

FCPA Update

A Global Anti-Corruption Newsletter



Also in this issue:

9 Anti-Corruption
Enforcement Update: China,
Vietnam, and Malaysia

[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
pferez@debevoise.com

NAFTA Replacement Adds Anti-Corruption Provisions

On September 30, 2018, the United States, Mexico, and Canada agreed to replace the North American Free Trade Agreement (“NAFTA”) with a trilateral trade pact known as the United States-Mexico-Canada Agreement (the “USMCA”). The deal resulted from over a year of negotiations among the three countries. Like its predecessor, the USMCA memorializes various aspects of the economic relationships among the neighboring countries. Unlike its predecessor, however, the USMCA also specifically addresses anti-corruption enforcement and compliance.

In particular, Chapter 27 of the USMCA establishes broad, aspirational principles for combating bribery at the national level and through inter-country coordination. The USMCA does not cover commercial bribery, but does address the demand side of public corruption by requiring the parties to adopt and enforce criminal liability

[Continued on page 2](#)

**NAFTA Replacement Adds
Anti-Corruption Provisions**
Continued from page 1

for government officials who receive bribes or embezzle public funds. Chapter 27 also requires the parties to establish legal protections for whistleblowers and strongly emphasizes the need for international cooperation among anti-corruption law enforcement agencies.

Although the inclusion of a chapter dedicated to anti-corruption enforcement within the USMCA is a welcome development, the new agreement seems unlikely to have a significant practical impact on the private sector absent changes to current U.S. law in the implementing legislation. As written, the USMCA does not explicitly require any changes to U.S. anti-corruption law. While the signatory countries ultimately may determine that compliance with the agreement mandates substantive changes to domestic laws (including the FCPA), any such changes would be unlikely to take effect until the ratification and implementation process is completed.

The multi-step ratification process for the USMCA is likely to take a substantial amount of time. After the agreement is signed, it must be ratified by the U.S. Congress and the Canadian and Mexican legislatures, which is a months-long process expected to begin in 2019. During that process, the legislatures must determine what, if any, changes to domestic law are necessary and make any required amendments through appropriate implementing legislation. Thus, even if ratified, most of the agreement's key provisions would be unlikely to take effect until 2020.¹

Overview

Chapter 27 of the USMCA imposes a broad range of obligations on the three parties with regard to promoting anti-corruption policies generally and enforcing specific standards. The text sets forth guidelines for regulating both public and private actors and, in some cases, imposes an affirmative duty on each country to enforce or enact legislation in support of specific anti-corruption measures. A review of the key provisions of the USMCA and an analysis of how those provisions either differ from or overlap with the existing statutory framework governing bribery and corruption enforcement actions in the United States is set forth below.²

A. Defining "Foreign Official"

As some have been quick to note, the USMCA incorporates a broad definition of "foreign official" that expressly includes individuals associated with state-owned or state-controlled enterprises ("SOEs"). Article 27.1 defines both

Continued on page 3

-
1. Each country must notify the others in writing once it has completed the internal ratification process. The agreement enters into force two months after the last notification. United States-Mexico-Canada Agreement ("U.S.M.C.A.") art. 34.5.
 2. For discussion of Mexico and Canada's domestic anti-corruption laws, respectively, see Sean Hecker, Andrew M. Levine, Eileen Zelek, "Mexico Adopts New Anti-Corruption Legislation," FCPA Update, Vol. 8, No. 2 (Sept. 2016); Sean Hecker, Andrew M. Levine, Jilan J. Kamal, Jia Wang, "Canada Cleans Up: Increased Enforcement and Proposed Amendments to the CFPOA," FCPA Update, Vol. 4, No. 7 (Feb. 2013).

NAFTA Replacement Adds
Anti-Corruption Provisions
Continued from page 2

“foreign public official” and “public official” to include “any person exercising a public function . . . including for a public agency or public enterprise.”³ The text further provides that “public enterprise means any enterprise, regardless of its legal form, over which a government, or governments, may, directly or indirectly, exercise a dominant influence.”⁴ A footnote clarifies that “dominant influence” may be found where, among other things, a government or governments hold the majority of an enterprise’s capital, control the majority of voting shares, or have the authority to appoint a majority of the enterprise’s governing body.⁵

“The text [of the USMCA] sets forth guidelines for regulating both public and private actors and, in some cases, imposes an affirmative duty on each country to enforce or enact legislation in support of specific anti-corruption measures.”

