁴ The Working Group stressed the importance of coordinating the use of different channels of information exchange (such as the Egmont Group, INTERPOL, and others) and recommended enhancing coordination between financial intelligence units and anti-corruption agencies.⁸⁵

The Group considered the following measures, among others, to be crucial elements of successful asset recovery procedures:

- (a) Fast seizure and freezing mechanisms at the initial stages of an asset recovery case;
- (b) The early communication and sharing of information before starting formal mutual legal assistance procedures;
- (c) Case coordination meetings among the requested and requesting states; and

REPORT ON IMPLEMENTING THE OECD ANTI-BRIBERY CONVENTION IN NEW ZEALAND (Oct. 2013), available at <http://www.oecd.org/daf/anti-bribery/NewZealandPhase3ReportEN.pdf>; ORG. FOR ECON. COOP. AND DEV., PHASE 2 REPORT ON IMPLEMENTING THE OECD ANTI-BRIBERY CONVENTION IN THE RUSSIAN FEDERATION (Oct. 2013), available at <http://www.oecd.org/daf/anti-bribery/RussianFederationPhase2ReportEN.pdf>.

80. The reports are available at *Fourth Evaluation Round (launched in 2012)*, COUNCIL OF EUR., http://www.coe.int/t/dghl/monitoring/greco/evaluations/round4/ReportsRound4_en.asp (last visited Jan. 28, 2014).

81. The reports are available at *Third Evaluation Round (launched in 2007)*, COUNCIL OF EUR., http://www.coe.int/t/dghl/monitoring/greco/evaluations/round3/ReportsRound3_en.asp (Jan. 28, 2014).

82. The reports are available at *Second Evaluation Round*, COUNCIL OF EUR., [http://www.coe.int/t/dghl/monitoring/greco/evaluations/round2/reports\(round2\)_en.asp](http://www.coe.int/t/dghl/monitoring/greco/evaluations/round2/reports(round2)_en.asp) (last visited Jan. 28, 2014).

83. *Id.*

84. Conference of the States Parties to the United Nations Convention Against Corruption, August 29–30, 2013, *Report on the Meeting of the Open-Ended Intergovernmental Working Group on Asset Recovery Held in Vienna on 29 and 30 August 2013*, ¶¶ 51–53, U.N. Doc. CAC/COSP/WG.2/2013/4 (Sept. 4, 2013), available at <https://www.unodc.org/documents/treaties/UNCAC/WorkingGroups/workinggroup2/2013-August-29-30/V138613e.pdf>.

85. *Id.*

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(d) The exchange of experts.⁸⁶

The Arab Forum on Asset Recovery held its second intergovernmental meeting (AFAR II) in Marrakesh, Morocco, in October 2013. The event was co-hosted by the Kingdom of Morocco and the United Kingdom, in association with the Stolen Asset Recovery Initiative of the World Bank (StAR) and the United Nations Office on Drugs and Crime (UNODC).⁸⁷ AFAR II took stock of the progress that had been made in asset recovery efforts by “Arab Countries in Transition,” identified the remaining challenges in the recovery of stolen assets, and set the future objectives for asset recovery work to be carried out within the framework of the Arab Forum.⁸⁸

“[I]n a concerted effort to mobilize and coordinate operational support for international asset recovery and to deny safe havens to corrupt officials and their ill-gotten gains,” INTERPOL and StAR organized a joint event, the 4th Global Focal Point Conference on Asset Recovery, in Bangkok, Thailand, in July 2013. The global Focal Point Initiative allows the pooling of expertise and resources to help practitioners at the forefront of the asset recovery and asset confiscation processes. Currently, over 170 investigators and prosecutors from 99 countries are part of the Focal Points network.⁸⁹ The Secure Email Capacity for Asset Recovery (SECAR) was also launched at the conference. This INTERPOL tool allows Focal Points to exchange sensitive information directly and securely to improve the speed of international cooperation in tracing and recovering stolen assets.⁹⁰

At the meeting in St. Petersburg, Russia, the Group of 20 (G20) reiterated its determination to combat domestic and foreign bribery and endorsed the non-binding Guiding Principles on Enforcement of the Foreign Bribery Offence and the Guiding Principles to Combat Solicitation.⁹¹ The world’s largest economies agreed to continue developing and strengthening frameworks to facilitate cooperation among the G20 member countries in the fight against corruption; including establishing a network to share information and cooperate in order to deny entry to the member countries of corrupt officials, ensuring the independence of the judiciary, sharing best practices and enforcing legislation to protect whistleblowers, ensuring that anti-corruption authorities are free from any undue influence, and promoting the integrity of public officials.⁹² G20 members will pay special attention to combating corruption in high-risk sectors and sports and promote voluntary participation in EITI.⁹³

86. *Id.* ¶ 56.

87. Chair’s Statement by the Kingdom of Morocco and the United Kingdom of the Second Meeting of the Arab Forum on Asset Recovery (Oct. 26–28, 2013), *available at* http://star.worldbank.org/star/sites/star/files/chairs_statement_uk_morocco_at_afar_ii_conclusion.pdf.

