FCPA Update

A Global Anti-Corruption Newsletter

Also in this issue:

If there are additional individuals within your organization who would like to receive *FCPA Update*, please email prohlik@debevoise.com, eogrosz@debevoise.com, or pferenz@debevoise.com

Petrobras Reaches Major Corruption-Related Settlements with U.S. and Brazilian Authorities

Late last month, Petroleo Brasileiro S.A. ("Petrobras"), the Brazilian state-owned oil and gas company at the center of the Lava Jato scandal, reached coordinated settlements with the U.S. Department of Justice ("DOJ"), U.S. Securities and Exchange Commission ("SEC"), and Brazil's Ministério Público Federal ("MPF"). DOJ entered into a non-prosecution agreement, the SEC issued a cease-and-desist order, and Petrobras agreed to enter into an agreement with the MPF, the form of which has not yet been finalized.[1] Petrobras also agreed to pay a combined $853.2 million in penalties to DOJ, the SEC, and the MPF.

Continued on page 2

1. U.S. Department of Justice, Letter to F. Joseph Warin Re Petroleo Brasileiro S.A. – Petrobras (Sept. 26, 2018), *available at* www.justice.gov/opa/press-release/file/1096706/download ("Petrobras NPA"); U.S. Securities and Exchange Commission, *In the Matter of Petroleo Brasileiro S.A. – Petrobras*, Order Instituting Cease-and-Desist Proceedings Pursuant to Section 8A of the Securities Act of 1933 and Section 21C of the Securities Exchange Act of 1934, Making Findings, and Imposing a Cease-and-Desist Order (Sept. 27, 2018), *available at* www.sec.gov/litigation/admin/2018/33-10561.pdf; Ministerio Publico Federal, "MPF e Petrobras realizam ajustes para constituir fundo em favor da sociedade brasileira" (Sept. 27, 2018), *available at* http://www.mpf.mp.br/pr/sala-de-imprensa/noticias-pr/mpf-e-petrobras-realizam-ajustes-para-constituir-fundo-em-favor-da-sociedade-brasileira.

Petrobras Reaches Major Corruption-Related Settlements with U.S. and Brazilian Authorities

Continued from page 1

This long-anticipated settlement is significant in both breadth and magnitude. It reflects the increased willingness of U.S. authorities to consider enforcement activity by non-U.S. authorities when assessing and allocating penalties. Here, the MPF – and not DOJ or the SEC – will collect the bulk of Petrobras's penalties, a purported example of DOJ's recently-issued policy against "piling on." The U.S. settlements also appear less onerous than they would have been absent Petrobras's cooperation and remediation. Furthermore, Petrobras expressly reserved the right to assert sovereign immunity, as a state-owned company, should DOJ later seek to pursue charges.

Underlying Conduct and Terms of Settlement

In its settlement with DOJ, Petrobras admitted that certain of its former executives conspired with corrupt contractors between 2004 and 2012 to implement an extensive bribery and bid-rigging scheme in connection with Petrobras's infrastructural expansion.[2] In exchange for obtaining inflated contracts, the corrupt contractors passed bribes – typically 1% to 3% of the value of their Petrobras contracts – to the implicated executives, Brazilian politicians, and political parties. DOJ estimated that the scheme generated more than $2 billion in corrupt payments, of which approximately $1 billion was directed to politicians and political parties. The payments were disguised as legitimate expenditures, including through consultancy agreements. DOJ specifically referred to four former members of Petrobras's Executive Committee and one manager, who were complicit in the scheme, and already were convicted in Brazil for receiving bribes and facilitating improper payments to politicians.

As a U.S. issuer trading American Depository Shares on the New York Stock Exchange, Petrobras was found to have misled investors by filing false financial statements and overstating its assets by approximately $2.5 billion, through erroneous recording of corrupt payments. Several implicated executives apparently submitted false certifications as part of Petrobras's process for preparing SEC filings and failed to implement adequate controls in order to continue facilitating the bribes. According to the settlement, Petrobras likewise made material misstatements and omissions in its SEC filings and in September 2010 documents relating to its nearly $70 billion global offering. Notably, the SEC brought this as an accounting fraud case, not an FCPA case.