Under this definition, the USMCA applies to employees of SOEs, in addition to elected or appointed government officials. This class of individuals is not expressly covered by the FCPA, but is included within the ambit of the statute under existing U.S. case law that characterizes SOEs as “instrumentalities” of a foreign government if meeting a multi-part test.⁶ As such, Chapter 27’s definition is largely consistent with existing U.S. case law, though it significantly streamlines the more elaborate tests espoused by U.S. courts. It remains to be seen whether this mandate will prompt any revision to the FCPA.

B. Corruption Offenses and Internal Controls

Article 27.3 of the USMCA sets forth a series of mandatory and suggested anti-corruption measures to be adopted or maintained by the parties.

Continued on page 4

3. U.S.M.C.A. art. 27.1.

4. *Id.*

5. *Id.* n.1.

6. See Sean Hecker, Andrew M. Levine, Colby A. Smith, Bruce E. Yannett, Michael T. Leigh, “U.S. Appellate Court Defines Government ‘Instrumentality’ Under the FCPA,” FCPA Update, Vol. 5, No. 10 (May 2014).

**NAFTA Replacement Adds
Anti-Corruption Provisions**
Continued from page 3

Most significantly, the agreement requires that each party define the following categories of conduct, when committed intentionally, as criminal offenses:⁷

- The offering or provision of an undue advantage to a public official in exchange for the public official acting or refraining from acting in relation to his or her official duties;
- The solicitation or acceptance of an undue advantage by a public official in exchange for acting or refraining from acting in relation to his or her official duties;
- The offering or provision of an undue advantage to a foreign public official in exchange for the public official acting or refraining from acting in relation to his or her official duties, in order to obtain an undue advantage in the conduct of international business;
- The aiding, abetting, or conspiring to offer, provide, solicit, or accept an undue burden in exchange for action or inaction by a public official or foreign public official; and
- The embezzlement or misappropriation by a public official of any property, funds or other thing of value entrusted to the official by virtue of his or her position.

Unlike most modern anti-corruption laws, the FCPA prohibits only the *giving* of bribes, not the taking.⁸ The FCPA contains no provisions relating to the solicitation or acceptance of bribes, or the embezzlement or misappropriation of public funds. These crimes are currently addressed through other U.S. laws, such as those pertaining to domestic bribery, money-laundering, and wire fraud.

The USMCA does not expressly prohibit facilitation payments, but requires the parties to encourage organizations to prohibit or discourage the use of them, and to raise awareness among public officials about domestic bribery laws, “with a view to stopping the solicitation and acceptance of facilitation payments.”⁹ While the FCPA, of course, expressly permits facilitation payments, officials from both DOJ and the SEC have stated in public commentary that they are disfavored.¹⁰

Continued on page 5

7. See U.S.M.C.A. art. 27.3.1-2.

8. The FCPA prohibits the offer, payment, promise to pay or authorization of the payment of any money, gift, or thing of value to a foreign official for the purpose of influencing a foreign official or securing an improper advantage. See 15 U.S.C. §§ 78dd-1(a); 78dd-2(a); 78dd-3(a).

9. U.S.M.C.A. art. 27.3.8.

10. See U.S. DEP’T OF JUSTICE & U.S. SECURITIES & EXCH. COMM., A RESOURCE GUIDE TO THE U.S. FOREIGN CORRUPT PRACTICES ACT (2012) (“Resource Guide”) (“Although true facilitating payments are not illegal under the FCPA, they may still violate local law in the countries where the company is operating, and the OECD’s Working Group on Bribery recommends that all countries encourage companies to prohibit or discourage facilitating payments, which the United States has done regularly.”).

NAFTA Replacement Adds
Anti-Corruption Provisions
Continued from page 4

The USMCA also requires the parties to establish requirements with respect to internal controls designed to prohibit certain accounting, auditing, or disclosure practices that may be used to facilitate bribery schemes.¹¹ In the United States, this provision will apply only to issuers, which already are subject to the FCPA's broader accounting provisions.¹² This inclusion is still encouraging in that it acknowledges the crucial role of good internal controls in preventing bribery and corruption.

