

FCPA Update

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Spotlight on the Asia-Pacific Region (Part I): Overview

This issue represents the first installment of a new feature of *FCPA Update*: our “regional spotlight” series. In this inaugural “spotlight” issue, we provide Part I of an overview of anti-corruption developments and general background pertaining to key enforcement authorities in the Asia-Pacific (“APAC”) region.¹ Look for Part II of our APAC review in September 2012, and other spotlight editions of *FCPA Update* relating to Latin America and to other regions or particular countries in the months to come.

Why the APAC Region Matters

Perhaps the most compelling reason to focus on the APAC region in the anti-bribery context is the sheer volume of corporate FCPA dispositions involving misconduct alleged to have occurred in the region. Since 2005, 39 concluded FCPA corporate enforcement actions have included an APAC component. This figure represents 42% of all corporate FCPA enforcement actions during this period. Twenty-four of these, 26% of the total, included allegations related to China. Other countries appearing repeatedly in corporate enforcement actions during this period include Indonesia (nine actions), India (eight), Thailand (six), South Korea (five), and Vietnam (five).²

Fact patterns involving the APAC region are also prevalent in ongoing but as-yet uncompleted investigations by the U.S. government or companies that have been disclosed in U.S. Securities and Exchange Commission (“SEC”) filings. In at least thirteen of these investigations, the alleged improper payments include a China component, at least three involve alleged misconduct in India, and at least five involve other named or unspecified countries in the region.³ Just this month, both *The Wall Street Journal* and *The New York*

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1. For purposes of this issue, we use the APAC label broadly to refer to East Asia, Southeast Asia, Australasia, and portions of the South Asian subcontinent, including India and Bangladesh.
2. A list of these resolved actions appears as Appendix 1.
3. A list of these pending investigation appears as Appendix 2. Companies identified in Appendix 2 are drawn mainly from information reported in *FCPA Blog* (<http://www.fcpablog.com>). The country-by-country analysis contained in Appendix 2 reflects our further review of the underlying publicly-available and designated SEC filings, which are also on file with the authors at Debevoise & Plimpton LLP.

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Times reported on allegations of possible FCPA violations involving a key consultant to and business partner of casino magnate Sheldon Adelson’s Las Vegas Sands Corporation in both China and Macau.⁴

Although the U.S. government remains a driving force in penalizing companies for corrupt payments made outside its borders, the United States is not alone in pursuing anti-bribery enforcement. A noteworthy recent development, illustrated by a recent prosecution in Australia highlighted in the accompanying article, is the prosecution by APAC nations of bribery cases that include an international element. Table 1 below lists laws in the region that expressly bar bribery of foreign officials, several of which were enacted by signatories to the OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions (“OECD Convention”).⁵

Table 1: Countries in the APAC Region that Have Enacted Legislation to Combat Foreign Bribery

Country	Reference	Year Entered into Force	Signatory to OECD Convention?
Australia	Criminal Code Amendment (Bribery of Foreign Public Officials) Act 1999, No. 43, 1999	1999	Yes
China	PRC Criminal Law, Article 164	2010	No
Japan	Unfair Competition Prevention Law, Article 18	1999	Yes
Malaysia	Malaysian Anti-Corruption Commission Act 2009	2009	No
South Korea	Act on Preventing Bribery of Foreign Public Officials in International Business Transactions	1999	Yes
New Zealand	The Crimes (Bribery of Foreign Public Officials) Amendment Act 2001.	2001	Yes

In some other jurisdictions, although there are not express prohibitions on bribery of foreign officials, it still may be possible to bring enforcement actions for foreign bribery under general anti-bribery statutes. For example, Hong Kong’s Court of Final Appeal

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4. Alexandra Berzon & Kate O’Keefe, “Sands China Deals Scrutinized,” *The Wall Street Journal* (Aug. 9, 2012), <http://online.wsj.com/article/SB10000872396390443537404577578900341481654.html>; Michael Luo, Neil Gough, & Edward Wong, “Scrutiny for Casino Mogul’s Frontman in China,” *The New York Times* (Aug. 13, 2012), <http://www.nytimes.com/2012/08/14/us/politics/sheldon-adelsons-dealings-in-china-are-under-investigation.html>. The Las Vegas Sands Corporation, had previously disclosed that the SEC had issued a subpoena relating to FCPA compliance. See, e.g., Las Vegas Sands Corp., Quarterly Report (Form 10-Q), at 17 (May 10, 2012).

5. OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions (2011), <http://www.oecd.org/investment/briberyininternationalbusiness/anti-briberyconvention/38028044.pdf>.

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recently confirmed that if an improper payment is offered in Hong Kong the general anti-bribery statute (the Prevention of Bribery Ordinance) applies even if the public official is from a foreign jurisdiction and the advantage sought relates to the official's duties in that jurisdiction.⁶ Foreign bribery may also fall within the scope of Singapore's Prevention of Corruption Act, which provides that citizens of Singapore are liable for offenses of the statute committed outside the country.⁷

Finally, employees of multinational corporations have also been the subject of investigations or enforcement actions by APAC countries in relation to alleged bribery of domestic officials, including China's prosecution of executives or other employees of Coca-Cola, Rio Tinto, and Carrefour in recent years.⁸

Compliance Concerns

The prosecution of APAC-related FCPA cases has occurred alongside continued growth of many economies in the region, which are a continued draw for companies headquartered in Europe and the Americas. Despite a sluggish global economy, several APAC economies continued to perform well

through 2011, including those of China (2011 GDP growth of 9.1%), Mongolia (2011 GDP growth of 17.2%), and Macau (2011 GDP growth of 20.7%).⁹ Although even these economic superstars have not

“The prosecution of APAC-related FCPA cases has occurred alongside continued growth of many economies in the region, which are a continued draw for companies headquartered in Europe and the Americas.”

been immune to recent economic turmoil,¹⁰ foreign companies have continued to show interest in the region, including in the fledgling shale gas industry in China.¹¹ Companies considering an investment in this field must be cognizant of the significant roles played by large, state-owned energy producers, including China National

Petroleum Corp. (“CNPC”) and China Petrochemical Corp. (“Sinopec”). More broadly, companies considering new or expanded business in the APAC region are advised to consider a number of risk factors and control issues, which are discussed in turn below.

A. Prevalence of Corruption

When expanding sales or operations into APAC countries, or entering into a partnership or joint venture with, or acquisition of, a company in the region, companies should evaluate a number of risk factors. Key among these is the perceived risk of corruption.

Transparency International's Corruption Perceptions Index 2011 assigns scores ranging from 0-10, with high-risk countries receiving lower scores and low-risk countries receiving higher scores. A sample of APAC region country scores and rankings appears in Table 2 below, listed from lowest to highest risk of corruption. Based on the relatively poor marks in these countries, it is perhaps not surprising that numerous enforcement actions relate to improper payments to officials in China, Thailand, and Indonesia.

