

FCPA Update

June 2013 ■ Vol. 4, No. 11

Spotlight on Southeast Asia

This article is the third in a series of *FCPA Update* regional spotlights, following our August and September 2012 spotlight issues more generally covering the Asia-Pacific region and our March 2013 spotlight on Latin America. The theme of this spotlight is “Beyond China” and the importance of the rising Southeast Asian region as a distinct area of focus for in-house counsel and compliance personnel.

Beyond China: Corruption Risks in Southeast Asia

For several years, the People’s Republic of China (“PRC”) has been the focus of both considerable foreign investment and FCPA enforcement. As the PRC moves into a period of more stable but slower growth,¹ investors and enforcement agencies are likely to increase their focus on other developing and middle-income countries, especially in Southeast Asia. Many of these Southeast Asian nations are ranked below the PRC in anti-corruption perception indices – that is, are perceived to be more corrupt than the PRC – and some of them have recently begun to target corruption in a more transparent manner than the PRC.

This article will examine anti-corruption challenges and enforcement trends in three such developing nations in Southeast Asia – Indonesia, the Philippines, and Vietnam – as well as in the middle-income countries of Thailand and Malaysia.

The reasons why the PRC has been (and will for the foreseeable future continue to be) a high-risk area are well-known. Given that the PRC has the largest population of any country, the second largest economy in the world, a continuing significant state role in the national economy, and a rank of 80th on Transparency International’s 2012 Corruption Perceptions Index (“CPI”), there is little wonder why the PRC has for years appeared at the top of the list of countries involved in FCPA enforcement actions. In 2012 and 2013, the PRC featured in the resolutions of enforcement activity against Eli Lilly, Tyco, Garth Peterson, Pfizer/Wyeth and Biomet. It also was the focus of disclosures relating to the Hollywood Studio sweep, as well as by Harris Corp., SL Industries, WW Grainger and Las Vegas Sands (China). Yet, although corruption remains a major problem in the PRC, as reflected in numerous local press reports regarding corrupt officials in the period following the Eighteenth Party Congress in November 2012,² the intensity of focus on the PRC is in several ways puzzling given the relative lack of regulatory attention to other countries in the region.

CONTINUED ON PAGE 2

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Regional Spotlight ■ Continued from page 1

For example, Indonesia, ranked 118th on the CPI, was mentioned in only four resolutions: the November 2012 Rothschild and Pierucci indictments, the Allianz cease and desist order, the Pfizer/Wyeth resolution and the Tyco enforcement actions.

Similarly, the Philippines, ranked 105th on the CPI, was mentioned principally in connection with the Wynn-Okada dispute. Thailand, an upper middle-income country which is ranked 88th on the CPI, received minor attention in the Tyco resolution and the ongoing Siriwan case, and Vietnam, ranked 123rd on the CPI, was not identified in any FCPA resolution in 2012 and 2013 (though allegations relating to Vietnam did appear in the Aon resolution in late 2011). Basic information about each nation’s economy and relative perceived corruption is set forth below:

	Population (2011) (in millions) ³	GDP (2011) (in US\$ billions) ⁴	CPI Ranking (2012) ⁵
Indonesia	242	847	118
Philippines	95	225	105
Thailand	69	346	88
Malaysia	29	288	54
Vietnam	88	124	123

Although a continuing focus on the PRC is likely given its size and the prevalence of state-owned enterprises in the country, which makes many of the country’s 1.3 billion residents “foreign officials” as the term is defined by enforcement agencies, enforcement agencies may also follow investor interest and increase their focus on Southeast Asian countries, especially those perceived to be more corrupt than the PRC.

I. Indonesia

After India and China, Indonesia is the largest market in Asia. With a population of 242 million people, Indonesia is larger than Brazil. Indonesia has ample natural resources (including significant amounts of natural gas). Its GDP is approximately US\$ 850 billion.⁶ Its economy has grown by an average of 5.7% a year over the past decade⁷ and is expected to grow at over 6% in the coming years.⁸

Already a major destination for foreign direct investment (“FDI”), Indonesia is home to pervasive corruption. Whether characterized as small bribes, facilitation payments or responses to low-level intimidation or extortion by the police, payments are regularly reported to be sought in almost every conceivable interaction with government officials.

CONTINUED ON PAGE 3

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 8. World Bank, note 6, *supra*.