88. *Arab Forum on Asset Recovery*, STOLEN ASSET RECOVERY INITIATIVE, <http://star.worldbank.org/star/ArabForum/About> (last visited Jan. 28, 2014).

89. Press Release, Akharakit Keeratithanachaiyos, Nat’l Anti-Corruption Comm’n, 4th Global Focal Point Conference on Asset Recovery Opens Amid High Expectations (July 3, 2013), *available at* <http://www.acauthorities.org/sites/aca/files/others/4th%20global%20focal%20point%20conference.pdf>.

90. *Id.* at 2.

91. RUSSIA G20: G20 LEADERS’ DECLARATION 26 (Sept. 5–6, 2013), *available at* <http://en.g20russia.ru/news/20130906/782776427.html> (follow “The G20 Leaders Declaration” link).

92. *Id.*

93. *Id.*

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In August, the World Bank Group launched a Sanctions System Review.⁹⁴ The system is an administrative process for sanctioning firms and individuals found to have engaged in corrupt, fraudulent, collusive, coercive, or obstructive practices in connection with Bank-financed projects. The World Bank sanctions regime has been in place for over fifteen years, has already undergone a number of reforms, and consultations are held every several years to undertake a self-assessment of the Sanctions program with input from stakeholders on the implementation of reform. The multi-phased review will run through 2014.⁹⁵

In 2013, OECD published a report on anti-corruption efforts in Eastern Europe and Central Asia in 2009–2013.⁹⁶ “The analysis is illustrated by examples of good practice from various countries and comparative cross-country data” and “analyzes three broad areas of anti-corruption work: anti-corruption policies and institutions; criminalization of corruption and ensuring enforcement; and measures to prevent corruption in public administration and in the business sector.”⁹⁷

OECD, UNODC, and the World Bank also released *The Anti-Corruption Ethics and Compliance Handbook for Business* to serve as a useful, practical tool for companies seeking compliance advice in one, easy-to-reference publication. The Handbook

provides an overview of the international anti-corruption framework, within which companies conducting international business must operate . . . a brief introduction to how companies can assess their risk in order to begin developing an effective anti-corruption ethics and compliance programme . . . [and] the business guidance instruments . . . further illustrated by real-life, anonymized case studies provided by companies.⁹⁸

A noteworthy StAR publication is *Left out of the Bargain: Settlements in Foreign Bribery Cases and Implications for Asset Recovery*.⁹⁹ The study looked at an increased use of settlements to enforce foreign bribery laws across the globe and the reasons why so little money is returned to the countries where corrupt acts took place.

94. THE WORLD BANK GROUP, REVIEW OF THE WORLD BANK GROUP SANCTIONS SYSTEM: CONSULTATION PLAN 1 (2013), available at http://consultations.worldbank.org/Data/hub/files/consultation-template/consultation-review-world-bank-group-sanctions-systemopenconsultationtemplate/materials/sanctionsreview_consultationplan.pdf.

95. *Id.*

96. ORG. FOR ECON. COOP. AND DEV., ANTI-CORRUPTION REFORMS IN EASTERN EUROPE AND CENTRAL ASIA: PROGRESS AND CHALLENGES, 2009-2013 3 (2013), available at <http://www.oecd.org/corruption/acn/istanbulactionplan/anti-corruption-reforms-eastern-europe-central-asia-2013.htm>.

97. *Id.*

98. ORG. FOR ECON. COOP. AND DEV., U.N. OFFICE ON DRUGS AND CRIME & THE WORLD BANK, ANTI-CORRUPTION ETHICS AND COMPLIANCE HANDBOOK FOR BUSINESS 3 (2013), available at <http://www.unodc.org/documents/corruption/Publications/2013/Anti-CorruptionEthicsComplianceHandbook.pdf>.

99. JACINTA ANYANGO ODUOR ET AL., LEFT OUT OF THE BARGAIN: SETTLEMENTS IN FOREIGN BRIBERY CASES AND IMPLICATIONS FOR ASSET RECOVERY 1–2 (2013), available at <http://star.worldbank.org/star/sites/star/files/9781464800863.pdf>.

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IV. Civil Society Efforts

A. TRANSPARENCY INTERNATIONAL

In 2013, Transparency International (TI) launched *Transparency in Corporate Reporting: Assessing Emerging Market Multinationals*, a report that assesses the corporate reporting practices of 100 large multinational companies from emerging markets. The new report is based on a review of what companies disclose publicly about the measures they have in place to fight corruption.¹⁰⁰ The average company score was a 3.6 out of a maximum of 10 points in the overall index. Only one in four of the 100 companies achieved an overall score of at least 50 percent.¹⁰¹