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6. *B v. The Commissioner of the Independent Commission Against Corruption*, FACC No. 6/2009, at ¶¶ 11-22 (Court of Final Appeal of Hong Kong Jan. 28, 2010), http://legalref.judiciary.gov.hk/lrs/common/search/search_result_detail_frame.jsp?DIS=69505&QS=%2B&TP=JU.

7. Prevention of Corruption Act (Chapter 241), § 37(1) (1993).

8. See, e.g., David Barboza, “In Shanghai, Police Detain Former Worker at Coca-Cola,” *The New York Times* (Sept. 13, 2009), <http://www.nytimes.com/2009/09/14/business/global/14coke.html>; David Barboza, “Rio Tinto Workers Admit Taking Bribes in China,” *The New York Times* (Mar. 22, 2010), <http://www.nytimes.com/2010/03/23/world/asia/23riotinto.html>; Xie Chuanjiao, “Carrefour Supervisors in Beijing Prosecuted for Taking Bribes,” *China Daily* (July 2, 2008), http://www.chinadaily.com.cn/china/2008-07/02/content_6811523.htm.

9. GDP Growth (Annual %), World Bank, <http://data.worldbank.org/indicator/NY.GDP.MKTP.KD.ZG> (accessed Aug. 16, 2012).

10. Bruce Einhorn, “Macau Feels the Pinch of China's Slowdown,” *Bloomberg Businessweek* (June 5, 2012), <http://www.businessweek.com/articles/2012-06-05/macau-feels-the-pinch-of-chinas-slowdown>.

11. Wayne Ma, “China Shale Gas Is Lure for U.S. Firms,” *The Wall Street Journal – Deal Journal* (blog) (July 16, 2012), <http://blogs.wsj.com/deals/2012/07/16/china-shale-gas-is-lure-for-u-s-firms/>.

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Table 2: Transparency International Corruption Perception Index 2011: Rankings for Selected APAC Countries/Territories

Country/Territory	Score	Worldwide Rank
New Zealand	9.5	1
Singapore	9.2	5
Australia	8.8	8
Hong Kong	8.4	12
Japan	8.0	14
Taiwan	6.1	32
South Korea	5.4	43
Macau	5.1	46
Malaysia	4.3	60
China	3.6	75
Thailand	3.4	80
Sri Lanka	3.3	86
India	3.1	95
Indonesia	3.0	100
Vietnam	2.9	112
Bangladesh	2.7	120
Mongolia	2.7	120
Philippines	2.6	129
Cambodia	2.1	164
Myanmar	1.5	180
North Korea	1.0	182

B. Degree of Government Ownership or Oversight

The degree of government ownership or oversight of particular businesses or industries is also a key risk factor.

For example, although it is difficult to quantify the magnitude of state ownership in China, some observers have estimated state-owned and state-controlled enterprises as accounting for a 30 to more than 50 percent share of China's GDP.¹² State-owned enterprises also continue to play an important role in several other APAC countries, including Vietnam, where government-owned companies dominate a number of industries, including coal (97%), electricity and gas (94%), telecommunications (91%), and insurance (88%).¹³

China's three largest oil companies, all of which are state-owned, are all on the *Fortune* Global 500 list — CNPC and Sinopec (ranked 5 and 6, respectively), as well as China National Offshore Oil Corporation ("CNOOC," ranked 162)¹⁴ — making it difficult for non-Chinese companies doing business in this sector to avoid dealing with Chinese "officials." Similarly, interactions with "foreign officials" are all but inevitable in the health care sector, where U.S. authorities have treated doctors and other health care personnel in several countries, including China and Indonesia, as foreign officials for purposes of the FCPA.¹⁵ Corruption in the health care arena is deemed to be a significant problem in China, whose Ministry of Health recently introduced

a code of conduct that expressly bars the nation's nearly nine million medical personnel from taking bribes.¹⁶

C. Recurring Internal Control Issues in the APAC Region

In addition to the general compliance issues that multinational companies face when conducting business in high-risk jurisdictions, there are a number of specific compliance concerns that arise with some regularity in the APAC region.

One of these issues arises from the geographical distance and differing time zones between companies that are headquartered in Europe or the Americas and their APAC operations. Such companies should have a strong local compliance organization to counteract the impact of the distance and obstacles to effective communication. In addition, it is important for local managers and employees in legal, compliance, and/or finance functions to have a solid grounding in local customs as well as facility, if at all feasible, in the local language. Although hiring individuals born and raised in a specific country is not required, true bilingual language facility in these functions is key.

"Travel bribery" is another recurring theme in the region. A number of noteworthy enforcement actions have involved the provision of vacations that

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12. Andrew Szamosszegi & Cole Kyle, "An Analysis of State-Owned Enterprises and State Capitalism in China," U.S.-China Economic and Security Review Commission (Oct. 26, 2011), at 11, 25 (collecting other estimates and performing detailed analysis to arrive at the conclusion that "the broadly defined state sector likely surpasses 50 percent" of China's economic output), http://www.uscc.gov/researchpapers/2011/10_26_11_CapitalTradeSOEStudy.pdf.
13. Vietnam's State Owned Enterprises: Opportunities – June 2012, U.K. Foreign & Commonwealth Office (June 14, 2012), <http://www.ukti.gov.uk/export/howwehelp/overseasbusinessrisk/premiumcontent/321840.html>.
14. *Fortune*, Global 500 (2011), http://money.cnn.com/magazines/fortune/global500/2011/full_list/index.html (accessed Aug. 16, 2012).
15. See, e.g., SEC Press Rel. 2012-152, SEC Charges Pfizer with FCPA Violations (Aug. 7, 2012), <http://www.sec.gov/news/press/2012/2012-152.htm> (allegations regarding payments and other incentives provided to doctors in China, Indonesia, Pakistan, and Croatia).
16. See Benjamin Kessler, "New Code Of Conduct For China Medical Workers," *FCPA Blog* (Aug. 16, 2012), <http://www.fcpablog.com/blog/2012/8/16/new-code-of-conduct-for-china-medical-workers.html>.

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are either disguised (to varying degrees) as business-related trips, or for which the legitimate business component is overshadowed by sightseeing and entertainment. For example, in the recent *Biomet* action, it was alleged that

“[C]ompanies that conduct business in these jurisdictions should have a robust system of limits for gifts that includes reasonable exceptions and procedures for senior-level sign-offs where appropriate.”

