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TechnipFMC Agrees to Pay \$296 Million to DOJ and Brazilian Authorities to Resolve Criminal FCPA Charges; SEC Civil Charges Pending

On June 25, 2019, the Department of Justice announced a resolution with Technip FMC PLC (“TFMC”), a London-headquartered, global provider of oil and gas technology and services that is listed on the New York Stock Exchange, for conspiracy to violate the anti-bribery provisions of the Foreign Corrupt Practices Act (“FCPA”). TFMC is a result of the 2017 merger of Paris-based Technip S.A. and Houston-based FMC Technologies, Inc. TFMC entered into a three-year deferred prosecution agreement with the DOJ and agreed to pay a combined total criminal fine of more than \$296 million to resolve the charges with the DOJ and with the Advogado-Geral da União (“AGU”), the Controladoria-Geral da União (“CGU”) and the Ministério Público Federal (“MPF”) in Brazil.¹ TFMC will pay approximately \$82 million in fines to the DOJ, which will credit the \$214 million that TFMC pays to the Brazilian authorities. Additionally, TFMC has reached an agreement in principle with the SEC, subject to final SEC approval.²

As a part of the DOJ resolution, Technip USA, Inc., TFMC’s wholly-owned U.S. subsidiary, pleaded guilty to one count of conspiracy to violate the anti-bribery provisions of the FCPA. Zwi Skornicki, TFMC’s former consultant, also pleaded guilty before United States District Judge Kiyo A. Matsumoto of the Eastern District of New York to a one-count criminal information charging him with conspiracy to violate the FCPA. He is awaiting sentencing.

The charges arose from two bribery schemes: one by TFMC’s pre-merger predecessor company, Technip S.A., to pay bribes to Brazilian officials, and one by its other pre-merger predecessor, FMC Technologies, Inc., to pay bribes to Iraqi officials. From 2003 to 2013, TFMC is charged with conspiring with others, including Keppel Offshore & Marine Ltd. (“KOM”)—which entered into its own settlement with the DOJ for related FCPA violations in December 2017—to make corrupt payments in Brazil.³ TFMC, Technip USA,

¹ The DOJ also recognized the significant assistance provided by the governments of Australia, France, Guernsey, Italy, Monaco, and the United Kingdom. See Press Release, Dep’t of Justice, *TechnipFMC PLC and U.S.-Based Subsidiary Agree to Pay Over \$296 Million in Global Criminal Fines to Resolve Foreign Bribery Case* (June 25, 2019) (hereinafter “DOJ Press Release”), available [here](#).

² See Press Release, TechnipFMC, *TechnipFMC Reaches Global Resolution of U.S. and Brazilian Legacy Investigations* (June 25, 2019), available [here](#).

³ KOM and its U.S. subsidiary, Keppel Offshore & Marine USA, Inc., agreed to pay a combined total criminal fine of more than \$422 million to resolve charges with authorities in Brazil, Singapore, and the United States. KOM’s attorney also pleaded

KOM, and Skornicki are charged with conspiring to pay more than \$69 million in bribes to employees of Petrobras, the state-owned oil company, as well as to certain Brazilian political candidates and their political party, in return for certain contracts related to oil and gas projects. From 2008 to 2013, to win contracts to provide metering technologies for oil and gas production measurement to the Iraqi government, TFMC is also charged with conspiring with others to bribe officials at the Iraqi Ministry of Oil and at the South Oil Company and the Missan Oil Company, both state-owned oil companies.⁴

As explained further below, the resolutions highlight the perils associated with successor liability. TFMC inherited significant FCPA liabilities in the course of its 2017 merger. In 2010, Technip S.A., American Depository Shares of which traded on the New York Stock Exchange between August 2001 and November 2007, entered into a two-year deferred prosecution agreement and a \$240-million settlement with DOJ for participating in a scheme to bribe Nigerian government officials to obtain engineering, procurement, and construction contracts.⁵ Certain of the company's offenses in Brazil and Iraq occurred during the pendency of the 2010 deferred prosecution agreement, and while Technip S.A. was subject to the oversight of a corporate compliance monitor.⁶

Factual Allegations

According to the DOJ, between 2003 and 2014, in furtherance of a scheme in Brazil to obtain certain large offshore oil and gas projects, TFMC and Technip USA made "commission" payments to Skornicki knowing that those payments would be used to pay bribes to Brazilian government officials.⁷ Additionally, TFMC made corrupt payments directly to the Brazilian Workers' Party and certain party candidates to secure improper business advantages and to obtain and retain business with Petrobras, the Brazilian state-owned petroleum corporation.⁸ In furtherance of the conspiracy, TFMC also hired the children of several Petrobras

guilty. See Client Memorandum, Paul, Weiss, Rifkind, Wharton & Garrison LLP, FCPA Enforcement and Anti-Corruption Developments: 2017 Year in Review (Jan. 19, 2018), available [here](#).

⁴ DOJ Press Release.

