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DOJ's Prosecution of Former Chadian Diplomats Signals Focus on Holding Individuals Accountable in Foreign Corruption Cases

DOJ has long emphasized that a top prosecutorial priority – in FCPA cases and white-collar criminal matters more broadly – is to hold individual bad actors accountable.[1] Yet, in the FCPA context, it has not always been clear to what extent DOJ is dedicating time and resources to investigating and prosecuting individuals. Building an FCPA case against an individual in the absence of a cooperating company can be, of course, more difficult and time-intensive – and typically more risky for DOJ, given the greater frequency with which such defendants proceed to trial. It was therefore notable to see DOJ recently unseal bribery charges against

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1. *See, e.g., Deputy Attorney General Rod J. Rosenstein Delivers Keynote Address on FCPA Enforcement Developments*, Dept. of Just. (Mar. 7, 2019), https://www.justice.gov/opa/speech/deputy-attorney-general-rod-j-rosenstein-delivers-keynote-address-fcpa-enforcement; Memo from Sally Yates, Deputy Attorney General (Sept. 9, 2015) (https://www.justice.gov/archives/dag/file/769036/download).

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two former diplomats from the Republic of Chad, arising from a decade-old corruption case involving Griffiths Energy International Inc. ("Griffiths").

The charges against Mahamoud Adam Bechir and Youssouf Hamid Takane, Chad's former Ambassador and former Deputy Chief of Mission to the U.S. and Canada, respectively, as well as against Naeem Tyab, a Canadian national and founding shareholder of Griffiths, and Bechir's wife, Nouracham Bechir Niam, demonstrate that DOJ has not lost sight of its often-underscored priority of holding culpable individuals accountable. According to the indictment, Bechir and Takane engaged in the bribery scheme between 2009 and 2014 in their capacity as diplomats serving in Washington, D.C., in which they demanded and obtained bribes in the form of a $2 million payment and shares of Griffiths stock in exchange for using their influence in Chad to help the company obtain oil rights.[2] After arranging the bribes, Griffiths was able to contract with Chad's Ministry of Petroleum and Energy regarding the development of Chadian oil blocks.[3]

Griffiths, a Canadian company, had already been investigated in Canada and paid a C$ 10.35 million fine in 2013 to resolve anti-bribery charges in Canada. Additionally, the U.K.'s Serious Fraud Office ("SFO") and DOJ each separately brought asset forfeiture proceedings related to the bribery scheme. Despite Griffiths's corporate resolution and the asset forfeiture cases, DOJ brought charges – six years later – against four individuals. Tyab was arrested in 2019; he pleaded guilty to conspiracy to violate the FCPA pursuant to a cooperation agreement with the government, and he forfeited approximately $27 million.[4] At present, Bechir, Takane, and Niam are at large.

The Indictment

The indictment against Bechir, Takane, Niam, and Tyab, returned by the grand jury on February 7, 2019, was unsealed more than two years later on May 20, 2021. Bechir was Chad's Ambassador to the United States and Canada from 2004 to 2012, and Takane was Chad's Deputy Chief of Mission to the United States and Canada from 2007 to 2012.[5] Both were foreign officials within the meaning of the FCPA.[6] Because foreign officials are not chargeable under the FCPA,[7] Bechir and

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2. Indictment ¶¶ 13, 21, 24, 27, *United States v. Tyab et al.*, No. 19 Cr. 038 (RJL) (D.D.C. Feb. 7, 2019), ECF No. 1.
3. *Id.* ¶ 36.
4. Gov. Consent Motion to Unseal ¶ 2, *United States v. Tyab et al.*, No. 19 Cr. 038 (RJL), ECF No. 54 (May 17, 2021).
5. Indictment ¶¶ 3, 4.
6. Indictment ¶¶ 3, 4.
7. *See* Andrew M. Levine, Winston Paes, et al., "DOJ Uses Money Laundering Statute to Prosecute Foreign Officials for Bribery – But Will This Change with New Legislation?" FCPA Update, Vol. 12, No. 9 (Apr. 2021), https://www.debevoise.com/insights/publications/2021/04/fcpa-update-april-2021 (citing *United States v. Castle*, 925 F.2d 831, 831-32 (5th Cir. 1991) and *United States v. Hoskins*, 902 F.3d 69 (2d Cir. 2018)).