FCPA Update

FCPA Update is a publication of Debevoise & Plimpton LLP

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Regional Spotlight ■ Continued from page 2

These officials are typically paid low salaries and, according to reports, view these payments as an acceptable way of supplementing their incomes.⁹

Indeed, a survey released by Indonesia's statistics agency found that "32% of people polled viewed bribing police officers as normal, while 33% of respondents considered it normal to give extra money to civil registry officials."¹⁰

Larger bribes in Indonesia have been reported to be demanded by politicians and political parties in exchange for assistance in obtaining government-related contracts or otherwise exercising influence. The November 2012 FCPA indictments of David Rothschild and Frederic Pierucci in part allege the use of a consultant to make payments to a member of Parliament in order to assist with obtaining a contract.¹¹ Demands for this type of bribe reportedly often occur in proximity to elections, the next of which is scheduled for 2014. Although Indonesia's transition to democracy

15 years ago likely reduced the endemic corruption of the former dictatorship, the country's elections are a proximate occasion for bribery. The country's campaign finance laws strictly limit campaign donations in a manner that has not kept pace with Indonesia's raucous political culture, causing political parties and officials running for re-election to seek alternate means of financing.¹² Most recently, the Chairman of the country's Prosperous Justice Party ("the P.K.S."), which is part of the governing coalition, was accused of accepting bribes in exchange for allowing additional government quotas.¹³ In 2012, 52 members of various political parties were implicated in corruption charges.¹⁴ In May 2013, Zulkarnaen Djabar, a member of Parliament for Golkar (the country's largest party), received the longest ever term of imprisonment (15 years) for corruption by a politician for accepting a Rp 14 billion (US\$ 1.42 million) bribe to rig a government tender for the purchase of Korans.¹⁵ The bribe payer, a local businessman, received a sentence of eight years.¹⁶

Indonesia's main anti-corruption agency, the Corruption Eradication Commission (Komisi Pemberantasan Korupsi) ("KPK") does not shy away from targeting high-level officials. Recent examples include: Inspector General Djoko Susilo, who has been charged with corruption and money laundering after allegedly amassing some US\$ 57 million through hidden means,¹⁷ and Anas Urbaningrum, the head of Indonesia's ruling Democratic Party, who is being investigated for allegedly accepting kickbacks in relation to the Hambalang Sports Centre corruption scandal.¹⁸ Muhammad Nazaruddin, the former treasurer of the Democratic Party, was also convicted on corruption charges related to Rp 4.6 billion (approximately US\$ 460,000) in bribes allegedly received in connection to the construction of the athletes' village for the Southeast Asian Games.¹⁹

While less pervasive than in China, state-owned enterprises ("SOEs") comprise a significant part of the Indonesian economy. Major Indonesian SOEs include Pertamina,

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9. J. Vernon Henderson & Ari Kuncoro, "Corruption in Indonesia," National Bureau of Economic Research Working Paper No. 10674, at 3 (Aug. 2004), <http://www.nber.org/papers/w10674>.
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Regional Spotlight ■ Continued from page 3

the oil and natural gas company; Pegadaian, a fiduciary services monopoly; and PLN, the state electricity monopoly at issue in the Rothschild and Pierucci cases. Smaller

“Despite its relatively low CPI ranking, Indonesia has relatively robust anti-corruption legislation and an active anti-corruption prosecutor.”

state-owned enterprises, at the provincial or municipal level, are common and were the focus of the allegations in the Allianz resolution.

Despite its relatively low CPI ranking, Indonesia has relatively robust anti-corruption legislation and an active anti-

corruption prosecutor. Indonesia’s Law No. 20 of 2001 on the Eradication of Corruption criminalizes active and passive corruption in the public sector.²⁰ Proposals are being discussed to grant the KPK the power to prosecute foreigners located outside Indonesia and to prosecute private-sector corruption.²¹ Like prosecutors elsewhere, the KPK can also rely on other legislation, for example Law No. 25 of 2003 on Money Laundering.²²

The KPK has existed for over a decade and has tended to focus on the prosecution of bribe takers.²³ In recent years it has become more active, investigating and obtaining convictions of more than a hundred high-level Indonesian officials in all areas of government,²⁴ such as the conviction of former Youth and Sports Ministry Secretary Wafid Muharram for accepting Rp 3.2 billion (approximately US\$ 320,000) from a contractor.²⁵ The KPK has an enviable 100% conviction rate,²⁶ achieved

through expansive investigative powers, the pre-testing of prosecutions and an efficient anti-corruption court.²⁷ Despite this conviction rate, the KPK’s success has been limited by the fact that many of those convicted either remain free or reportedly continue to run lucrative business empires from prison.²⁸