Continued on page 3

2. Petrobras NPA, Attachment A.

Petrobras Reaches Major Corruption-Related Settlements with U.S. and Brazilian Authorities

Continued from page 2

Because of Petrobras's cooperation and remediation, it received a 25% discount off the bottom of the applicable DOJ fine range under the U.S. Sentencing Guidelines. As agreed, DOJ and the SEC each will collect only 10% of the resulting $853.2 million penalty, with the Brazilian authorities collecting the remaining 80%. The portion to be paid to the Brazilian authorities shall be "deposited by Petrobras into a special fund in Brazil to be used in strict accordance with the terms and conditions of the consent agreement, including for various social and educational programs to promote transparency, citizenship and compliance in the public sector."[3] DOJ expressly stated that it would credit the amounts Petrobras paid to the SEC and the MPF against the criminal penalty due under the DOJ settlement. Petrobras separately agreed to $933 million in disgorgement and prejudgment interest to the SEC, which in turn agreed to reduce that obligation by the amount of Petrobras's settlement in a related private class-action shareholders' suit – an amount totaling $2.95 billion and thereby more than offsetting the disgorgement and interest due to the SEC (*In re Petrobras Securities Litigation,* No. 14-cv-9662 (S.D.N.Y.)).

"[The Petrobras settlement] reflects the increased willingness of U.S. authorities to consider enforcement activity by non-U.S. authorities when assessing and allocating penalties. Here, the MPF – and not DOJ or the SEC – will collect the bulk of Petrobras's penalties, a purported example of DOJ's recently-issued policy against 'piling on.'"

In the NPA, DOJ elaborated on factors that impacted the overall outcome and specifically DOJ's decision to grant Petrobras the full 25% cooperation discount:[4]

- ***First,*** Petrobras fully cooperated by conducting a thorough internal investigation; sharing its findings through regular factual presentations and otherwise; facilitating interviews with and information from foreign witnesses; and providing voluminous evidence to the authorities along with translations of key documents.

Continued on page 4

3. Petrobras Press Release, "Petrobras Reaches Coordinated Resolutions with Authorities in the United States and Agreement to Remit Bulk of Associated Payments to Brazil" (Sept. 27, 2018), *available at* www.petrobras.com.br/en/news/petrobras-reaches-coordinated-resolutions-with-authorities-in-the-united-states-and-agreement-to-remit-bulk-of-associated-payments-to-brazil.htm.

4. Petrobras NPA.

Petrobras Reaches Major Corruption-Related Settlements with U.S. and Brazilian Authorities

Continued from page 3

- ***Second,*** Petrobras engaged in extensive remedial actions, including by separating from implicated employees; replacing its Board of Directors and Executive Board (comprising top managers); revamping its compliance function; and enhancing anti-corruption training for its employees, executives, and directors.
- ***Third,*** as part of its remediation, Petrobras implemented a series of governance reforms, including expanding the scope of decisions that require Board approval; instituting a "four eyes" approval policy for substantive decisions; creating new corporate investment policies and procedures; implementing measures to insulate its operations from political interference; and enhancing controls related to procurement and contracting. Petrobras also created a new Division of Governance and Compliance and an Ethics Committee, and it restructured its Ombudsman Office.

In light of these remedial efforts and Petrobras being subject to oversight by the Brazilian authorities, DOJ also elected not to impose an independent compliance monitor.

The NPA has a three-year term, which DOJ can extend for up to another year if Petrobras knowingly violates any of its provisions or fails to fully perform its obligations, including the ongoing cooperation and reporting obligations.

Key Takeaways from the Petrobras Settlements

Several aspects of the Petrobras settlement – in addition to its size – are noteworthy.

The DOJ settlement is one of the first FCPA enforcement actions against a state-owned or state-controlled company, with the only other such action on record being the 2006 FCPA settlement by the Norwegian company Statoil.[5] Unlike Statoil, which waived sovereign immunity in connection with that settlement, Petrobras expressly reserved its right, as an instrumentality of the Republic of Brazil, to argue sovereign immunity from criminal prosecution should DOJ ever decide to press charges. That defense, unavailable to most subjects of investigation for potential FCPA violations, may have helped Petrobras secure less severe settlement terms. Nevertheless, given the pervasiveness and egregiousness of the alleged wrongdoing and the coordination among U.S. and Brazilian authorities, it seems unlikely that the company ever would have reached the point of litigating that defense in U.S. courts.