Each party is also bound to adopt or maintain measures to protect reporters or whistleblowers from retaliation.¹³ Furthermore, under the USMCA, corporate entities may themselves be held liable for engaging in bribery or prohibited financial practices.¹⁴ While the FCPA does not itself provide for whistleblower protection, employees of U.S. issuers who report to the SEC are protected from retaliation by the Dodd-Frank Act.¹⁵ In contrast, the USMCA includes broad language that requires protection for any person who reports suspected offenses "to the competent authorities."¹⁶ The U.S. Congress may ultimately determine that compliance with the agreement requires broader whistleblower protection for employees who report to agencies beyond the SEC, as well as employees of non-issuers. Whether such protection will be included in the implementing legislation is not yet certain.

C. Standards for Government Officials

As the enumerated offenses listed above demonstrate, the USMCA requires that the parties establish legal consequences for government officials themselves, as opposed to merely the payers of bribes. Specifically, the new agreement provides for public officials – including individuals associated with SOEs – to be criminally liable for their involvement in bribery schemes such as the solicitation or acceptance of undue advantage and the aiding, abetting, or conspiring offenses. While existing U.S. law does govern the acceptance and solicitation of bribes by U.S. officials, the conduct covered by the FCPA is limited in that only those who offer, promise, authorize, or actually make improper payments to foreign officials can be penalized. Another interesting aspect of Chapter 27 is the obligation it imposes

Continued on page 6

-
11. See U.S.M.C.A. art. 27.3.6. Prohibited acts include off-the-books accounts or transactions; falsified expenditures; intentionally misattributed liabilities; the use of false documents; and the intentional, premature destruction of bookkeeping documents.
 12. *Id.* n.4.
 13. *Id.* art. 27.3.7.
 14. *Id.* art. 27.3.4.
 15. See 15 U.S.C. § 78u-6; *Digital Realty Trust, Inc. v. Somers*, 138 S. Ct. 767 (2018); for discussion of Digital Realty Trust, Inc., see "Supreme Court Clarifies Scope of Dodd-Frank's Whistleblower Protections," Client Update (Feb. 2018).
 16. U.S.M.C.A. art. 27.3.7.

**NAFTA Replacement Adds
Anti-Corruption Provisions**
Continued from page 5

on each party to enact concrete measures to promote integrity among public officials.¹⁷ The agreement specifically mandates the adoption or maintenance of codes or standards of conduct for “the correct, honorable and proper performance of public functions” and emphasizes the need to promote “integrity, honesty and responsibility” among public officials.¹⁸ There is particular focus on training public officials, implementing governmental internal controls, providing for proper discipline of public officials, and reviewing the selection of individuals for public posts. The parties are also bound to enact measures aimed at identifying conflicts of interest and facilitating reporting by public officials of potential corruption arising in the course of their duties.¹⁹ Beyond a general provision for disciplinary measures against public officials who violate codes of conduct, the agreement requires that each party establish procedures to remove, suspend, or reassign a public official accused of violating the USMCA, “to the extent consistent with the fundamental principles of its legal system.”²⁰

D. Private Sector Participation

In addition to the obligations imposed on individuals in the public sector, the USMCA contains express language requiring each party to promote the “active participation” of the private sector in the fight against corruption, and to raise public awareness generally about the existence and threat of corruption.²¹ Although no specific measures are prescribed in furtherance of this objective, the text does provide examples of acceptable initiatives, including encouraging companies to make statements in their annual reports regarding their internal controls and efforts to detect bribery and corruption.

Article 27.5 reiterates the parties’ obligation to encourage private enterprises to maintain sufficient internal auditing controls and subject themselves to appropriate auditing and certification procedures, as well as to establish compliance programs to detect and prevent corruption.²²

Continued on page 7

17. A footnote limits the application of this obligation to public officials at “the central level of government” for the United States and Mexico. Canada’s obligation is governed by its own legislation regarding public servants. U.S.M.C.A. n.5-6.

18. See U.S.M.C.A. art. 27.4.1-2.

19. See *id.* art. 27.4.1.

20. *Id.* art. 27.4.3.

21. *Id.* art. 27.5.1.

22. *Id.* art. 27.5.2, 4.