Biomet's Chinese subsidiary sponsored a trip by twenty Chinese surgeons to Spain that included a substantial non-business component at *Biomet*'s expense.¹⁷ Perhaps the most extreme example of this form of bribery is the 2007 case against *Lucent Technologies*, in which the U.S. Securities and Exchange Commission (“SEC”) alleged that *Lucent* provided Chinese officials with trips that were generally characterized as factory inspections or training, even though by this point “*Lucent* had outsourced most

of its manufacturing and no longer had any *Lucent* factories for its customers to tour.”¹⁸ *Lucent* paid for trips to North America, Europe, Australia, and Japan “that involved little or no business content,” and “consisted primarily or entirely of sightseeing to locations” including Disneyland, Universal Studios, the Grand Canyon, Hawaii, Niagara Falls, Las Vegas, Washington, D.C., and New York City, each typically lasting 14 days.¹⁹

Another challenge can be the custom of gift-giving in some APAC countries. To reduce the likelihood of subsequent compliance issues arising, companies that conduct business in these jurisdictions should have a robust system of limits for gifts that includes reasonable exceptions and procedures for senior-level sign-offs where appropriate. The same applies for entertainment even if it does not involve related travel activity. Particularly challenging questions in this area may require assistance of outside counsel.

In China in particular, managers and compliance personnel outside the region must develop sensitivity to certain cultural concepts that have an important effect on business dealings. One of these is *guanxi*, which is the system of personal connections

and relationships cultivated over time in order to develop trust and reciprocity.²⁰ Another key concept is *mianzi*, which refers to saving face, and is related to prestige, hierarchy, and the preservation of others’ self-respect as well as one’s own. Both *guanxi* and *mianzi* may make it difficult to persuade employees to report misconduct or take positions that conflict with their colleagues’ or supervisors’ views.²¹ To be effective, therefore, compliance programs must account for these phenomena and develop a system of limits that is both practical and likely to withstand scrutiny by regulators.

Experienced law firms, compliance consultants and forensic auditors with on-the-ground experience in the region and an understanding of cultural concerns can be of great assistance in formulating effective compliance programs and carrying out investigations, should the need arise.

Best Practices

There are several key sources of guidance that companies with operations in high-risk APAC jurisdictions should consult in developing or strengthening anti-bribery compliance and training programs. These include the following:

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17. See SEC Press Rel. 2012-50, SEC Charges Medical Device Company *Biomet* with Foreign Bribery (Mar. 26, 2012), <http://www.sec.gov/news/press/2012/2012-50.htm>.

18. DOJ Press Rel. 07-1028, *Lucent Technologies Inc. Agrees to Pay \$1 Million Fine to Resolve FCPA Allegations* (Dec. 21, 2007), http://www.justice.gov/opa/pr/2007/December/07_crm_1028.html.

19. *Id.*; SEC Lit Rel. No. 20414, SEC Files Settled Action Against *Lucent Technologies Inc.* in Connection With Payments of Chinese Officials’ Travel and Entertainment Expenses; Company Agrees to Pay \$1.5 Million Civil Penalty (Dec. 21, 2007), <http://www.sec.gov/litigation/litreleases/2007/lr20414.htm>.

20. See Judith Irwin, “Occasional Paper 6: Doing Business in China: An Overview of Ethical Aspects,” *Institute of Business Ethics*, at 5 (July 2012), <http://www.ibe.org.uk/userfiles/chinaop.pdf>.

21. See *id.*

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- U.S. Sentencing Guidelines (specifically, section 8B2.1);²²
- U.K. Ministry of Justice guidance regarding the prevention of bribery by commercial organizations;²³
- OECD Guidelines for Multinational Enterprises, which were most recently updated in 2011;²⁴
- The Committee of Sponsoring Organizations of the Treadway Commission (“COSO”) Integrated Framework, which is not specific to anti-bribery compliance, but which identifies five components of effective internal controls that are helpful in this context: control environment, risk assessment, control activities, information and communication, and monitoring.²⁵

In addition, the DOJ is expected to issue guidance regarding the FCPA in the near future.

One of the clearest illustrations of the value of a strong compliance program came earlier this year in connection with alleged FCPA violations by a managing director of Morgan Stanley’s real estate business in

China.²⁶ In late April 2012, the DOJ and SEC announced that they had declined to bring an enforcement action against Morgan Stanley (although they did bring charges against the individual managing director, Garth Peterson, whom the SEC described as a “rogue employee” and who was recently sentenced to nine months’ imprisonment by U.S. District Judge Jack Weinstein in the Eastern District of New York).²⁷ In so doing, the agencies noted that, prior to and at the time of Peterson’s alleged misconduct, Morgan Stanley had implemented the following safeguards against FCPA violations:

- frequent employee compliance training;
- frequent compliance reminders, including written materials;
- annual employee certifications of anti-corruption policies;
- a compliance hotline equipped to field calls in a number of languages, including Chinese;
- continued evaluation and improvement of compliance program and internal controls; and

- a “substantial system of controls” in place “to detect and prevent improper payments.

The DOJ and SEC also emphasized the extensive due diligence that Morgan Stanley carried out concerning business dealings with the third party, Shanghai Yongye Enterprise (Group) Co. Ltd., whose chairman is alleged to have received improper payments via Peterson. Such diligence is key for arrangements with local partners.

In addition to the region-specific issues that compel thoughtful but robust approaches to local customs, as well as the need for adequate resourcing of compliance functions to deal with the recurring challenges of local languages and differing time zones and distance from headquarters, anti-corruption best practices need to address all of the key functional topics of business activity, including interactions with government officials, in all the relevant business contexts. These include (1) project acquisition and sales; (2) administrative, regulatory, judicial, and tax matters; (3) immigration law and customs compliance; (4) currency controls, banking

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22. U.S. Sentencing Commission, 2011 Federal Sentencing Guidelines Manual § 8B2.1 (effective Nov. 1, 2011), http://www.uscc.gov/guidelines/2011_Guidelines/Manual_HTML/8b2_1.htm.
23. Ministry of Justice, The Bribery Act 2010: Guidance (Mar. 30, 2011), <http://www.justice.gov.uk/downloads/legislation/bribery-act-2010-guidance.pdf>; see also Lord Goldsmith QC, Karolos Seeger, Nicola C. Port, & Matthew H. Getz, “The U.K. Bribery Act 2010: Implementation and Guidance,” *FCPA Update* Vol. 2, No. 8 (March 2011), <http://www.debevoise.com/files/Publication/d263dadf-70e8-4bbd-b543-00fafbae8044/Presentation/PublicationAttachment/d375ac45-c0ac-461e-b512-30828ec23109/FCPAUpdateMarch2011.pdf>
24. OECD Guidelines for Multinational Enterprises, 2011 Edition (May 25, 2011), <http://www.oecd.org/daf/internationalinvestment/guidelinesformultinationalenterprises/oecdguidelinesformultinationalenterprises.htm>.
25. Committee of Sponsoring Organizations of the Treadway Commission, Internal Control - Integrated Framework (Executive Summary), <http://www.coso.org/documents/Internal%20Control-Integrated%20Framework.pdf>.
26. See Paul R. Berger, Sean Hecker, Bruce E. Yannett, & Elizabeth A. Kostrzewa, “Hints and Olive Branches in the Morgan Stanley Declinations,” *FCPA Update*, Vol. 3, No. 10 (May 2012), http://www.debevoise.com/files/Publication/71aba13d-70d9-4e81-803b-4231ab73f0d1/Presentation/PublicationAttachment/9c07e8dd-c87d-4722-978b-7b7bdf0e261/FCPA_Update_May_2012.pdf.
27. Jessica Dye, “Ex-Morgan Stanley Executive Gets Prison Time in Bribery Case,” *Reuters* (Aug. 16, 2012), <http://www.reuters.com/article/2012/08/16/us-morganstanley-bribery-sentencing-idUSBRE87F1DV20120816>.

