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Accelerating International Cooperation in Fraud, Corruption, and Other Criminal Investigations and Enforcement Actions

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In recent years, international cooperation among law enforcement agencies in fraud, corruption, and a wide variety of business-related criminal investigations and prosecutions has been a growing and well recognized trend. Four years ago, we commented on the trend in our [October 2013 Law360 article](#) about the collaboration between U.S. and Canadian authorities in securing the first criminal conviction following a contested trial of an individual under Canada's Corruption of Foreign Public Officials Act. In recent years, administrative agencies, law enforcement investigators, and prosecutorial offices around the globe have become increasingly interconnected across international borders, as the United States and other nations have accelerated their aggressive pursuit and coordination of transnational enforcement actions. This reality presents complex challenges for U.S. and foreign multinational companies in responding to such actions and highlights the importance of having effective compliance measures to deter and detect misconduct in potential violation of anti-corruption, export control, trade sanctions, money laundering, environmental, and other laws.

Four recent enforcement actions discussed below reflect the increasing sophistication and scope of cross-border investigations and prosecutions:

1. James Robert Liang – Volkswagen Diesel Emissions Fraud Scandal

James Robert Liang, a Volkswagen engineer, was sentenced by U.S. District Court Judge Sean F. Cox of the Eastern District of Michigan on August 25, 2017 to forty (40) months in prison for his role in the nearly 10-year conspiracy to defraud regulators and Volkswagen customers by implementing software specifically designed to cheat emissions tests in hundreds of thousands of Volkswagen “clean diesel” vehicles sold in the United States. Last year, Liang, a German national, pleaded guilty to one count of conspiracy to defraud the United States, commit wire fraud, and violate the Clean Air Act.

Liang admitted that he and other Volkswagen employees designed and implemented software for the EA 189 engine to defeat U.S. emission standards on nearly 500,000 Volkswagen diesel vehicles. The so-called “defeat device” detected whether a vehicle was undergoing standard U.S. emissions testing on a dynamometer, versus being driven on the road under normal driving conditions. Liang further admitted that for each new model year from 2009 through 2016, he and other Volkswagen employees falsely certified to the U.S. Environmental Protection Agency and the California Air Resources Board that Volkswagen's diesel vehicles complied

with U.S. emissions standards. At the same time, the Company marketed the Volkswagen diesel vehicles as “clean diesel” and promoted the vehicles' increased fuel economy that resulted from using the defeat device.

This past January, Volkswagen pleaded guilty to three criminal felony counts (i.e., conspiracy, obstruction of justice, and making false statements to import cars into the United States) and agreed to pay \$4.3 billion in criminal and civil penalties relating to the diesel issue. Volkswagen's legal troubles are far from over and extend beyond the United States. Since the scandal broke in the United States in 2015, prosecutors in multiple countries, including Italy, France, South Korea, and Germany, have opened investigations into Volkswagen's emissions testing and related fraud allegations. As just one example of the cooperation between investigators and prosecutors in the United States and these foreign countries, Liang agreed in his Plea Agreement with the U.S. Government to “cooperate fully with the government, and any other law enforcement agency designated by the government, *including but not limited to the Staatsanwaltschaft Braunschweig in Germany* [the German public prosecutor's office].” (Emphasis added.)

2. Mahmoud Thiam – Guinean Mining Industry Bribery

Mahmoud Thiam, a former Minister of Mines and Geology for the government of Guinea, was sentenced on August 25, 2017 by U.S. District Court Judge Denise L. Cote of the Southern District of New York to seven (7) years in prison, and three (3) years of supervised release, for laundering \$8.5 million in bribes paid to him by executives of China Sonangol International Ltd. (“China Sonangol”) and China International Fund, SA (“CIF”). Thiam, a Guinea-born U.S. citizen, was convicted on May 3, 2017 of one count of transacting in criminally derived property (18 USC § 1957) and one count of money laundering (18 USC § 1956(a)(1)(B)). The laundered funds were bribe proceeds derived through violations of Guinean bribery laws, according to the indictment.

Thiam formerly served as Guinea's Minister of Mines and Geology from 2009 to 2010. Evidence presented at trial showed China Sonangol and CIF executives paid Thiam \$8.5 million in illegal payments and in exchange Thiam used his position as Minister to help China Sonangol, CIF, and their subsidiaries secure exclusive and lucrative investment rights in a broad range of sectors of Guinea's economy, including near complete control of Guinea's mining sector. Bank records presented at trial further showed that Thiam laundered the bribe payments through bank accounts in Hong Kong and the United States. In furtherance of the scheme, Thiam misreported his occupation to banks in Hong Kong and the United States to conceal his position as a public official and falsely claimed that the funds were proceeds from the sale of land in Africa, according to evidence presented at trial. In announcing the conviction, the U.S. Justice Department noted that it had received substantial assistance from the governments of Guinea, Israel, and Switzerland in gathering evidence and other efforts during the investigation of Thiam.