Bribe payers are also prosecuted in Indonesia, with recent examples including the trial of two businessmen for allegedly paying Rp 1.3 billion (approximately US\$ 130,000) out of an allegedly promised Rp 40 billion (US\$ 4 million) to a senior PKS official to pressure the Minister of Agriculture to raise the beef import quota.²⁹ In 2012, a prominent actor-turned-businessman was sentenced to six years for bribing Jakarta city officials to rig advertising contracts.³⁰ Businessman Anggodo Widjojo was convicted in 2010 of attempting to bribe KPK officers.³¹ The KPK does not yet, however, have jurisdiction to prosecute

CONTINUED ON PAGE 5

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27. Emil P. Bolongaita, “An exception to the rule?: Why Indonesia’s Anti-Corruption Commission Succeeds Where Others Don’t – A Comparison with the Philippines’ Ombudsman,” *U4 Issue*, Vol. 4, at 13-18 (Aug. 2010), <http://www.u4.no/publications/an-exception-to-the-rule-why-indonesia-s-anti-corruption-commission-succeeds-where-others-don-t-a-comparison-with-the-philippines-ombudsman/>.

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Regional Spotlight ■ Continued from page 4

foreigners (that is, non-Indonesians) located outside Indonesia.³²

II. Philippines

With a population of just under 100 million and a GDP of US\$ 225 billion, the Philippines is a major economy in Southeast Asia that is often overlooked, even though the country's economy has grown by approximately five percent per year over the past 10 years, with growth exceeding seven percent in 2010 and 6.6% in 2012.³³ Despite its central location in the APAC region, its historic ties to the United States and its large English-speaking population, the Philippines has historically attracted less FDI than other ASEAN nations.³⁴ In the future, improved political stability and a focus on good governance (including anti-corruption) by the current administration³⁵ could increase the attractiveness of investment in the country.³⁶

Currently, however, the Philippines is ranked 105 on the CPI³⁷ and, as in Indonesia, corruption is reported as being widespread. Payments to lower-level

government officials in the Philippines to speed up the bureaucratic system (known as the "lagay" system in the Philippines) are reportedly common. More significant bribes are also allegedly common in the Philippines and often involve paying to manipulate bidding outcomes or providing benefits to relatives of officials in a country in which nepotism is common.³⁸

United States authorities are currently investigating allegations of up to US\$ 40 million in payments to associates of Philippine gaming officials by Universal Entertainment.³⁹ Within the Philippines, prosecutors have arrested Mike Arroyo, husband of the former Philippine President Gloria Macapagal-Arroyo, who is accused of accepting bribes to push through a government contract with the Chinese telecommunications company ZTE Corp.⁴⁰ In addition to Arroyo, former National Police chief Jesus Verzosa, a businessman; and 19 retired and active police officers have also been charged with graft in relation to the sale of second-hand helicopters to the Philippine National Police.⁴¹ Other

high profile cases include officials of the Philippine Overseas Employment Administration ("POEA") being charged with violations of the Anti-Graft and Corrupt Practices Act.⁴²

The main laws on bribery and corruption in the Philippines include: Articles 210, 211, 211-A and 212 of the Revised Penal Code, which cover direct, indirect, qualified bribery and corruption of public officials, respectively; Republic Act No. 3019, which covers, *inter alia*, public officials requesting or receiving gifts; Presidential Decree No. 46, which prohibits public officials from receiving and private persons from giving any gift, whether for past or future favor; Republic Act No. 6713, which expressly prohibits public officials from soliciting and accepting gifts; and Republic Act No. 7080, which covers the plunder of assets or amassing wealth gained from criminal acts, such as receiving kickbacks.⁴³ There are also other regulations that do not directly deal with corruption, but which have had an impact on government efforts to tackle this

CONTINUED ON PAGE 6

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Regional Spotlight ■ Continued from page 5

issue. For example, the Revised Code of Corporate Governance has raised the levels of corporate governance in corporations, thus indirectly addressing corruption.⁴⁴

