Debevoise & Plimpton

FCPA Update
September 2021
Volume 13
Number 2

FCPA Update

A Global Anti-Corruption Newsletter

Also in this issue:

Click here for an index of all FCPA Update articles

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

Ruling in Ng's 1MDB Case Signals Low Bar for Internal Controls Charges

In a 160-page ruling last month that has implications for how DOJ may bring internal accounting controls charges against individual defendants, the District Court for the Eastern District of New York denied a motion by former Goldman Sachs banker Ng Chong Hwa (known as Roger Ng) to dismiss his foreign bribery case, which arose from the corruption scandal involving Malaysia's development fund, 1Malaysia Development Berhad ("1MDB").[1]

Ng was charged in 2018 with conspiring to launder money and to violate the FCPA in connection with a scheme to pay bribes to high-ranking government officials to secure underwriting business from 1MDB.[2] In October 2020, Ng moved

Continued on page 2

1. Mem. & Order on Def. Mot. to Dismiss,, *United States v. Ng Chong Hwa*, 1:18-cr-00538-MKB (E.D.N.Y. Sept. 10, 2021) [hereinafter "Ng Mem. & Order"].
2. *See* Jane Shvets, Bruce Yannett, and Andreas A. Glimenakis, "Goldman Sachs' 1MDB Settlement Brings Record Breaking FCPA Recovery for U.S. Authorities," FCPA Update, Vol. 12, No. 3 (Oct. 2020), https://www.debevoise.com/insights/publications/2020/10/fcpa-update-october-2020.

Ruling in Ng's 1MDB Case Signals Low Bar for Internal Controls Charges
Continued from page 1

to dismiss the indictment and for other relief on a number of fronts, arguing (1) lack of venue; (2) failure to allege all essential elements of conspiracy to commit bribery under the FCPA; (3) failure to allege that he conspired to circumvent a set of controls cognizable under the FCPA; and (4) failure to meet the constitutional requirements and to properly allege the elements of conspiracy to commit money laundering.

On September 10, 2021, the Court denied Ng's motion.

As we have noted previously, it is the legal challenges by individual defendants that continue to develop the law in the FCPA space. Although the Order itself brings no ground-breaking clarity to FCPA case law, the Court's view on the internal accounting controls provisions of the FCPA, in particular, highlight the relatively low bar needed to allege certain FCPA violations and take those cases to the jury. Relying on the "leading case on the internal accounting controls provision," the Court reminded defendants not to conflate the FCPA's two accounting provisions and that the question as to whether internal controls are cognizable "internal accounting controls" (and whether an issuer's "transactions" or "assets" were involved) is an issue for the jury.[3]

The 1MDB Bribery Scheme

Between 2009 and 2011, Goldman Managing Directors Roger Ng and Tim Leissner attempted to make Low Taek Jho ("Jho Low") – a Malaysian financier with close ties to senior government officials in Malaysia and Abu Dhabi – a formal Goldman client. However, based at least in part on concerns regarding the sources of his wealth, personnel within Goldman's Compliance Group and Intelligence Group refused to approve any client relationship with Low.[4] Leissner, Ng, and others nonetheless continued to engage with Low, who "played a central role" in certain bond transactions they sought to underwrite, allegedly concealing Low's involvement despite knowing that Low intended to use funds misappropriated from the bond transactions to pay bribes to numerous high-ranking government officials in Malaysia.[5]

On October 3, 2018, Ng and Low were charged with conspiracy to commit money laundering and to violate the FCPA's anti-bribery provisions.[6] Ng also was charged

