Q2 2016: Regulatory Round-Up

This round-up contains a summary by sector of certain key global regulatory developments which occurred during the second quarter of 2016. The sectors covered in this round-up include:

- Financial Services
- Motor
- Technology
- Energy
- Telecommunications
- Construction
- Sport
- “Other”

Detail contained within is publicly available information. This Alert does not contain any legal commentary on the aforementioned.

Financial Services

Internal Investigations – Employee Cooperation

On 16 June 2016, the US Court of Appeals for the Second Circuit held that insurance broker Marsh & McLennan had good cause to terminate two employees for refusal to comply with its “reasonable order” to attend interviews during an internal investigation into bid-rigging allegations in 2004 and was not required to pay them any benefits. The court concluded that Marsh & McLennan’s interview demands were reasonable as a matter of law because at the time they were made, the two individuals were employed by the company and had been implicated in an alleged criminal conspiracy for acts that were within the scope of employment and that imperilled the company. Furthermore, Marsh & McLennan was entitled to seek information from its own employees about suspicions of on the job criminal conduct. The company was also entitled to take measures to protect its standing with investors, clients, employees and regulators. The court also noted that there is no doctrine which limits a company’s inquiries as to allegations of employee misconduct. The ruling provides a solid legal framework supporting the right of a company to terminate an employee who fails to cooperate in an internal investigation. Note that it remains an open issue as to whether the same rationale would support a request from a company for employees to cooperate with government investigations.

Weil’s New York Litigation team successfully represented Marsh & McLennan.
LIBOR

- On 7 June 2016, the Australian Securities and Investments Commission ("ASIC") accused National Australia Bank of "unconscionable conduct and market manipulation" in its involvement in setting the bank bill swap reference rate between June 2010 and December 2012. This follows similar allegations levelled at Westpac and ANZ Banking Group by ASIC.¹

- On 2 June 2016, two former Deutsche Bank traders, the bank’s supervisor of the Pool Trading Desk in New York and a derivatives trader in London, were indicted in the US for their alleged roles in a scheme to manipulate the USD LIBOR. The US Department of Justice ("DoJ") acknowledged assistance in the investigation from the US Commodity Futures Trading Commission ("CFTC"), the SFO and the UK Financial Conduct Authority ("FCA").²

- On 25 May 2016, the CFTC ordered Citibank to pay settlements totalling US$425 million for: (i) attempted manipulation of Yen LIBOR and Euroyen TIBOR; (ii) false reporting of Euroyen TIBOR and USD LIBOR; and (iii) attempted manipulation and false reporting of the USD International Swaps and Derivatives Association Fix, a global benchmark for interest rate products.³

- On 12 April 2016, Panama’s Attorney-General raided the offices of the Mossack Fonseca law firm to search for what the national police described as documentation that "would establish the possible use of the firm for illicit activities."⁷

- On 10 April 2016, the UK Government announced that a taskforce, jointly led by HMRC and the National Crime Agency, would investigate the Panama Papers. The taskforce will report its progress to the Chancellor and Home Secretary later this year.⁸

Sanctions

- The Policing and Crime Bill is progressing through UK Parliament. Under sections 89 and 90 of the Bill, sentences for sanctions violations (including new offences), would be increased on summary conviction from six months to twelve months, and on conviction on indictment from two years to seven years. Under section 91 of the Bill, HM Treasury/Office of Financial Sanctions Implementation ("OFSI") would be granted the right to impose a monetary penalty of up to £1 million or 50% of the estimated value of funds or resources involved in a prohibited transaction, subject to certain conditions.⁹

Money Laundering

- The FCA Business Plan for 2016/2017 states that financial crime and money laundering is one of seven themes that the FCA will focus on during the coming year. The FCA will work with the Treasury on the EU’s Fourth Money Laundering Directive and continue to contribute to the Financial Action Task Force.⁵

- In April 2016, the Government published an Action Plan setting out extensive reform to the anti-money laundering and counter-financing of terrorism regime and filing of Suspicious Activity Reports. The Action Plan focuses on the following areas: (i) a stronger partnership between the private sector and government agencies; (ii) reforming the supervisory regime; and (iii) increasing the international reach of law enforcement agencies and international information sharing to tackle money laundering and terrorist financing threats.⁶

Senior Managers Regime

- On 10 May 2016, two new statutory instruments came into force relating to misconduct by approved persons, as set out in sections 66A and 66B of the Financial Services and Markets Act 2000.