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activities, financing and investment in local operations; (5) formation of subsidiaries and joint ventures and merger and acquisition approval; (6) real estate and zoning; (7) labor relations and employment and pension law compliance; (8) environmental compliance; (9) general information sharing; and (10) utility service and police and fire protection, among other day-to-day matters.

Financial controls need to address the manifold ways money or things of value can be surreptitiously distributed to foreign officials, from direct cash payments and travel benefits to more complex routing via agents, subcontractors, consortia partners, joint venture partners, and other third parties. Due diligence of M&A and JV targets, as well as of third-parties and other business partners is essential, as are appropriate contractual protections, including representations, warranties, indemnification provisions, and disclosure requirements. Anti-corruption risk assessments, and compliance testing through a well-resourced and flexible internal audit staff, should be conducted regularly, and policies should be clear, understandable, and reinforced through periodic training and robust “tone at the top.” Finally, there need to be disciplinary consequences for those managers and employees who knowingly break the rules, and, to this end, employment contracts must be framed in advance to the extent possible to enable such discipline.

Conclusion

Given the enormous role of the APAC region in the world’s economy and the specific challenges the region poses, it can be expected that multinational firms operating in the region will continue to be subject to intense scrutiny by anti-corruption regulators in the United States and elsewhere, including in the region. In light of the unique risks posed by the region, it is particularly important that companies remain vigilant in adopting best compliance practices and refining them to address the issues of their specific businesses.

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Appendix 1: Resolved Corporate FCPA Enforcement Actions
2005 to the Present Involving APAC Countries/Territories

Company	Year	DOJ/SEC	APAC Countries/Territories
InVision Technologies / GE InVision, Inc.	2005 ²⁸	Both	China, Thailand, Philippines
Diagnostic Products Corp. / DPC (Tianjin) Co. Ltd	2005	Both	China
Monsanto Company	2005	Both	Indonesia
Schnitzer Steel Industries / SSI International Far East Ltd.	2006	Both	China, South Korea
Tyco International Ltd.	2006	SEC	South Korea
Baker Hughes, Inc.	2007	Both	Indonesia
Dow Chemical Co.	2007	SEC	India
Lucent Technologies, Inc.	2007	Both	China
Paradigm B.V.	2007	DOJ	China, Indonesia
Textron Inc. / David Brown Guinard Pumps S.A.S. / David Brown Transmissions France S.A.	2007	Both	Bangladesh, India, Indonesia
York International Corp.	2007	Both	India
AGA Medical Corp.	2008	DOJ	China
Con-Way, Inc. / Emery Transnational	2008	SEC	Philippines
Faro Technologies, Inc.	2008	Both	China
Siemens AG / Siemens Bangladesh Ltd.	2008	Both	China, Bangladesh, Vietnam
Westinghouse Air Brake Technologies Corp. / Pioneer Friction Ltd.	2008	Both	India
Avery Dennison Corp.	2009	SEC	China
Control Components, Inc.	2009	DOJ	China, South Korea, India, Malaysia
ITT Corp. / Nanjing Goulds Pumps Ltd	2009	SEC	China
UTStarcom, Inc.	2009	Both	China, Mongolia, Thailand
Alcatel-Lucent, SA	2010	Both	Malaysia, Taiwan
Alliance One International, Inc.	2010	Both	China, Indonesia, Thailand
Daimler AG / DaimlerChrysler China Ltd.	2010	Both	China, Indonesia, Thailand, Vietnam
Innospec, Inc.	2010	Both	Indonesia
Nexus Technologies, Inc.	2010	DOJ	Vietnam
Pride International, Inc.	2010	Both	India
RAE Systems Inc.	2010	Both	China
Universal Corporation / Universal Leaf Tabacos Ltda	2010	Both	Thailand
Veraz Networks, Inc.	2010	SEC	China, Vietnam
Aon Corp.	2011	Both	Bangladesh, Indonesia, Myanmar, Vietnam
Diageo Plc.	2011	SEC	India, South Korea, Thailand
International Business Machines Corp.	2011	SEC	China, South Korea
Maxwell Technologies, Inc.	2011	Both	China
Rockwell Automation, Inc.	2011	Both	China
Watts Water Technologies, Inc.	2011	SEC	China
Biomet, Inc.	2012	Both	China
NORDAM Group, Inc.	2012	China	DOJ
Pfizer Inc. / Wyeth LLC	2012	Both	China, Indonesia, Pakistan
Oracle Corp.	2012	SEC	India

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28. The DOJ resolution occurred in December 2004, while the SEC action concluded in February 2005.

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Appendix 2: SEC Disclosures Regarding FCPA Investigations Involving APAC Countries/Territories

Company	Disclosure Date(s)	APAC Countries/ Territories
Avon Products, Inc.	8-K filed Oct. 21, 2008 ARS filed April 4, 2012	China
Bruker Corporation	10-Q filed Aug. 9, 2011 10-Q filed May 9, 2012	China, Hong Kong
Diebold Inc.	10-Q filed Apr. 30, 2010	Asia Pacific region
The Dun & Bradstreet Corp.	8-K filed Mar. 19, 2012 10-Q filed May 8, 2012	China
GlaxoSmithKline PLC	20-F filed March 13, 2012	China
Grifols, SA / Telecris Biotherapeutics Holding Corp.	F-4 filed Aug. 10, 2010 20-F filed Mar. 29, 2012	China
Huntsman International LLC	10-Q filed May 7, 2010 10-Q filed May 1, 2012	India
Ingersoll Rand PLC	10-Q filed May 8, 2009 10-Q filed Apr. 28, 2011	China
Keyuan Petrochemicals, Inc.	10-K filed Oct. 20, 2011 10-K filed Apr. 13, 2012	China
Kraft Foods, Inc. / Cadbury Ltd.	10-K filed Feb. 28, 2011 10-K filed Feb. 27, 2012	India
Las Vegas Sands Corp.	10-K filed Mar. 1, 2011 10-Q filed May 10, 2011	China, Macau ²⁹
MTS Systems Corporation	8-K filed Mar. 27, 2012 10-Q filed May 4, 2012	South Korea
Parametric Technology Corp.	10-Q filed Aug. 10, 2011 10-Q filed May 9, 2012	China
SciClone Pharmaceuticals, Inc.	10-Q filed Aug. 9, 2010 10-Q filed Nov. 8, 2010 10-Q filed May 10, 2012	China
Sensata Technologies Holding N.V.	10-Q filed Oct. 22, 2010 10-Q filed May 1, 2012	China
SL Industries, Inc.	10-Q filed May 10, 2012	China
STR Holdings, Inc.	S-1 filed Oct. 7, 2009 10-K filed Mar. 11, 2011	China, India
Tata Communications Ltd.	20-F filed Sept. 30, 2010 20-F filed Oct. 14, 2011	Unspecified Southeast Asian country
W.W. Grainger, Inc.	10-K filed Dec. 31, 2011	China
Wynn Resorts, Ltd.	PRE 14A filed Mar. 7, 2012 10-K/A filed Apr. 30, 2010	Philippines
Zimmer Holdings, Inc.	8-K filed Oct. 12, 2007 10-Q filed Nov. 9, 2007 10-Q filed May 3, 2012	Asia Pacific region

29. Las Vegas Sands Corp.'s SEC filings do not specify the countries or territories involved, but press reports indicate that the investigation relates to payments made in China and Macau. See note 4, *supra*.