Despite these numerous laws, corruption remains deep-rooted in the Philippines. The Philippines enacted the original version of the Anti-Graft and Corrupt Practices Act in 1960, and the various anti-corruption institutions such as the Presidential Anti-Graft Commission and the Office of the Ombudsman were also established in 2001 and 1987, respectively.⁴⁵ In 2011, the top anti-corruption official was forced to resign after politicians voted to impeach her on grounds of failing to investigate corruption claims.⁴⁶

Recently, the government of the Philippines has made efforts to strengthen the anti-bribery regime in the Philippines. For example, President Aquino approved the Good Governance and Anti-Corruption Plan (“GCAC Plan”).⁴⁷ The GCAC Plan is based on three pillars: transparency, accountability and participation, with each pillar containing specific programs and commitments. For example, the Freedom of Information Act was finally passed, after a decade of trying to push it through

Congress. The Philippine government hopes to improve transparency and openness in a bid to tackle the longstanding problems of corruption and bribery in the country.⁴⁸

“In 2011, the top anti-corruption official [in the Philippines] was forced to resign after politicians voted to impeach her on grounds of failing to investigate corruption claims.”

III. Thailand

With a population of about 70 million, Thailand is an economic success story. After more than two decades of strong economic growth, the country moved in July 2011 into the ranks of the World Bank’s “upper middle income” group of countries.⁴⁹ Thailand has long been a destination for FDI, especially in manufacturing.⁵⁰ Despite political instability, Thailand’s combination

of relatively low wages and advanced infrastructure remains a draw to foreign investors, and contributes to its sizeable GDP of around US\$ 350 billion.⁵¹

Corruption is reported to be common in Thailand, which now ranks below China on the CPI. Most infrastructure projects and other public works projects, such as government housing, are plagued by corruption problems. Although the Thai government is viewed as less bureaucratic than those in other Southeast Asian countries, paying bribes to expedite licenses, permits or the provision of facilities and public utilities is alleged to be common. Judicial and police corruption in Thailand is also reported to be rampant, and largely unpunished, with judges alleged to be making decisions influenced by bribes and personal relationships.⁵²

Independent Thai anti-corruption institutions such as the National Anti-Corruption Commission (“NACC”), the ombudsman, the Elections Commission, and the Constitutional Court rarely bring or hear corruption cases. According to the NACC, only 15 corruption cases were brought to court in Thailand between 2000 and 2011,⁵³ and the prosecution process

CONTINUED ON PAGE 7

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Regional Spotlight ■ Continued from page 6

often takes so long that it fails to discourage offenders.⁵⁴ The one main exception is the investigation of former Prime Minister Thaksin in 2006. Thaksin was overthrown in a military coup for alleged abuse of power and corruption. He fled Thailand to avoid a trial, but the Supreme Court of Thailand nevertheless seized US\$ 1.44 billion of his assets in February 2010.⁵⁵

As evaluated by the Global Integrity Report in 2007, the anti-corruption laws in Thailand are in fact fairly strong, but actual enforcement by the anti-corruption agency is much weaker.⁵⁶ Thai law criminalizes active and passive bribery, attempted corruption, extortion, abuse of public office for private gain, and serving as an intermediary between two parties exchanging bribes and services.⁵⁷ Two notable areas that the Thai Penal Code does not cover is the bribery of foreign (non-Thai) officials and business-to-business corruption.⁵⁸

Recent corruption scandals involving public procurement, especially in relation to aid contracts following the 2011 floods,

have led the government to adopt additional reporting and record keeping requirements for companies entering into government procurement contracts in excess of THB 500,000 (approximately US\$ 16,000).⁵⁹

IV. Malaysia

Like Thailand, Malaysia is an upper-middle income country with a GDP of approximately US\$ 288 billion according to the World Bank.⁶⁰ With roughly 30 million inhabitants, the country ranks 54th on the CPI, tied with Latvia and Turkey.

