

## Anti-Corruption

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### I. United States Developments

Significant anti-corruption policy developments occurred in 2015, despite fewer Foreign Corrupt Practices Act (FCPA) cases announced by the U.S. Department of Justice (DOJ).<sup>1</sup> The pace of developments with the U.S. Securities and Exchange Commission (SEC) remained largely unchanged.

#### A. SIGNIFICANT POLICY DEVELOPMENTS

##### 1. *Yates Memo*

In what has been referred to as the “Yates Memo,” the DOJ announced a policy to increasingly target individuals in corporate crimes.<sup>2</sup> Corporations will now be eligible for cooperation credit only if they provide the DOJ with “all relevant facts” relating to all individuals responsible for misconduct, regardless of the level of seniority.<sup>3</sup> DOJ criminal and civil investigations are required to focus on investigating individuals “from the inception of the investigation.”<sup>4</sup> In order to resolve a case against a corporation, the DOJ should have a “clear plan” to resolve open investigations of individuals.<sup>5</sup>

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1. Trends in Anti-Corruption Enforcement 2015, DAVIS POLK CLIENT MEMO, *available at* [http://www.davispolk.com/sites/default/files/Trends\\_in\\_Anti-Corruption\\_Enforcement\\_%202015.pdf](http://www.davispolk.com/sites/default/files/Trends_in_Anti-Corruption_Enforcement_%202015.pdf).

2. Sally Quillian Yates, *Individual Accountability for Corporate Wrongdoing*, U.S. DEP’T OF JUSTICE (Sept. 9, 2015), *available at* <http://www.justice.gov/dag/file/769036/download>.

3. *Id.* at 3-4.

4. *Id.* at 4.

5. *Id.* at 6.

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2. *Limitations on Accomplice Liability*

In a controversial ruling in *United States v. Hoskins*,<sup>6</sup> accomplice liability was significantly limited under the anti-bribery provisions of the FCPA. The district court held that an individual not directly subject to the jurisdiction of the FCPA as a domestic concern or as an employee, officer, or director of a domestic concern cannot be liable as an accomplice under the anti-bribery provisions.

3. *Princelings*

Internships for children of officials of sovereign wealth funds were the focus of the SEC's settlement with The Bank of New York Mellon Corporation (BNY Mellon) for violations of the anti-bribery and internal controls provisions of the FCPA.<sup>7</sup> BNY Mellon employees viewed the internships as important to keep the sovereign wealth fund's business.<sup>8</sup>

Sales staff and client relationship managers were permitted wide discretion in making initial hiring decision and human resources was not trained to flag hires that were potentially problematic. Senior managers were able to approve hires requested by foreign officials with no mechanism to ensure that potential hiring violations were reviewed by anyone with a legal or compliance background.<sup>9</sup>

4. *FIFA*

In *United States v. Webb*,<sup>10</sup> the DOJ demonstrated its willingness as well as the scope of its efforts to address corruption associated with the Federation Internationale de Football Association (FIFA). No violations of the anti-bribery provisions were alleged. Instead, the indictment charged fourteen individuals with racketeering, wire fraud, and money laundering conspiracies as well as underlying substantive accounts.<sup>11</sup> The activities that flowed in various ways through the U.S. served as the basis for establishing territorial jurisdiction for the charges.<sup>12</sup>

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6. Ruling on Defendant's Second Motion to Dismiss the Indictment, *United States v. Hoskins*, No. 3:12-cr-00238-JBA (Aug. 13, 2015), ECF No. 270, available at <https://ecf.ctd.uscourts.gov/doc1/04114701422>.

7. Press Release, *SEC Charges BNY Mellon with FCPA Violations*, SEC. & EXCH. COM'N, 2015-170 (Aug. 18, 2015), available at <http://www.sec.gov/news/pressrelease/2015-170.html>.

8. Order Instituting Cease-and-Desist Proceedings, *In the Matter of The Bank of New York Mellon Corporation*, SEC Adm. Proceeding No. 3-16762, ¶ 14 (Aug. 18, 2015), available at <http://www.sec.gov/litigation/admin/2015/34-75720.pdf>.

9. *Id.* at ¶ 27.

10. Indictment, *United States v. Webb*, No. 15 CR 0252 (RJD) (E.D.N.Y., May 20, 2015), ECF No. 1, available at <http://www.justice.gov/opa/file/450211/download>.

11. *Id.*; Press Release, *Nine FIFA Officials and Five Corporate Executives Indicted for Racketeering, Conspiracy, and Corruption*, U.S. DEP'T OF JUSTICE, 15-677, (May 27, 2015), available at <http://www.justice.gov/opa/pr/nine-fifa-officials-and-five-corporate-executives-indicted-racketeering-conspiracy-and>.

12. *Cf.* Indictment, *Webb*, *supra* at note 10.

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B. U.S. DEPARTMENT OF JUSTICE

1. *Public International Organization*

In *United States v. Harder*,<sup>13</sup> violations of the FCPA's anti-bribery provisions, in combination with violations of the Travel Act for commercial bribery as well as international money laundering, were charged in a grand jury indictment against a U.S. resident for the payment of bribes for the benefit of a senior official of the European Bank for Reconstruction and Development (EBRD), a "public international organization" under the FCPA.<sup>14</sup> The bribes were paid to the sister of the EBRD's official for his influence in affecting certain EBRD procurement decisions.<sup>15</sup>

2. *Impact of Cooperation*

In conjunction with the investigation of a privately held U.S. company, Louis Berger International, Inc. (LBI), two former LBI officials entered pleas for conspiring to violate the anti-bribery provisions of the FCPA for orchestrating the payment of bribes to government officials in various countries.<sup>16</sup> Despite the extent and seriousness of the allegations, a deferred prosecution agreement (DPA) was entered due to LBI's self-reporting, extent of cooperation, "including voluntarily making both U.S. and foreign employees available for interviews, and collecting, analyzing and organizing evidence and information for federal investigators," extensive remediation, "including terminating the officers and employees responsible for the corrupt payments," and its "demonstrated commitment to improving its compliance program and internal controls."<sup>17</sup>

3. *Charging Foreign Officials*

In *United States v. Mikerin*,<sup>18</sup> a Russian official residing in the United States pled guilty to conspiring to commit money laundering with two individuals who sought to influence him in violation of the FCPA's anti-bribery provisions. Mikerin was the president of a U.S.-based subsidiary of a subsidiary of Russia's State Atomic Energy Corporation.

C. SECURITIES AND EXCHANGE COMMISSION

1. *The PBSJ Corporation*

The SEC entered into a DPA with The PBSJ Corporation (PBSJ) involving the funneling of funds by its Qatari subsidiary to a company owned and controlled by a Qatari official in exchange for confidential "sealed-bid and pricing information" that enabled the

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13. Indictment, *United States v. Harder*, No. 2:15-cr-0001-PD (E.D. Pa., Jan. 6, 2015), ECF No. 1, available at <http://www.justice.gov/criminal-fraud/file/482396/download>.

14. *Id.*

15. *Id.*

16. Press Release, *Louis Berger International Resolves Foreign Bribery Charges*, U.S. DEPT. OF JUSTICE, 15-903, (July 17, 2015), available at <http://www.justice.gov/opa/pr/louis-berger-international-resolves-foreign-bribery-charges>.

17. *Id.*

18. Superseding Information, *United States v. Mikerin*, No. 8:14-cr-00529-TDC (D. Md., Aug. 27, 2015), ECF No. 98, available at <http://www.justice.gov/criminal-fraud/file/782186/download>.