A New and Urgent Focus on Foreign Bribery Law Compliance in Australia

Until recently, foreign bribery was not an issue high on the compliance risk radar of Australian companies. A perfect storm of developments has changed this. Perhaps most notably, Australia's first foreign bribery prosecution has been brought, 12 years after Australia enacted laws criminalizing foreign bribery, in a high-profile enforcement action that has received significant media and political attention. Moreover, the passage and implementation of the U.K. Bribery Act has had particular resonance in Australia, given the statute's wide jurisdictional reach and the significant number of Australian companies that conduct business in the United Kingdom. Finally, penalties for foreign bribery under Australian law have increased markedly, and the Australia Parliament is considering outlawing facilitation payments.

The economic environment in which Australian companies operate has also amplified their exposure to foreign bribery risk. While much of the world has experienced an economic recession,

Australia is in an economic boom, fueled largely by the export of natural resources to Asia, in particular China. Consequently, Australia's economy is heavily dependent upon both high-risk industries and high-risk jurisdictions.¹ Two of Australia's largest mining companies – Rio Tinto and BHP Billiton – have found themselves embroiled in bribery investigations arising out of their operations in Asia.²

Reports have emerged of a number of Australian companies self-reporting possible foreign bribery law breaches to the Australia Federal Police (“AFP”), and the AFP has observed “an increased awareness among Australian companies and industry of their obligations as a result of recent foreign bribery matters.”³ At the same time, a recent study found that large Australian companies still lag behind their international peers in prohibiting foreign bribery, and many lack effective compliance programs.⁴ The study concluded that the “likelihood of an ASX 200 company with international operations, no stated anti

bribery policy, and/or inadequate anti bribery management controls becoming embroiled in another high profile scandal [is] significant.”⁵

Australia's Foreign Bribery Laws

Australia's foreign bribery laws are contained in Division 70 (Bribery of Foreign Public Officials) of the Commonwealth Criminal Code, and were enacted following Australia's 1999 ratification of the Organization for Economic Cooperation and Development (“OECD”) Convention on Combating Bribery of Foreign Public Officials in International Business Transactions. Division 70 makes it a criminal offense to bribe, or offer to bribe, a foreign public official, or to cause another to do so.⁶ There is no requirement that the bribe be successful.⁷ Division 70 does not extend to commercial bribery.⁸ A defense currently exists for facilitation payments,⁹ although a legislative proposal to outlaw facilitation

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1. A recent report found that three quarters of companies in the Australian Securities Exchange (“ASX”) 100 are now exposed to high risk sectors or countries, compared to just over half of ASX 100 companies five years ago. See The Australian Council of Superannuation Investors & CAER, *Anti Corruption & Bribery Practices in Corporate Australia: A Review of Exposure to Corruption and Bribery Risk Across the S&P/ASX 200 4* (Oct. 2011), http://www.acsi.org.au/images/stories/ACSIDocuments/generalresearchpublic/11_anti_corruption_bribery_practices_in_corporate_australia.oct_11.pdf.
2. David Barboza, “China Sentences Rio Tinto Employees in Bribe Case,” *The New York Times* (Mar. 29, 2010), <http://www.nytimes.com/2010/03/30/business/global/30riotinto.html>; Alex Wilson, “BHP Billiton Discloses SEC Request,” *The Wall Street Journal* (Apr. 21, 2010), <http://online.wsj.com/article/SB10001424052748704448304575196660876522070.html>.
3. Richard Baker & Nick McKenzie, “Firms Tell of Possible Bribes,” *The Age* (Feb. 14, 2012), <http://www.theage.com.au/national/firms-tell-of-possible-bribes-20120213-1t2ax.html>.
4. The Australian Council of Superannuation Investors & CAER, note 1, *supra*, at 5, 19.
5. *Id.* at 27.
6. Criminal Code Act 1995 (Cth) s 70.2(1) [Australia].
7. *Id.* at s 70.2(1A).
8. *Id.* at s 70.2(1)(c).
9. *Id.* at s 70.4.

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payments is under active consideration.¹⁰ Division 70 applies to Australian companies, citizens and residents, and to other persons when the offense occurs at least partly in Australia.¹¹

The maximum penalties for individuals for breach of Division 70 are 10 years imprisonment and an AUD 1.1 million fine (approximately US \$1.15 million).¹² For companies, the maximum penalty is the greater of AUD 11 million (approximately US \$11.5 million), three times the value of the benefit attributable to the conduct (if it can be determined), or 10% of annual turnover.¹³ These penalties were introduced in February 2010, and represent a significant increase on the previous maximum fine for companies of AUD 330,000 (approximately US \$346,236).

Securrency and Note Printing Australia Prosecutions

Until 2011, no prosecutions had been brought under Division 70, a lack

of enforcement that was noted by the OECD.¹⁴ In July 2011, however, the AFP brought charges of bribery of foreign public officials against two Australian companies – Securrency International Pty Ltd (“Securrency”) and Note Printing

“The maximum penalties for individuals for breach of Division 70 are 10 years imprisonment and an AUD 1.1 million fine (approximately US \$1.15 million).”