3. Heon-Cheol Chi – South Korean Seismological Industry Bribery

Heon-Cheol Chi, the Director of South Korea's Earthquake Research Center at the Korea Institute of Geoscience and Mineral Resources ("KIGAM"), was convicted after a jury trial in the U.S. District Court for the Central District of California on July 17, 2017 of laundering bribes which he received from two seismological companies based in California and England through the U.S. banking system. Between at least 2009 and 2015, Mr. Chi allegedly used his official position at KIGAM to demand and receive over \$1 million in bribes from two seismological companies in exchange for providing them with market intelligence and inside information, including confidential information about their competitors and the KIGAM bidding process. According to court records submitted by the U.S. Justice Department, Mr. Chi attempted to conceal the bribery scheme by instructing representatives of the companies to delete or not respond to his emails, requesting that the company representatives not inform his colleagues at KIGAM of their illegal arrangements, and by sending fictitious invoices listing a false address in New Jersey. In announcing the conviction, the U.S. Justice Department highlighted that the FBI's International Corruption Squad in Los Angeles investigated the case with the cooperation and assistance of South Korean and U.K. governmental officials.

4. Dmitrij Harder – European Bank for Reconstruction and Development Bribery

On July 18, 2017, Dmitrij Harder, the former owner and president of Chestnut Consulting Group Inc. and Chestnut Consulting Group Co. (the "Chestnut Group") located in Southampton, Pennsylvania, was sentenced by U.S. District Court Judge Paul S. Diamond in the Eastern District of Pennsylvania to sixty (60) months imprisonment and ordered to forfeit \$1.9 million for bribing an official at the European Bank for Reconstruction and Development ("EBRD") in violation of the Foreign Corrupt Practices Act ("FCPA"). Between July 2008 and November 2009, Mr. Harder was alleged to have paid approximately \$3.5 million in bribes to Andrej Ryjenko, an official and senior banker at the EBRD, in exchange for Mr. Ryjenko referring EBRD clients to the Chestnut Group. At the same time that the U.S. Government prosecuted Mr. Harder, the U.K. Government prosecuted the alleged recipient of the bribe payment, Mr. Ryjenko. In June 2017, Mr. Ryjenko was convicted in a U.K. court and sentenced to six (6) years imprisonment for conspiring to make or accept corrupt payments and money laundering.

The dual prosecutions in this matter both in the United Kingdom and the United States reflects a careful coordination between the U.K. and U.S. prosecutors, thereby allowing each sovereign to enforce its laws and to seek justice against the alleged conspirator with the greatest connection to it. One might reasonably anticipate that the Harder and Ryjenko investigation and resulting prosecutions may serve as a model for the International Anti-Corruption Coordination Centre ("IACCC"), which was announced in July 2017. See <http://www.nationalcrimeagency.gov.uk/news/1138-international-partners-join-forces-to-tackle-global-grand-corruption>. The U.K. and participating

governments, which include Australia, Canada, New Zealand, Singapore, and the United States, announced that the IACCC would bring together law enforcement officers from multiple jurisdictions to coordinate law enforcement action against allegations of grand corruption (e.g., bribery of public officials, embezzlement, abuse of function or the laundering of the proceeds of crime).

Implications and Lessons Learned

The recent cases discussed above highlight the acceleration and depth of cooperation among law enforcement and administrative agencies of the United States and its foreign partners in pursuit of alleged business misconduct criminal enforcement actions:

- **A Presumption of Information Sharing** – U.S. law enforcement agents and prosecutors are increasingly working with their foreign counterparts – particularly those in the United Kingdom and Germany – to pursue dual or near simultaneous investigations and prosecutions in the same matter both in the United States and in the corresponding foreign country, and, in some instances, the U.S. Government is even requiring in Plea Agreements that defendants cooperate with foreign law enforcement officials. Now more than ever, companies should presume that information or allegations learned by government investigators on one side of an international border will flow freely to the other side.
- **Beyond Information Sharing toward Jointly Planned Investigations and Prosecutions** – The careful coordination and joint planning by U.S. and foreign authorities noted above requires an additional layer of cross-border cooperation and mutual assistance beyond merely sharing or exchanging information. The cooperation in the cases noted above reflects a willingness by sovereign nations to forego their own prosecutions while partner nations in turn undertake their own prosecutions or administrative enforcement actions. Such international cooperation requires earlier review and collaboration by law enforcement agents and prosecutors in an investigation to ensure that each country's laws, rules, and customs governing criminal and administrative investigations are followed during the investigation to avoid, for example, the results of an interview conducted in one country being lost because the interview techniques are not permissible in the second country.
- **No Industries Immune** – Each of the four cases noted above involved a different industry (i.e., automotive, mining, seismology, development/reconstruction consulting), demonstrating that no company or industry is off limits when it comes to potential cross-border administrative or criminal investigations and enforcement actions.

In such a global enforcement environment, it has become increasingly invaluable for multinational companies operating in the United States and abroad (i) to have effective and audited compliance programs to instruct, deter, and detect potential fraud and other unlawful conduct in each of the nations in which the company operates; (ii) to conduct prompt and efficient

internal investigations of alleged wrongdoing; and, where the particular circumstances so warrant or relevant contractual or legal obligations so require, (iii) to report voluntarily the potential wrongdoing to relevant governmental agencies. Such actions enable multinational companies to minimize the risks and costs inherent in simultaneous and coordinated investigations and enforcement actions involving administrative agencies, law enforcement agents, and prosecutors in the United States and multiple foreign countries.

If you have any question about the topics discussed in this Client Alert or we may assist you in dealing with an internal investigation, or an investigation or enforcement action by the U.S. Government, please contact Holland & Hart lawyers [Steven W. Pelak](#), [Jason E. Prince](#), or [Gwen S. Green](#), who stand ready to assist you or your company in resolving the ever increasing challenges and issues raised by such matters.