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subsidiary to secure winning bids.<sup>19</sup> “PBSJ ignored multiple red flags.”<sup>20</sup> But upon discovery, PBSJ self-reported and “cooperated substantially.”<sup>21</sup> At the same time, a former official of PBSJ agreed to a cease-and-desist order for violating the FCPA’s anti-bribery and accounting and record-keeping provisions.<sup>22</sup>

2. *Goodyear*

Violations of the FCPA’s accounting and record-keeping provisions were the basis of the SEC’s settlement with Goodyear Tire & Rubber Company for bribes paid by its subsidiaries to promote sales in Kenya and Angola.<sup>23</sup> “Bribes were generally paid in cash to employees of private companies or government-owned entities as well as other local authorities such as police or city council officials. The improper payments were falsely recorded as legitimate business expenses.”<sup>24</sup>

3. *FLIR Systems*

Violations of the FCPA’s anti-bribery, accounting, and record-keeping provisions were the basis of the SEC’s order instituting a settled administrative proceeding against FLIR Systems, Inc. (FLIR).<sup>25</sup> FLIR was found to have few internal controls over gifts and travel.<sup>26</sup> In order to secure contracts with Saudi Arabia’s Ministry of Interior, expensive watches were given to and extravagant travel was arranged for Saudi officials.<sup>27</sup> The value of the gifts and the extent and nature of the travel were falsely recorded as legitimate business expenses.<sup>28</sup> FLIR’s internal controls failed to catch the improper payments despite documentation suggesting extravagant gifts and travel.<sup>29</sup>

4. *BHB Billiton*

The SEC’s order instituting a settled administrative proceeding against BHP Billiton and BHP Billiton Plc (BHPB), a combination of two companies with American Depository Shares (ADRs) listed with the SEC, found violations of the FCPA’s accounting

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19. Press Release, *SEC Charges Former Executives at Tampa-Based Engineering Firm with FCPA Violations*, SEC. & EXCH. COM’N, 2015-13, s (Jan. 22, 2015), available at <http://www.sec.gov/news/pressrelease/2015-13.html>.

20. *Id.*

21. *Id.*

22. Order Instituting Cease-and-Desist Proceedings, *In the Matter of Walid Hatoum*, SEC Admin. Proceeding No. 3-16352, ¶¶ 26-29 (Jan. 22, 2015), available at <http://www.sec.gov/litigation/admin/2015/34-74112.pdf>.

23. Press Release, *SEC Charges Goodyear with FCPA Violations*, SEC. & EXCH. COM’N, 2015-38, (Feb. 24, 2015), available at <http://www.sec.gov/news/pressrelease/2015-38.html>.

24. *Id.*

25. Order Instituting Cease-and-Desist Proceedings at ¶¶ 22-25, *In the Matter of FLIR Systems, Inc.*, Admin. Proceeding No. 3-16478 (Apr. 8, 2015), available at <http://www.sec.gov/litigation/admin/2015/34-74673.pdf>.

26. *Id.* at ¶¶ 17-18.

27. *Id.* at ¶¶ 5-15.

28. *Id.*

29. *Id.* at ¶ 14.

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and record-keeping provisions.<sup>30</sup> BHPB failed to devise and maintain sufficient internal controls over its global hospitality program connected to its sponsorship of the 2008 Summer Olympic Games in Beijing.<sup>31</sup> BHP Billiton invited government officials and employees of state-owned enterprises to attend the Games at its expense while those officials were in a position to help BHP Billiton.<sup>32</sup> Its “check the box approach” was found to be insufficient.<sup>33</sup>

5. *Mead Johnson*

Actions of distributors of Mead Johnson Nutrition Company’s (Mead Johnson) Chinese subsidiary were the basis of its settlement with the SEC for violations of the FCPA’s accounting and record-keeping provisions.<sup>34</sup> Health care professionals at state-owned hospitals were compensated through funds generated by discounts to distributors that were, in part, allocated for certain marketing and sales efforts.<sup>35</sup> Although the discounts contractually belonged to the distributors, the Chinese subsidiary exercised some control over how the proceeds from the discounts were spent.<sup>36</sup> The internal controls did not provide reasonable assurances that the expenditures made through distributors were made in accordance with management’s authorization.<sup>37</sup>

6. *Garcia*

In the SEC’s settlement with Vincinte E. Garcia, a sales official of one of the entities of SAE SE, a German corporation with ADRs registered with the SEC, the cease-and-desist order found violations of the FCPA’s anti-bribery provisions and accounting record-keeping provisions.<sup>38</sup> Garcia used various circuitous means of creating substantial discounts that were used to generate profits to fund bribes to Panamanian officials.<sup>39</sup>

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30. Order Instituting Cease-and-Desist Proceedings at ¶¶ 35-38, *In the Matter of BHP Billiton Ltd. and BHO Billiton Plc*, SEC Admin. Proceeding No. 3-16546 (May 20, 2015), available at <http://www.sec.gov/litigation/admin/2015/34-74998.pdf>.

31. *Id.* at ¶¶ 16-24.

32. *Id.* at ¶¶ 8-15.

33. Press Release, *SEC Charges BHP Billiton with FCPA Olympic Games*, SEC. & EXCH. COM’N, 2015-229, (May 20, 2015), <http://www.sec.gov/news/pressrelease/2015-93.html>.

34. Order Instituting Cease-and-Desist Proceedings, *In the Matter of Mead Johnson Nutrition Company*, SEC Admin. Proceeding No. 3-16704, ¶ 14 (July 28, 2015), available at <http://www.sec.gov/litigation/admin/2015/34-75532.pdf>.

35. *Id.* at ¶¶ 7-9.

36. *Id.* at ¶ 10.

37. *Id.* at ¶¶ 12-13.

38. Order Instituting Cease-and-Desist Proceedings, *In the Matter of Vincente E. Garcia*, SEC Admin. Proceeding No. 3-16750, ¶¶ 22-24 (Aug. 12, 2015), available at <http://www.sec.gov/litigation/admin/2015/34-75684.pdf>.

39. Press Release, *SEC Charges Former Software Executive with FCPA Violations*, SEC. & EXCH. COM’N, 2015-165 (Aug. 12, 2015), available at <http://www.sec.gov/news/pressrelease/2015-165.html>.

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7. *Hitachi*

In the complaint associated with the SEC's settlement with Hitachi, Hitachi is alleged to have sold a 25 percent interest in its South African subsidiary to a company serving as a front for the African National Congress (ANC).<sup>40</sup>

This arrangement gave the front company and the ANC the ability to share in the profits from any power station contracts that Hitachi secured. . . . Through a separate, undisclosed arrangement, Hitachi paid the front company an additional \$1 million in 'success fees' that were inaccurately booked as consulting fees without appropriate documentation.<sup>41</sup>

The failure to respond to red flags and the absence of due diligence, training, and sufficient explanation in accounting records were among the internal controls violations.<sup>42</sup>

8. *Bristol-Myers Squibb Company*

Bristol-Myers Squibb Company (BMS) entered into a settlement with the SEC regarding a violation of the FCPA's internal controls and record-keeping provisions by BMS's majority-owned joint venture in China.<sup>43</sup> BMS failed to design and maintain effective internal controls relating to health care providers (HCPs) at state-owned and state-controlled hospitals in China.<sup>44</sup> Representatives of the joint venture improperly generated funds that were used to provide corrupt inducements to HCPs that were, in turn, falsely recorded as legitimate business expenses in the joint venture's books and records.<sup>45</sup>

## II. Enforcement Actions Abroad

### A. CASES

1. *Algeria*

In May 2015, a court in Algiers sentenced fourteen individuals to jail and fined seven foreign firms—including ones from China, Japan, Switzerland, Canada, Spain, and Portugal—50,000 million euros (\$56.4 million) each for convictions involving corruption, money laundering, and embezzlement related to a massive highway infrastructure project.<sup>46</sup> Chani Mejdoub, a financial consultant and citizen of Luxembourg, was

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40. Complaint, *Sec. & Exch. Com'n v. Hitachi, Ltd.*, No. 1:15-cv-01573, ECF No. 1 (D.D.C., Sept. 28, 2015), available at <http://www.sec.gov/litigation/complaints/2015/comp-pr2015-212.pdf>.