Australia Limited (“NPA”) – and six individuals.¹⁵ Securrency is the world leader in polymer bank note technology, and the charges relate to alleged bribes paid to public officials via sales agents to secure

contracts in a number of Asian countries.¹⁶ Since the charges were announced, three additional individuals have been charged and the extradition of a fourth person is being sought.¹⁷ Public reports suggest that both Securrency and NPA are intending to enter guilty pleas, although the proceedings are currently subject to a gag order.¹⁸ The former Company Secretary and Chief Financial Officer of Securrency has pleaded guilty to a charge of false accounting, and will be a witness against several of his former colleagues.¹⁹

The prosecution is notable on many fronts. The Reserve Bank of Australia, Australia’s central bank, owns 50% of Securrency and 100% of NPA.²⁰ What Reserve Bank officials knew, and when, has been the subject of both press speculation and Parliamentary questioning.²¹ In addition, the Reserve Bank has stated that, prior to the prosecution, it engaged an Australian law firm to investigate its use of sales agents to determine whether there

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10. Attorney-General’s Dep’t, Gov’t of Australia, “Divisions 70 and 141 of the Criminal Code Act 1995: Assessing the ‘facilitation payments’ defense to the Foreign Bribery offence and other measures” (Nov. 15, 2011), <http://www.crimeprevention.gov.au/Financialcrime/Documents/v2Public%20consultation%20paper%20-%20amendments%20to%20bribery%20offences%20-%20corrected%20version%2018%20November%202011.pdf>.
11. Criminal Code Act 1995 (Cth) s 70.5.
12. *Id.* at s 70.2(4); Crimes Act 1914 (Cth) s 4AA(1) [Australia].
13. Criminal Code Act 1995 (Cth) s 70.2(5); Crimes Act 1914 (Cth) s 4AA(1).
14. Richard Baker & Nick McKenzie, “Australia Rebuked on Graft Cases,” *The Age* (Oct. 6, 2009), <http://www.theage.com.au/national/australia-rebuked-on-graft-cases-20091005-gjem.html>.
15. Australian Federal Police, Media Release, Foreign Bribery Charges Laid in Australia (July 1, 2011), <http://www.afp.gov.au/media-centre/news/afp/2011/july/foreign-bribery-charges-laid-in-australia.aspx>.
16. *Id.*
17. Richard Baker & Nick McKenzie, “Bank Bribe Charges: Court Calls Two Firms,” *The Age* (Oct. 28, 2011), <http://www.theage.com.au/national/bank-bribe-charges-court-calls-two-firms-20111027-1mm5s.html>; Richard Baker & Nick McKenzie, “Bribery Scandal Case Gets Witness,” *Sydney Morning Herald* (June 9, 2012), <http://www.smh.com.au/opinion/political-news/bribery-scandal-case-gets-witness-20120608-201r6.html>.
18. Baker & McKenzie, “Bank Bribe Charges: Court Calls Two Firms,” note 17, *supra*; Richard Baker & Nick McKenzie, “Bribes: Firms to Plead Guilty,” *The Age* (July 27, 2011), <http://www.theage.com.au/national/bribes-firms-to-plead-guilty-20110726-1hyna.html>.
19. Richard Baker & Nick McKenzie, “Guilty Plea in RBA Scandal,” *The Age* (July 19, 2012), <http://www.theage.com.au/opinion/political-news/guilty-plea-in-rba-scandal-20120718-22ap8.html>.
20. Reserve Bank of Australia, *Reserve Bank of Australia Annual Report 2010* at 29 (Aug. 10, 2010), <http://www.rba.gov.au/publications/annual-reports/rba/2010/index.html>.
21. Hansard, Commonwealth of Australia, House of Representatives, Standing Committee on Economics, *Review of Reserve Bank of Australia Annual Report 2010* at 32-37, Canberra (Feb. 11, 2011), <http://parlinfo.aph.gov.au/parlInfo/search/display/display.w3p;query=Id%3A%22committees%2Fcommrep%2F13346%2F0000%22>; Nick McKenzie & Richard Baker, “Reserve Officials in Evidence Cover-Up,” *Sydney Morning Herald* (Oct. 5, 2011), <http://www.smh.com.au/business/reserve-officials-in-evidence-coverup-20111004-117dr.html>.

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was a breach of Australian law, and that the investigation “concluded that there was not.”²²

The Importance of Effective Compliance Policies and Procedures for Australian Companies

Considerable attention has been focused on the U.K. Bribery Act’s offense of the “failure of commercial organisations to prevent bribery,” a strict liability offense, and the corresponding affirmative defense available to an organization found to have “adequate procedures.”²³ Comparatively little attention, however, has been given to existing principles of corporate criminal liability under Australia’s Commonwealth Criminal Code, which have similar effect.

Division 12 of the Commonwealth Criminal Code establishes principles of corporate criminal liability applicable to federal offenses.²⁴ These provisions were enacted in 2001, and at that time were described as constituting a “paradigm shift in corporate criminal liability.”²⁵ Australia does not apply the respondeat superior doctrine of United States criminal law.

Rather, section 12.3 of Division 12 provides that:

If intention, knowledge or recklessness is a fault element in relation to a physical element of an offence, that fault element must be attributed to a body corporate that expressly, tacitly or impliedly authorised or permitted the commission of the offence.²⁶

Authorization or permission under section 12.3 may be established in any number of ways, including through the actions of the board of directors or a “high managerial agent.”²⁷ Authorization or permission may also be established, however, by “proving that a corporate culture existed within the body corporate that directed, encouraged, tolerated or led to non-compliance with the relevant provision” or by “proving that the body corporate failed to create and maintain a corporate culture that required compliance with the relevant provision.”²⁸

“Corporate culture” is defined as an “attitude, policy, rule, course of conduct or practice” existing within the company or part of the company.²⁹ Division 12 expressly codifies “tone at the top” as a

factor in determining corporate culture by providing that one of the circumstances relevant to the application of these standards is whether the employee that committed the offense “believed on reasonable grounds, or entertained a reasonable expectation, that a high managerial agent of the body corporate would have authorised or permitted the commission of the offence.”³⁰

Consequently, under Australian law, effective anti-corruption and bribery policies and procedures are not only a critical element in preventing breaches of the law in the first place. They also factor meaningfully in the determination of whether a corporation will be held liable should one of its employees engage in bribery. An Australian company’s criminal liability in situations where an employee has engaged in bribery may well turn on whether such conduct was contrary to the culture of the company. Evidence of an effective compliance program would be critical in such circumstances.³¹

Despite the importance of anti-corruption policies under Australian law, a recent study found that only 59% of ASX 200 companies with international

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22. Reserve Bank of Australia, “RBA statement in response to questions from *The Age*,” *The Age* (Aug. 11, 2011), <http://www.theage.com.au/national/investigations/rba-statement-in-response-to-questions-from-the-age-20110810-1imx3.html#ixzz21PcRbb56>.

23. Bribery Act, 2010, c. 23, s 7; U.K. Ministry of Justice, *The Bribery Act 2010: Guidance about procedures which relevant commercial organisations can put into place to prevent persons associated with them from bribing* 15-19 (Mar. 2011), <http://www.justice.gov.uk/downloads/legislation/bribery-act-2010-guidance.pdf>. See also K. Seeger, M. Getz & L. Grouse, “Transparency International: UK’s anti-bribery due diligence guidance,” *FCPA Update*, Vol. 3, No. 11 (June 2012), www.debevoise.com/files/Publication/c97a52f6-8d35-425d-ac8a-a222d7f2c8af/Presentation/PublicationAttachment/06a0bdee-0a9b-46ca-8cc0-d6f9becfa517/FCPA_Update_June_2012.pdf.

24. Criminal Code Act 1995 (Cth) div 12. While there has been some suggestion that the Division 12 principles may not apply to the offense of foreign bribery, most commentators do not take this view. See, e.g., Cindy Davids and Grant Schubert, “Criminalising Foreign Bribery: Is Australia’s Bark Louder than Its Bite?” 35 *Crim. L.J.* 98, 107-08 (2011). Given that the question has yet to be addressed by Australian courts, it is prudent to assume Division 12 will apply to the offense of foreign bribery.