Although Malaysia is less corrupt than many other Southeast Asian nations, a 2010 survey carried out by Transparency International found that at least one in 10 Malaysians has paid a bribe, while half of all businesses have lost contracts or clients as a result of corruption.⁶¹ In the recent elections in 2013, there were allegations that the competing political parties poured millions of dollars into projects thought to benefit their own support bases. There have also been reports that the Barisan

Nasional party was engaged in vote-buying by handing out cash vouchers to voters.⁶² Indeed, the election was plagued by allegations of corruption and bribery.⁶³ In 2013, numerous allegations of corruption were leveled against Taib Mahmud, the long-serving Chief Minister of Sarawak, Malaysia's largest state, who is rumored to be Malaysia's richest man but considered untouchable given his importance to Malaysia's governing coalition.⁶⁴

The Malaysian Anti-Corruption Act came into force in 2009, replacing the previous Anti-Corruption Act of 1997. The new legislation was intended to improve transparency and to ensure that the new Malaysian Anti-Corruption Commission (replacing the previous Anti-Corruption Agency) was subject to external monitoring. In addition, Malaysia also ratified the United Nations Convention against Corruption in 2008.⁶⁵ To emphasize the importance of ridding Malaysia of bribery, the Malaysian president recently appointed Paul Low, the former president

CONTINUED ON PAGE 8

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57. *Id.* at <http://report.globalintegrity.org/Thailand/2007/scorecard/95>.

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64. Agence France-Presse, "Outrage Grows Over Scandal-Tainted Malaysian Leader," *South China Morning Post* (May 23, 2013), <http://www.scmp.com/news/asia/article/1244182/outrage-grows-over-scandal-tainted-malaysian-leader>; "Corruption in Malaysia Laid Bare as Investigation Catches Sarawak's Ruling Elite on Camera," *Global Witness* (Mar. 19, 2013), <http://www.globalwitness.org/library/corruption-malaysia-laid-bare-investigation-catches-sarawak%E2%80%99s-ruling-elite-camera>.

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Regional Spotlight ■ Continued from page 7

of Transparency International Malaysia, to his cabinet. Nevertheless, there are calls for more substantive action to rid Malaysia of its risk of corruption.⁶⁶

“In 2012, the National Assembly of Vietnam passed a revised law on anti-corruption and a new law has also been passed requiring senior government officials and members of the National Assembly to disclose their assets and income.”

V. Vietnam

Vietnam is in a somewhat different position than the countries mentioned above. Given the nature of the communist regime, there is little transparency in Vietnam into enforcement of anti-corruption laws. Lacking in democratic accountability mechanisms and without a

free press, Vietnam recently cracked down on internet based activists, jailing three anti-corruption bloggers.⁶⁷

With a GDP of approximately US\$ 124 billion and ranking number 123 on the CPI, Vietnam is reported to be very significantly marred by corruption and is reputed to be one of the least transparent nations in Asia, if not the world, in which to conduct business. As in China, state-owned enterprises are ubiquitous. Transparency International reports rampant petty corruption, ranging from facilitating payments to frequent small kickbacks in business transactions.⁶⁸ In a 2010 survey, more than 40% of respondents in Vietnam reported having paid a bribe in the preceding 12 months.⁶⁹ Nepotism and cronyism are also reportedly rampant, with public procurement seen as particularly corrupt.⁷⁰

Vietnamese officials have publicly recognized the problem (and potential adverse economic impact) of corruption.⁷¹ In 2012, the National Assembly of Vietnam passed a revised law on anti-corruption⁷² and a new law has also been passed requiring senior government officials and members

of the National Assembly to disclose their assets and income.⁷³ In addition, Vietnam is also a signatory to the United Nations Convention Against Corruption.⁷⁴ The Penal Code of 1999 and Decision 64/2007/QD-TTg on Gifts to Public Organizations and Officials regulate bribery of public officials. There is, however, an exception that allows public officials to accept gifts worth less than 500,000 dong (approximately US\$ 25) offered to them on certain occasions (*e.g.*, celebrations, weddings, funerals, etc.), provided that such gifts do not affect their official duties or decision-making.⁷⁵ In Vietnam, the criminal offense of bribery covers private/public to public corruption, but not private to private corruption (commercial bribery). If these anti-corruption laws apply structurally to a particular transaction, bribe givers, public officials or employees of SOEs and intermediaries in bribery may all be subject to prosecution. Vietnam also has civil penalties for bribery, but enforcement is limited, and the consequences are usually political or reputational.⁷⁶

A further problem that Vietnam faces is that, unlike the other countries discussed

CONTINUED ON PAGE 9

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69. *Id.* at 3.

70. *Id.*

71. “Corruption in Vietnam is Serious, Blatant and Rampant,” *Toitrenews* (Vietnam) (Sept. 13, 2012), <http://tuoitrenews.vn/features-news/1411/corruption-in-vietnam-is-serious-blatant-rampant>.