41. Press Release, *SEC Charges Hitachi with FCPA Violations*, SEC. & EXCH. COM'N, 2015-212 (Sept. 28, 2015), available at <http://www.sec.gov/news/pressrelease/2015-212.html>.

42. Complaint at ¶¶ 70-72; *Hitachi*, No. 1:15-cv-01573, at note 40.

43. Press Release, *SEC Charges Bristol-Myers Squibb with FCPA Violations*, SEC. & EXCH. COM'N (Oct. 5, 2015), available at <http://www.sec.gov/news/pressrelease/2015-229.html>.

44. *Id.*

45. *Id.*

46. Associated Foreign Press, *Algeria Jails 14, Fines Foreign Firms in Corruption Case*, THE GUARDIAN (May 7, 2015), <http://www.ngrguardiannews.com/2015/05/algeria-jails-14-fines-foreign-firms-in-corruption-case/>.

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sentenced to ten years imprisonment.<sup>47</sup> In addition, Mejdoub and Mohamed Khelladi, former high-ranking officials at the ministry of public works, were individually fined 30,000 million euros (\$33.8 million) and the court seized their property.<sup>48</sup>

2. *Argentina*

Jorge Molina, representative of the German company Atlantic Zeiser (AZ), Armando Gostanian, former President of the Argentine Mint, and two others were sentenced in August 2015 for their roles in paying and receiving bribes between 1996—1999.<sup>49</sup> Molina received a two-year sentence and \$200,000 fine; Gostanian received a five-year sentence and was ordered to pay back \$800,000 in illicit monies.<sup>50</sup> Two other officials were given three-year prison sentences and were required to return nearly \$100,000 each.<sup>51</sup>

3. *China*

The anti-corruption campaign being waged by Chinese President Xi Jinping touched numerous Chinese companies—including state-owned enterprises (SOEs)—as executives from China National Petroleum Corporation (CNPC),<sup>52</sup> China Telecom Corp Ltd.,<sup>53</sup> the National Health and Family Planning Commission Bureau of Medical Administration,<sup>54</sup> Wilson Engineering Services Co. Ltd.,<sup>55</sup> FAW Group Corp.,<sup>56</sup> Sinopec Group,<sup>57</sup> and Wuhan Iron and Steel Corp.<sup>58</sup> were all arrested and found guilty of corruption and graft in 2015. Private company Baidu—the country’s largest search engine company—fired

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47. *Id.*

48. *Id.*

49. *Condenaron a Gostanián a 5 años de prisión y a devolver 800 mil dólares* [Gostanián was Convicted to 5 Years in Prison and to Repay \$800,000], CLARIN (Aug. 14, 2015), [http://www.clarin.com/politica/gostanian\\_0\\_1412259169.html](http://www.clarin.com/politica/gostanian_0_1412259169.html).

50. *Id.*

51. *Id.*

52. See Adam Rose & Judy Hua, *Former PetroChina Chairman Jiang Jiemin Sentenced to 16 Years in Prison – State TV*, REUTERS (Oct. 12, 2015), <http://www.reuters.com/article/china-corruption-trial-idUSB9N11N01N20151012>; see also *Ex-China Energy Official Sentenced to 20 Years for Corruption*, VOICE OF AMERICA (Oct. 13, 2015), <http://www.voanews.com/content/ex-china-energy-official-sentenced-to-twenty-year-for-corruption/3003890.html>.

53. See Matthew Robertson, *Top Exec at Chinese State Telco is Purged*, EPOCH TIMES (Apr. 17, 2015), <http://www.theepochtimes.com/n3/1324467-top-exec-at-chinese-state-telco-is-purged/>.

54. See Zhao Han, *Former Health Officials Detained as Graft Fighters Target Hospital*, CAIXIN ONLINE (May 7, 2015), <http://english.caixin.com/2015-05-07/100807275.html>.

55. See *PetroChina Supplier Wilson Says Found Guilty of Bribery in China*, REUTERS (Aug. 6, 2015), [http://www.rigzone.com/news/oil\\_gas/a/139996/PetroChina\\_Supplier\\_Wison\\_Says\\_Found\\_Guilty\\_of\\_Bribery\\_in\\_China](http://www.rigzone.com/news/oil_gas/a/139996/PetroChina_Supplier_Wison_Says_Found_Guilty_of_Bribery_in_China).

56. See Jeffrey Young, *Beijing’s Ongoing Corruption Probe Casts Wide Net*, VOICE OF AMERICA (Mar. 23, 2015), <http://www.voanews.com/content/beijings-ongoing-corruption-probe-casts-wide-net/2688681.html>; see also Jake Spring, *Former Top Exec at China’s FAW Car Investigated for Graft*, REUTERS (October 13, 2015), <http://www.reuters.com/article/2015/10/13/china-corruption-faw-idUSL3N12D3MT20151013>.

57. See Kwao Pappah, *Former President of Sinopec Kicked-Out of Communist Party, to be Prosecuted for Corruption*, CHINA TOPIX (Sept. 18, 2015), <http://www.chinatopix.com/articles/65811/20150918/wang-tianpu-former-president-sinopec-kicked-out-communist-party-prosecuted.htm>.

58. See Domonique Patton, *China Investigates Former Chairman of Wuban Iron and Steel*, REUTERS (Aug. 30, 2015), <http://www.reuters.com/article/2015/08/30/us-china-corruption-wuhan-steel-idUSKCN0QZ06620150830>.

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eight executives, and more than 4,000 employees of Huawei admitted to having engaged in some form of corruption.<sup>59</sup>

4. *Cuba*

In July 2015, seven people were convicted in connection with a scheme by Uruguayan company DFS to bribe officials at Cuba's national oil company, Cubapetroleo (CUPET), and the Research Center for the Chemical Industry (RCCI).<sup>60</sup> Emilio Enrique Cotter, an Argentinian national and representative of DFS in Cuba, was sentenced to ten years imprisonment for his role in the deals with CUPET and paying bribes to the RCCI employees.<sup>61</sup> Six other Cuban nationals were also sentenced.<sup>62</sup>

5. *Norway*

In July 2015, four former executives of Yara International ASA (Yara) were sentenced to prison for their role in one of the country's largest corruption scandals.<sup>63</sup> Thorleif Enger, Yara's former CEO, received three years imprisonment; former chief legal officer Kendrick Wallace was sentenced to two and half years; and Tor Holba and Daniel Clauw each received two year terms for bribing officials in Libya and India to enter joint-venture deals in those countries.<sup>64</sup> In 2014, Yara admitted to the bribes and paid a \$35.91 million fine.<sup>65</sup>

6. *United Kingdom*

The U.K. Serious Fraud Office (SFO) has continued enforcement<sup>66</sup> against individuals for violations of the country's old statute, the Prevention of Corruption Act,<sup>67</sup> and has also brought its first case<sup>68</sup> under the Bribery Act of 2010 (UKBA).<sup>69</sup> The first to be charged under the UKBA were two British citizens charged with bribing a Norwegian government official to conceal the origins of seven decommissioned Norwegian naval gunboats that the pair sought to sell to the Nigerian former Niger Delta warlord, Government

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59. Manny Salvacion, *Baidu Fires Eight Executives Accused of Criminal Behavior*, YIBADA (May 15, 2015), <http://en.yibada.com/articles/32952/20150515/baidu-eight-executives-criminal-behavior.htm>.

60. *Cuban Oil Company Faces Loss, Damages*, CUSTOMS TODAY (July 10, 2015), <http://www.customstoday.com.pk/cuban-oil-company-faces-loss-damages/>.

61. *Id.*

62. *Id.*

63. Stine Jacobsen & Joachim Dagenborg, *Former Yara Executives Sentenced to Prison in Corruption Case*, REUTERS (July 7, 2015), <http://www.reuters.com/article/2015/07/07/us-yara-intl-lawsuit-idUSKCN0PHILY20150707>.