TI's 2013 report on OECD country enforcement of foreign bribery laws, *Exporting Corruption: OECD Progress Report 2013*,¹⁰² found that only four countries—the United States, Germany, the United Kingdom, and Switzerland, representing 26.2 percent of world exports—were in the highest classification of “active” enforcement. Another four countries are in the “moderate” enforcement category, with ten in the “limited” enforcement category. The remaining twenty countries were found to have “little to no” enforcement.¹⁰³

The TI Global Corruption Barometer 2013, a public opinion survey of 114,000 people in 107 countries, revealed that more than half of those surveyed believe that corruption has worsened in the last two years. Twenty-seven percent of respondents reported paying a bribe when accessing public services in the last twelve months.¹⁰⁴

Transparency International UK (TI UK) issued *Raising the Bar: Good Anti-Corruption Practices in Defence Companies (Part I)*, following last year's release of its Defence Companies Anti-Corruption Index (CI).¹⁰⁵ The report identifies and discusses seven areas that define anti-corruption best practices in the defense industry.

B. EXTRACTIVE INDUSTRIES TRANSPARENCY INITIATIVE

In 2013, EITI launched a new standard, to increase the level of detail and improve the reliability data provided by both companies and governments, including state-owned en-

100. BARBARA KOWALCZYK-HOYER & SUSAN CÔTÉ-FREEMAN, TRANSPARENCY INT'L, TRANSPARENCY IN CORPORATE REPORTING: ASSESSING EMERGING MARKET MULTINATIONALS 2, 4 (2013), *available at* http://www.transparency.org/whatwedo/pub/transparency_in_corporate_reporting_assessing_emerging_market_multinational (follow “Download the report” link).

101. *Id.*

102. FRITZ HELMANN ET. AL, TRANSPARENCY INT'L, EXPORTING CORRUPTION: PROGRESS REPORT 2013: ASSESSING ENFORCEMENT OF THE OECD CONVENTION ON COMBATING FOREIGN BRIBERY 4 (2013), *available at* http://www.transparency.org/whatwedo/pub/exporting_corruption_progress_report_2013_assessing_enforcement_of_the_oecd (follow “Download the report” link).

103. *Id.*

104. DEBORAH HARDOON & FINN HEINRICH, TRANSPARENCY INT'L, GLOBAL CORRUPTION BAROMETER 2013: REPORT 3, 6 (2013), *available at* <http://www.transparency.org/gcb2013/report>.

105. TRANSPARENCY INT'L UK, RAISING THE BAR: GOOD ANTI-CORRUPTION PRACTICE IN DEFENSE COMPANIES (PART I) 2 (2013), *available at* <http://www.ti-defence.org/publications/67-dsp-pubs-rtb>.

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terprises; and to require that EITI Reports contain basic contextual detail about a country's extractive sector.¹⁰⁶

This year, Albania,¹⁰⁷ Burkina Faso,¹⁰⁸ Cameroon,¹⁰⁹ Congo,¹¹⁰ Cote D'Ivoire,¹¹¹ Kazakhstan,¹¹² and Togo¹¹³ achieved compliance with the EITI standards, which indicates that each country has an effective process for annual disclosure and accountability of all revenues from its extractive sector. In total, twenty-five countries are currently compliant with the EITI standard.¹¹⁴

106. INT'L SECRETARIAT, EXTRACTIVE INDUS. TRANSPARENCY INITIATIVE, THE EITI STANDARD (Sam Bartlett & Dyveke Rogan eds., 2013), *available at* <http://eiti.org/document/standard>.

107. Press Release, Extractive Indus. Transparency Initiative, Albania Declared 'EITI Compliant' (May 3, 2013), *available at* <http://eiti.org/news/albania-declared-eiti-compliant>.

108. Press Release, Extractive Indus. Transparency Initiative, Congo and Burkina Faso Accepted as 'EITI Compliant' (Feb. 28, 2013), *available at* <http://eiti.org/news/congo-and-burkina-faso-accepted-eiti-compliant> [hereinafter EITI, Congo and Burkina Faso].

109. Press Release, Extractive Indus. Transparency Initiative, Cameroon Accepted as 'EITI Compliant' (Oct. 17, 2013), *available at* <http://eiti.org/news/cameroon-accepted-eiti-compliant>.

110. EITI, Congo and Burkina Faso, *supra* note 107.

111. Press Release, EITI, Cote D'Ivoire Accepted as 'EITI Compliant' (May 30, 2013), *available at* <http://eiti.org/news/c-te-d-ivoire-accepted-eiti-compliant>.

112. Press Release, Extractive Indus. Transparency Initiative, Kazakhstan Accepted as 'EITI Compliant' (Oct. 17, 2013), *available at* <http://eiti.org/news/kazakhstan-accepted-eiti-compliant>.

113. Press Release, Extractive Indus. Transparency Initiative, Togo Declared EITI Compliant (May 30, 2013), *available at* <http://eiti.org/news/togo-declared-eiti-compliant>.

114. *EITI Countries*, EXTRACTIVE INDUS. TRANSPARENCY INITIATIVE, <http://eiti.org/countries> (last visited Jan. 28, 2014).

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