Continued on page 5

5. U.S. Department of Justice, "U.S. Resolves Probe Against Oil Company that Bribed Iranian Official" (Oct. 13, 2006), *available at* www.justice.gov/archive/opa/pr/2006/October/06_crm_700.html.

Petrobras Reaches Major Corruption-Related Settlements with U.S. and Brazilian Authorities

Continued from page 4

At least to some extent, the structure of the Petrobras settlement also reflects DOJ's May 2018 "Policy on Coordination of Corporate Resolution Penalties," sometimes referred to more colloquially as the "anti-piling on" policy.[6] That policy provides that DOJ, when resolving an investigation of potential corporate wrongdoing, should seek "as appropriate" to coordinate with other enforcement authorities, including non-U.S. authorities, and should consider any penalties imposed by other authorities for the same misconduct. Deputy Assistant Attorney General Matthew S. Miner, in a speech the same day the Petrobras settlement was announced, touted the settlement as an example of DOJ's application of this policy, highlighting coordination between U.S. and Brazilian authorities.[7] Principal Deputy Assistant Attorney General John P. Cronan, in a more recent speech, echoed the same point, adding that DOJ also took into account that Petrobras itself had been victimized by embezzlement by a number of its executives involved in the wrongdoing.[8] It is noteworthy, particularly in a settlement of this magnitude, that the vast majority of the penalties will be paid to a non-U.S. authority. In that respect, the settlement appears to reflect some deference by the United States to the nation with the more substantial and direct interest in the misconduct at issue. It remains to be seen whether and in what circumstances the new DOJ policy will result in U.S. authorities ceding enforcement altogether to authorities of other countries, rather than merely taking a smaller slice of the resulting penalties.

Lastly, the terms of the Petrobras illustrate, yet again, the value of robust cooperation and remediation efforts by companies seeking to resolve FCPA-related inquiries. Even though the scale of the admitted wrongdoing was substantial, spanning many years and involving corrupt payments in the billions, the company secured the entirety of the fine discount potentially available for its cooperation with DOJ. The actions taken by the company to cooperate and remediate, as listed above and described in the settlement documents, again demonstrate that even in the most serious cases of corporate wrongdoing, a swift, thorough, and decisive response by the company may significantly improve the ultimate outcome of enforcement by U.S. authorities.

Continued on page 6

6. U.S. Department of Justice, "Policy on Coordination of Corporate Resolution Penalties" (May 9, 2018), *available at* www.justice.gov/opa/speech/file/1061186/download.

7. U.S. Department of Justice, "Deputy Assistant Attorney General Matthew S. Miner of the Justice Department's Criminal Division Delivers Remarks at the 5th Annual GIR New York Live Event" (Sept. 27, 2018), *available at* www.justice.gov/opa/speech/deputy-assistant-attorney-general-matthew-s-miner-justice-department-s-criminal-division.

8. U.S. Department of Justice, "Principal Deputy Assistant Attorney General John P. Cronan of the Justice Department's Criminal Division Delivers Remarks at the Latin Lawyer/Global Investigations Review Anti-Corruption and Investigations Conference" (Oct. 18, 2018), *available at* www.justice.gov/opa/speech/principal-deputy-assistant-attorney-general-john-p-cronan-justice-department-s-criminal-0.

Petrobras Reaches Major Corruption-Related Settlements with U.S. and Brazilian Authorities

Continued from page 5

Kara Brockmeyer

Andrew M. Levine

Erich O. Grosz

Ivona Josipovic

Kara Brockmeyer is a partner in the Washington, D.C. office. Andrew M. Levine is a partner in the New York office. Erich O. Grosz is a counsel in the New York office. Ivona Josipovic is an associate in the New York office. The authors may be reached at kbrockmeyer@debevoise.com, amlevine@debevoise.com, eogrosz@debevoise.com, and ijosipovic@debevoise.com. Full contact details for each author are available at www.debevoise.com.