64. *Id.*

65. *Id.*

66. See David Green, Director, Speech at the Cambridge Symposium on Economic Crime (Sept. 2, 2014), available at <https://www.sfo.gov.uk/2014/09/02/cambridge-symposium-2014/>.

67. Prevention of Corruption Act, 1906, 6 Edw. 7, c. 34 (U.K.).

68. See *Two British Business Men Arrested Over Bribe Involving Gunboats Sold to Tompolo*, OMOJUWA (Jan. 21, 2015), <http://omokuwa.com/2015/01/two-british-business-men-arrested-over-bribe-involving-gunboats-sold-to-tompolo/>.

69. Bribery Act, 2010, c. 23 (U.K.).

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Ekpemuplo (or Tompolo), but destined purportedly for the Nigerian Maritime Administration and Safety Agency.<sup>70</sup>

A British national and resident of the Philippines pled guilty to multiple counts of conspiracy to corrupt, not under the UKBA, but under Section 1 of the Criminal Law Act of 1977.<sup>71</sup> Graham Marchment, a procurement engineer, conspired with others to deliberately share confidential oil and gas project bid information to rival bidders in return for payments disguised as commissions.<sup>72</sup> Marchment was sentenced to two and half years in prison.<sup>73</sup>

On February 12, 2015, two executives from Smith and Ouzman, Ltd. (S&A)—Christopher John Smith, former chairman, and Nicholas Charles Smith, former director of sales—were sentenced for their role in making corrupt payments to win contracts for S&A in Kenya and Mauritania.<sup>74</sup> Christopher Smith was sentenced to eighteen months imprisonment and Nicholas Smith to three years.<sup>75</sup>

The Crown Court sentenced Guido Bakker and Sijbrandus Scheffer—two Dutch nationals who formerly ran a consulting business—to one year and fifteen months in prison, respectively, for receiving bribes from Missionpharma (Mission), a Dutch pharmaceutical company. Bakker and Scheffer were involved in assisting Mission to obtain United Nations contracts in the Democratic Republic of Congo worth £66 million.

In June 2015, the British High Court ruled in favor of protecting the identity of informants and whistleblowers, even in the context of due diligence reports where the sources are journalists.<sup>76</sup>

**B. LEGISLATIVE EFFORTS**

**1. Brazil**

On March 19, 2015, the Brazilian federal government issued regulations<sup>77</sup> related to the Clean Companies Act.<sup>78</sup> Among its elements, the Decree establishes guidelines for the calculation of corporate fines (along with certain reductions for mitigating factors),<sup>79</sup> discusses the circumstances for the publishing of sanctions decisions,<sup>80</sup> sets forth the

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70. *Two British Business Men Arrested Over Bribe Involving Gunboats Sold to Tompolo*, *supra* note 68.

71. Press Release, Guilty Plea in Multi-Million Pound Energy Corruption Case, SERIOUS FRAUD OFFICE (May 11, 2015), *available at* <https://www.sfo.gov.uk/2015/05/11/guilty-plea-in-multi-million-pound-energy-corruption-case/>.

72. *Id.*

73. *Id.*

74. Press Release, Two Men Sentenced Following Corruption Trial, SERIOUS FRAUD OFFICE (Feb. 12, 2015), *available at* <https://www.sfo.gov.uk/2015/02/12/two-men-sentenced-following-corruption-trial/>; see also Benton et al., *Anti-Corruption*, 49 *THE YEAR IN REVIEW* 307, 317 (2015).

75. *Id.*

76. See *Rio Tinto PLC v. Vale S.A. and Others*, [2015] EWHC 1865 (Q.B.), [37]-[38], *available at* <http://www.bailii.org/ew/cases/EWHC/QB/2015/1865.html>.

77. Decreto No. 8420, de 18 de Marco de 2015, Diário Oficial da União [D.O.U.] (Braz.).

78. Lei No. 12.846, de 1 de Agosto de 2013, Diário Oficial da União [D.O.U.] (Braz.).

79. Decreto No. 8420, *supra* note 78, at capítulo II, art. 17.

80. *Id.* at capítulo II, art. 24.

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requirements for corporate leniency agreements,<sup>81</sup> and provides a framework for evaluating corporate compliance programs.<sup>82</sup>

2. *China*

In August 2015, China amended its criminal law to, among other things, remove the option of a reduced prison time for those who have been convicted of serious corruption charges and received a two-year suspended death sentence.<sup>83</sup> Individuals will now face life imprisonment after the two-year period. Changes also included making it a criminal offense to pay bribes to close family members of state government officials. The amendments went into effect November 1, 2015.<sup>84</sup>

3. *France*

In April 2015, the French Ministry of Justice's independent arm—the Central Service for the Prevention of Corruption [Service Central de Prévention de la Corruption] (SCPC)<sup>85</sup>—issued a series of non-binding guidelines intended “to strengthen the fight against corruption in commercial transactions.”<sup>86</sup> The guidelines reference the need for organizations to: obtain full management commitment; conduct risk assessments; and establish an anti-corruption compliance program that includes, among other things, control mechanisms, communications, training, and follow-up.<sup>87</sup>

4. *Germany*

In January 2015, the German government adopted a set of reforms to the German Criminal Code<sup>88</sup> focused on increasing penalties for commercial bribery,<sup>89</sup> bringing German law into alignment with the U.N. Convention Against Corruption<sup>90</sup> and criminalizing both passive and active bribery in business transactions. The revamped law does not contemplate an offense if there is no competitive advantage gained from the transaction. Rather, it extends criminal penalties against employees and agents for their behavior from a breach of duty perspective.<sup>91</sup>

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81. *Id.* at capítulo III, art. 28.

82. *Id.* at capítulo IV, art. 41-42.

83. *China Adopts Amendments to Criminal Law*, CHINA.ORG.CN (Aug. 29, 2015), [http://www.china.org.cn/china/2015-08/29/content\\_36452178.htm](http://www.china.org.cn/china/2015-08/29/content_36452178.htm).

84. *Id.*

85. Service Central de Prévention de la Corruption [Central Service of Corruption Prevention], MINISTÈRE DE LA JUSTICE [MINISTRY OF JUSTICE], <http://www.justice.gouv.fr/le-ministere-de-la-justice-10017/service-central-de-prevention-de-la-corruption-12312/#SCPC> (last visited Feb. 23, 2016).

86. *Id.*, English version *available at*: <http://www.justice.gouv.fr/multilinguisme-12198/english-12200/the-central-service-for-the-prevention-of-corruption-24860.html>.

87. *Id.*

88. STRAFGESETZBUCH [StGB] (PENAL CODE), Oct. 10, 2013, BUNDESGESETZBLATT, § 299.

89. *Bribery Act – Germany gets ready for stricter criminal laws*, LEXOLOGY (March 17, 2015), <http://www.lexology.com/library/detail.aspx?g=3c349eaf-7ac4-4e03-8e47-795789a2a8b4>.

90. United Nations Convention against Corruption, G.A. Res. 58/4, Art. 15, U.N. Doc. A/RES/58/4 (Oct. 31, 2003).

91. STRAFGESETZBUCH at § 299.

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In July, the German government also adopted a draft bill, §299a StGB *Passive and active corruption in the healthcare sector*, specifically designed to address corruption committed by the medical profession and the pharmaceutical and medical device industry.<sup>92</sup> The amendments prohibit doctors and pharmacists from accepting any transferred value for referring patients, promoting medical products, or dispensing medicines or devices, among other provisions. There is no de minimis exception.

5. *Italy*

In June 2015, Italy implemented a new Anti-Bribery Bill.<sup>93</sup> The new law was written to combat organized crime, corruption against the state, false accounting, and other related crimes. Amendments include, among other things, increased prison terms for those convicted of bribery,<sup>94</sup> extended debarment and suspension,<sup>95</sup> extended penalties against Italian officials for corruption<sup>96</sup> (including members of the judiciary),<sup>97</sup> increased penalties (including prison time) for many bribery offenses, accounting offenses extended to all companies,<sup>98</sup> and underscoring the role of the National Authority for Anti-Corruption.

