



Month in a Minute: July 2024

Hughes Hubbard's anti-corruption "Month in a Minute" offers a quick look-back at the biggest foreign corruption-related developments from the prior month. The Month in a Minute is intended to provide a quick snapshot of the latest news and developments. We hope you find it a useful and perhaps even enjoyable resource.

Highlights from July 2024 include a loss for a Petrobras co-conspirator, a guilty plea and exposure of a bribery scheme involving a state-owned airline in South Africa, an amendment to FEPA, and the announcement of a new DOJ whistleblower program.

Judge Denies Oztemel Brother's Motion to Dismiss

On July 2, 2024, Judge Kari Dooley of the U.S. District Court for the District of Connecticut denied a motion to dismiss filed by Glenn Oztemel. Oztemel was charged, along with his brother, Gary Oztemel, and Brazilian oil trader Eduardo Innecco, with FCPA and money laundering violations for his role in an alleged scheme to bribe officials at Petrobras, Brazil's state-owned energy company, in exchange for lucrative contracts for a Connecticut-based commodity trading company. Specifically, Glenn Oztemel was charged in a superseding indictment with one count of conspiracy to violate the FCPA, three counts of violating the FCPA, one count of conspiracy to commit money laundering, and two counts of money laundering.

In October 2023, Glenn Oztemel filed a motion to dismiss the indictment, arguing that (1) prosecutors failed to show that certain wire transfers were made in furtherance of the bribery scheme, and (2) the money laundering and foreign bribery conspiracy charges were beyond the five-year statute of limitations. In denying the motion on July 2, 2024, Judge Dooley ruled that Glenn Oztemel's first argument relied upon a too narrow reading of the FCPA and that, for his second argument, the majority of the alleged overt acts in furtherance of the scheme occurred within the limitations period.

Glenn Oztemel's case is proceeding with discovery. On June 24, 2024, Glenn's brother, Gary Oztemel, pled guilty to one count of engaging in a monetary transaction involving criminally derived property and agreed to forfeit \$301,575. His sentencing is scheduled for September 16, 2024. The case against Eduardo Innecco remains ongoing.

U.S. Businessman Pleads Guilty to South African Airline Bribery Scheme

On July 15, 2024, Julian Aires, owner of JM Aviation, a US-based aircraft component services company, pleaded guilty in the U.S. District Court for the District of Columbia to one count of conspiracy to violate the FCPA. Aires was charged in a criminal information on June 11, 2024, which alleged that, from 2016

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to 2020, he conspired with individuals from AAR Corporation (“AAR”), another US-based aviation services company, to pay bribes to officials at South African Airways Technical (“SAAT”), a wholly owned subsidiary of state-owned South African Airways, in order to win a bid for a five-year aircraft parts servicing contract. Aires’s guilty plea appears to be part of a larger DOJ investigation into alleged corruption schemes involving South African Airways. The details of the South African Airways schemes were first disclosed in a 2022 report authored by the Zondo Commission (the “Zondo Report”), a South African corruption task force headed by South Africa’s Chief Justice.

According to court documents, in 2016 Aires arranged to pay SAAT officials a part of the resulting revenue in exchange for help securing a parts servicing contract from SAAT. Throughout the contract period, SAAT paid AAR approximately \$79.6 million in total for its services. Between 2016 and 2020, AAR paid JM Aviation and an affiliated South African company roughly \$5.4 million for “commissions, success fees, and advance payments” stemming from the contract. An unspecified portion of that amount was then sent as bribes to SAAT officials.

According to court filings, Aires also confessed to carrying out a separate scheme in 2016 involving a Swiss airport services company, identified in the Zondo report as Swissport. Aires and alleged co-conspirators engaged in a sham services contract with Swissport for airport ground handling services; in fact, the real purpose of the contract was to bribe South African Airways officials to obtain business for Swissport. Per Aires, Swissport paid around \$2.7 million to JM Aviation, which was then distributed to officials as bribes.

As part of his plea agreement, Aires signed a statement of offense admitting to the scheme and agreed to testify as a witness in future proceedings against others. He is the first witness to do so in this case.

Congress Amends the Foreign Extortion Prevention Act

On July 22, 2024, Congress passed the Foreign Extortion Prevention Technical Corrections Act, which revised the Foreign Extortion Prevention Act (FEPA). Originally passed in December 2023, FEPA imposes criminal liability on foreign government officials who demand or receive improper payments from U.S. persons or while in U.S. territory. FEPA complements the FCPA—which punishes U.S. persons for offering or giving bribes to foreign officials—by seeking to disincentivize foreign officials, who often remain unsanctioned for corrupt behavior in their home countries, from requesting or accepting bribes.

Congress’s recent revision shifts FEPA to Chapter 63 of the U.S. Code, which addresses mail and other fraud offenses. The amendments also clarify that (1) FEPA’s jurisdictional reach does not extend to situations where the bribe requestee or payor is neither a U.S. issuer nor domestic concern, unless the foreign official requesting the bribe is within the territory of the United States; (2) a foreign official acting in an unofficial capacity does not qualify as a “foreign official,” and (3) influencing any act or decision taken by a foreign official in their official capacity may satisfy FEPA’s quid pro quo requirement.

DOJ Launches New Whistleblower Program

The DOJ recently announced the launch of a new three-year pilot program, the Corporate Whistleblower Awards Pilot Program (the “Whistleblower Program”). Under the Whistleblower Program, whistleblowers who voluntarily provide original, truthful, and complete information about certain criminal misconduct may be eligible to receive a monetary award.

The Whistleblower Program is designed to “fill in the gaps” between other existing whistleblower programs. As such, the Whistleblower Program is limited to four subject areas that the DOJ has identified as being not otherwise covered by another program: (1) crimes by financial institutions; (2) foreign corruption including violations of the FCPA; (3) domestic corruption involving corporate misconduct; and (4) health care fraud. To qualify under the Whistleblower Program, the whistleblower must provide information related to one of these areas and the information must lead to criminal or civil forfeiture exceeding \$1,000,000, in connection with a successful prosecution, corporate criminal resolution, or

civil forfeiture action. In addition, the whistleblower must cooperate with the DOJ's investigation into related conduct and criminal or civil actions, including providing testimony and evidence.

Individuals who qualify for an award under the Whistleblower Program may receive up to 30% of the first \$100 million in net proceeds forfeited, and up to 5% of any net proceeds forfeited between \$100 million and \$500 million. There is no additional award for net proceeds forfeited above \$500 million. In order to encourage whistleblowers to first report misconduct internally, the Whistleblower Program allows for the DOJ to increase the award to a whistleblower who reports concerns internally, as long as they report to the DOJ within 120 days of that internal reporting. The goal of this new Whistleblower Program is to incentivize individuals to come forward with information about corporate criminal misconduct; however, whether an individual receives an award under the Whistleblower Program and the amount of the award is ultimately subject to the DOJ's discretion.

In connection with the announcement of the Pilot Program, the DOJ also temporarily revised the Criminal Division Corporate Enforcement Policy to specify that a company that receives an internal report of misconduct from a whistleblower has 120 days to report that misconduct to the DOJ to be eligible for the full benefits (i.e., a declination) under the Corporate Enforcement Policy.

FACT OF THE MONTH

In the Northern Hemisphere, the long, hot days of July are referred to as the "dog days of summer." The term "dog days" denotes the period, typically in early to mid-July, in which Sirius, the most prominent star in the Canis Major ("Greater Dog") constellation, rises alongside the Sun. Many Greeks and Romans associated the rise of Sirius with thunderstorms, heat, and drought—thus the dog days of summer were born.