Continued on page 7

KBR's Judicial Review Challenge: Beware the Extraterritorial Powers of the U.K. Serious Fraud Office

In a recent decision, the High Court in London[1] has provided the first express confirmation that the compulsory document production powers of the U.K. Serious Fraud Office ("SFO") have extraterritorial application. Foreign companies may be served with a notice requiring the production of documents held outside the United Kingdom if they have a "sufficient connection" to the United Kingdom.

Background

This application for judicial review was brought by the professional services company KBR Inc., a U.S.-incorporated parent company of the larger KBR Group. On February 17, 2017, the SFO had commenced a criminal investigation against a U.K. subsidiary of KBR Inc., Kellogg Brown & Root Ltd. ("KBR Ltd."), in relation to suspected offences of bribery and corruption. The SFO's investigation into KBR Ltd. arose initially out of the SFO's investigation of the Monaco-based oil consultancy Unaoil. According to the SFO, Unaoil was engaged at various times by KBR Inc.'s U.K. subsidiaries, including KBR Ltd., from 1996 onwards "ostensibly to provide consultancy services in the oil and gas sectors in the Caspian region, primarily Kazakhstan and Azerbaijan." The SFO's investigation identified suspected corrupt payments in excess of $23 million made by KBR Inc.'s U.K. subsidiaries to Unaoil, which were processed by KBR Inc.'s treasury function and required the express approval of corporate officers of KBR Inc.

As part of its investigation, the SFO sought to compel the production of documents from KBR Ltd. Under section 2(3) of the Criminal Justice Act 1987 (the "CJA"), the Director of the SFO has the power to serve a notice on a person under investigation or any other person whom he believes has relevant information, requiring the production of documents relevant to the subject matter of an SFO investigation (a "section 2 Notice"). Failing to comply without reasonable excuse is an offence. On April 4, 2017, the SFO served KBR Ltd. with a section 2 Notice (the "April Notice"), requiring the production of some 21 separate categories of material that were in the possession of KBR Ltd. KBR Ltd. initially cooperated, including by providing responsive documents forwarded by KBR Inc., as well as those held by KBR Inc. outside the United Kingdom on a voluntary basis.

Continued on page 8

1. The Queen on the Application of KBR Inc. v The Director of the Serious Fraud Office [2018] EWHC 2368 (Admin), *available at* http://www.bailii.org/ew/cases/EWHC/Admin/2018/2368.html.

KBR's Judicial Review Challenge: Beware the Extraterritorial Powers of the U.K. Serious Fraud Office

Continued from page 7

It emerges from the judgment that the SFO at some point during its investigation developed a concern that KBR Inc. had played a key role in the activities involving Unaoil, including in approving payments to Unaoil. In July 2017, KBR Ltd. requested a meeting with the SFO to discuss the status of the investigation and its ongoing cooperation. Given its concerns about the involvement of KBR Inc., the SFO agreed to this meeting provided that senior officers of KBR Inc. attended. The meeting took place at the SFO's headquarters in London on July 25, 2017 and was attended by KBR Inc.'s Executive Vice President, General Counsel and Corporate Secretary, Eileen Akerson, as well as KBR Inc.'s Chief Compliance Officer. Without prior notice, the SFO served a further section 2 Notice (the "July Notice") on Ms. Akerson at that meeting. This July Notice expanded the scope of the April Notice to include documents held by the KBR Group, rather than KBR Ltd. only. It is clear from the judgment that the SFO had a draft section 2 Notice in reserve at the meeting, precisely for the eventuality that the KBR Inc. representatives did not, as it ultimately transpired, provide a "satisfactory response" at that meeting as to KBR Inc.'s willingness to provide the materials outstanding under the April Notice voluntarily.