Other

- On 2 June 2016, Judge Herrington of the Upper Tribunal Tax and Chancery Chamber rejected the SFO and FCA’s application to postpone a former Deutsche Bank trader, Christian Bittar’s civil action against the regulator over the wording of the FCA’s settlement with Deutsche Bank in 2015. The SFO had sought to argue that Bittar’s case against the FCA should be stayed until the criminal case against him for alleged Euribor manipulation, set for September 2017, had concluded.¹¹

- On 19 May 2016, the FCA published the final notice it issued to Peter Francis Johnson, the former compliance officer of Keydata Investment Services
LTD. The FCA has publicly censured Mr Johnson and made an order (effective from 19 May 2016) prohibiting him from performing any function in relation to any regulated activity, on the basis that his conduct demonstrates he is not fit and proper. The FCA found that Mr Johnson failed to act with integrity in his role as Keydata’s compliance officer and misled the then Financial Services Authority on a number of occasions.12

On 12 May 2016, following the case brought by the FCA, known as operation Tabernula, two individuals, Martyn Dodgson, a senior investment banker and Andrew Hind, a Chartered Accountant, were sentenced to 4.5 years and 3.5 years imprisonment respectively, following being convicted of conspiring to insider deal between November 2006 and March 2010. Three defendants, Iraj Parvizi, Ben Anderson and Andrew Harrison were acquitted.13

Motor
On 28 June 2016, Volkswagen entered into a partial settlement with the US Environmental Protection Agency, the Federal Trade Commission and a class action, agreeing to pay US$14.7 billion.14 The settlement must be approved by a federal judge in California. The DoJ has stated that it will continue with its criminal investigation into multiple companies and individuals.

German prosecutors are investigating whether Volkswagen employees deleted potentially incriminating data a week before admitting to installing illegal software in its diesel cars to cheat emissions tests, according to the Süddeutsche Zeitung.15

Technology
On 24 May 2016, French prosecutors raided Google’s Paris office as part of a preliminary investigation into tax fraud which it commenced in June 2015.16

Energy
At the beginning of July, the SFO was granted special government funding to pursue its investigation into Eurasian Natural Resources Corporation, the Kazakh-based miner.17

On 1 April 2016, it was announced that the authorities in Monaco had raided the headquarters of Unaoil. The Monaco authorities stated that “these searches and interviews were carried out in the presence of British officials as part of a vast, international corruption scandal implicating numerous foreign oil industry firms. The information collected is going to be examined by the British authorities as part of their investigation.”18

Telecommunications
- On 7 June 2016, the Securities and Exchange Commission ("SEC") announced a non-prosecution agreement ("NPA") with internet services provider Akamai Technologies. Akamai has agreed to pay US$652,452 plus interest. According to the NPA, Akamai’s foreign subsidiary arranged US$40,000 in payments to induce government-owned entities to purchase more services than they actually needed. Employees at the foreign subsidiary violated the company’s written policies by providing improper gift cards, meals, and entertainment to officials at these state-owned entities to build business relationships. The company self-reported the misconduct promptly, and co-operated extensively with the ensuing SEC Investigations. The declination is under the Foreign Corrupt Practices Act ("FCPA") pilot programme.19

- On 2 May 2016, Siemens AG SIEGn.GE agreed to pay Israel 160 million shekels (£29.31 million) to settle allegations that the group bribed executives at a state-owned utility company to win contracts.20

- At the end of April 2016, the General Counsel and Chief Finance Officer of Norwegian telecoms company, Telenor, stepped down following an internal investigation which uncovered “internal weaknesses” of its handling of its minority shareholding in Russian company, VimpelCom.21

Construction
- On 9 June 2016, Brazilian administrative anti-corruption authority, the Ministry of Transparency announced that it had banned Skanska from bidding on government contracts. A statement by the ministry said Skanska’s Brazilian subsidiary had participated in a cartel to reduce competition for contracts with the country’s state-controlled oil company Petrobras and between 2003 and 2012 the Skanska subsidiary, allegedly paid US$900,000 in bribes to win a US$380 million contract with Petrobras to do construction work on an oil terminal.22