Continued on page 3

3. Ng Mem. & Order at 67 (referring to *SEC. v. World-Wide Coin Invs. Ltd.*, 567 F. Supp. 724, 749–50 (N.D. Ga. 1983)).
4. Order ¶¶ 19-20, *In re The Goldman Sachs Group, Inc.*, Securities Exchange Act Rel. No. 90243 (Oct. 22, 2020), https://www.sec.gov/litigation/admin/2020/34-90243.pdf.
5. Ng Mem. & Order at 62; United States Dep't of Justice, Press Release No. 20-11143, "Goldman Sachs Charged in Foreign Bribery Case and Agrees to Pay Over $2.9 Billion" (Oct. 22, 2020), https://www.justice.gov/opa/pr/goldman-sachs-charged-foreign-bribery-case-and-agrees-pay-over-29-billion.
6. Indictment, *United States v. Low*, No. 18-cr-00538-MKB (E.D.N.Y. Oct. 3, 2018), https://www.justice.gov/opa/press-release/file/1106931/download.

Ruling in Ng's 1MDB Case Signals Low Bar for Internal Controls Charges

Continued from page 2

with violating the FCPA's internal controls provisions in connection with his alleged circumvention of Goldman's internal accounting controls. Ng was arrested in Malaysia in November 2018, was extradited back to the United States, pleaded not guilty, and is contesting the charges against him. His much-anticipated and long-delayed trial has been postponed until January 2022.[7]

Internal Controls Charges

DOJ alleged that Ng conspired to violate Goldman's internal accounting controls by concealing Low's involvement in procuring the lucrative bond transactions from Goldman's Compliance and Intelligence groups "to prevent any investigation into the business relationship with Low that might jeopardize the deals" and to prevent the "internal accounting controls" groups from attempting to stop Goldman's participation in the transactions. Ng attempted to refute that allegation by relying on the following arguments:

"The Court's ruling in *Ng* serves as a cautionary tale regarding how broadly the FCPA's internal controls provision can potentially be interpreted, setting a high bar for challenges to FCPA charges on a motion to dismiss."

- *Transactions or Assets of Issuer*. First, Ng argued that the FCPA's internal accounting controls provision applies only to the transactions and assets of the relevant issuer (Goldman), and that none of the allegations here related to internal Goldman accounting because bribes were paid from assets that belonged to 1MDB, a non-issuer. The Court agreed with the government's arguments, however, holding that the relevant transaction was Goldman's purchase of 1MDB bonds with its own assets, a transaction and use of company assets that would not have been authorized by the groups at Goldman that enforce its internal accounting controls had Ng and others not concealed Low's involvement. Ultimately, according to the Court, the question as to whether "transactions" or "assets" of an issuer were involved is for the jury to decide.[8]

Continued on page 4

7. Leissner, who is cooperating with DOJ, pleaded guilty in 2018, while Low denies wrongdoing and remains at large. Goldman itself settled the SEC's and DOJ's FCPA charges in October 2020 for $2.9 billion in a settlement that was notable for breaking several records in the FCPA realm: the largest amount of bribes allegedly paid ($1.6 billion), the largest loss amount charged ($2.7 billion), and the largest number of authorities participating in parallel resolutions (at least nine). U.S. Dep't of Justice, "Acting Assistant Attorney General Brian C. Rabbitt Delivers Remarks Announcing Goldman Sachs/1mdb Enforcement Actions" (Oct. 22, 2020), https://www.justice.gov/opa/speech/acting-assistant-attorney-general-brian-c-rabbitt-delivers-remarks-announcing-goldman.

8. Ng Mem. & Order at 63.

Ruling in Ng's 1MDB Case Signals Low Bar for Internal Controls Charges
Continued from page 3