⁵ See *U.S. v. TechnipFMC plc*, Criminal Information, Cr. No. 19-278 (KAM) (hereinafter "TFMC Information"), ¶ 3, available [here](#). See also Press Release, Dep't of Justice, *Technip S.A. Resolves Foreign Corrupt Practices Act Investigation and Agrees to Pay \$240 Million Criminal Penalty* (Jun. 28, 2010), available [here](#).

⁶ See *U.S. v. TechnipFMC plc*, No 19-cr-278 (E.D.N.Y. June 25, 2019) (hereinafter "DPA"), ¶ 4(i), available [here](#).

⁷ See *U.S. v. Zwi Skornicki*, Criminal Information, CR. No. 19-277 (KAM) (hereinafter "Skornicki Information"), ¶¶ 9–11, available [here](#).

⁸ See DPA, Ex. A, ¶ 14.

officials at its subsidiary companies.⁹ TFMC and its subsidiaries earned approximately \$135.7 million in profits from the corruptly obtained business.¹⁰

In Iraq, between 2008 and 2013, TFMC and others conspired to violate the FCPA in connection with seven contracts to provide metering technologies for oil and gas production measurement to the government of Iraq.¹¹ TFMC and others promised to pay, and paid, bribes to at least five Iraqi officials to secure improper business advantages; TFMC subsequently earned \$5.3 million from business improperly obtained in Iraq through this scheme.¹² In furtherance of the scheme, TFMC employees created and executed agency agreements between TFMC and an intermediary company to facilitate bribes and conceal their purpose.¹³ Based on these agency agreements, the intermediary company either paid bribes directly to officials or made payments to sub-agents who then made payments to officials.¹⁴ These agency agreements, titled System Sales Consultant Agreements, called for the intermediary company to receive percentage commissions after TFMC received “full customer payment” from the Iraqi government for work on the contemplated contracts.¹⁵

TFMC and Technip USA have agreed to pay a combined total criminal fine of \$296,184,000 to the U.S. and Brazilian authorities.¹⁶ TFMC did not receive voluntary disclosure credit because it did not voluntarily and timely disclose the misconduct, but it did receive full credit for its cooperation with the DOJ.¹⁷ TFMC introduced various remedial compliance and risk mitigation measures, including banning the use of commercial consultants in Brazil and suspending all payments to commercial consultants in Brazil.¹⁸

Based on TFMC’s remediation, the state of its compliance program, as well as the company’s commitment to report to the DOJ during a two-year self-reporting period, the DOJ determined that an independent compliance monitor was unnecessary.¹⁹ The reporting requirements obligate the company to conduct an initial review and submit an initial report within a year setting forth a complete description of its compliance

⁹ *Id.* at ¶ 37.

¹⁰ *See* TFMC Information, ¶ 38.

¹¹ *See* DPA at Ex. A at ¶ 60.

¹² *See id.*

¹³ *See id.* at ¶ 61.

¹⁴ *See id.*

¹⁵ *See id.* at ¶ 64.

¹⁶ *See* DPA at ¶ 7.

¹⁷ *See* DPA at ¶ 4(a)-(b).

¹⁸ *See id.* at ¶ 4(d).

¹⁹ *See id.* at ¶ 4(f).

remediation efforts to date, and proposals designed to improve internal controls, policies, and procedures for ensuring compliance with the FCPA and other applicable anti-corruption laws. In addition, the company is obligated to conduct and prepare at least two follow-up reviews and reports incorporating the DOJ's views on the company's prior reviews and reports.²⁰

Analysis

Although the settlements with the DOJ and with the Brazilian authorities resolve allegations relating to conduct that occurred more than ten years ago, TFMC continues to struggle with liabilities incurred by its pre-merger predecessors. Indeed, TFMC is currently cooperating with a corruption investigation by the French Parquet National Financier ("PNF") related to historical projects in Equatorial Guinea and Ghana, and it has set aside a further \$70 million in connection with this investigation.²¹ The resolutions with the DOJ and authorities in Brazil, as well as the company's pending resolutions with the SEC and the PNF, highlight the potential significance of successor liability when engaging in merger activity with a company that has engaged in FCPA violations, and the importance of conducting corruption-related due diligence and remediation. Taking steps to understand the risk of successor liability and conducting post-acquisition reviews soon after closing are especially important in light of the DOJ's revised FCPA Corporate Enforcement Policy, announced in 2018, pursuant to which the Department may credit successor entities in mergers and acquisitions that promptly report wrongdoing.²²

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²⁰ See *id.* at Ex. D, ¶¶ a-e.

²¹ See Press Release, TechnipFMC, *TechnipFMC Reaches Global Resolution of U.S. and Brazilian Legacy Investigations* (June 25, 2019), available [here](#).

²² See Dep't of Justice, 9-47.120 - *FCPA Corporate Enforcement Policy* (updated Mar. 8, 2019), available [here](#); Press Release, Dep't of Justice, *Deputy Assistant Attorney General Matthew S. Miner Remarks at the American Conference Institute 9th Global Forum on Anti-Corruption Compliance in High Risk Markets* (July 25, 2018), available [here](#).

This memorandum is not intended to provide legal advice, and no legal or business decision should be based on its content. Questions concerning issues addressed in this memorandum should be directed to:

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