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Tom Fox (01:00):

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Ad Speaker (01:19):

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Tom Fox (01:46):

This episode, I have back with me fan favorite, James Koukios. James is a partner at Morrison and Foerster. Jim's previously worked in the FCPA unit in the fraud section of the Department of Justice. And he leads a team that puts out a great monthly newsletter entitled the *Top 10 International Anti-Corruption Developments*. In this episode, the first of a two-part episode, we take a look at international anti-corruption developments, which took place in the month of January, 2019. These include: former bankers arrested on FCPA charges, and the Mozambique to the boat scandal. Japan's Olympic chief faces corruption charges in France, two European countries take steps to strengthen in anti-corruption efforts, Italy publishes a new bribery destroyer law, and the UK establishes a financial industry task force. Next week, we take a look at the Top 10 international Anti-Corruption Developments for the month of February. I know you will find this useful and enjoy it as well. Finally, the FCPA compliance report is a part of the compliance podcast network. Hello, everyone. This is Tom Fox, back for another episode and you're in for a treat today because you not only have fan favorite James Koukios, but you have Tom Fox favorite James Koukios, back for a couple of Morrison and Foerster Anti-Corruption Development newsletters. First for January of 2019 and the second for February, 2019. So with a big "Go Blue" James, welcome back!

James Koukios (03:20):

Go Blue, Tom! Thanks for the kind words.

Tom Fox (03:23):

So let's just hop right into the January. I've highlighted a few that I wanted to raise with you, James. The first one was, I thought an incredibly interesting, complicated, and I think it's going to be very far-reaching, indictments where two former bankers were arrested on FCPA charges in a Mozambique bribery scheme. I'm just wondering what you might be able to tell us about that, James.

James Koukios (03:50):

Very, very detailed charging document. Agree it's a very complex charges and allegations and probably worth reading about. So very interesting. It was actually, as I remember, it was actually three former bankers who were arrested in London on charges of conspiracy to violate the—both the anti-bribery and internal controls provisions of the FCPA. And they were also charged with conspiracy to commit money laundering, securities fraud, and wire fraud. So as you said, Tom, very wide-ranging, shows how many of the foreign bribery type schemes can get wrapped up in a number of different kinds of other violations as well, not just bribery violations, but securities fraud, money laundering, wire fraud as well. And then in that action also DOJ brought money laundering and fraud charges against Mozambique's former finance minister and a senior executive of an Abu Dhabi based shipbuilding company.

James Koukios (04:57):

So that also continues the trend of DOJ going after foreign officials as well, when they find—feel like they have appropriate jurisdiction under the money laundering laws, to try to reach both that supply side and demand side of foreign bribery. So, in summary, it's—again, a very long and complicated charging document, but according to the indictment, the three bankers conspired to arrange over \$2 billion of loans for maritime projects in Mozambique while they were concealing the details of the loans from their banks' internal controls. And through this scheme, the defendants are alleged to have diverted more than \$200 million of the loans. Part of which was used to bribe Mozambique government officials who approved the projects. And so, I think another very interesting aspect of this case is the fact that DOJ seems to allege that these three bankers were actually actively circumventing the banks' internal controls, which led to internal controls charge—charges against the individuals, which is somewhat rare. Not—not unprecedented, but oftentimes against individuals, DOJ will bring just anti-bribery charges. And here, they brought both anti-bribery and internal controls charges against the individuals, which may also be a signal of how they view the banks' complicity or lack thereof in this type of—or at least the culpability in, this type of scheme as well.

Tom Fox (06:41):

So James, there were a couple of things and perhaps one more now that you've given a few remarks on it that I thought were significant about this matter. The first was, we again see the continue—continuation where a government is changed, regime-changed in here, democratically-elected regime changed. And the old guys were corrupt, and it's not the new guys bringing the charges. Although, I have to believe that there were some cooperation. Nevertheless, I've counseled a lot of companies that you need to be aware of regime change. You need to scrub your operations as closely as you can if there is, or even may be regime change. The second thing is, this was not sort of your typical pay a bribe, get a contract. This was bribe payments to facilitate a bond being floated, and that bond money was going to be used to enrich Mozambique officials.

Tom Fox (07:43):

The stated purpose of the bond was to increase Mozambique's tuna fleet. So I'm sure Charlie, the tuna is happy, there's not more boats out there. But it seemed to be one—once again, I see the DOJ and indeed, anti-corruption efforts on a worldwide basis reaching to new areas where people are going to, frankly, steal money from company—countries and their people. And then the third point that you raised was once again, the demand and supply side are well within the targets of the department of justice and that they are going, when they can, after the people who receive the bribes as well.

James Koukios (08:24):

I agree with all your points there, Tom. Starting from the top of number one, the regime change, completely agree. When I was in the department, I worked on cases where the new administration of a democratically elected country would indeed help us build a case against the, the old regime. Interesting

though, sometimes I've seen a nuance to that happen as well, which is the ruling party may be willing to cooperate with DOJ against the opposition party, which used to be the ruling party, in order to try to drum up political support for the upcoming elections and things like that. So it's a little bit of a delayed reaction if you will, for—for the scenario that you said. But I think the underlying point is it does make sense for companies doing business abroad to think about how local politics can affect prosecutions, both domestically and in terms of the local law enforcement willing—being willing to reach out to U.S. Authorities to help cooperate in investigations. Whenever there's that, kind of, political motivation, DOJ might be the beneficiary of that.