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Takane were instead charged with money laundering offenses, specifically, conspiring to conduct financial transactions designed to conceal the proceeds of the bribery scheme and conspiring to transfer funds to and from the United States in furtherance of the bribery scheme.[8] Tyab and Niam were charged with both money laundering and FCPA violations. The FCPA theory is that both defendants are foreign nationals who took actions within the territory of the United States in furtherance of the effort to bribe Bechir and Takane.[9]

According to the allegations in the Indictment, Bechir and Takane began to conspire with Tyab, a founding shareholder of Griffiths, to secure oil rights in Chad in exchange for bribes around 2008.[10] As a means of transmitting the bribes, Tyab initially executed a consulting contract on behalf of Griffiths with a shell company that Bechir controlled, through which Griffiths would pay Bechir's company $2 million in consulting fees upon receiving oil rights in Chad.[11] In an effort to insulate Bechir, Bechir and Tyab later swapped this shell company for a different company controlled by Bechir's wife, Niam.[12] Tyab allegedly initiated wire transfers from an escrow account in Canada to a bank account that Niam controlled in Washington, D.C. in order to execute the payments on the consulting contracts.[13] In turn, Niam transferred money from her bank account in Washington, D.C. to Takane's bank account, also in Washington, and other accounts controlled by Bechir.[14]

"DOJ's decision to pursue foreign bribery charges … – especially given that the conduct occurred years ago and that the case has been the subject of prior proceedings in Canada, the United Kingdom, and the United States – is a strong signal that prosecutors are paying more than lip service to their commitment to hold individuals accountable in white-collar cases."

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8. Indictment, Counts 2-5.
9. Indictment, Count 1; *see also* 15 U.S.C. § 78dd-3 (FCPA prohibition applying to foreign nationals who, "while in the territory of the United States," "corruptly to make use of the mails or any means or instrumentality of interstate commerce or to do any other act in furtherance" of an effort to bribe a foreign official).
10. *Id.* at ¶ 22; *see also* Motion for Scheduling Order, *United States v. Approximately 22 Million in British Pounds*, Case No. 15 Cv. 01018 (RJL) (D.D.C. Jan. 19, 2016), ECF No. 36, ex. 7 (identifying Griffiths Energy as the Canadian energy company alleged to have been involved in the bribery schemes) (hereinafter "Civil Forfeiture Proceedings").
11. Indictment ¶¶ 9, 25, 27.
12. *Id.* ¶¶ 10, 28-30.
13. *Id.* ¶¶ 40, 43.
14. *Id.* ¶¶ 41-42, 44-46, 48.

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In addition to the consulting contracts,[15] Griffiths also paid bribes to Bechir and Takane in the form of company shares to secure the Chadian oil rights.[16] To execute this part of the scheme, Niam and unidentified co-conspirators sent nominal payments of $745 and $1,000 in exchange for a total of 4 million Griffiths shares.[17] Niam later tendered 1.6 million shares for a profit of approximately $30 million.[18]

Prior Legal Proceedings

This bribery scheme first came to light in 2011 when a new board of directors at Griffiths became aware of potential malfeasance related to the consulting contracts and launched an internal investigation.[19] After identifying the consulting agreements as a cover for bribe payments, the Griffiths directors disclosed the information to Canadian law enforcement. The company ultimately pleaded guilty in Canadian proceedings in 2013 and paid a total fine of $10.35 million.[20]

Separately, the SFO obtained a property freezing order in 2014 for 4.4 million British Pounds against Ikram Mahamet Saleh, Takane's wife, after Saleh sold 800,000 shares in Griffiths.[21] The SFO's case against Saleh arose out of the same underlying facts as those that led to the Canadian proceedings. Saleh challenged the order twice, but the SFO prevailed each time.[22]

In June 2015, the United States initiated a civil asset forfeiture case to seize profits from the bribery scheme.[23] Specifically, the government sought the forfeiture of approximately $34 million, which represented the value of 4 million Griffiths founders' shares that were used to bribe Bechir and Takane.[24] In its *in rem* complaint, DOJ identified three assets: 1.6 million shares issued to Niam held in a U.K. bank account; 1.6 million shares issued to Bechir and Takane's associate Adoum Hassan and held by Niam in a U.K. bank account; and 800,000 shares issued to Saleh and held in a U.K. bank account.[25] As the basis for its civil forfeiture proceeding, DOJ alleged