6. *Mexico*

In May 2015, President Enrique Peña Nieto signed into law several reforms, one of which will create a new National Anti-Corruption System (SNA). The SNA will have responsibility for enforcing anti-corruption laws, have enhanced audit and investigative powers, and eventually provide stronger sanctions for corporations who engage in bribery.<sup>99</sup>

7. *Russia*

In July 2015, Russia amended its Code of Administrative Offenses to include fines for foreign companies operating in Russia who engage in bribery<sup>100</sup> and for those “outside” of the country who are involved in corruption if the act “affects Russia’s interests”<sup>101</sup> or if the

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92. LEXOLOGY, *supra* note 93.

93. Law No. 69 of May 6, 2015, Provisions on Crimes Against the Public Administration, Mafia-Type Associations and False Accounting, GAZETTA UFFICIALE No. 124 (May 30, 2015), NORMATTIVA (in Italian)) <http://www.normattiva.it/uri-res/N2Ls?urn:nir:stato:legge:2015-05-27;69>.

94. *Id.* at art. 314.

95. *Id.* at art. 35.

96. *Id.* at art. 319.

97. *Id.* at art. 319-ter.

98. *Id.* at art. 32-d.

99. *Mexico Adopts National Anti-Corruption Enforcement System: The Global Trend of Anti-Corruption Statutes*, TAFT, (July 16, 2015), <http://taftlaw.com/news/publications/detail/1259-mexico-adopts-national-anti-corruption-enforcement-system-the-global-trend-of-anti-corruption-statutes>.

100. *Russian govt. commission approves bill introducing fines for corrupt foreign businesses*, RUSSIAN LEGAL INFORMATION AGENCY, (July 22, 2015), [http://rapsinews.com/anticorruption\\_news/20150722/274234639.html](http://rapsinews.com/anticorruption_news/20150722/274234639.html)

101. КОДЕКС РОССИЙСКОЙ ФЕДЕРАЦИИ РФ ОБ АДМИНИСТРАТИВНЫХ ПРАВОНАРУШЕНИЯХ [KOAP RF] [Code of Administrative Violations] art. 19.28 (Russ.).

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corporation was held liable for the same offense in another country. Fines will range from three to one hundred times the amount of the bribe paid.<sup>102</sup>

Earlier in the year, Russian President Vladimir Putin signed a new law that reduced fines for the giving and demanding of bribes. Penalties for bribes worth less than 25,000 rubles will now be fined at ten times the amount of the bribe, a reduction from the previous twenty-five times. Additionally, both bribe takers and givers were given extended time (sixty days) to self-report and pay the fine.<sup>103</sup>

8. *South Korea*

In March 2015, Korea enacted a new anti-corruption law,<sup>104</sup> known as the Kim Young-ran Law,<sup>105</sup> with several controversial provisions. Article 2 of the Law is applicable to private and public school teachers and journalists,<sup>106</sup> as well as public officials. The Law imposes penalties of up to three years imprisonment and fines of up to five times the amount of the bribe accepted for those convicted of receiving anything of value in excess of approximately \$900 (USD) in one payment, whether or not the item or amount was related to the individual's work or was directly related to favors sought.<sup>107</sup> The law also requires public officials to report spouses who receive bribes. Failure to report carries criminal penalties.<sup>108</sup> The law also imposes liability on companies for violations by their employees, although demonstration of internal controls to prevent and detect bribery could provide exemption from liability.

9. *Switzerland*

In September 2015, the Swiss parliament amended the country's criminal code to make private corruption an automatic criminal offense.<sup>109</sup> Previously, a complaint had to be made to a Swiss court before private corruption matters could be investigated. The amended law imposes a maximum penalty of three-year's jail time and the possibility of sanctions against private entities. The law will apply to private companies, private associations, and sports federations.

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102. *Id.*

103. *Putin Signs Law Reducing Penalties for Corruption*, MOSCOW TIMES, (March 10, 2015), <http://www.themoscowtimes.com/news/article/putin-signs-law-reducing-penalties-for-corruption/517212.html>.

104. Minbeob [Civil Act], Act. No. 13 278, Mar. 27, 2015, (S. Kor.).

105. Named after the former Supreme Court Justice and Chairwoman of the Anti-Corruption and Civil Rights Commission who proposed it.

106. Minbeob at art. 2.

107. Minbeob at art. 22.

108. *South Korea: Controversial Anti-Corruption Law Promulgated*, LAW LIBRARY OF CONGRESS (Apr. 16, 2015), <http://www.loc.gov/law/foreign-news/article/south-korea-controversial-anti-corruption-law-promulgated/>.

109. Arnout Geeraert, *Switzerland prepares stricter laws against sports corruption*, PLAY THE GAME (July 11, 2014), <http://www.playthegame.org/news/news-articles/2014/switzerland-prepares-stricter-laws-against-sports-corruption/>.

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10. *Thailand*

On July 9, 2015, Thailand amended its Anti-Corruption Act<sup>110</sup> to extend new penalties to both government officials and to foreigners who engage in bribery. Those found guilty under Article 13 for “taking bribes in return for malfeasance,”<sup>111</sup> will now face the imposition of sentences of five to twenty years of imprisonment, life imprisonment, or the death penalty, as well as fines that can range from 100,000 to 400,000 baht (approximately \$2,855-\$11,420).<sup>112</sup> The penalties under the amended Act will extend to individuals in the private sector, foreign officials, and employees of international organizations operating in Thailand convicted of corruption.<sup>113</sup>

11. *Tunisia*

In July 2015, Tunisian President Beji Caid Essebsi introduced a controversial new draft law on “economic reconciliation.” The law would provide amnesty to both individuals in the private sector and civil servants accused of corruption. It pardons those charged or convicted of financial corruption if they confess and return the bribe monies.<sup>114</sup>

12. *Ukraine*

In April 2015, a new set of anti-corruption laws went into effect.<sup>115</sup> State-owned entities with more than 5,000 employees and annual revenue in excess of \$3.3 million are required to develop anti-corruption compliance programs.<sup>116</sup> The same requirement is made of private companies involved in public procurement involving services worth more than \$230,000 or goods valued in excess of \$47,000.<sup>117</sup> Private companies must appoint an anti-corruption compliance officer, conduct risk assessments, possess articulated employee codes of conduct, implement monitoring programs, draft whistleblower or complaint mechanisms and protections, provide anti-corruption training to their employees, and include compliance provisions in their third-party contracts.<sup>118</sup> There are no penalties for failure to maintain a compliance program, but the government has indicated it will consider the existence or non-existence of one in determining whether to prosecute.<sup>119</sup>

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110. ORGANIC ACT, (2015) (Thai).

111. *Thailand: Anti-Corruption Law Penalties Extended to Foreigners*, LAW LIBRARY OF CONGRESS (Aug. 7, 2015), <http://www.loc.gov/law/foreign-news/article/thailand-anti-corruption-law-penalties-extended-to-foreigners/>.

112. *Id.*

113. *Id.*

114. *Tunisians protest against corruption amnesty law*, AL JAZEERA (Sept. 12, 2015), <http://www.aljazeera.com/news/2015/09/tunisians-protest-corruption-amnesty-law-150912165912469.html>.

115. EUROPEAN BUSINESS ASSOCIATION, *Ukraine Adopts New Anti-Corruption Laws*, News from Members, (November 18, 2014), <http://www.eba.com.ua/en/information-support/news-from-members/item/30595-2014-11-18-1040>.