- *Specificity of Internal Controls*. Second, Ng argued that the government failed to identify an internal accounting control that was violated, contending that the compliance and legal groups Goldman identified as internal controls were not "accounting related." While the Court acknowledged that civil cases have been dismissed where the SEC failed to allege which controls were violated, such specificity is not required in the criminal context – rather, tracking the statutory language is sufficient at this stage. Again, the Court found that the question as to whether the controls at issue are accounting controls is for the jury to decide.[9]
- *Squaring with Precedent and the FCPA Resource Guide*. Third, Ng asserted that the government's arguments did not square with prior applications of the internal accounting controls provision or with the SEC and DOJ's jointly-issued *Resource Guide to the U.S. Foreign Corrupt Practices Act*. Specifically, he argued that "there has *never* been a criminal case where a defendant was convicted for violating his company's internal accounting controls when it was undisputed that his company did not engage in a transaction concerning its own funds." The Court dismissed Ng's characterization as incorrect on the ground that the case *does* involve a transaction by the firm or use of its funds (Goldman was an underwriter of the 1MDB bond transactions). The Court also took issue with Ng's suggestion that circumvention of accounting controls must be attended by the falsification of accounting documents that could be reflected on the issuer's financial statements; in the Court's view, that argument "appears to conflate" the FCPA's books and records provision with its internal accounting controls provision.[10] The Court noted that while violations of the books and records provision (which requires issuers to "make and keep books, records, and accounts, which in reasonable detail, accurately and fairly reflect the transactions and dispositions of the assets of the issuer") commonly feature falsification of books, the internal accounting controls provision (subsections of which "only require that issuers maintain a system of controls sufficient to provide reasonable assurances that "transactions are executed in accordance with management's general or specific authorization" and that "access to assets is permitted only in accordance with management's general or specific authorization") "has no such requirement" because that provision's focus "is not on actual entries into the books and records" but on "management control."[11]

  The Court also relied upon the 2020 *Resource Guide*: it held that the allegations that Ng concealed Low's involvement to ensure that Goldman would authorize

Continued on page 5

9. *Id.* at 64.
10. *Id.* at 66 & n.21.
11. *Id.* at 67.

Ruling in Ng's 1MDB Case Signals Low Bar for Internal Controls Charges
Continued from page 4

the deals are consistent with the reasoning in the *Resource Guide* that "the focus is not only on maintaining controls to ensure accurate accounting but also on "'maintain[ing] a system of internal accounting controls sufficient to assure management's control, authority, and responsibility over the firm's assets.'"[12]

- *Void for Vagueness*. Ng also argued that because the alleged violation does not relate to a Goldman transaction or assets, the internal accounting controls provision is unconstitutionally vague as applied because it fails to give sufficient notice of prohibited conduct ("a person of ordinary intelligence reading the provision would believe it applies only to accounting of an issuer's transactions and assets") and because it "is prone to 'subjective' enforcement because once the provision 'is untethered from accounting, there is no limit to how far prosecutors can expand the term.'" The Court, however, sided with DOJ, which argued that (i) the issue was premature at this pre-evidentiary stage of proceedings; and (ii) the provision does give sufficient notice to Ng that his concealment of Low's involvement in the bond deals was related to a Goldman transaction or assets.[13]

Takeaways

A few items stand out as takeaways and matters to watch as Ng's case heads towards trial.

- *Internal Controls Are Not Limited to Preventing Direct Payments of Bribes From an Issuer's Assets*. The *Ng* Court dealt with the defendant's argument that the internal controls provision applies only to improper payments made directly from an issuer's assets by highlighting that the relevant transaction or use of assets was Goldman's purchase of 1MDB bonds. Just because Ng did not conspire to circumvent Goldman's controls to access the specific funds used to make improper payments did not render the internal controls provision inapplicable. Ng's alleged conspiracy to circumvent internal controls by concealing Low's involvement from "the groups at [Goldman] that enforce its internal accounting controls" in a way that enabled his participation to continue and Goldman to obtain the 1MDB bond offerings was deemed a sufficient link between controls-circumvention and use of company assets to go to the jury – and to stave off vagueness arguments. Such a broad interpretation means that the provision applies not only to payments from company assets for bribes

Continued on page 6

12. Ng Mem. & Order at 65; United States Dep't of Justice, Criminal Div. and United States Sec. & Exch. Comm'n, Enf't Div. 38, A Resource Guide to the U.S. Foreign Corrupt Practices Act: Second Edition (July 2020), https://www.justice.gov/criminal-fraud/file/1292051/download.