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15. *Id.* ¶¶ 30, 40, 50.
16. *Id.* ¶ 19.
17. *Id.* ¶¶ 32, 33.
18. *Id.* ¶¶ 35, 55.
19. Joint Motion to Dismiss, Civil Forfeiture Proceedings, *supra* note 10, at 15-17, ECF No. 27-6 (containing the transcript for *Queen v. Griffiths Energy International Inc.*).
20. Motion for Scheduling Order by the United States, Civil Forfeiture Proceedings, *supra* note 10, at 5-6, ECF No. 36-6.
21. 2015 EWHC 2119 (QB), Case no. HQ15X00464, ¶¶ 1-2. Griffiths had by this point changed its name to Caracal Energy Inc.
22. *SFO Wins Property Freezing Order Appeal in Chad Oil Corruption Case*, Serious Fraud Office (Jan. 23, 2017), https://www.sfo.gov.uk/2017/01/23/sfo-wins-property-freezing-order-appeal-chad-oil-corruption-case/.
23. Complaint *In Rem*, Civil Forfeiture Proceedings *supra* note 10, ¶ 1, ECF No. 1.
24. *Id.* ¶¶ 2-4.
25. *Id.* ¶ 5.

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foreign bribery, FCPA, and money laundering charges against the assets.[26] The D.C. District Court issued a warrant for arrest *in rem* against the assets in August 2015,[27] but the forfeiture action was subsequently stayed by the court following a consent motion to allow the parties to discuss the possibility of settlement and resolve disagreements over the government's limited discovery requests.[28] The stay remains in effect after the court denied Niam's motion to lift the stay in December 2020.[29]

Conclusion

DOJ's decision to pursue foreign bribery charges against Bechir, Takane, Niam, and Tyab – especially given that the conduct occurred years ago and that the case has been the subject of prior proceedings in Canada, the United Kingdom, and the United States – is a strong signal that prosecutors are paying more than lip service to their commitment to hold individuals accountable in white-collar cases. But time will tell whether this trend of an increase in individual anti-corruption prosecutions continues.

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26. *Id.* ¶¶ 70-71, 73-74, 76-79, 81-85.
27. Arrest Warrant *In Rem*, Civil Forfeiture Proceedings, *supra* note 10, ECF No. 4.
28. *See* Minute Order Granting Consent Motion for Limited Stay of Proceedings, Civil Forfeiture Proceedings, *supra* note 10 (Dec. 21, 2015).
29. Minute Order Denying Claimant Niam's Motion to Lift Stay, Civil Forfeiture Proceedings, *supra* note 10 (Dec. 1, 2020).

Enhanced Cross-Border Anti-Corruption Enforcement Expected as Part of President Biden's National Security Strategy

On June 3, 2021, President Joseph Biden issued a National Security Study Memorandum declaring that combatting corruption is a core national security priority.[1] The Memorandum requires federal agencies including DOJ and the Treasury Department, State Department, intelligence agencies, and others to engage in an interagency review and prepare a responsive report within the next 200 days. That report will address how the U.S. government can modernize and better resource efforts to fight cor ruption; challenge the use of illicit finance; hold corrupt parties individuals, organizations, and their facilitators accountable; and strengthen international partnerships and assistance.

This Memorandum signals the Biden Administration's redoubled emphasis on anti-corruption efforts – even though, contrary to the expectations of many, enforcement of the FCPA remained vigorous under the prior administration. There already had been widespread anticipation that the Biden Administration would shift more enforcement resources to the anti-corruption front and seek to strengthen cross-border coordination in investigating such matters. The Memorandum confirms that such initiatives are in progress and have the focus and attention of the most senior leadership in the administration. Significantly, the Memorandum seeks a Presidential strategy that spans the federal government, not only the U.S. agencies specifically tasked with enforcing the FCPA (DOJ and the SEC).

In particular, the Memorandum identifies five key priorities:

- Dedicate additional resources of federal departments and agencies to fighting corruption, both domestically and overseas, including by identifying where new structures and staffing would be appropriate;
- Increase transparency in the international financial system, including by reducing the use of offshore tax havens, illicit assets, and shell companies, and accelerate ground-breaking actions by the Treasury Department to create a beneficial ownership registry as required by last year's Corporate Transparency Act and close related regulatory loopholes;

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1. "Memorandum on Establishing the Fight Against Corruption as a Core United States National Security Interest" (June 3, 2021), https://www.whitehouse.gov/briefing-room/presidential-actions/2021/06/03/memorandum-on-establishing-the-fight-against-corruption-as-a-core-united-states-national-security-interest.