KBR's Application for Judicial Review

KBR Inc. applied for judicial review of the July Notice. The challenge was based on three grounds:

1. Jurisdiction: Section 2(3) of the CJA did not operate extraterritorially and therefore, the SFO lacked jurisdiction to request material from a foreign company held outside the United Kingdom using that provision.
2. The SFO's discretion: the Director of the SFO used his discretion improperly when deciding to seek production of the documents held outside the United Kingdom by means of section 2 rather than proceeding under the U.K. / U.S. Mutual Legal Assistance Treaty ("MLAT").
3. Effectiveness of service: the July Notice was not effectively served on KBR Inc. as it had only been handed to a representative of KBR Inc. at a meeting.

The High Court considered and rejected all three grounds.

1. Jurisdiction – the "Sufficient Connection" Test

The court reasoned that section 2(3) must "as a matter of first importance" have extraterritorial application as the very purpose of the legislation is to enable the SFO to investigate and prosecute cases which are complex and international in nature.

Continued on page 9

KBR's Judicial Review Challenge: Beware the Extraterritorial Powers of the U.K. Serious Fraud Office

Continued from page 8

As part of its assessment, the court considered the U.K.'s obligations under the OECD Convention on Combatting Bribery of Foreign Public Officials in International Business Transactions. It held that if the SFO were prevented from using its section 2 powers to compel the production of documents on the basis that the documents were held outside the United Kingdom by a non-U.K. company, this could have the effect of impeding the SFO's fundamental and statutory purpose.

"There is little doubt that this decision represents a boost to the [Serious Fraud Office] and provides it with important clarification that it can rely on its section 2(3) powers to compel the production of documents held overseas by foreign companies."

Additionally, the court considered the impact of modern technology and the increasing ease with which data and documents can be transferred across international borders. The judgment draws attention to recent developments in the United States in which the U.S. courts grappled with a similar issue, in particular in the case of *Microsoft v. U.S.*[2] and the subsequent enactment of the Clarifying Lawful Overseas Use of Data Act (the "CLOUD Act"). In the Microsoft case, the question for the U.S. Court of Appeals for the Second Circuit was to determine whether Microsoft could be compelled, under the Stored Communications Act ("the SCA")[3] to produce the contents of a customer's email account stored on servers hosted outside the United States. Microsoft was successful in appealing the decision of the lower court that it was in contempt for failing to make a production of this nature. Subsequently (and before the U.S. government's appeal of the judgment was heard), the CLOUD Act was signed into law which amended the SCA to provide expressly for its extraterritorial application.

The High Court noted that the SCA, like the CJA, was passed in the mid-1980s at a time when the landscape in terms of storing data was entirely different to now, in particular with respect to the use of online storage. The World Wide Web was not even created until 1990. However, the reasoning of the U.S. court was not found to be persuasive with respect to the CJA. Unlike in the United States,

Continued on page 10

2. *Microsoft v U.S.*, 829 F.3d 197 (2d Cir. 2016).
3. 18 U.S.C. § 2701.

KBR's Judicial Review Challenge: Beware the Extraterritorial Powers of the U.K. Serious Fraud Office

Continued from page 9

where a legislative solution was found to issues of extraterritoriality, the English court was willing to find a judicial solution and hold the CJA had extraterritorial application. The court noted that the policy underlying section 2 when it came into law in 1987 required some extraterritorial application and the fact that technology had developed since that time further illustrated the need for such application. It appears the court was concerned that a ruling against the extraterritorial application of section 2(3) would increase the risk companies deliberately moving data outside the United Kingdom to prevent the SFO from obtaining access.

Further, the court drew comparisons between the regime under the CJA and that under insolvency legislation in the United Kingdom, an area in which the courts have considered the extraterritorial application of statutory provisions on multiple occasions. In the insolvency cases, the courts have interpreted various sections of the Insolvency Act 1986 to have extraterritorial reach on the basis that it could not have been Parliament's intention to allow a person who was responsible for the demise of a company to escape responsibility under the Insolvency Act simply by leaving the jurisdiction. The court held that the public interest implications in the extraterritorial application of the CJA were analogous with those in insolvency and required some extraterritorial application of section 2(3).