13. *Id.* at 68–70 ("Accordingly, because the internal accounting controls provision gives sufficient notice to Ng that his concealment of Low's involvement in the bond deals was related to a transaction or asset of the Goldman Sachs Group's – namely, its underwriting of the bond deals – the provision is not prone to subjective enforcement because it ties the allegations against Ng to the transactions and assets used to conduct them.").

Ruling in Ng's 1MDB Case Signals Low Bar for Internal Controls Charges
Continued from page 5

(direct or through a third party), but also to circumvention of controls tied to any transaction, which could presumably be satisfied by any business purpose that is the object of an FCPA case.

- *They're Accounting Controls if a Jury Says So.* In an Order citing heavily from what the Court called "the leading case on the internal accounting controls provision – and the main authority cited by the parties," the Court noted that the question as to whether "controls" are internal "accounting" controls is for the jury to decide. Because "there are no specific standards by which to evaluate the sufficiency of controls" and "any evaluation is inevitably a highly subjective process in which knowledgeable individuals can arrive at totally different conclusions[,] [a]ny ruling . . . with respect to the applicability of . . . the internal accounting control provision[] should be strictly limited to the facts of each case." Leaving the determination in the hands of jurors exposes third party onboarding processes, hiring questionnaires, vendor risk management workflows, and other policies and procedures put in place by compliance or legal departments that may be arguably "accounting related" to possible categorization as internal accounting controls. The Order itself paints the controls as "the groups at [Goldman] that enforce its internal accounting controls," meaning that any circumvention of these fact-dependent controls (or control personnel) made in connection with a broadly-defined transaction can potentially be viewed as a violation.[14]
- *Books and Records vs. Internal Controls.* By calling out Ng's conflation of the books and records and internal controls provisions, the Court emphasized the important point that circumventing internal controls does not require any falsification of books and records. The Court noted that the focus of the internal controls provision "is not on actual entries into the books and records" but on "management control;" the provision is "primarily designed to give statutory content to an aspect of management stewardship responsibility, that of providing shareholders with reasonable assurances that the business is adequately controlled" – and "should not be analyzed solely from [the] point of view" of being "supportive of accuracy and reliability in the auditor's review and financial disclosure process."[15] With respect to the boundaries of internal *accounting* controls, the Court's view appears to be that any circumvention of any company "control" that may thwart management's wishes may be sufficient.

Continued on page 7

14. *Id.* at 67.
15. *Id.* at 60, 67–68.

Ruling in Ng's 1MDB Case Signals Low Bar for Internal Controls Charges
Continued from page 6

Conclusion

The Court's ruling in *Ng* serves as a cautionary tale regarding how broadly the FCPA's internal controls provision can potentially be interpreted, setting a high bar for challenges to FCPA charges on a motion to dismiss. The government appears to charge individual defendants with conspiracy to violate internal controls much less frequently than conspiracy to violate the FCPA's anti-bribery provisions or to commit money laundering, but Ng's case may be a harbinger of more such charges where defendants conspire to bypass broadly-defined, fact-dependent internal controls in the course of pursuing transactions for the company or use of company assets.

Kara Brockmeyer

Bruce E. Yannett

Michael P. Geraltowski

Andreas A. Glimenakis

Kara Brockmeyer is a partner in the Washington, D.C. office. Bruce E. Yannett is a partner in the New York office. Michael P. Geraltowski and Andreas A. Glimenakis are associates in the Washington, D.C. office. Full contact details for each author are available at www.debevoise.com.

Continued on page 8

China's Anti-Corruption Campaign Shifts Focus

Since 2012, the People's Republic of China has been engaged in an anti-corruption crackdown. A new statement that was issued jointly by a number of government, Party, and judicial bodies suggests that the focus of that crackdown may soon turn from bribe-takers to bribe givers. This new announcement follows a number of recent developments in the anti-corruption campaign, including new legislation restricting the cross-border transfer of data (including in the context of judicial proceedings) and new legislation relating to China's anti-corruption super-regulator, the National Supervisory Commission ("NSC"). In addition to the new laws, anti-corruption regulators recently have found a new target. Following several years of sectoral anti-corruption sweeps – notably including the healthcare sector and the financial sector – Chinese authorities are focused on the legal sector, including investigating former judges and prosecutors who misuse their government connections after entering private practice.