NAFTA Replacement Adds
Anti-Corruption Provisions
Continued from page 6

E. Cooperation and Enforcement

The final section of Chapter 27 is devoted entirely to international cooperation. The text expressly recognizes the importance of coordination and information exchange among the parties' respective anti-corruption law enforcement agencies.²³ In pursuit of this coordination, the agreement provides that the relevant agencies "shall consider undertaking technical cooperation activities."²⁴ This move toward coordinating international enforcement is in line with many of the recent statements by U.S. enforcement agencies regarding cooperative enforcement of existing laws like the FCPA and the U.K. Bribery Act.²⁵

“[I]n the near term, the USMCA is unlikely to affect materially either the enforcement of anti-corruption laws or the review of anti-corruption compliance programs under U.S. law. It could, however, form the basis for future legislation aimed at the broader set of corruption concerns articulated in the agreement”

Despite this cooperative pledge, the enforcement of Chapter 27 is ultimately left to the individual parties. Each signatory is bound to comply with Article 27.3 (Measures to Combat with Corruption), but is afforded discretion with respect to the enforcement of its own anti-corruption laws, including those adopted in accordance with the USMCA.²⁶ Moreover, enforcement of anti-corruption laws is specifically exempted from the dispute settlement procedures set forth in Chapter 31.²⁷ Thus, should any party believe that another has failed to enforce its anti-corruption laws in compliance with the USMCA, no real recourse is available under the agreement.

Continued on page 8

23. *Id.* art. 279.1.

24. *Id.* art. 27.9.3.

25. See "DOJ's New Policy on Coordination of Corporate Resolutions Aims to Reduce 'Piling On,'" Debevoise Update (May 11, 2018); Rod J. Rosenstein, Deputy Attorney General, Remarks at the 34th International Conference on the Foreign Corrupt Practices Act (Nov. 29, 2017) (transcript available at <https://www.justice.gov/opa/speech/deputy-attorney-general-rosenstein-delivers-remarks-34th-international-conference-foreign>); Rod J. Rosenstein, Deputy Attorney General, Remarks at the American Conference Institute's 20th Anniversary New York Conference on the Foreign Corrupt Practices Act (May 9, 2018) (transcript available at <https://www.justice.gov/opa/speech/deputy-attorney-general-rod-j-rosenstein-delivers-remarks-american-conference-institutes>).

26. U.S.M.C.A. art. 27.6.1-2.

27. See *id.* art. 27.6.3, 27.8.1-3. According to the terms of the USMCA, dispute settlement is only available where a party believes that another has adopted or maintained a measure inconsistent with its obligations, or has otherwise failed to carry out an obligation.

NAFTA Replacement Adds
Anti-Corruption Provisions
Continued from page 7

Conclusion

The USMCA's inclusion of these express, multi-national commitments to jointly combat bribery and corruption represents a meaningful development in the anticorruption space and reflects the increasing importance of cross-border coordination. Although the ultimate impact of this agreement on the public and private sectors remains uncertain, the legislature of each signatory country will be required to consider potential gaps in its anti-corruption laws and enforcement, as the ratification process continues.

In terms of the timeline for tracking progress, a lengthy approval process lies ahead. In the United States, the President must provide Congress with a list of required changes to U.S. laws to bring the United States into compliance with its obligations under the agreement. Additionally, the U.S. International Trade Commission must complete a review of the agreement's economic impact, which may not be completed until mid-March 2019. The U.S. Congress then would be tasked with approving an implementing bill that would include both official approval of the agreement and provisions for necessary changes to existing U.S. laws.²⁸

At each step along the way, there are numerous unknowns regarding the degree and manner of implementing the broad policies set out in the text of Chapter 27. Because of this, in the near term, the USMCA is unlikely to affect materially either the enforcement of anti-corruption laws or the review of anti-corruption compliance programs under U.S. law. It could, however, form the basis for future legislation aimed at the broader set of corruption concerns articulated in the agreement, which also could expand or alter the enforcement priorities of the relevant U.S. agencies.

Kara Brockmeyer

Andrew M. Levine

Daniel Aun

Marisa R. Taney

Victoria L. Recalde

Kara Brockmeyer is a partner in the Washington, D.C. office. Andrew M. Levine is a partner in the New York office. Daniel Aun, Marisa R. Taney, and Victoria L. Recalde are associates in the New York office. The authors may be reached at kbrockmeyer@debevoise.com, amlevine@debevoise.com, daun@debevoise.com, mrtaney@debevoise.com, and vlrecald@debevoise.com. Full contact details for each author are available at www.debevoise.com.

Continued on page 9

28. 19 U.S.C. § 2191(b).

Anti-Corruption Enforcement Update: China, Vietnam, and Malaysia

The year 2018 has seen a flurry of anti-corruption legislative developments and enforcement activity in Asia. The factors driving these developments may not always be clear, but there is no question that businesses operating in Asia should stay current on the evolving legal requirements and the implications for their operations of increasingly active enforcement. This article summarizes recent developments in China, Vietnam, and Malaysia.