- On 28 April 2016, Brazil’s Comptroller General barred Mendes Junior Engenharia from public tenders for at least two years. The engineering company was the first to be penalised for involvement in the Petrobras scandal.23
Self-reported potential foreign bribery concerns relating to its Peru operations to the DoJ and SEC. On 29 April 2016, the Canadian Supreme Court ruled that the World Bank did not waive immunity by helping police examine corruption allegations against construction company SNC-Lavalin and stated that “shielding an organization’s entire collection of stored documents, including official records and correspondences, is integral to ensuring their proper, independent functioning.”

On 8 April 2016, the SFO confirmed that it had opened a criminal investigation into activity at Speciality Steels, a business unit of Tata Steel.

On 5 April 2016, the DoJ announced that it had launched a pilot programme designed to provide greater transparency regarding the benefits of voluntary disclosure. The one year program establishes more stringent criteria for full cooperation credit than those that have been traditionally articulated by the DoJ, while capping cooperation credit for companies that fail to voluntarily self-disclose FCPA violations at significantly less than for those that do. (Please see our Alert entitled “New DOJ FCPA Enforcement Plan Raises Stakes, Creates Further Uncertainty”).

On 11 April 2016, former FIFA vice president and executive committee member, Alfredo Hawit, pleaded guilty to four counts of conspiracy linked to a bribery scandal in football’s governing body. Each count could lead to up to 20 years in jail. He is also due to forfeit US$950,000.

On 10 June 2016, South Korean prosecutors raided Lotte Group’s headquarters as part of an ongoing investigation into an alleged ‘slush-fund’ and bribery.

On 9 June 2016, the UK Financial Reporting Council launched an investigation into Deloitte’s handling of the financial statements of Serco, an outsourcing company under investigation by the UK’s SFO for alleged fraud in an electronic monitoring contract with the government.

On 6 June 2016, the SFO published operational guidance in relation to interviews conducted pursuant to section 2 of the Criminal Justice Act 1987. The guidance replaces the SFO’s previous Operational Handbook. Under the handbook, there was an inferred presumption that the interviewee was entitled to legal representation from the solicitor of his or her choice, with the qualification that the SFO had discretion to prohibit attendance of a specific solicitor or law firm if they were concerned that the firm was also acting for the company in the investigation and there was a real risk of prejudice to the investigation. The new guidance provides that the SFO has discretion to allow a lawyer to attend only “if the case controller believes it likely they will assist the purpose of the interview […] or that they will provide essential assistance to the interviewee by way of legal advice or pastoral support.”

On 12 May 2016, a former manager of a polymer banknote manufacturer, Securency PTY Ltd, was sentenced to two and a half years imprisonment on four counts of making corrupt payments to a Nigerian official, contrary to the Prevention of Corruption Act 1906.

On 11 May 2016, David Cameron stated that the UK Government would consult on extending the criminal offence of failure to prevent bribery, found in section 7 of the UK Bribery Act, to “other economic crimes such as fraud and money laundering.”

On 4 May 2016, Quad/Graphics, a Wisconsin-headquartered commercial printing company,
17. http://www.ft.com/cms/s/0/eddb276e-3fb3-11e6-9f2c-36b487ebd80a.html#axzz4DQDnmfh
20. http://uk.reuters.com/article/uk-israel-siemens-idUKKCN0XT1B9
25. http://www.ft.com/cms/s/0/1f24970-2ecd-11e6-9398-152a09ac4d4d.html#axzz4BF841q1fs
28. https://www.sfo.gov.uk/2016/05/12/former-securitymanager-sentenced-corruption/
30. http://investors.qg.com/phoenix.zhtml?c=231687&p=iol-SECText&TExT=aHR0cDovL2FwaS50ZW5rd2l6YXJkLmNvbS9tmaWxpbcnueG1sP1Z2Py9wYWdPTEwQTE0OTwkJc0RVE9MSZTVRE9MTQmU1FERVNDPVNFQ1RJT05fUE-FHRSZleHA9JnN1YnNpZD01Nw%3D%3D
32. https://www.sfo.gov.uk/2016/04/08/tata-steel-investigation/
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