A New Focus for China's Anti-Corruption Campaign?

On September 8, 2021, six Chinese authorities published an "*Opinion on Furthering the Investigation of Giving and Taking Bribes*" (the "Opinion") outlining the intention to crack down on bribe givers as well as bribe-takers.[1] Although paying a bribe has always been illegal (and has frequently been prosecuted), more often than not anti-corruption agencies and prosecutors have focused on the recipients of bribes. The Opinion suggests that might change.

The Opinion was released by the Central Commission for Discipline Inspection ("CCDI") of the Communist Party of China ("CCP") and the NSC, The Supreme People's Court, Supreme People's Procuratorate, the Central Organization Department of the CCP, the Central Political and Legal Affairs Commission, and the United Front Work Department of the CCP. The Opinion states that "one of the major reasons corruption has continued is because bribe givers have resorted to whatever means to 'entrap' CCP members and cadres."[2] At a press conference, the representative of the CCDI stated his view that the main source of bribery is the act of giving bribes and he criticized the status quo in which rates of prosecution and penalties for bribe giving are lower than similar metrics for bribe taking.[3]

Continued on page 9

1. 中央纪委国家监委会同有关单位联合印发《关于进一步推进受贿行贿一起查的意见》 (Opinion on Furthering the Investigation of Giving and Taking Bribes Together) (Sept. 8, 2021), https://www.ccdi.gov.cn/toutiao/202109/t20210908_249687.html.
2. *Id.*
3. People's Daily, 进一步推进受贿行贿一起查 巩固发展反腐败斗争压倒性胜利—中央纪委国家监委案件监督管理室负责人答记者问 (Furthering the Investigation of Giving and Taking Bribes and Consolidating the Development of the Crushing Victory in the Fight against Corruption - transcript of press conference regarding the Opinion) (Sept. 9, 2021), http://paper.people.com.cn/rmrb/html/2021-09/09/nw.D110000renmrb_20210909_1-04.htm.

China's Anti-Corruption Campaign Shifts Focus
Continued from page 8

The Opinion announces five areas of focus in future anti-corruption enforcement in China: (1) repeated bribery, "huge bribery," or bribery of many people; (2) CCP members and state functionaries who give bribes; (3) bribery in important state work and major projects; (4) bribery in key sectors (law enforcement, justice, ecological and environmental protection, finance, workplace safety, food and drug activities, poverty alleviation and disaster relief, pension and social security activities, education and health care, etc.); and (5) major commercial bribery. The Opinion also stated that the relevant government and Party entities were exploring the creation of a blacklist as a new punishment for bribe givers.

New Restrictions on Cross-Border Investigations and Proceedings

On September 1, 2021, the PRC Data Security Law (the "DSL")[4] became effective. The DSL includes legal and regulatory restrictions on cross-border data transfer, including transfers in connection with foreign judicial proceedings.[5]

The DSL prohibits transfer of any data stored within the PRC to a foreign judicial or law enforcement authority without prior approval by competent PRC authorities.[6] The DSL, however, does not define what constitutes "a data transfer to a foreign judicial or law enforcement authority," or specify the pre-approval application mechanism. The restriction applies to all data, and is not limited to personal data (see below) or "important data" or "data collected and produced by Critical Information Infrastructure Operator" which are subject to additional restrictions under the DSL and the Cybersecurity Law.[7]

Consistent with the DSL, the Personal Information Protection Law (the "PIPL") which will take effect on November 1, 2021, requires that any transfer of personal information stored within the PRC to foreign judicial or law enforcement bodies must be pre-approved by competent Chinese authorities. Similar to the DSL, the PIPL does not specify the relevant definition or approval procedures.