China Amends Its Criminal Procedure Law

As China's anti-corruption crackdown closes out its sixth year, related legislative reforms continue. In March 2018, China passed the Supervision Law, creating a new anti-corruption regulator and thereby enshrining in law and significantly strengthening disciplinary supervision previously carried out by the Communist Party.¹ The Supervision Law implied changes to the manner of investigating and prosecuting corruption offenses. On October 26, 2018, China amended its Criminal Procedure Law (the "2018 Amendment"), aligning the procedures used by the People's Procuratorate (the prosecutor) with the investigation procedures under the Supervision Law. The 2018 Amendment also introduced trials *in absentia* for certain crimes, including bribery and corruption.²

The Supervision Law also created a new supervisory body, the Supervision Commission, charged with conducting bribery-related investigations and imposing non-criminal disciplinary measures. The Supervision Commission has the power (and duty) to transfer criminal cases of bribery to the People's Procuratorate for prosecution.³ Prior to the Supervision Law, the Public Security Bureau (the police) or the Communist Party Committee on Discipline and Inspection investigated bribery allegations and the People's Procuratorate prosecuted them. The 2018 Amendment introduced procedures relating to the transfer of cases from the Supervision Commission to the People's Procuratorate. Suspects already detained by the Supervision Commission will be held in detention for up to ten

Continued on page 10

-
1. See Kara Brockmeyer, Andrew M. Levine, Philip Rohlik, and De Zha, "China Creates New Anti-Corruption Regulator," FCPA Update, Vol. 9, No. 8 (March 2018).
 2. 《中华人民共和国刑事诉讼法（2018年修订）》(hereinafter "2018 Amendment"); see "New laws aid fight against corruption," China Daily (Oct. 29, 2018), http://english.court.gov.cn/2018-10/29/content_37155046.htm.
 3. Art. 45 of the Supervision Law 《中华人民共和国监察法》, effective on Mar. 20, 2018, unofficial translation available on Westlaw China, <http://app.westlawchina.com/maf/china/app/document?&src=nr&docguid=i000000000000016247d28a1e41e5b281&lang=en>.

Anti-Corruption
Enforcement Update: China,
Vietnam, and Malaysia

Continued from page 9

additional days, during which time the People's Procuratorate must decide whether the suspect should be arrested.⁴ Thereafter, it has one month to decide whether it will prosecute the suspect, subject to 15-day extensions for complex cases.⁵ As we noted when the Supervision Law passed, it is unclear whether the right to counsel attaches during an investigation by the Supervision Commission, though it is unlikely that it does.⁶ The 2018 Amendment is silent on the matter.

Trials *in absentia* did not exist under the Criminal Procedure Law, and the procedures for such trials were created in the 2018 Amendment. The 2018 Amendment set out stringent prerequisites for such trials. First, trials *in absentia* are only available for three types of crimes: bribery and corruption, offenses against national security, and terrorism. Moreover, trials *in absentia* are available in national security and terrorism cases only if the case is verified by the Highest People's Procuratorate as requiring a prompt trial. Bribery and corruption cases do not require such verification, which may result in such cases most frequently resulting in trials *in absentia*. Trials *in absentia* also are only available when the suspect is abroad.⁷ As in other countries with trials *in absentia*, the 2018 Amendment provides for a new trial upon the suspect's return to China. If the suspect returns to China during the pendency of a trial *in absentia*, a new trial is automatic. If a suspect returns to China after the criminal judgment is entered, a new trial can be granted if the suspect objects to the judgment.⁸

To proceed with a trial *in absentia*, the court must first serve the defendant in accordance with judicial assistance methods provided by applicable treaties or diplomatic measures.⁹ Currently, China has such treaties in effect with more than fifty countries and regions, including the United States, Canada, Russia, France, the United Kingdom, and Japan. The 2018 Amendment makes clear that, unlike the uncertainty surrounding defendants' rights in investigations by the Supervision Commission, defendants in trials *in absentia* enjoy the right to counsel (i.e., despite not appearing, the defendant may appoint an attorney or have an attorney appointed to represent him or her at trial) and the right to appeal.¹⁰

The Supervision Law emphasized the importance of international cooperation in China's anti-corruption effort, calling for the enhancement of judicial assistance

Continued on page 11

4. 2018 Amendment Art. 170.

