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# The Practitioner's Guide to Global Investigations

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## Editors

Judith Seddon, Eleanor Davison, Christopher J Morvillo, Michael Bowes QC, Luke Tolaini

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In this half-year update to the second edition of *The Practitioner's Guide to Global Investigations*, the editorial team have approached the panel of expert authors to bring readers up to date with significant changes in the investigations landscape. The first part of this update covers developments in the United States and the United Kingdom and includes contributions from in-house practitioners. In these jurisdictions, the focus on privilege in internal investigations remains intense, the protection of whistleblowers is high on the European agenda and the implications of the General Data Protection Regulation are as yet untested. The second part of this update covers jurisdiction-specific developments around the world.

We are also delighted to announce the addition of Ama A Adams of Ropes & Gray in Washington, DC, and Tara McGrath of Clifford Chance in New York to the US editorial team as co-editors for the third edition of *The Practitioner's Guide to Global Investigations*, to be published in January 2019.

The update opens with a discussion piece with Mark Steward, Director of Enforcement and Market Oversight at the UK Financial Conduct Authority, regarding enforcement priorities in the post-financial crisis era.

celebrated in a 2008 hip hop hit ‘Yahooze’, to which even former US Secretary of State Colin Powell was pictured dancing at the Royal Albert Hall in London. Recently, as part of these efforts to disrupt the activities of Yahoo Boys, the EFCC reportedly conducted a raid outside a popular Lagos nightclub, where it was claimed more than 12 suspected internet fraudsters were arrested and a number of cars seized.

Although this action by the EFCC is commendable, it would appear that the vast majority of the victims of such fraud are frequently unable to recover their lost funds. This is not the result of any inefficiency on the part of the law enforcement agencies. It is, rather, a consequence of the victims tending to reside outside Nigeria, and having been, individually, defrauded of relatively small sums of money. The victims have not lost sufficient sums to justify the costs of seeking recovery in civil actions. They are also unable to seek recovery by way of post-conviction forfeiture orders against the perpetrators because, to secure a conviction, the victims are usually required to come to Nigeria to give evidence. For most victims, who tend to be ordinary people transferring funds either to invest in fake enterprises, or to assist ‘romantic partners’ they met online, and who may have got into financial difficulties and require loans, the costs of travel to Nigeria are usually unaffordable.

Therefore, while reported raids may make it look as if the EFCC is achieving results, most, if not all, of the suspects arrested will escape prosecution, owing to insufficient evidence to secure a conviction if, as is usually the case, their victims were outside Nigeria. The victims will therefore remain unable to obtain recovery of lost money.

Collective action facilitated by the EFCC could conceivably resolve the injustice.

Read the authors' chapter on ‘Nigeria’ in GIR’s *The Practitioner’s Guide to Global Investigations* [here](#).

## Singapore: There’s only 1MDB, but there are many investigations under way

**Mahesh Rai**

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### 1MDB investigations

The 1MDB investigations are still the highest-profile investigations under way in Singapore.

Following the conviction of 4 ex-employees of BSI Bank for varying offences ranging from failure to report suspicious transactions to forgery and cheating, the Singapore police are now examining Goldman Sachs’s role in the 1MDB deals and its links with Malaysian financier Low Taek Jho.

The police’s initial interviews with current and former Goldman Sachs employees involved in the 1MDB bond offerings were conducted in October 2017. Investigators have said that the bank itself is not the focus of the investigation, and neither Goldman Sachs’s current nor its former employees have been publicly accused of criminal offences or charged in relation to the 1MDB investigations.

In March 2017, prior to the police investigations, MAS issued Tim Leissner (a former director of Goldman Sachs Singapore who was the lead banker in the 1MDB bond deals) with a prohibition order barring him from the financial industries in Singapore for 10 years.

To date, no other individuals from Goldman Sachs have been implicated as a result of the investigations by MAS and the police.



### **Petrobras corruption case**

In December 2017, the US Justice Department announced that Keppel Offshore & Marine had agreed to pay US\$422 million under a deferred prosecution agreement (DPA) to resolve investigations by authorities in the United States, Brazil and Singapore into a massive corruption scandal involving Brazil's state-run oil company, Petrobras, and Keppel, a Singapore company listed on the mainboard of the Singapore Exchange.

According to US court documents, Keppel paid US\$55 million in bribes between 2001 to 2014 to Petrobras officials and the Workers Party of Brazil, the governing party for the majority of that time.

The bribes were paid to secure 13 contracts with Petrobras and Sete Brasil Participações SA, a Brazil company that commissioned a fleet of rigs for Petrobras's use.

On 23 December 2017, the Singapore authorities issued a conditional warning to Keppel. Singapore authorities have stated that this was issued in lieu of prosecution for corruption offences and was part of the global resolution under the DPA.

Under the conditional warning, Keppel committed to certain undertakings to pay a total of about US\$105.6 million to Singapore within three years from the date of the warning, less any penalties paid to the Brazilian authorities during that period.

The payments represented part of the total criminal fine to be paid by Keppel under the DPA.

In February, several former key executives of Keppel were arrested in connection with the Singapore authorities' investigation into the corruption scandal.

The investigations in respect of the individuals involved are ongoing.

On 13 March, three months after the conditional warning was issued to Keppel, deferred prosecution agreements were introduced in Singapore through the Criminal Justice Reform Act. However, DPAs have not been used in Singapore to date.

Read the author's chapter on 'Singapore' in GIR's *The Practitioner's Guide to Global Investigations* [here](#).

## **United Kingdom: KBR, XYZ and DPIAs**

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### **Unaoil**

In April, the criminal investigation by the Serious Fraud Office (SFO) into Unaoil and companies connected with it faced a further challenge by way of a judicial review brought by KBR, which challenged the legitimacy of the SFO's use of a notice issued under section 2(3) of the Criminal Justice Act 1987 to compel the production by a US company of material held by that company overseas. The notice was served on the company through a company officer, who was in the United Kingdom to attend a meeting with the SFO, but resided and worked in the United States. Judgment is awaited at the time of writing.

In November 2017 the first charges were brought in relation to the Unaoil investigation. Four individuals including Basil Al Jarah, Unaoil's Iraq partner, and Ziad Arkle, Unaoil's territory manager for Iraq, were charged with conspiracy to make corrupt payments to secure the award of contracts in Iraq to SBM Offshore. In May, Mr Al Jarah and Mr Arkle were charged with additional charges of making corrupt payments to secure the award of a contract in Iraq for Leighton Contractors Singapore PTE Ltd.