James Koukios (09:45):

And then it becomes very difficult for a company or an individual trying to defend itself to try to separate what's just politics versus what is actual evidence. So, that's definitely, I completely agree with you companies doing business and in, kind of, places where there's regime change or very fraught elections do need to be a little bit careful about what's going on there and pay a lot of attention. Regarding the bond offering, I totally agree. I mean, we've seen over the last several years going back, you know, 6, 7, 8 years where financial services industry has become more and more involved in FCPA investigations. The last FCPA investigation I worked on at DOJ involved a Brazilian development bank that was trading bonds and things like that. And the allegations were that the defendants were a broker dealer in the United States, that paid bonds to make sure that that bank traded bonds through them instead of any other brokerage house. So we definitely, whenever there's you know, used to be mining was big money, petroleum was big money. Financial deals are big money. And so whenever there's large bond offerings, large trades, things like that there is the potential for possible anti-corruption charges.

Tom Fox (11:09):

So, James, next up we have the—the French of all people. Perhaps that's not a fair statement anymore, but France is investigating the Japanese Olympics chief for corruption. What did the—what did the newsletter have to say about that?

James Koukios (11:25):

Sure. So in January of 2019, French authorities revealed that they had opened a formal investigation of the president of Japan's Olympic committee Tsunekazu Takeda on charges of corruption. An investigating judge in France charged to Takeda in December of 2018, but he publicly denied the accusations. The suspicions are that Takeda paid bribes to officials of the international Olympic committee to secure Tokyo's successful bid for the 2020 summer Olympics. And this really kind of continues a theme for French investigators. I take your point. They don't always, you know have the reputation of always vigorously pursuing foreign bribery charges, but they have been very active in Olympics. For example, they were involved in investigating alleged corruption with—in Brazil, the Rio Olympics as well. So, this does seem to be one area focus on corruption in athletics that French authorities are very interested in.

Tom Fox (12:40):

Next up we had two European companies that took steps to strengthen some anti-corruption legislation. What did you guys see in that?

James Koukios (12:50):

Sure there—So we covered in January 2019, two countries that took steps to strengthen their anti-corruption efforts. The first was Italy and this is just great because at least how it's translated. They the law was called the Bribe Destroyer Law, which I can't pronounce in Italian, but reads, Spazzacorrotti, which just bribed destroyer. I love it. It sounds great. It was a pretty comprehensive law that was published on January 9th, 2019. It includes a number of measures that make private and corporate contributions to political parties and foundations more transparent and also aim to combat public sector corruption. In that

regard the law does, among other things, freezes the statute of limitations period once there has been any judicial decision. That was a big issue in Italy because the statute of limitations clock continued to run even after charges were filed, a conviction was had, and an appeal was taken as I understand it.

James Koukios (13:57):

So you could have in the middle of an appeal, the statute of limitations expire, and then the charges go away. So it made actually getting final decisions very difficult in Italy—as I understand it. In addition, the law increased sanctions for individuals and corporations, permanently prohibits, those found guilty of corruption and sentenced to more than two years imprisonment from holding public office or contracting with the government. Important from an OACD standpoint, it broadens the definition of foreign public official to include members of international organizations, individuals at a public international organization, judges, and officers of international courts, and members of international parliamentary assemblies. So that should bring the Italian law more in line with the OACD anti-bribery convention. Provides benefits for voluntary disclosures by individuals, which we've seen obviously make a big difference around the world in terms of cooperators and people coming forward with information. Introduces a new crime of undue trading of influence, and provides a benefit for corporate cooperation, which again could be huge for bringing forward cases in Italy of corruption and things like that.

James Koukios (15:19):

So in many ways, although I'm sure there's very important differences, in many ways, this Bribe Destroyer Law seems to bring Italian practice a little bit more in line with the U.S., UK, and other countries practices that have been very effective in fighting foreign bribery. The other item that we covered in this regard is that the United Kingdom established a financial industry task force in January of 2019. The goal of that task is to crack down on fraud and corruption in the financial industry. The task force will be led by what they call the economic crimes strategic board. And the members of that board will include the chief executives of several major banks. And it will be chaired by the interior minister and finance minister of the UK. And in particular, according to reports, that UK officials are particularly focused on money from Russia, Nigeria, Asia, and the former Soviet States. There's been a lot of talk over the last few years that London has become a real attractive location for kleptocracy money and other kinds of illicit funds focused much on Russia, but as this announcement and development shows not just Russia, but former Soviet states, some African countries and other parts of Asia. So again, it just—both of these events go to a trend that we've obviously seen over the last 10 years of countries around the world taking a more aggressive stance towards fighting corruption in foreign bribery.

Tom Fox (17:04):

Hello everyone. This is Tom Fox again. I hope you enjoyed James Koukios speaking on the Morrison & Foerster Top 10 International, Anti-corruption Developments for the month of January, 2019. I hope you will join us again next week, where James follows up by talking about the Top 10 International Anti-corruption Developments for the month of February, as articulated in the Morrison & Foerster report. Also, as a special bonus next week, James talks about the opinion release procedure, how a company can use it, and what happens when a request comes into the Department of Justice and how it's handled going forward. The FCPA compliance report is a part of the Compliance Podcast Network.

Outro Speaker (17:52):

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