5. *Id.* Art. 172.

6. Brockmeyer, et al., "China Creates New Anti-Corruption Regulator," *supra* n. 1.

7. 2018 Amendment Art. 291.

8. *Id.* Art. 295.

9. *Id.* Art. 292.

10. 2018 Amendment Art. 293-294.

**Anti-Corruption
Enforcement Update: China,
Vietnam, and Malaysia**

Continued from page 10

across jurisdictions.¹¹ The creation of trials *in absentia* furthers China's ability to prosecute crimes committed by those beyond its borders. When Chinese prosecutors obtain convictions in such matters, they may gain additional leverage in related cooperation requests to other countries' authorities.

Vietnam's Anti-Corruption Crackdown Continues

As the anti-corruption crackdown in China continues to garner significant attention, Vietnam is in the midst of a similar effort. Like China, Vietnam has seen significant economic growth over the past 30 years. With a population of 95 million and growing, it is a significant market in itself.¹² Vietnam is also an investment destination for manufacturing once concentrated in China, a trend that is likely to continue given Vietnam's membership in the Comprehensive and Progressive Pacific Partnership ("CPTPP") and U.S.-China trade tensions.¹³

“The factors driving these developments may not always be clear, but there is no question that businesses operating in Asia should stay current on the evolving legal requirements and the implications for their operations of increasingly active enforcement.”

Despite its attractiveness as an investment destination, Vietnam has long suffered from endemic corruption, with a Transparency International Corruption Perceptions Index score of 35, ranking 107th on the list.¹⁴ In a 2017 Transparency International survey, 65% of respondents in Vietnam reported having paid a bribe in the past twelve months.¹⁵ In other recent surveys, “nine out of ten companies indicate[d] they expect to give gifts to officials,”¹⁶ and “[n]early half of businesses paid a bribe during an administrative inspection.”¹⁷

Continued on page 12

-
11. See Art. 50-52.
 12. World Bank, Vietnam Overview, <http://www.worldbank.org/en/country/vietnam/overview>.
 13. Bac Pham and Bennett Murray, “Here’s Who Wins and Who Loses in the US-China Trade War: Vietnam,” South China Morning Post, November 18, 2018, <https://www.scmp.com/week-asia/geopolitics/article/2173665/heres-who-wins-and-who-loses-us-china-trade-war-vietnam>.
 14. Transparency International, Corruption Perceptions Index 2017, <https://www.transparency.org/country/VNM>; see also Christopher K. Tahbaz, Philip Rohlik, Xia Li, Bruce E. Yannett, and Andrew Levine, “Spotlight on Southeast Asia,” FCPA Update, Vol. 4, No. 11 (June 2013) at 8, <https://www.debevoise.com/insights/publications/2013/06/fcpa-update>.
 15. Transparency International, “People and Corruption: Asia Pacific,” (Mar. 7, 2017), https://www.transparency.org/whatwedo/publication/people_and_corruption_asia_pacific_global_corruption_barometer.
 16. GAN Business Anti-Corruption Portal, Vietnam Corruption Report, <https://www.business-anti-corruption.com/country-profiles/vietnam/>.
 17. *Id.*

**Anti-Corruption
Enforcement Update: China,
Vietnam, and Malaysia**

Continued from page 11

Since his reelection as General Secretary of the Vietnamese Communist Party in 2016, Nguyen Phu Trong, who assumed the position of President of Vietnam in October 2018,¹⁸ has followed China in launching an increasingly aggressive anti-corruption campaign.¹⁹ Earlier this year, numerous executives of the state-owned oil company, PetroVietnam, went on trial,²⁰ including Dinh La Thang, a former member of the ruling politburo.²¹ In July, the crackdown spread to Mobifone, a state-owned telecommunications provider, with the arrest of the former chairman of the company and a senior official in the Ministry of Information and Communications.²² Two other former high-ranking Mobifone executives were arrested in November.²³ Also in November, several former officials at Vietnam Social Security, the government social insurance operator, were arrested, including the former head of Vietnam Social Security who was also a former deputy minister of labor.²⁴

On November 10, 2018, President Trong, who is also the Chairman of the Central Steering Committee for Anti-corruption, was quoted in state media as urging faster investigation and prosecution of anti-corruption cases and “accelerat[ing] the fight against petty corruption, especially in administrative units, as widespread wrongdoings even at small scale could erode people’s trust.”²⁵ At the same time, it was reported during a meeting of Vietnam’s National Assembly that, in the twelve months ending October 2018, the government had opened over 3,400 corruption-related investigations and conducted over 220,000 inspections.²⁶