72. Business Anti-Corruption Portal, “Vietnam Country Profile: Public Anti-Corruption Initiatives,” <http://www.business-anti-corruption.com/country-profiles/east-asia-the-pacific/vietnam/initiatives/public-anti-corruption-initiatives/>.

73. Business Anti-Corruption Portal, “Vietnam Country Profile: Snapshot,” <http://www.business-anti-corruption.com/country-profiles/east-asia-the-pacific/vietnam/>.

74. AmCham Vietnam, “Vietnam Ratifies United Nations Anti-Corruption Convention,” <http://www.amchamvietnam.com/3002/vietnam-ratifies-united-nations-anti-corruption-convention/>.

75. “Gifts Offered to Public Servants Illegally to be Confiscated,” *IntellAsia* (May 18, 2007), <http://www.intellasia.net/gifts-offered-to-public-servants-illegally-to-be-confiscated-66326>.

76. Thompson Reuters Accelus, “Weak Enforcement Hampers Vietnam’s Anti-Corruption Efforts,” (Sept. 12, 2011), <http://www.trust.org/item/20110912113400-mct2o/?source=search>.

Regional Spotlight ■ Continued from page 8

above, Vietnam does not have a dedicated and independent anti-corruption agency. Institutions such as the Central Steering Committee against Corruption, the Government Inspectorate, the People's Procuracy and the State Audit of Vietnam are theoretically responsible for dealing with corruption issues, but these institutions have few powers independently to investigate and prosecute suspected persons.⁷⁷

* * *

Corruption is prevalent throughout Southeast Asia. As countries in the region become even more attractive to investors, in part because of the strength of their own markets and in part because of wage growth and a slowing economy in the PRC, it is possible that the focus of enforcement

agencies in the United States and United Kingdom will also turn in their direction. This potential focus will be aided by the fact that, except for Vietnam, these nations are much more transparent than the PRC.

Although local prosecution of multinational corporations is rare, aggressive and transparent anti-corruption agencies, such as Indonesia's KPK, and/or the relatively open societies (in terms of a relatively free press and relatively democratic systems) of a number of Southeast Asian nations provide more opportunities for potential wrongdoing to come to the attention of the international press and enforcement agencies. As a consequence, there is a greater incentive for multinational corporations to be on guard when doing business in these countries.

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77. Martini, note 68, *supra*, at 7-8.

NEWS FROM THE BRICS

Commercial Bribery in Russia: Recent Developments

Last month brought more news from Russia in its ongoing effort to step up its anti-corruption efforts. On May 15, 2013, the Russian banking industry was stunned when law enforcement authorities arrested Vladimir Golubkov, the Chairman of Joint Stock Commercial Bank Rosbank (“Rosbank”) on suspicion of commercial bribery.¹ Mr. Golubkov’s arrest was one of the most widely reported cases of alleged commercial bribery in Russia, as a result of his high rank at Rosbank and Rosbank’s status as one of the top ten Russian banks and as part of one of the world’s leading banking groups, Société Générale.

Mr. Golubkov, who had a long history of employment with Rosbank that predated Société Générale’s acquisition of the bank, was arrested in his office while allegedly receiving a bribe in the amount of RUB 5 million (approximately US\$ 160,000). According to law enforcement authorities, it represented the last tranche of a bribe totalling approximately US\$ 1.5 million, paid by a businessman in exchange for the extension of a loan agreement and the reduction of the loan interest rate

and monthly payments. Mr. Golubkov’s arrest was recorded on tape – which was subsequently made available on a Russian government website.² The tape does not document where the cash came from, or whether or how Mr. Golubkov received it, but instead simply shows the cash, already in stacks, sitting atop his office desk. According to law enforcement authorities, this money was transferred to Mr. Golubkov by his colleague, the Senior Vice President of Rosbank, who was allegedly observed receiving it from the businessman the day before. Both Mr. Golubkov, who has not admitted to committing a crime, and his colleague, who reportedly confessed to acting as an intermediary for Mr. Golubkov, are currently under home custody.³

They are accused of violating Article 204 of the Russian Criminal Code, which criminalizes commercial bribery, defined as an unlawful transfer of money to persons occupying managerial positions in commercial organizations for the purpose of influencing their actions or inactions in performing their managerial duties. Criminal penalties are extended to both

bribe givers and bribe takers, and include fines in the amount of between 40 and 70 times that of the bribe and imprisonment of up to seven years. For bribe takers (as Mr. Golubkov is alleged to be), penalties may also include disqualification from occupying a managerial position for up to three years.