Continued on page 10

4. 《中华人民共和国数据安全法》(Data Security Law of the People's Republic of China), full text available at http://www.npc.gov.cn/npc/c30834/202106/7c9af12f51334a73b56d7938f99a788a.shtml.

5. *See* Debevoise & Plimpton LLP, "China Passes Anti-Foreign Sanctions and Data Security Laws" (June 15, 2021), https://www.debevoise.com/insights/publications/2021/06/china-passes-anti-foreign-sanctions-and.

6. Data Security Law *supra* n.4 at Article 36.

7. Data Security Law *supra* n.4 at Article 31: ("关键信息基础设施的运营者在中华人民共和国境内运营中收集和产生的重要数据的出境安全管理，适用《中华人民共和国网络安全法》的规定；其他数据处理者在中华人民共和国境内运营中收集和产生的重要数据的出境安全管理办法，由国家网信部门会同国务院有关部门制定。") ("The security management of cross-border transfer of important data collected and generated by operators of critical information infrastructure during operations within the territory of the People's Republic of China, the provisions of the Cybersecurity Law of the PRC shall apply; he measures for the security management of cross-border transfer of important data collected and generated by other data processors during operations within the territory of the PRC shall be formulated by the State Cyberspace Administration of China in conjunction with relevant departments of the State Council.")

China's Anti-Corruption Campaign Shifts Focus
Continued from page 9

This restriction reflects a trend of seeking to limit the extension of long-arm jurisdiction by foreign governments into China, and elevates data and personal information protection to the level of national security. Although the practical rules surrounding cross-border data transfers still need regulatory clarification, companies should start carefully reviewing and seeking advice before responding to requests for data stored in China, whether by foreign authorities or in private civil litigation.

New Powers for China's Anti-Corruption Regulator

On August 20, 2021, the National People's Congress Standing Committee adopted a new Supervisors Law, to effect on January 1, 2022.[8] The Supervisors Law is concerned with the organization of (and grants new powers to) the NSC, which works with the CCDI in policing China's civil servants and CCP members.

"Foreign companies doing business in China should be alert to increased risks arising from the country's new focus on bribe giving as well as new impediments to cooperating with investigations by foreign regulators."

The NSC was created by the Supervision Law of 2018.[9] That law consolidated anti-corruption supervisory work that had previously been scattered over multiple state and Party agencies. Prior to 2018, the Ministry of Supervision oversaw the supervision and inspection of civil servants (who are not necessarily CCP members), and the CCDI had the power to investigate Party members (whether or not they were civil servants). The People's Procuratorate was ultimately responsible for investigating and bringing criminal bribery charges, but both the CCDI and Ministry of Supervision could impose non-criminal penalties. In 2018, the Ministry of Supervision was dissolved and many of its duties were transferred to the NSC. The CCDI formally remains separate, but works with (and shares staff and facilities with) the NSC. The Procuratorate's power of investigating corruption cases has been narrowed; the NSC will be given priority to lead the investigation

Continued on page 11

8. 《中华人民共和国监察官法》(Supervisors Law of the People's Republic of China), full text accessible at http://www.npc.gov.cn/npc/c30834/202108/c5439b50d1614851aeaee97dde63b863.shtml; an unofficial English translation accessible at https://www.pkulaw.com/en_law/fc56e12c41d55616bdfb.html.

9. 《中华人民共和国监察法》(Supervision Law of the People's Republic of China), full text accessible at http://www.npc.gov.cn/zgrdw/npc/xinwen/2018-03/21/content_2052362.htm; an unofficial English translation accessible at: https://www.pkulaw.com/en_law/49d33112b961f99cbdfb.html.