Continued on page 13

-
18. Yves Dam Van, “Vietnam parliament elects Communist Party chief as president,” *Washington Post* (Oct. 23, 2018), https://www.washingtonpost.com/world/asia_pacific/vietnam-elects-communist-party-chief-as-new-president/2018/10/23/7cfbe396-d6a1-11e8-8384-bcc5492fef49_story.html?noredirect=on&utm_term=.98d5a0a00e90.
 19. Cù Huy Hà Vũ, “Meet Vietnam’s New President: The Communist Party Chief,” *The Diplomat* (Oct. 23, 2018), <https://thediplomat.com/2018/10/meet-vietnams-new-president-the-communist-party-chief/>.
 20. “Explainer: What’s behind Vietnam’s corruption crackdown?” *Reuters* (Jan. 8, 2018), <https://www.reuters.com/article/us-vietnam-security-crackdown-explainer/explainer-whats-behind-vietnams-corruption-crackdown-idUSKBN1EX0U7>.
 21. Khanh Vu, “Vietnam arrests more oil executives amid corruption crackdown” *Reuters* (June 22, 2018), <https://www.reuters.com/article/us-vietnam-security/vietnam-arrests-more-oil-executives-amid-corruption-crackdown-idUSKBN1JH2G3>.
 22. Khanh Vu, “Vietnam arrests former chairman of Mobifone and ministry official” *Reuters* (July 10, 2018), <https://www.reuters.com/article/us-vietnam-security-mobifone/vietnam-arrests-former-chairman-of-mobifone-and-ministry-official-idUSKBN1K029B>.
 23. Khanh Vu, “Vietnam arrests two more officials of state-run MobiFone in graft crackdown” *Reuters* (Nov. 14, 2018), <https://www.reuters.com/article/us-vietnam-security/vietnam-arrests-two-more-officials-of-state-run-mobifone-in-graft-crackdown-idUSKCN1NJ0LC>.
 24. Simone Rensch, “Vietnamese corruption crackdown sees former minister arrested,” *Public Finance International* (Nov. 12, 2018), <https://www.publicfinanceinternational.org/news/2018/11/vietnamese-corruption-crackdown-sees-former-minister-arrested>.
 25. “Anti-corruption committee asks for expedition in judgement of major cases,” *Vietnam News* (Nov. 11, 2018), <http://vietnamnews.vn/politics-laws/469802/anti-corruption-committee-asks-for-expedition-in-judgement-of-major-cases.html#HotGkdabK7dRmXeO.99>.
 26. “Chief Inspector reports on anti-corruption drive,” *Vietnam News* (Nov. 14, 2018), <https://vietnamnews.vn/politics-laws/480048/chief-inspector-reports-on-anti-corruption-drive.html#2CStKlhpzWLxicsr.97>.

**Anti-Corruption
Enforcement Update: China,
Vietnam, and Malaysia**

Continued from page 12

As is the case elsewhere, it is possible that there is a political element to aspects of the corruption crackdown in Vietnam. Nonetheless, addressing corruption there is long overdue. Should the government continue the campaign, the business environment in Vietnam could gradually improve.

Malaysia Charges Former Chief Minister

Since the electoral defeat of the long-ruling Barisan Nasional coalition, led by the United Malays National Organization (“UMNO”), in May 2018, international attention has mostly focused on the 1MDB scandal. That scandal has led to charges being filed in the United States²⁷ and in Malaysia, including the arrest of former Prime Minister Najib Razak in July,²⁸ with additional charges brought in September.²⁹ The new government is not confining itself to 1MDB, though. The Chairman of UMNO and former deputy Prime Minister, Ahmad Zahid Hamidi, was arrested in October and charged with corruption and embezzlement relating to his family-owned charity.³⁰ Hamidi denied all charges.³¹ Moving beyond arrests of members of the former government, the Malaysian Anti-Corruption Commission also published asset declarations of members of parliament of the new governing coalition in November.³²

The 1MDB scandal was extensively covered in the press before any charges were brought. It is not the only long-running corruption scandal that was exposed by journalists and is now being addressed by the new government in Malaysia. A lesser known but even older scandal involves allegations of corruption relating to timber concessions in the Malaysian state of Sabah. On November 5, 2018, Musa Aman, the former Chief Minister of Sabah, pleaded not guilty to 35 charges of corruption and money laundering relating to \$63 million in bribes allegedly received between 2004 and 2008.³³