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- Reemphasize holding accountable individuals and organizations involved in corrupt activities as well as those facilitating or enabling corruption, including by strengthening efforts to bar illicit actors from accessing the international financial system through anti-corruption sanctions under the Global Magnitsky Act; seizing and recovering illicit assets through greater criminal and civil enforcement actions under DOJ's Kleptocracy Asset Recovery Initiative; and increasing the capacity of other stakeholders – state and local agencies, the media, non-governmental organizations, and international partners – to support anti-corruption efforts;
- Consistent with the Biden Administration's attention to international alliances, strengthen cross-border partnerships in investigating corrupt conduct, including where perpetrated by autocratic or kleptocratic governments; and
- Along similar lines, increase attention to foreign assistance programs and security cooperation procedures, in the interest of developing other countries' capacities to implement their own anti-corruption and transparency measures.

As the Memorandum makes clear, the Biden Administration believes that vigorous FCPA enforcement is critical not only as a matter of criminal justice, but also national security. We therefore expect the Memorandum to fuel renewed efforts across the federal government to increase interagency collaboration in detecting, investigating, and prosecuting foreign and domestic corruption. DOJ already works closely with agencies such as the State Department and Treasury Department on anti-corruption efforts and investigations. That engagement may become more formal and rigorous, and it presumably will include further collaboration with other agencies identified in the Memorandum, including the intelligence agencies. The Memorandum also portends increased cooperation by the federal government with foreign countries and international institutions in combatting corruption. In this regard, the Memorandum specifically references the desire to address "the demand side of bribery" and "strategic corruption by foreign leaders," suggesting more concerted efforts to prosecute corrupt foreign officials who are beyond the FCPA's ambit but subject to anti-money laundering and other U.S. laws.

These imperatives – DOJ working with other federal agencies and coordinating with foreign partners on FCPA matters – are not new, but are likely to accelerate given that this is now a top priority for the Biden Administration. Of course, a key driver of government prioritization is funding, so it will be important to see if, as we expect, significant additional resources are allocated to DOJ and the SEC to pursue foreign corruption cases.

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The Memorandum also may foretell DOJ's and the Treasury Department's aggressive use of their new subpoena power enacted as part of the National Defense Authorization Act for 2021. That law authorized subpoenas to any foreign bank that maintains a U.S. correspondent account for records related to "the correspondent account or any account at the foreign bank, including records maintained outside the United States," that are the subject of, among other things, any federal criminal investigation.[2] The government has not yet made clear how frequently or under what circumstances it will employ this powerful new tool. But in light of the Memorandum, DOJ and Treasury understandably may feel they have greater flexibility to use all available tools, including this new subpoena power, to investigate and ultimately prosecute foreign corruption.

"We therefore expect the Memorandum to fuel renewed efforts across the federal government to increase interagency collaboration in detecting, investigating, and prosecuting foreign and domestic corruption."

Other developments surrounding the Memorandum's issuance also may provide additional insight regarding future enforcement priorities. On June 2, 2021, the U.S. government sanctioned current and former Bulgarian government officials involved in corruption, as well as their relatives and dozens of entities controlled or owned by them.[3] The United States imposed these sanctions pursuant to an executive order implementing the Global Magnitsky Human Rights Accountability Act, a powerful statute that allows the imposition of sanctions on foreign individuals or entities involved in human rights violations and corruption. Indeed, the United States is not alone in using sanctions to tackle such crimes; the European Union and the United Kingdom both have introduced similar laws.[4]

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2. Satish M. Kini, Winston M. Paes, et al, "Congress Passes Sweeping Anti-Money Laundering and Corporate Beneficial Ownership Law," Debevoise In Depth (Jan. 4, 2021), https://www.debevoise.com/insights/publications/2021/01/congress-passes-sweeping-anti-money-laundering-and.
3. "Public Designation of Five Bulgarian Public Officials Due to Involvement in Significant Corruption" (June 2, 2021), https://www.state.gov/public-designation-of-five-bulgarian-public-officials-due-to-involvement-in-significant-corruption.
4. Karolos Seeger, Andrew M. Levine, et al, "UK Introduces Magnitsky-Style Human Rights Sanctions Regime," Debevoise Update (July 13, 2020), https://www.debevoise.com/insights/publications/2020/07/uk-introduces-magnitsky; Karolos Seeger, Jane Shvets, et al, "EU Introduces Magnitsky-Style Human Rights Sanctions Regime," Debevoise Update (Dec. 21, 2020), https://www.debevoise.com/insights/publications/2020/12/eu-introduces-magnitsky-style-human-rights.