25. Jennifer Hill, *Corporate Criminal Liability in Australia: An Evolving Corporate Governance Technique?* 17, 20 (Vanderbilt Law School, Law and Economics Working Paper No. 03-10, 2003).

26. Criminal Code Act 1995 (Cth) s 12.3(1).

27. *Id.* at s 12.3(2)(a) and (b).

28. *Id.* at s 12.3(2)(c) and (d).

29. *Id.* at s 12.3(6).

30. *Id.* at s 12.3(4)(b).

31. Hill, note 25, *supra*, at 18.

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operations have corporate policies that explicitly prohibit bribery.³² The same study also found that only 26% of ASX 100 companies were rated as having advanced management implementation systems to implement their Codes of Conduct, and

“The Securrency case highlights the distinction between having a policy and effectively implementing it.”

that 32% were rated as basic or worse in regards to having adequate management systems to implement their Codes of Conduct.³³

The Securrency case highlights the distinction between having a policy and effectively implementing it. In giving evidence to the Australian Parliament in 2011, Reserve Bank Governor Glenn Stevens stated that Securrency had “policies that looked very good on paper – looked very strong and had all the right checks and balances and due diligence, and so on – [and] had not been implemented properly. That is a fact; there is no doubt about that.”³⁴

Conclusion

A handful of Australian companies have for many years had exposure to the FCPA as issuers on U.S. exchanges. Now, however,

all Australian companies with overseas operations, particularly those operating in high-risk markets and industries, should ensure that their foreign bribery policies and procedures are robust and effective, on paper and in practice. Australian companies need not reinvent the wheel – they can draw upon international best practices, while designing and enhancing compliance programs that make sense in their business and industry.

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32. The Australian Council of Superannuation Investors & CAER, note 1, *supra*, at 5.

33. *Id.* at 18-19.

34. Hansard, note 21, *supra*, at 35.

Recent Anti-Bribery Enforcement in Hong Kong

The Hong Kong Special Administrative Region (“SAR”) is perceived to be one of the world’s least corrupt jurisdictions, ranking twelfth (ahead of Japan, Germany, the United Kingdom and the United States) on the Transparency International Corruption Perceptions Index for 2011.¹ This was not always the case. Prior to the 1970s, corruption was endemic both in the public and private sector.² In addition to legislation designed to limit the sources of corrupt proceeds³ and a free press, much of the credit for Hong Kong’s reputation for transparency goes to the Independent Commission Against Corruption (“ICAC”) and the strong legal framework instituted by the Prevention of Bribery Ordinance.⁴

Established in 1974, the ICAC has combined aggressive tactics and independence from government and other law enforcement agencies to combat both

public and private corruption through arrests, prosecutions, and public relations campaigns.⁵ The ICAC’s success can be measured in the general decline of graft complaints related to government departments.⁶ The ICAC, after an early history of raiding police stations and blockbuster prosecutions, has devoted much of its work in recent years to small-scale crimes and has placed an increasing focus on private sector corruption and financial crimes other than corruption.⁷

Recently, however, the ICAC made its most high-profile arrests in years, possibly suggesting a new focus on Hong Kong’s wealthy business community, which exercises significant influence in the territory. This focus on prominent business persons has brought with it a renewed focus on the ethics of Hong Kong’s public officials.

High-Profile Arrest and Prosecution of Kwok Brothers

In March 2012, the ICAC arrested Thomas and Raymond Kwok,⁸ brothers and co-chairmen of Sun Hung Kai Properties (“SHKP”), the second largest property developer in the world and one of the largest conglomerates in Hong Kong, with over 40 billion USD in assets.⁹ SHKP owns some of Hong Kong’s largest properties, including the iconic International Commerce Centre, the fourth tallest building in the world.

The arrests arose out of an investigation into collusion involving Rafael Hui Si-yan, the former Chief Secretary and second highest official in the SAR Government.¹⁰ The ICAC also arrested SHKP executive director Thomas Chan and Francis Kwan, a businessman and former official of the Hong Kong Stock Exchange.¹¹

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1. Transparency International, Corruption Perceptions Index 2011, <http://cpi.transparency.org/cpi2011/results/>.
2. Jean Yves Le Corre, Transparency International, Integrity Study Report: Hong Kong at 11 (2006), http://www.transparency.org/content/download/16359/218977/file/NIS_HongKong_2006.pdf [“Integrity Study”]; ICAC, Brief History, http://www.icac.org.hk/en/about_icac/bh/index.html [“ICAC Brief History”].
3. Such as the legalization of off-track betting in the territory. See Robert Klitgaard, *Controlling Corruption*, 116, n.18 (1991).
4. Prevention of Bribery Ordinance, Cap. 201 (1997) (H.K.). Along with outlawing giving and receiving bribes and criminal penalties for conspiracy, Section 10 of the Ordinance creates the offense of “possession of unexplained property” for higher level public officials. Under Section 10, a “prescribed officer” (active or retired) who maintains property or a standard of living above a level “commensurate with his past or present emoluments” commits an offense “unless he gives a satisfactory explanation.”
5. Integrity Study at 11; ICAC Brief History.
6. Integrity Study at 12.
7. See, e.g., ICAC Press Rels., (May 30, 2012, June 14, 15, and 18, 2012), http://www.icac.org.hk/en/news_and_events/pr2/index_archive.html. Examples of conduct tackled by the ICAC have included vote rigging in district elections, abuse in the granting of a liquor license, scamming of a student’s parent by a school supervisor, and bribery to obtain club membership.
8. Simpson Cheung and Sandy Li, “Kwok Brothers Report to ICAC to Renew Their Bail,” *South China Morning Post* (May 29, 2012).
9. Sun Hung Kai Properties Ltd., Annual Report 6 (2011/2012), <http://www.shkp.com/en-US/Pages/annual-interim-reports/>. The Kwoks themselves are personally worth about \$18.3 billion. Alex Frew McMillan and Joy Leung, “Billionaire Kwok Brothers Arrested for Graft in Hong Kong,” *Reuters* (Mar. 29, 2012), <http://www.reuters.com/article/2012/03/29/us-sunhungkai-suspension-idUSBRE82S0U920120329>.
10. “ICAC Releases Former CS & Kwok Brothers,” *Radio Television Hong Kong* (Mar. 30, 2012), http://www.rthk.org.hk/rthk/news/englishnews/20120330/news_20120330_56_829856.htm.
11. *Id.*; Adrian Wan, Sandy Li, and Clifford Lo, “Kwoks ‘Paid HK\$34m in Bribes,’” *South China Morning Post* (July 14, 2012).

