# Client Alert

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# A Reminder of the Long Arm of US laws: Singapore and Malaysian Nationals Plead Guilty in US Navy Bribery Scandal - the "Fat Leonard" Case

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In March 2016, the San Diego Federal District Court sentenced a Singaporean man to 63 months' imprisonment for knowingly and intentionally conspiring with others to defraud the U.S. Navy by obtaining the payment of false and fraudulent claims.

## Facts

Alex Wisidagama ("**Alex**"), a Singapore national, was employed by Glenn Defense Marine (Asia) ("**Glenn Defense**") as its General Manager of Global Government Contracts. Glenn Defense was a Singapore company which provided ship husbanding services for U.S. Navy ships. At each port visit, the U.S. Navy ships and submarines would order goods and services from Glenn Defense and in turn, Glenn Defense would submit its invoices to the respective vessels for payment.

Alex admitted to conspiring with other Glenn Defense officials to overcharge the U.S. Navy in various ways. They had submitted fraudulent competitive quotes and fraudulently inflated invoices to the U.S. Navy. They had also directed and approved the creation of fictitious port authorities with the same end. In routinely overbilling for items such as fuel, tugboat services, security, docking and sewage disposal, the fraud caused more than USD 34 million in total losses to the U.S. Navy.

The charges against Alex were brought under Section 286 of Title 18 of the United States Code ("**Section 286**"), which states that "*[w]hoever enters into any agreement, combination, or conspiracy to defraud the United States, or any department or agency thereof, by obtaining or aiding to obtain the payment or allowance of any false, fictitious or fraudulent claim, shall be fined under this title or imprisoned not more than ten years, or both.*"

Alex's admission to the Section 286 offence followed that of his boss and uncle, Leonard Glenn Francis ("**Leonard**"). Leonard, also known as Fat Leonard, a Malaysian national, was the Chief Executive Officer of Glenn Defense. He was alleged to have bribed U.S. Navy personnel for classified information on the movement and schedules of the ships. Having been lured to the US in a "sting" operation on the premise of a meeting with senior U.S. Navy personnel, he was arrested and on 15 January 2015, he pleaded guilty to all charges.

Prior to the arrest of these two Glenn Defense executives, 10 US officers had been charged in connection with this bribery case, out of which nine have pleaded guilty.

In the latest of these, Captain Daniel Dusek, the highest-ranking U.S. Navy officer to be charged in relation to this scandal, was sentenced to 46 months in prison on 25 March 2016 for disclosing classified information to a contractor in exchange for gifts and prostitutes. He was also ordered to pay a USD 70,000 fine and USD 30,000 in restitution to the U.S. Navy.

The bribery case is still under investigation by the U.S. authorities.

## Comments

This case is an example of a prosecution by the U.S. authorities of foreign nationals who were found to have obtained or aided in obtaining the payment of false, fictitious or fraudulent claims, in respect of their contracts with US military personnel. While the charge in this case was framed under section 286 of the United States Code as it dealt with the bribery of domestic (i.e. United States) officials, it is quite conceivable that a similar approach would be taken by the US authorities in respect of the enforcement of the US Foreign Corrupt Practices Act ("**FCPA**"), in respect of similar conduct involving foreign officials. The "long arm" of the FCPA is well known, judging from the enforcement trends we have seen in recent years.

However, there are also dissenting views which may buck this trend and represent a setback for authorities such as the Department of Justice ("**US DOJ**"). In the recent case of *U.S. v Hoskins* No. 3:12cr238 (JBA) (D. Conn.) (Aug. 13, 2015), the US District Court for the District of Connecticut affirmed in March 2016 its earlier ruling that a non-resident foreign national cannot be charged with conspiracy to violate the FCPA or with aiding and abetting a violation of the FCPA, unless the government can show that he acted as an agent of a "domestic concern" or while physically present in the United States. The Court held in that case that there are only 3 bases under the FCPA on which to claim jurisdiction against any person:

(i) where a "domestic concern" or U.S. "issuer" of securities, or any officer, director, employee, or agent [*emphasis added*] thereof makes use of the US interstate commerce in furtherance of a corrupt payment;

(ii) where a US citizen, national or resident acts outside the US in furtherance of a corrupt payment; and

(iii) where any other person, while in the territory of the United States, acts in furtherance of a corrupt payment.

Previously, the US DOJ has operated on the basis that foreign nationals/entities can be pursued on theories of aiding and abetment and conspiracy without being responsible for the primary offence under (i) to (iii). It has filed a notice of appeal seeking to overturn the court's decision. It will be interesting to see the appeal court's decision on the matter. If unsuccessful, it might deprive the US enforcement authorities of a valuable tool in their actions against foreign entities which has proven useful in a number of high profile cases involving Japanese companies. Alternatively, it may prompt them to sharpen up other tools in their armoury such as the agency theory as well as anti-money laundering provisions. In the meantime, the prosecution of Alex and Fat Leonard serves as a stark reminder to non-US nationals that nationality and distance are no protection against the dogged pursuit by international enforcement authorities.