China's Anti-Corruption Campaign Shifts Focus
Continued from page 10

in case of jurisdiction overlaps. The NSC (with the CCDI) has the power to detain and question *any person*[10] (not just civil servants and CCP members) for up to six months in connection with a corruption investigation, during which time the right to counsel does not attach.[11] It may refer suspects to the Procuratorate for prosecution and/or impose a variety of non-criminal sanctions for fraud, bribery, and other improper behavior.

The new Supervisors Law defines the rights and duties of NSC officials, as well as prescribing their qualifications and the manner of oversight, evaluations, appointments, and removals. The Supervisors Law also creates new offenses (disciplinary, administrative, and criminal) for obstruction of supervisors' work.[12] Moreover, the law prohibits persons from serving as NSC officials if their spouses (or their children, if there is no spouse) are based outside the PRC.[13] In response to public concerns about the oversight of the NSC, the Supervisors Law contains a chapter regarding oversight and punishment of supervisors. Any person has the right to report any misconduct of NSC officials, and the report should be made to the NSC.[14]

One month after the Supervisors Law was passed, the NSC issued Regulations on the Implementation of the Supervision Law.[15] The Regulation clarifies the duties of the NSC, its jurisdiction, its supervisory power, and its working procedure. It also introduces rules concerning international cooperation and oversight. The Regulation enumerates more than 100 crimes and infractions committed by civil servants that the NSC is responsible for investigating. For example, Articles 26 to 31 of the Regulation stipulate that the NSC has the authority to investigate public officials suspected of corruption and bribery, abuse of power, dereliction of duty, favoritism, major liability crimes, and crimes of election sabotage. In addition, the Regulation provides for separate evidentiary standards for cases of "violations" and "crimes;" "clear and convincing" and "beyond a reasonable doubt," respectively. The Regulation also sets out procedures for the exclusion of illegally obtained evidence.

Continued on page 12

10. *Id.* at Article 22("对涉嫌行贿犯罪或者共同职务犯罪的涉案人员，监察机关可以依照前款规定采取留置措施"). ("The supervisory organ may, in accordance with the provision of the preceding paragraph, detain any person who is suspected of giving bribes or committing any joint duty-related crime.")
11. *See* Jane Shvets, Bruce E. Yannett, Philip Rohlik, De Zha, "Anti-Corruption Enforcement Update: China, Vietnam, and Malaysia," FCPA Update, Vol. 10 No.4 (Nov. 2018), https://www.debevoise.com/insights/publications/2018/11/fcpa-update-november-2018.
12. Supervisors Law at Article 56 ("对任何干涉监察官依法履职的行为，监察官有权拒绝并予以全面如实记录和报告；有违纪违法情形的，由有关机关根据情节轻重追究有关人员的责任。") ("In case of any interference with a supervisor's performance of duties in accordance with the law, the supervisor shall have the right to refuse it, and make a record of and report it in a comprehensive and faithful manner; and, in case of any violation of discipline or law, the relevant authority shall hold the relevant persons liable according to the seriousness of circumstances.")
13. *Id.*, at Article 13.
14. *Id.* at Article 43 and Article 44.
15. XinhuaNet, "Implementation Rules for China's Supervision Law Take Effect" (Sept. 21, 2021), http://english.www.gov.cn/news/topnews/202109/21/content_WS614915f6c6d0df57f98e09c6.html.

China's Anti-Corruption Campaign Shifts Focus
Continued from page 11

Crackdown on the Legal Sector

Finally, on August 30, 2021, China's Central Political and Legal Affairs Commission held a press conference reporting on a "Nationwide Ethics Review" of the judicial sector. The Commission found that nearly 30% of surveyed former judges and prosecutors who switched careers to enter private practice had violated conflict of interest regulations. The Review was launched in February 2021 as part of an anti-corruption campaign across all arms of government.