116. *Id.*

117. *Id.*

118. *Id.*

119. *Id.*

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**III. Treaties and International Organizations**

A. TREATIES

The United Nations Convention Against Corruption (UNCAC)<sup>120</sup> added four new members in 2015 – Gambia, Grenada, South Sudan, and Tuvalu – increasing the number of States Parties to 177.<sup>121</sup>

In 2015, the UNCAC Implementation Review Group adopted country reviews for Armenia, Bahrain, Bolivia, Colombia, Cook Islands, Dominica, Egypt, FYR Macedonia, Ghana, Ireland, Israel, Kiribati, Liechtenstein, Luxembourg, Madagascar, Malta, Marshall Islands, Micronesia, Nauru, Palau, Qatar, Poland, Sri Lanka, Tunisia, and Uruguay.<sup>122</sup> To date, a total of 113 Executive Summaries and ninety-nine full country review reports have been finalized. One hundred forty eight direct dialogues (country visits or joint meetings) have taken place, and one hundred sixty three responses to the self-assessment checklist have been received.

In November 2015, the Conference of the State Parties to the UNCAC held its sixth session in St. Petersburg.<sup>123</sup> The biennial Conference brought together representatives from member states, inter-governmental organizations, civil society, the private sector, and the media, in what is considered to be the world's largest anti-corruption gathering. The Conference commended the identification of corruption and bribery as one of the goals listed in the Sustainable Development Goals. Among other topics discussed were the need to tackle illicit financial flows and recovery of stolen assets.<sup>124</sup>

Efforts under the Inter-American Convention against Corruption<sup>125</sup> also concentrated on reviewing member countries' implementation of the Convention. At its Twenty-Fifth Meeting, held in March 2015, the Committee of Experts of the Follow-up Mechanism for the Implementation of the Inter-American Convention against Corruption adopted reports on Antigua and Barbuda, Bahamas, and the United States of America.<sup>126</sup>

In 2015, the OECD Working Group on Bribery in International Business Transactions, the body responsible for monitoring implementation and enforcement of the Convention on Combating Bribery of Foreign Public Officials in International Business Transactions

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120. U.N. Convention Against Corruption, G.A. Res 58/4, U.N. Doc. A/RES/58/4 (Oct. 31, 2003).

121. G.A. Res. 58/4, *supra* note 124; Doc. A/58/422 (Dec. 1, 2015).

122. Conference of the States Parties to the United Nations Convention against Corruption, Vienna, June 1-5, 2015, *Implementation Review Group on its sixth session*, ¶ 79, U.N. Doc. CAC/COSP/IRG/2015/5.

123. Conference of the States Parties to the United Nations Convention against Corruption, St. Petersburg, Russ., Nov. 2-6, 2015, *Progress report on the implementation of the mandates of the Working Group on Asset Recovery*, U.N. Doc. CAC/COSP/2015/3.

124. *Id.* ¶¶ 35, 37.

125. Inter-American Convention Against Corruption art. 9, Mar. 29, 1996, S. Treaty Doc. No. 105-39, I.L.M. 724.

126. *Country Reports of the Fourth Round*, ORGANIZATION OF AMERICAN STATES, [http://www.oas.org/juridico/english/mesicic4\\_rep.htm](http://www.oas.org/juridico/english/mesicic4_rep.htm).

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(the OECD Anti-Bribery Convention)<sup>127</sup> conducted peer reviews and adopted Phase 2 Reports on Colombia and Latvia and Phase 3 Reports on Greece and Israel.<sup>128</sup>

The Council of Europe's Group of States against Corruption (GRECO), the group that monitors implementation of the Council of Europe's Criminal Law Convention on Corruption, published the Fourth Evaluation Round reports, which focuses on prevention of corruption by members of parliament, judges, and prosecutors for Azerbaijan, Greece, Hungary, Malta, Montenegro, and the Republic of Serbia.<sup>129</sup> Third Evaluation Round Compliance Reports, concentrating on transparency in the funding of political parties and electoral campaigns, were completed for Austria.<sup>130</sup> Third Evaluation Round Second Compliance Reports were further completed for Azerbaijan, Cyprus, Georgia, Hungary, Republic of Moldova, Montenegro, Portugal, and Romania.<sup>131</sup>

GRECO's 2015 annual report<sup>132</sup> summarizes the findings of the evaluations. Despite noticeable progress made by several countries, GRECO expressed concerns about the slow progress made by a significant number of states in implementing its recommendations to prevent and combat corruption, in particular, its recommendations on the transparency of political funding.<sup>133</sup> This poor performance is mainly attributed to the difficulty of "reaching a viable agreement among political parties."<sup>134</sup>

**B. INTERNATIONAL ORGANIZATIONS**

The G20 Anti-Corruption Working Group (ACWG) held three meetings in 2015. The first meeting was held in Istanbul in March 2015.<sup>135</sup> The Group agreed on several actions, including "developing an SME [small and medium-sized enterprise] toolkit for anti-corruption issues and establishing an international center for ethics and integrity for the business community in close cooperation with the B20; producing G20 high-level principles on anti-corruption, ethics and compliance, in line with the principles developed by APEC [Asia Pacific Economic Cooperation] as well as OECD and UNODC [United Nations Office of Drugs and Crime], . . . and initiating dialogue with financial institutions to discuss their role in and experiences with handling the risks related to the movement of proceeds of corruption."<sup>136</sup>

127. *OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions*, OECD, <http://www.oecd.org/corruption/oecdantibriberyconvention.htm>.

128. *Country Reports on the Implementation of the OECD Anti-Bribery Convention*, OECD, <http://www.oecd.org/corruption/anti-bribery/anti-briberyconvention/countryreportsontheimplementationoftheoecdanti-briberyconvention.htm>.

129. *Fourth Evaluation Round (launched in 2012)*, GROUP OF STATES AGAINST CORRUPTION (GRECO) (Feb. 25, 2016), [http://www.coe.int/t/dghl/monitoring/greco/evaluations/round4/ReportsRound4\\_en.asp](http://www.coe.int/t/dghl/monitoring/greco/evaluations/round4/ReportsRound4_en.asp).

130. *Third Evaluation Round (launched in 2007)*, GROUP OF STATES AGAINST CORRUPTION (GRECO), [https://www.coe.int/t/dghl/monitoring/greco/evaluations/round3/ReportsRound3\\_en.asp](https://www.coe.int/t/dghl/monitoring/greco/evaluations/round3/ReportsRound3_en.asp).

131. *Id.*

132. Group of States Against Corruption, *15th General Activity Report* (2014), [http://www.coe.int/t/dghl/monitoring/greco/documents/2015/Greco\(2015\)1\\_GAR2014\\_EN.pdf](http://www.coe.int/t/dghl/monitoring/greco/documents/2015/Greco(2015)1_GAR2014_EN.pdf).

133. Press Release, Fighting corruption in Europe: regulating conflicts of interest of parliamentarians, judges and prosecutors must be a priority, GROUP OF STATES AGAINST CORRUPTION (June 18, 2015), [https://www.coe.int/t/dghl/monitoring/greco/news/News2015/News\(20150618\)ActRep2014\\_en.asp](https://www.coe.int/t/dghl/monitoring/greco/news/News2015/News(20150618)ActRep2014_en.asp).

134. *Id.*

135. *First G20 Anti-Corruption Working Group Meeting held in Istanbul*, G20, <http://g20.org/first-g20-anti-corruption-working-group-meeting-held-in-istanbul/>.

136. *Id.*

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The Second G20 ACWG meeting was held in Washington, D.C. in June 2015 and continued work from the first meeting.<sup>137</sup> The Group reviewed and finalized (in principle) a draft of the Principles on Public Procurement and also discussed a draft of proposed principles on the disposition and management of recovered assets. The Third ACWG meeting took place in Paris in October 2015.<sup>138</sup> The Group discussed the revised draft G20 private sector compliance principles.