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In addition, shortly after the Memorandum's issuance and concurrently with Vice President Kamala Harris's trip to Central America, Attorney General Merrick Garland announced DOJ initiatives to combat corruption and organized crime in Central America.[5] These efforts include creating a dedicated law enforcement task force and boosting investigative, prosecutorial, and asset recovery efforts in Guatemala, El Salvador, and Honduras, through FCPA enforcement, the Kleptocracy Asset Recovery Initiative, and counter-narcotics operations.[6]

Given the Biden Administration's focus on fighting corruption and related developments, it is more important than ever for companies to have a robust anti-corruption compliance framework in place. Many companies, particularly those with international operations, already had been preparing for an increased emphasis on anti-corruption enforcement by the administration. Among other steps, companies should consider refreshing risk assessments of their operations, reviewing their compliance programs, and considering enhancements to their policies and procedures in anticipation of the potential for heightened scrutiny. This most recent announcement by the administration confirms that such steps are prudent and well-advised, and it serves as a reminder to anyone flouting the law that anti-corruption enforcement by the United States and its partners will become even more vigorous in the coming years.

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5. U.S. Dep't of Justice, "Attorney General Announces Initiatives to Combat Human Smuggling and Trafficking and to Fight Corruption in Central America" (June 7, 2021), https://www.justice.gov/opa/pr/attorney-general-announces-initiatives-combat-human-smuggling-and-trafficking-and-fight.

6. *Id.*

German Parliament Halts Reform of Corporate Criminal Liability

The 2018 Coalition Treaty of the three-party German government provided for legislation that would replace the current model of corporate administrative liability with corporate criminal liability for crimes committed in the context of a business.[1]

Following its progression through the legislative procedure,[2] lawmakers now consider the much-anticipated draft Corporate Sanctions Act to be off the table for this parliamentary term due to their failure to agree on key points.

The envisioned Act stipulated a new set of sanctions in the event top management committed a corporate crime or failed to prevent criminal conduct by lower ranking employees. According to the draft legislation, a criminal act would be a deed that violates the company's duties or an action intended to enrich the company illegally. It would extend the liability for corporations domiciled in Germany to crimes committed abroad if the crime was punishable both in Germany and the foreign jurisdiction. Mandatory prosecution, counterbalanced with additional grounds for declining or ending prosecution, would have replaced the current prosecutorial discretion. The draft further provided for severe sanctions, including monetary fines of up to 10% of annual worldwide and group-wide revenues, and the disgorgement of profits.

Ever since its inception, drafts of the Act have faced severe criticism by stakeholders, in particular for what were perceived as disproportionate fines and increased information rights for injured parties. Further, fierce opposition by German bar associations and industry groups had been directed at the envisaged rules governing the legal effects of internal investigations: internal investigations were to be rewarded through a mandatory reduction of fines only if they met certain criteria, such as a material contribution to the discovery of the corporate crime; full and continuous cooperation by, among other things, sharing the results including all relevant documentary evidence and final reports with the prosecution; and the observation of certain fair trial standards such as informing interviewees about their right to remain silent. Internal investigations conducted by

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1. Thomas Schürrle and Friedrich Popp, "Germany Begins Reform of Corporate Criminal Liability," FCPA Update, Vol. 11, No. 5 (Dec. 2019), https://www.debevoise.com/insights/publications/2019/12/fcpa-update-december-2019.
2. Thomas Schürrle, Karolos Seeger, Friedrich Popp & Jennifer Deschins, "German Corporate Criminal Liability Act Heads to Parliament," FCPA Update, Vol. 11, No. 11 (June 2020). https://www.debevoise.com/insights/publications/2020/06/fcpa-update-june-2020.

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defense counsel and thus protected by German professional secrecy would not have qualified for this benefit. As a consequence, companies would have been faced with a stark choice early on in the process: cooperate with the prosecution on the basis of an internal investigation that did not benefit from any privilege protection or, alternatively, choose a possibly more thorough and better protected internal investigation conducted by defense counsel, whilst foregoing the benefit of a possible reduction of sanctions. This feature of the proposed law was also identified as an unsurmountable obstacle to further progress in Parliament.

For the time being, German law thus continues to provide for administrative liability for corporate wrongdoing and the sole sanction of a maximum fine of EUR 10 million, in addition to the disgorgement of ill-gotten gross profits.

As Germany continues to seek conformity with international standards of corporate criminal liability, the topic will certainly remain on the agenda of the newly elected legislature in September 2021.

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