According to Chen Yixin, the secretary-general of the Central Political and Legal Affairs Commission, during the Review, 178,431 cadres and officials in China's judicial sector have been punished for all kinds of "disciplinary and legal violations" (not all involving corruption). With regard to former judges and prosecutors, the Nationwide Ethics Review surveyed 7,640 former judges and prosecutors who left their posts since 2012. 2,044 of these were found to have "violated regulations of practicing law", and 101 of these were found to be acting as "judicial brokers," who illegally manipulated the legal system by selling influence.[16] Under Chinese law,[17] former judges and prosecutors are prohibited from practicing law before the expiry of a two-year moratorium after leaving their official posts, or acting as an agent *ad litem* or a defender in the capacity of a lawyer in cases that were handled by the courts and procuratorates where they previously served. Chen did not disclose any more details of the violations or what punishment has been imposed in these cases.

In a matter likely related to the review, in March 2021, three judicial officials in Beijing were placed under investigation for suspected corruption.[18] Additionally, Meng Xiang, the former director of the Supreme People's Court enforcement bureau, was placed under investigation by the NSC in July 2021.[19]

Continued on page 13

16. Central Political and Legal Affairs Commission, "The Second Press Conference on the National Political and Legal Sector Education And Rectification" (Aug. 30, 2021), https://www.chinapeace.gov.cn/chinapeace/jyzd210830/yqfb.shtml.
17. 《中华人民共和国法官法》 (The Judges Law of the People's Republic of China) at Article 36, http://www.npc.gov.cn/npc/c30834/201904/1d7e75427ffb4b3fb020af13d0959e4b.shtml;《中华人民共和国监察官法》 (The Public Procuratorate Law of the People's Republic of China) at Article 37, https://www.spp.gov.cn/zdgz/201904/t20190423_415970.shtml.
18. Wang Chao, "Strictly Crack Down on the Moths that Gnaw at Justice," China Discipline Inspection and Supervision News (Mar. 26, 2021), http://www.bjsupervision.gov.cn/ywyl/202103/t20210326_73310.html.
19. Committee on Discipline and Inspection, "Meng Xiang, Member of the Judicial Committee and Director of the Executive Bureau of the Supreme People's Court, under Review and Investigation," (July 16, 2021), https://www.ccdi.gov.cn/scdc/zggb/zjsc/202107/t20210717_246305.html.

China's Anti-Corruption Campaign Shifts Focus
Continued from page 12

While victory was declared in the first phase of the anti-corruption campaign at the end of 2018,[20] recent events demonstrate that China continues to aggressively enforce its laws against bribery. Foreign companies doing business in China should be alert to increased risks arising from the country's new focus on bribe giving as well as new impediments to cooperating with investigations by foreign regulators.

Gareth Hughes

Bruce E. Yannett

Philip Rohlik

Tingting Wu

Eva Yue Niu

Gareth Hughes is a partner in the Hong Kong office. Bruce E. Yannett is a partner in the New York office. Philip Rohlik is a counsel in the Shanghai office. Tingting Wu is an international counsel in the Shanghai office. Eva Yue Niu is a legal consultant in the Shanghai office. Full contact details for each author are available at www.debevoise.com.

20. *See* "Crushing Victory in the Fight against Corruption - Central Political Bureau Meeting Releases New Signals in the Fight against Corruption," XinhuaNet (Dec. 13, 2018), http://www.xinhuanet.com/2018-12/13/c_1123850237.htm (in Chinese); ;*see* also Nectar Gan and Choi Chi Yuk, "'Crushing victory': what's next for Chinese President Xi Jinping's war on corruption?," South China Morning Post (Dec. 14, 2018), https://www.scmp.com/news/china/politics/article/2178019/crushing-victory-whats-next-chinese-president-xi-jinpings-war.

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

San Francisco
+1 415 738 5700

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

Luxembourg
+352 27 33 54 00

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

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

Douglas S. Zolkind
Co-Executive Editor
+1 212 909 6804
dzolkind@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

Winston M. Paes
Co-Editor-in-Chief
+1 212 909 6896
wmpaes@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

Andreas A. Glimenakis
Associate Editor
+1 202 383 8138
aaglimen@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.