These factors led the court to find that there was "an extremely strong public interest" in allowing the SFO to exercise its section 2 powers to compel the production of documents held outside the United Kingdom by a non-U.K. company. However, the court recognised that not all overseas companies were subject to the jurisdiction of section 2 of the CJA. The question therefore is the extent to which section 2 of the CJA has extraterritorial application in a particular case involving particular documents held by a particular company, not whether it has extraterritorial application at all.

The High Court held that the appropriate test by which to determine whether a particular foreign company's documents held outside the United Kingdom could be subject to a section 2 Notice was the "sufficient connection" test. Again the court looked to previous insolvency cases which had used a similar test to establish a connection to the United Kingdom. If the SFO could establish that the foreign company had a sufficient connection to the United Kingdom in the context of the alleged misconduct, it could establish the necessary jurisdiction to serve a section 2 Notice. The court held that this test "strikes a careful balance between facilitating the SFO's investigation of serious fraud with an international dimension

Continued on page 11

KBR's Judicial Review Challenge: Beware the Extraterritorial Powers of the U.K. Serious Fraud Office

Continued from page 10

and making excessive requirements in respect of a foreign company with regard to documents abroad."[4]

The question of whether a foreign company has a "sufficient connection" to the United Kingdom under this test will depend on the facts of each case and the corporate structure of the companies and groups involved. Helpfully, the court set out some factors that are unlikely to be sufficient to establish a sufficient connection, and others that in the case of KBR were sufficient to do so.

Factors which the court *did not* consider sufficient were:

- Parent-subsidiary relationship – the court held that this was altogether a too broad and would "ensnare sundry parent companies of multinational groups without adequate justification";
- Foreign company's voluntary cooperation – as such cooperation is to be encouraged, allowing it to give rise to a risk of a sufficiently close connection would inevitably lead to it diminishing; and
- Attendance by foreign company executives at meetings with the SFO – as with cooperation, attending meetings with the SFO in the United Kingdom cannot be treated as bringing the foreign parent company within the scope of the sufficient connection test; a contrary conclusion would make such meetings altogether unlikely to happen.

The court considered the following factors as establishing KBR Inc.'s "sufficient connection" and thus bringing it within the reach of section 2(3) were:

- Foreign company payment processing – payments to Unaoil were processed by KBR Inc.'s treasury function in the United States and paid by KBR Inc.; and
- Foreign company approvals of suspected corrupt payments – from 2005 onwards, payments to Unaoil required express approval of KBR Inc., including KBR Inc.'s compliance function from 2010 onwards.

On that basis, the court held that it was "impossible to distance KBR Inc. from the transactions central to the [SFO] investigation of KBR Ltd."[5] It found further support for that decision in the fact that a senior KBR Inc. sales executive was based at and carried out his functions from KBR's U.K. office – even though this would not by itself have been sufficient for the purposes of establishing extraterritorial reach of section 2(3).

Continued on page 12

4. *KBR Inc. v SFO, supra* n. 1, para.72 (ii).
5. *KBR Inc v SFO, supra* n. 1, para. 82.

KBR's Judicial Review Challenge: Beware the Extraterritorial Powers of the U.K. Serious Fraud Office

Continued from page 11

Applying the rationale of the decision, it would seem that any foreign company's involvement in making, processing and/or approving payments by U.K. subsidiaries could potentially bring it within the purview of section 2(3) in the event of an SFO investigation. That said, any assessment of this question will necessarily be heavily fact-specific.

2. Discretion – CJA or MLAT?

The court stated that the Director of the SFO had had not committed an error of law in exercising his section 2 powers despite the availability of a MLAT procedure. It reasoned that availability of the MLAT with the United States was an additional power to those powers available to the SFO under the CJA and it was within the discretion of the Director of the SFO to decide which was more appropriate in any given case.

It is noteworthy that the SFO decided to seek production of these documents by using its section 2 powers rather than seeking the assistance of the U.S. Department of Justice for documents held in the United States by a U.S. company, given the usual levels of close and often informal cooperation between the two agencies.

3. Effective Service of the section 2 Notice

The court held that service of a section 2 Notice on a senior officer of a foreign company who is present in the jurisdiction for business is effective. The court distinguished a situation where the senior officer is in the United Kingdom coincidentally or for a reason not related to the company's business, when service would unlikely be effective. While the CJA itself contains no specific provisions relating to the service of a section 2 Notice, the court refused to uphold KBR's argument that the provisions contained in the Civil Procedure Rules governed the question of effective service.