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On July 13, 2012, 117 days after the initial arrests, the ICAC charged Hui, the Kwok brothers, Chan, and Kwan with a series of offenses, including conspiracy to offer advantages to a public servant and misconduct in public office.¹² Hui alone faces eight charges.¹³ The ICAC alleges that, between 2000 and 2009, the Kwoks made payments to Hui of more than HK\$ 34 million (US\$ 4.3 million).¹⁴ According to the ICAC charge, Hui received HK\$ 30 million in cash and more than HK\$ 5 million in loans and the rent-free use of a luxury flat.¹⁵ In a statement, the ICAC described these benefits “as a reward for [Hui] to remain favourably disposed to [Raymond Kwok] and/or his interests.”¹⁶ The ICAC did not allege that any projects directly benefitted from Hui’s decision making.¹⁷ On the same day, the Director of Public Prosecutions (“DPP”), Kevin Zervos, appeared before a magistrate and sought an adjournment due to the complexity of the case.¹⁸ No pleas were entered and the case has been adjourned to October 12, 2012.¹⁹

Close Scrutiny of Chief Executive Conduct

In recent months, the SAR’s former top official, the recently retired Chief Executive Donald Tsang, has come under scrutiny for his dealings with senior-level businessmen

“The DPP has...taken a public position on amending the Prevention of Bribery Ordinance, which covers civil servants but not the Chief Executive, to include the Chief Executive.”

during his tenure in office. As there were no applicable guidelines in place, it has been the practice of the Chief Executive’s Office voluntarily to disclose official gifts, but not those made in a “private” capacity. Earlier

this year, the Hong Kong press reported that Tsang had accepted without declaration gifts from wealthy citizens, from trips on private planes and luxury yachts to use of a penthouse just over the border in mainland China, while his Office publicly declared receipt of only such gifts as some potted plants and a pen.²⁰ Although the ICAC has not yet taken specific action, it is currently investigating allegations against Tsang in more detail.²¹ The DPP has in turn taken a public position on amending the Prevention of Bribery Ordinance, which covers civil servants but not the Chief Executive, to include the Chief Executive.²²

In direct response to the public furor over his close relationships with prominent businesspersons and receipt of private gifts, Tsang created the Independent Review Committee for the Prevention and Handling of Potential Conflicts of Interests (the “Committee”) to consider the prevention and handling of potential conflicts of interests concerning the Chief Executive, non-official members

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12. ICAC Press Rel., Former Chief Secretary and Four Others Face ICAC Charges of Bribery and Misconduct (July 13, 2012), http://www.icac.org.hk/en/news_and_events/pr2/index_uid_1311.html; Enid Tsui, “Kwoks Charged in Hong Kong Bribery Case,” *Financial Times* (July 13, 2012), <http://www.ft.com/cms/s/0/ddfa67aa-cca1-11e1-9c96-00144feabdc0.html#axzz23UVIFRA5>.
13. Li Likui and Kahon Chan, “Former CS, Kwok Brothers Charged,” *China Daily* (July 14, 2012), <http://www.chinadailyapac.com/article/former-cs-kwok-brothers-charged>.
14. See Wan, Li, & Lo, note 11, *supra*.
15. *Id.*
16. ICAC Press Rel., Former Chief Secretary and Four Others Face ICAC Charges of Bribery and Misconduct (July 13, 2012), http://www.icac.org.hk/en/news_and_events/pr2/index_uid_1311.html; see also Tsui, note 12, *supra*.
17. Tsui, note 12, *supra*.
18. Likui and Chan, note 13, *supra*.
19. Wan, Li, & Lo, note 11, *supra*.
20. Kent Ewing, “Corruption Cloud Hangs Over Hong Kong,” *Asia Times Online* (Apr. 3, 2012), <http://www.atimes.com/atimes/China/ND03Ad01.html>; Te-Ping Chen, “Loophole Allows Hong Kong Chief to Cavort With Tycoons,” *China Real Time Report* (Feb. 29, 2012), <http://blogs.wsj.com/chinarealtime/2012/02/29/hong-kong-scandal-reveals-conflict-of-interest-loophole/>.
21. Emily Tsang, Tanna Chong, and Simpson Cheung, “ICAC Launches Tsang Investigation,” *South China Morning Post* (Feb. 29, 2012), <http://topics.scmp.com/news/hk-news-watch/article/ICAC-launches-Tsang-investigation>.
22. Simpson Cheung, “Anti-Graft Law Should Cover All, Says Prosecutor,” *South China Morning Post* (May 12, 2012).

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of the SAR's Executive Council, and appointed officials.²³ On May 31, 2012, the Committee reported to the SAR government on insufficiencies in the current controls governing conflicts and made a number of recommendations.²⁴ The Committee proposed bringing the Chief Executive under the authority of the Prevention of Bribery Ordinance, which would criminalize the solicitation or acceptance by the Chief Executive of any benefits provided without the permission of a statutory independent commission.²⁵

The administration of the new Chief Executive, Chun-ying Leung, which took office July 1, has also been hit by scandal. In addition to allegations of unauthorized improvements made to his house, Leung's administration has had to deal with the fact that Leung's Secretary for Development, a long-time civil servant, resigned after 12 days on the job as Secretary after his arrest by the ICAC for misuse of civil servant rent subsidies.²⁶ According to press reports, the Secretary and the Assistant Director of Highways cross-leased adjacent apartments to each other while collecting the subsidy.²⁷

Conclusion

Although recent enforcement activities in Hong Kong discussed here have raised the specter of the kind of high-level corruption charges that have not been leveled in decades, Hong Kong remains well regarded by international corruption

watchdogs, and foreign investors generally see it as offering a transparent business environment.²⁸ As the high-level cases work their way through the legal system, even greater clarity in Hong Kong may emerge.

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23. See generally, Independent Review Committee for the Prevention and Handling of Potential Conflicts of Interests, About the Committee, <http://www.irc.gov.hk/eng/about/about.htm>.

24. Independent Review Committee for the Prevention and Handling of Potential Conflicts of Interests, Press Release (May 31, 2012), <http://www.info.gov.hk/gia/general/201205/31/P201205310415.htm>; Report of the Independent Review Committee for the Prevention and Handling of Potential Conflicts of Interests (2012), http://www.irc.gov.hk/pdf/IRC_Report_20120531_eng.pdf.

25. Fan Feifei, "Free Ride to End for CE," *China Daily* (June 1, 2012), <http://www.chinadailyapac.com/article/free-ride-end-cc>.

26. Joyce Ng, Clifford Lo, Colleen Lee, and Gary Cheung, "Minister Arrested By ICAC Resigns," *South China Morning Post* (July 13, 2012), <http://topics.scmp.com/news/hk-news-watch/article/Minister-arrested-by-ICAC-resigns>.

27. *Id.*

28. See Corruption Perceptions Index 2011, note 1, *supra*.

Upcoming Speaking Engagements

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Sean Hecker

“U.S. Prosecution of Foreign Crimes: Challenges and Debates”

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November 16, 2012

Paul R. Berger

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Karolos Seeger

Matthew Howard Getz

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