The Fifth Annual High-Level Anti-Corruption Conference for G20 Governments and Business, jointly organized by the Turkish Presidency of the G20 and the OECD, held in March 2015, built on the conclusions of the G20 and B20 discussions, implementing the G20 priority for closer cooperation between governments and the private sector.<sup>139</sup>

In March 2015, the OECD held its third annual Integrity Week with the theme of “Corruption and Investment” at OECD Headquarters in Paris.<sup>140</sup> Integrity Week, and its central public event, the Integrity Forum, featured high-level discussions on mapping corruption risks in the investment cycle, identifying potential ways to mitigate and prevent corruption in investment, and on the Forum’s background document – “Curbing Corruption: Investing in Growth.”<sup>141</sup> Based on the discussion of the Integrity Forum, this text evolved into a practical tool: the Integrity Framework for Public Investment.

In September 2015, OECD launched a report on greater cooperation and information sharing between government agencies to counter financial crimes.<sup>142</sup> The report was released at the Fourth OECD Forum on Tax and Crime, where more than 200 senior officials and specialists from more than seventy countries and international organizations discussed the need to “strengthen[] the links between criminal tax investigations and the fight against illicit financial flows such as tax evasion, bribery and corruption, money laundering, [and] terrorist financing.”<sup>143</sup>

The Sixteenth International Anti-Corruption Conference (IACC) that was held in Malaysia in September 2015 focused on the theme “*Ending Impunity: People. Integrity. Action.*”<sup>144</sup> “It welcomed nearly 1,200 people from 130 countries.”<sup>145</sup> The discussions effectively resulted in the adoption of the Sixteenth IACC Declaration, in which a number

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137. *Second G20 Anti-Corruption Working Group Meeting held in Washington D.C.*, G20, <http://g20.org.tr/second-g20-anti-corruption-working-group-meeting-held-in-washington-d-c/>.

138. *Id.*

139. *Fifth Annual High Level Conference of Anti-Corruption organized in Istanbul*, G20, <http://g20.org.tr/fifth-annual-high-level-conference-on-anti-corruption-organized-in-istanbul/>.

140. Angel Gurriá, Secretary-General, OECD, Closing Remarks (Mar. 26, 2015), available at <http://www.oecd.org/about/secretary-general/oecd-integrity-forum-2015-curbing-corruption-investing-in-growth-closing-remarks.htm>.

141. *Background Document, 3RD OECD Integrity Forum: Curbing Corruption Investing in Growth*, OECD 26 (March 25-26, 2015), <http://www.oecd.org/gov/ethics/curbing-corruption-document.pdf>.

142. *OECD launches report on greater co-operation and information sharing between government agencies to counter financial crimes*, ORG. FOR ECON. COOPERATION AND DEV. (Sept. 18, 2015), <http://www.oecd.org/tax/oecd-launches-report-on-greater-cooperation-and-information-sharing-between-government-agencies-to-counter-financial-crimes.htm>.

143. *Id.*

144. *A glimpse into the 16th International Anti-Corruption Conference*, UNDP (Sept. 10, 2015), <http://www.ua.undp.org/content/ukraine/en/home/presscenter/articles/2015/09/10/a-glimpse-into-the-16th-international-anti-corruption-conference.html>

145. *Id.*

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of governments, including Germany, Norway, Switzerland, the UK, and the U.S., expressed their commitment to end impunity.<sup>146</sup>

The Asian Development Bank (ADB) engaged in numerous anti-corruption initiatives in 2015, including an update of its Integrity Principles and Guidelines (IPG).<sup>147</sup> In particular, the function of the Sanction Appeals Committee Secretariat was moved from the Office of Anticorruption and Integrity (OAI) Head to a senior staff outside OAI to strengthen the independence of the sanctions appeal process. Other measures to ensure application of a consistent approach to the sanctions process and to strengthen ADB due diligence processes were also included in the updated measures.

Following the launch of Ukraine's Anti-Corruption Initiative in May 2015, the EBRD has helped Ukraine set up a Business Ombudsman Council.<sup>148</sup> The Business Ombudsman, as part of the Anti-Corruption Initiative, was created by a Memorandum of Understanding between the Ukrainian government, international organizations including the EBRD and the OECD, and several Ukrainian business associations. The Business Ombudsman is a key effort to improve the investment climate in Ukraine. The Business Ombudsman Council has issued two quarterly reports, one for the period April-June 2015<sup>149</sup> and one for July-September 2015.<sup>150</sup>

EBRD also adopted its revised Enforcement Policy and Procedures (EPPs), which became effective in November 2015.<sup>151</sup> The revised EPPs provide for a two-stage decision making process, as opposed to the one-stage procedure set forth in the earlier version.

The revised EPPs include the option of resolution through a settlement agreement, as well as the introduction of two new Prohibited Practices—"obstructive practice" and "misuse of the Bank's resources."<sup>152</sup>

The Inter-American Development Bank (IDB) also adopted new Sanctions Procedures, which became effective in June 2015.<sup>153</sup> Among the procedures are changes to the criteria for imposing a temporary sanction and a mechanism for negotiated resolution agreements of cases prior to the commencement of proceedings.<sup>154</sup>

The World Bank Group was significantly active on the anti-corruption front in 2015. In October, the Integrity Vice Presidency (INT) issued its Annual Update highlighting

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146. *Statement by the Friends of the IAAC—"We Hear the Call"*, IAAC (Sept. 5, 2015), <http://16iacc.org/blog/2015/09/05/statement-by-the-friends-of-the-iacc-we-hear-the-call/>.

147. OFFICE OF ANTICORRUPTION AND INTEGRITY, *Integrity Principles and Guidelines*, ASIAN DEV. BANK (2015), <http://www.adb.org/sites/default/files/institutional-document/32131/integrity-principles-guidelines.pdf>.

148. Anton Usov, *Ukraine and EBRD launch initiative to combat corruption*, EUR. BANK FOR RECONSTRUCTION & DEV. (May 12, 2014), <http://www.ebrd.com/news/2014/ukraine-and-ebrd-launch-initiative-to-combat-corruption.html>.

149. *Quarterly Report (April-June 2015)*, BUS. OMBUDSMAN COUNCIL, [https://boi.org.ua/media/uploads/boc\\_qreport\\_july\\_2015\\_pdf\\_eng\\_v1.pdf](https://boi.org.ua/media/uploads/boc_qreport_july_2015_pdf_eng_v1.pdf).

150. *Quarterly Report (Quarter III, 2015)*, BUS. OMBUDSMAN COUNCIL, [https://boi.org.ua/media/uploads/q3report/q3\\_2015\\_report\\_en.pdf](https://boi.org.ua/media/uploads/q3report/q3_2015_report_en.pdf).

151. *Enforcement Policy and Procedures*, EUR. BANK FOR RECONSTRUCTION & DEV. (Nov. 2015), <http://www.ebrd.com/news/publications/policies/enforcement-policy-and-procedures.html>.

152. *Id.* at 3, 24.

153. Inter-American Development Bank, *Sanctions Procedures* 1 n.\* (2015), <http://idbdocs.iadb.org/wsdocs/getdocument.aspx?docnum=39676437>.

154. *Id.* at § 15.4.