The case is currently under investigation. If it results in an indictment, it will be transferred to a court that will decide whether Mr. Golubkov and his colleague are indeed guilty of the alleged crime.

Mr. Golubkov’s case may be quite sensational – given that it resulted in a major management shake-up at Rosbank⁴ – but it is not unique. In 2012 alone, Russian authorities prosecuted more than 1,200 commercial bribery cases. In the banking sector, three managers of the Distressed Assets Department of OJSC Sberbank of Russia were accused of offering to liquidate a businessman’s indebtedness to Sberbank of RUB 700 million in exchange for a bribe of RUB 100 million, to be paid via an intermediary.⁵ Just a week before Mr. Golubkov’s arrest, the head of a regional

CONTINUED ON PAGE 11

1. See Ilya Arkhipov & Ilya Khrennikov, “SocGen Unit CEO Charged With Bribery as Prokhorov Urges Freedom,” *Bloomberg* (May 16, 2013), <http://www.bloomberg.com/news/2013-05-16/socgen-unit-ceo-charged-with-bribery-as-prokhorov-urges-freedom.html>; “SocGen’s Russian Head Charged Over \$1.5 mn Bribe,” *Agence France Presse* (May 16, 2013), <http://www.france24.com/en/20130516-socgens-russian-head-charged-over-15-mn-bribe>.
2. See “Police Detain Chairman of the Management Board of Rosbank for the Receipt of RUB 5 mln. from a Businessman,” *MVD Press-Service* (May 15, 2013), <http://mvd.ru/news/item/993933>.
3. See A. Koshkina, “Rosbank’s Bribe Went Home,” *Gazeta.ru* (May 17, 2013), <http://www.gazeta.ru/social/2013/05/17/5326181.shtml>.
4. On May 27, 2013, the Board of Directors of Rosbank terminated Mr. Golubkov’s employment as Chairman of Rosbank. See “The Chairman of Rosbank’s Management Board, Vladimir Golubkov, Is Terminated,” *RIA Novosti* (May 27, 2013), http://www.dp.ru/a/2013/05/27/Uvolen_predsedatel_pravl/.
5. See O. Rubnikovich, “Sberbank Has a Temptingly Problematic Asset,” *Kommersant* (Nov. 20, 2012), <http://www.kommersant.ru/doc/2071185>; “Court in Moscow Extended Arrests of Sberbank’s Employees in a Case of Commercial Bribery,” *RIA Novosti* (Apr. 2, 2013), <http://bankir.ru/novosti/s/sud-v-moskve-prodlil-aresty-sotrudnikam-sberbanka-po-delu-0-kommercheskom-podkupe-10040534/>. The investigation is ongoing. Two of the three accused individuals will be held in custody until July 2013; the third individual has been released on her own recognizance following a plea agreement with the authorities.

Commercial Bribery in Russia ■ Continued from page 10

branch of CJSC European Industrial Bank was accused of extorting a one percent kickback from a businessman's banking operations in exchange for unblocking his bank account and lifting cash withdrawal limits.⁶

Foreign and Russian companies that operate or invest in businesses in Russia would be well-advised to devote substantial attention to anti-commercial bribery compliance. This includes ensuring that their compliance policies cover not only improper payments made to government officials, but also improper payments to managers of private companies that fall within the scope of Article 204. Further, companies should ensure that their policies explicitly prohibit bribe *taking*, something not always incorporated in anti-bribery compliance programs.

Current practice shows that the receipt of bribes is of particular interest to Russian authorities, and that even the

mere accusation of receiving bribes may be detrimental to business, as the police do not hesitate to release the information about alleged violations before a trial or

“Foreign and Russian companies that operate or invest in businesses in Russia would be well-advised to devote substantial attention to anti-commercial bribery compliance.”

court determination of the merits. Recent events in Russia demonstrate the wisdom of firms implementing policies, procedures, and controls that embody a “golden rule”

of compliance – do not allow officers, employees, and intermediaries to receive that which they should not give themselves.

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6. See A. Khromova, “Cunning Banker Is Accused of Commercial Bribery,” *ZebraTV* (May 8, 2013), <http://zebratv.ru/novosti/ekstscssi/khitrogo-bankira-obvinyayut-v-kommercheskom-podkupe/>. The investigation is ongoing.

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