Given the current parliamentary consideration of the Crime (Overseas Production Order) Bill – which would, in certain circumstances, enable U.K. authorities to require the production of documents directly from overseas companies – the question of effective service may in any event become less relevant in the future.

Despite finding in the SFO's favour with respect to service, the court criticised the approach taken by the SFO in serving the July Notice on Ms. Akerson in the manner it did and described this as having "unappealing features." Importantly, the court noted that the SFO's approach may impact other foreign companies' willingness to attend similar meetings to discuss voluntary cooperation with document production notices. It will certainly be a consideration for companies in the future.

Continued on page 13

KBR's Judicial Review Challenge: Beware the Extraterritorial Powers of the U.K. Serious Fraud Office

Continued from page 12

In the absence of an assurance to the contrary from the SFO prior to any meeting, representatives of overseas companies would be well advised to consider the risks that their documents held outside the United Kingdom may yet become subject to an effective section 2 Notice if they attend.

Broader Implications for Overseas Companies

There is little doubt that this decision represents a boost to the SFO and provides it with important clarification that it can rely on its section 2(3) powers to compel the production of documents held overseas by foreign companies. Given the SFO's success in this case, there is every chance it will continue to use those compulsive powers in an expansive way in future investigations.

Although the factors that established KBR's sufficient connection were specific to its inter-group structure and the operations of its central functions, they give useful guidance as to the types of factors the SFO will consider determinative. Of particular relevance will be any requirements a group has for UK financial transactions to be processed, paid and approved outside the United Kingdom. This will be a common feature for many multinational groups and should therefore feature prominently in any jurisdictional risk assessment.

Karolos Seeger

Jane Shvets

Thomas Jenkins

Constantin Klein

Robin Lööf

Karolos Seeger and Jane Shvets are partners in the London office. Thomas Jenkins, Constantin Klein, and Robin Lööf are associates in the London office. The authors may be reached at kseeger@debevoise.com, jshvets@debevoise.com, tjenkins@debevoise.com, cklein@debevoise.com, and rloof@debevoise.com. Full contact details for each author are available at www.debevoise.com.

Continued on page 14

FCPA Update

FCPA Update is a publication of
Debevoise & Plimpton LLP

919 Third Avenue
New York, New York 10022
+1 212 909 6000
www.debevoise.com

Washington, D.C.
+1 202 383 8000

London
+44 20 7786 9000

Paris
+33 1 40 73 12 12

Frankfurt
+49 69 2097 5000

Moscow
+7 495 956 3858

Hong Kong
+852 2160 9800

Shanghai
+86 21 5047 1800

Tokyo
+81 3 4570 6680

Bruce E. Yannett
Co-Editor-in-Chief
+1 212 909 6495
beyannett@debevoise.com

Andrew J. Ceresney
Co-Editor-in-Chief
+1 212 909 6947
aceresney@debevoise.com

David A. O'Neil
Co-Editor-in-Chief
+1 202 383 8040
daoneil@debevoise.com

Jane Shvets
Co-Editor-in-Chief
+44 20 7786 9163
jshvets@debevoise.com

Philip Rohlik
Co-Executive Editor
+852 2160 9856
prohlik@debevoise.com

Kara Brockmeyer
Co-Editor-in-Chief
+1 202 383 8120
kbrockmeyer@debevoise.com

Andrew M. Levine
Co-Editor-in-Chief
+1 212 909 6069
amlevine@debevoise.com

Karolos Seeger
Co-Editor-in-Chief
+44 20 7786 9042
kseeger@debevoise.com

Erich O. Grosz
Co-Executive Editor
+1 212 909 6808
eogrosz@debevoise.com

Jil Simon
Associate Editor
+1 202 383 8227
jsimon@debevoise.com

Please address inquiries regarding topics covered in this publication to the editors.

Please note:
The URLs in *FCPA Update* are provided with hyperlinks so as to enable readers to gain easy access to cited materials.