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the World Bank Group's contributions to the global movement to end corruption.<sup>155</sup> The report shows how early detection of red flags and prompt action to mitigate risk by project teams resulted in preventing "approximately \$138 million . . . from being awarded to companies that had attempted to engage in misconduct."<sup>156</sup> Among the key results achieved in FY15 are substantiated investigations that involved sixty-one projects and ninety-three contracts worth about \$523 million, resulting in seventy-three sanctioned entities, in addition to twenty-six cross-debarments.<sup>157</sup> In addition, the World Bank Group "entered into eleven Negotiated Resolution Agreements (NRAs) with entities ranging from small businesses to major multinational companies."<sup>158</sup>

#### IV. Civil Society Efforts

##### A. TRANSPARENCY INTERNATIONAL (TI)

In 2015, TI released its eleventh annual report on OECD member efforts to enforce the OECD Anti-Bribery Convention.<sup>159</sup> *Exporting Corruption, Progress Report 2015: Assessing Enforcement of the OECD Convention on Combatting Foreign Bribery* uses statistics from 2011-2014 to rank the forty-one OECD Convention countries according to enforcement activity: active, moderate, limited, and little or no enforcement.<sup>160</sup> Two countries, Iceland and Latvia, are not classified in the 2015 report.<sup>161</sup>

Again this year, Germany, Switzerland, the U.K., and the U.S., with 22.8 percent of world exports, ranked as the only active enforcers.<sup>162</sup> Norway moved to moderate enforcement from limited enforcement, now joining Australia, Austria, Canada, Finland, and Italy.<sup>163</sup> The twenty-nine other member countries ranked in the bottom two categories, providing insufficient or no corruption deterrence.<sup>164</sup> Greece, Netherlands, and South Korea moved to limited enforcement from little or no enforcement this year, and Argentina fell to little or no enforcement from limited enforcement.<sup>165</sup>

TI also published its 2015 Impact Report, *Fighting Corruption, Demanding Justice*, highlighting the progress it has made worldwide over the last twenty years in the fight against corruption.<sup>166</sup> Since 2001, TI has assessed over 1,800 institutions and one

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155. *Annual Update Fiscal Year 2015*, WORLD BANK GROUP: INTEGRITY VICE PRESIDENCY (2015), [http://siteresources.worldbank.org/EXTDOII/Resources/588920-1444050544186/INT\\_FY15\\_Annual\\_Update.pdf](http://siteresources.worldbank.org/EXTDOII/Resources/588920-1444050544186/INT_FY15_Annual_Update.pdf).

156. *Id.* at vii.

157. *Id.* at 6, 38, 51.

158. *Id.* at 3.

159. Fritz Heimann et al., *Exporting Corruption, Progress Report 2015: Assessing Enforcement of the OECD Convention on Combatting Foreign Bribery*, TRANSPARENCY INT'L 4 (Aug. 20, 2015), [http://issuu.com/transparencyinternational/docs/2015\\_exportingcorruption\\_oecdprogre/1](http://issuu.com/transparencyinternational/docs/2015_exportingcorruption_oecdprogre/1).

160. *Id.* at 12-13.

161. *Id.* at 7.

162. *Id.*

163. *Id.* at 4,7.

164. *Id.* at 7.

165. Heimann, et al., *supra* note 164, at 7.

166. *Fighting Corruption, Demanding Justice*, TRANSPARENCY INT'L 8 (Oct. 16, 2015), [https://www.transparency.org/whatwedo/publication/2015\\_impact\\_report](https://www.transparency.org/whatwedo/publication/2015_impact_report).

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hundred six countries and territories.<sup>167</sup> The 2015 Impact Report also details, among other accomplishments, TI's campaign to secure the first global convention against corruption, the UNCAC.<sup>168</sup> Today, as noted above, one hundred seventy six countries are party to the Convention.<sup>169</sup>

**B. EXTRACTIVE INDUSTRIES TRANSPARENCY INITIATIVE (EITI)**

The EITI is a global standard implemented by governments, in collaboration with companies and civil society, for the governance of a country's oil, gas, and mineral resources.<sup>170</sup> According to the 2015 EITI Fact Sheet, forty-nine countries implement the EITI and thirty-one countries are compliant with EITI requirements.<sup>171</sup> In October 2015, Malawi was admitted as a 'candidate' country to the EITI.<sup>172</sup> The compliant/candidate statuses of Central African Republic, Indonesia, and Yemen have been suspended.<sup>173</sup>

**C. WORLD JUSTICE PROJECT (WJP)**

The *WJP Open Government Index™ 2015* is an effort to measure government openness based on four dimensions: 1) publicized laws and government data, 2) right to information, 3) civic participation, and 4) complaint mechanisms.<sup>174</sup> Scores and rankings of the WJP Open Government Index for one hundred two countries were drawn from more than 100,000 household surveys and in-country expert questionnaires to highlight the perspectives of ordinary people as they interact with their governments.<sup>175</sup> The top three performers were: 1) Sweden, 2) New Zealand, and 3) Norway.<sup>176</sup> Myanmar, Uzbekistan, and Zimbabwe were the bottom three performers.<sup>177</sup>

WJP released its fifth annual *Rule of Law Index*, ranking one hundred two countries based on over 100,000 household and expert surveys.<sup>178</sup> Each country is provided a score and ranked on eight factors: 1) constraints on government powers, 2) absence of corruption, 3) open government, 4) fundamental rights, 5) order and security, 6) regulatory enforcement, 7) civil justice, and 8) criminal justice.<sup>179</sup> A ninth factor, informal

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167. *Id.* at 9.

168. *Id.* at 12-13.

169. *Id.* at 13.

170. *Fact Sheet*, EXTRACTIVE INDUS. TRANSPARENCY INITIATIVE, [https://eiti.org/files/document/EITI\\_Factsheet\\_EN.pdf](https://eiti.org/files/document/EITI_Factsheet_EN.pdf) (last updated Feb. 15, 2016).

171. *Id.*

172. *Malawi admitted as EITI candidate*, EXTRACTIVE INDUS. TRANSPARENCY INITIATIVE (Oct. 22, 2015, 11:59 AM), <https://eiti.org/news/malawi-admitted-eiti-candidate>.

173. *48 countries now implement the EITI*, EXTRACTIVE INDUS. TRANSPARENCY INITIATIVE (Feb. 12, 2015, 9:12 AM), <http://progrep.eiti.org/2015/glance/48-implementing-countries>.

174. *World Justice Project Open Government Index™ 2015 Report*, WORLD JUST. PROJECT 4 (Mar. 2015), [http://worldjusticeproject.org/sites/default/files/ogi\\_2015.pdf](http://worldjusticeproject.org/sites/default/files/ogi_2015.pdf)

175. *Id.*

176. *Id.* at 5.

177. *Id.*

178. *World Justice Project Rule of Law Index 2015*, WORLD JUSTICE PROJECT 5 (June 2015), [http://worldjusticeproject.org/sites/default/files/roli\\_2015\\_0.pdf](http://worldjusticeproject.org/sites/default/files/roli_2015_0.pdf).

179. *Id.* at 14.

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justice, is measured but not included in aggregated scores and rankings.<sup>180</sup> Factor two, absence of corruption, measures the absences of corruption in a number of government agencies and considers three forms of corruption: bribery, improper influence by public or private interests, and misappropriation of public funds or other resources.<sup>181</sup> In 2015, Denmark, Norway, and Singapore, respectively, took the top three spots, while Uganda, Cameroon, and Afghanistan occupied the three bottom rankings.<sup>182</sup>

D. INTERNATIONAL ORGANIZATION FOR STANDARDIZATION (ISO)

A group of experts is developing a new Anti-Bribery Management System Standard. The standard specifies a series of measures that any organization—public or private—“should implement to help prevent, detect and address bribery.”<sup>183</sup> Such measures include “adopting an anti-bribery policy, requiring top management leadership . . . undertaking bribery and risk assessments[,] due diligence on projects and business associates,” and training and monitoring of the program.<sup>184</sup> Organizations will be able to seek third-party certification that they conform to the standard’s requirements. The standard is expected to be final in late 2016.<sup>185</sup>

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180. *Id.* at 160.

181. *Id.* at 25.

182. *Id.*

183. ISO 37001 Anti-Bribery Management Systems Standard FAQs-Summary, INT’L ORG. FOR STANDARDIZATION (Apr. 26, 2015), [http://www.iso.org/iso/iso\\_37001\\_anti-bribery\\_management\\_systems\\_standard\\_brochure.pdf](http://www.iso.org/iso/iso_37001_anti-bribery_management_systems_standard_brochure.pdf).

184. *Id.*

185. ISO 37001: Anti-Bribery Management System Standard, INT’L ORG. FOR STANDARDIZATION, [http://www.iso.org/iso/iso\\_37001.pptx](http://www.iso.org/iso/iso_37001.pptx) (last visited Oct. 2, 2015).

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