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## *Recent Developments in U.S. Investigations and Litigation*

BY THE ANTITRUST & GOVERNMENT INVESTIGATION TEAMS

The first quarter of 2015 witnessed several significant developments in investigations by U.S. authorities in the areas of antitrust, anti-corruption, and sanctions. The U.S. Department of Justice (“DOJ”) in particular continues to be active in global investigations, with a particular focus on companies and individuals based in Asia. This trend, combined with related U.S. civil litigation against overseas companies, looks set to continue going forward in 2015.

The following are some recent developments of particular interest to companies based in Asia.

### **Antitrust Cartel Enforcement**

#### ***Another Japanese Executive Sentenced to 18 Months in U.S. Prison***

- A Japanese executive of an ocean shipping service company has agreed to travel to the U.S. to serve 18 months in prison after pleading guilty to participation in a cartel conspiracy relating to international ocean shipping services.
- To date, more than 50 Asian based executives have been charged in the U.S. and nearly 30 have been sentenced to jail time. In addition, 33 companies have paid fines totaling over \$2.4 billion.

#### ***Existing DOJ Investigations Expanding to Related Products and Industry-Wide Scrutiny***

- The U.S. Justice Department’s scrutiny of the auto parts industry continues to spawn new probes focused on related, non-automotive products, such as ball bearings and capacitors.
  - In January 2015, Japanese company Minebea Co. Ltd. agreed to pay a \$13.5 million fine for fixing the prices of small sized ball bearings used in a variety of applications, including auto parts.
  - Competition authorities raided several Japanese capacitor manufacturers last March and related investigations reportedly are underway in China, Japan, Korea, and the European Union.



## **Antitrust Civil Litigation**

### ***Entirely Foreign Conduct May Still Subject Companies to U.S. Jurisdiction***

- A U.S. federal court recently exercised jurisdiction over a Chinese manufacturer of cathode ray tubes who sold to a U.S. customer, despite evidence that the defendant:
  - had its principal place of business in China;
  - never manufactured cathode ray tubes outside of China;
  - never paid property or income tax in the United States;
  - never had any plants, warehouses, bank accounts, or employees in the United States.

## **Anti-Corruption Investigations Target Chinese Nationals**

### ***Cooperation Between U.S. and Chinese Authorities to Bring Charges in U.S. Against Chinese Citizens Accused of Using Stolen Funds to Purchase U.S. Property***

- In March 2015, a U.S. federal grand jury indicted a now divorced Chinese couple on money laundering and immigration fraud charges, alleging that the couple lied on immigration forms when they used stolen funds to purchase a \$500,000 home in the U.S.
  - The DOJ has alleged that the home was purchased with funds the husband stole from a massive government-owned grain storehouse from a company in China for which he was a director.
- The DOJ has specifically said that the Chinese authorities provided evidence to support the charges.

## **Sanctions**

### ***Accelerated Enforcement Activity by DOJ and OFAC***

- March was a busy month for officials charged with enforcing U.S. sanctions, anti-money laundering, and export controls laws. In rapid succession, the DOJ, the U.S. Department of the Treasury's Office of Foreign Assets Control ("OFAC"), and allied federal and state agencies announced several sizeable settlements, including:
  - On March 11, Commerzbank AG entered into a deferred prosecution agreement with DOJ and settlements with OFAC, and other financial regulators agreeing to pay nearly \$1.45 billion (including \$718 million for alleged OFAC sanctions violations, and the remainder for alleged Bank Secrecy Act/anti-money laundering and related deficiencies). The settlement also required the termination of several Commerzbank employees who had "central roles" in the cited conduct.
  - On March 25, Schlumberger Oilfield Holdings Ltd. ("SOHL"), a subsidiary of Schlumberger Ltd., reached an agreement with DOJ to pay \$232.7 million in fines and forfeiture penalties to settle allegations that SOHL, a non-U.S. company, facilitated and supported prohibited transactions with Iran and Sudan via its U.S. operations.
- Common to these actions was an asserted failure to implement and enforce adequate and effective internal controls to identify and curtail transactions involving sanctioned parties.



## ***U.S. Moves to Rescind Cuba's Designation as a State Sponsor of Terrorism***

- Following up on President Obama's December 2014 announcement of a major shift in policy toward Cuba, on April 14 the White House notified Congress that it intends to rescind Cuba's designation as a "state sponsor of terrorism."
  - Cuba's de-listing would represent the most concrete step toward normalizing relations between the long-estranged countries and will pave the way for the opening of embassies in Washington D.C. and Havana. It would also ease controls on dual-use goods, direct financial assistance, and other financial restrictions.
  - Although the removal from the list represents significant progress, ordinary trade and investment with Cuba will still be subject to restriction under the U.S. embargo, and complete normalization will take years.

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