Continued on page 14

-
27. U.S. Dep’t of Justice, “Malaysian Financier Low Taek Jho, AKA ‘Jho Low,’ and Former Banker Ng Chong Hwa, AKA ‘Roger Ng,’ Indicted for Conspiring to Launder Billions of Dollars in Illegal Proceeds and to Pay Hundreds of Millions of Dollars in Bribes in Connection with 1MDB Fund” (Nov. 1, 2018), <https://www.justice.gov/usao-edny/pr/malaysian-financier-low-taek-jho-aka-jho-low-and-former-banker-ng-chong-hwa-aka-roger>.
 28. Stefania Palma, “Malaysia’s former prime minister charged in corruption case,” *Financial Times* (July 4, 2018), <https://www.ft.com/content/97a9ec8e-7f2a-11e8-bc55-50daf11b720d>.
 29. Selvanaban Mariappen, “Former Malaysian PM Najib slapped with 25 more corruption charges,” *CNN* (Sept. 20, 2018), <https://edition.cnn.com/2018/09/20/asia/najib-razak-1mdb-charges-intl/index.html>.
 30. Tashny Sukumaran, “Malaysia’s former deputy prime minister Zahid Hamidi charged over corruption as Umno’s implosion continues,” *South China Morning Post* (Oct. 19, 2018).
 31. *Id.*
 32. Ashley Tang, “MACC publishes MPs’ asset declaration, Guan Eng tops the income list,” *The Star* (Nov. 1, 2018), <https://www.thestar.com.my/news/nation/2018/11/01/guan-eng-the-richest-mp-beating-out-even-dr-m/>.
 33. Nadirah H. Rodzi, “Former Sabah chief minister Musa Aman pleads not guilty to 35 graft charges involving S\$87m,” *Straits Times* (Nov. 5, 2018), <https://www.straitstimes.com/asia/se-asia/former-sabah-chief-minister-musa-aman-expected-to-be-charged-with-corruption-over>.

**Anti-Corruption
Enforcement Update: China,
Vietnam, and Malaysia**

Continued from page 13

The allegations relating to Aman were originally reported on a blog, the Sarawak Report, in 2012.³⁴ At that time, the former Malaysian government announced that Aman had been cleared of wrongdoing. The author of the blog, British journalist Clare Rewcastle-Brown, continued reporting about corruption in Malaysia, including with regard to 1MDB. As a result, she was effectively declared *persona non grata* by the former government, which issued a warrant for her arrest in 2015.³⁵ The warrant was lifted by the new government, allowing Rewcastle-Brown to return to Malaysia in May 2018.³⁶

Jane Shvets**Bruce E. Yannett****Philip Rohlik****De Zha**

Jane Shvets is a partner in the London office. Bruce E. Yannett is a partner in the New York office. Philip Rohlik is a counsel, and De Zha is a consultant, both in the Shanghai office. The authors may be reached at jshvets@debevoise.com, beyannett@debevoise.com, prohlik@debevoise.com, and dzha@debevoise.com. Full contact details for each author are available at www.debevoise.com.

-
34. "MUSA'S SECRET DONORS -We Blow The Whistle On UMNO's Sabah Kickbacks!," <http://www.sarawakreport.org/2012/10/musas-secret-donors-we-blow-the-whistle-on-umnos-sabah-kickbacks/>.
35. The Star, "Warrant of arrest out for Clare Brown" (Aug. 5, 2015), <https://www.thestar.com.my/news/nation/2015/08/05/warrant-of-arrest-out-for-clare-brown/>.
36. "Once-banned Rewcastle-Brown returns to Malaysia," Free Malaysia Today News (May 19, 2018), <https://www.freemalaysiatoday.com/category/nation/2018/05/19/once-banned-rewcastle-brown-returns-to-malaysia/>.

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

Karlos 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.

All content © 2018 Debevoise & Plimpton LLP. All rights reserved. The articles appearing in this publication provide summary information only and are not intended as legal advice. Readers should seek specific legal advice before taking any action with respect to the matters discussed herein. Any discussion of U.S. Federal tax law contained in these articles was not intended or written to be used, and it cannot be used by any taxpayer, for the purpose of avoiding penalties that may be imposed on the taxpayer under U.S. Federal tax law.

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