Och-Ziff Capital Management Group

US seeks scalps in Och-Ziff bribery investigation

Arrest of African fixer Samuel Mebiame throws fresh light on alleged corruption scheme

Daniel Och, founder of New York-listed hedge fund Och-Ziff © FT Graphic / Bloomberg

SEPTEMBER 12, 2016 by: Tom Burgis in London and Kara Scannell in New York

US prosecutors pursuing alleged bribery in Africa have a big prize in their sights — Och-Ziff (http://www.ft.com/topics/organisations/Och-Ziff_Capital_Management_Group_LLC), one of the world’s largest and most powerful hedge funds, as well as dealmakers and money men on three continents.

However, a corporate fine stretching into the hundreds of millions of dollars may not be enough for the US authorities who have specifically said they now want individuals to be called to account for corporate crime.

If investigators net some big fish, it will put individual executives on notice that they cannot disclaim responsibility for far-flung misbehaviour.

Och-Ziff (http://markets.ft.com/data/equities/tearsheet/summary?s=us:OZM), the $39bn New York-listed hedge fund run by Daniel Och, has already set aside (http://next.ft.com/content/5a4d9322-58cb-11e6-8d05-4ea66292c32) $414m to pay penalties it expects to incur as part of a deal to settle alleged bribery in Africa following an investigation by the Department of Justice and the Securities and Exchange Commission. The two sides are in talks and US prosecutors are expected to insist that an Och-Ziff subsidiary — but not the parent company —
pleads guilty to violating anti-corruption law (http://next.ft.com/content/be1cbbco-1d0d-11e6-b286-cddde55ca122), according to people familiar with the probe.

The investigators’ hand has been strengthened by the recent arrest of a Gabonese businessman, which appears to have furnished the authorities with a new trove of information about Och-Ziff’s African foray.

The settlement talks come a year after Sally Yates, US deputy attorney-general, issued a memo (https://www.justice.gov/dag/file/769036/download) declaring that “the Department [of Justice] will not release culpable individuals from civil or criminal liability when resolving a matter with a corporation”.

She was responding to criticism that prosecutors have been too ready to levy fines on companies while allowing individual perpetrators to avoid jail — effectively punishing current shareholders for the misdeeds of past executives.

It was not the first time a senior justice official had lamented prosecutors’ failure to jail more individuals. In overseas corruption cases, charges against senior corporate officers have been rare, DoJ’s critics note.

The Och-Ziff case raises anew questions of whether investigators can establish individual responsibility in complex cases of alleged bribery.

Days after the hedge fund announced the provision for its anticipated settlement last month, federal agents charged Samuel Mebiame with violating the 1977 Foreign Corrupt Practices Act. Prohibits bribes to foreign officials to assist in obtaining, or retaining business. Excludes settlements with non-US regulators.

Sources: The FCPA Blog; SEC; DoJ
Act, which bans overseas bribery. The son of a former Gabonese prime minister, Mr Mebiame works as a business fixer for investors in Africa. He was on a brief trip to the US and had been due to depart the day after the authorities swooped. Prosecutors allege Mr Mebiame spent years traversing Africa lavishing millions of dollars of bribes on officials in Guinea, Chad and Niger as part of efforts to secure mining rights.

According to prosecutors’ filings, Mr Mebiame — who remains in detention and whose lawyer declined to comment — was operating on behalf of a joint venture between an unnamed hedge fund and other investors. None of the parties was named. But people briefed on the investigation and the events described in the filing, said the hedge fund was Och-Ziff and the joint venture was called Africa Management Limited (AML).

AML was created in 2007 as a vehicle for investments in African mines. A blueprint seen by the Financial Times says Och-Ziff was to put in up to $300m in cash, with its partners contributing $900m in African mining assets. Och-Ziff declined to say how much cash was committed. The partners were both South African: Mvelaphanda, a conglomerate founded by the freedom fighter-turned-tycoon Tokyo Sexwale, and Palladino, veteran mining investor Walter Hennig’s vehicle.

The timing was bad: the commodity boom was turning to bust. But the venture’s staff in Johannesburg sought opportunities nonetheless and discussed their progress in regular conference calls with representatives of the three investors, people with knowledge of the venture say. One was Mr Hennig, for Palladino. The second was Mark Willcox, a resource-
industry dealmaker who headed Mvelaphanda and was appointed chief executive of the joint venture. The third was Och-Ziff’s man in London, Michael Cohen.

Mr Cohen, a protégé of Mr Och with a penchant for shooting and a hard-charging style, had built Och-Ziff’s European operation from scratch. Under Mr Cohen, Och-Ziff’s Vanja Baros, a private equity analyst who had responsibility for some of the African investments and, with his boss, served as a director of AML from 2007 to 2012.

The US investigation into Och-Ziff ranges well beyond AML’s activities, including contentious mining deals in Congo and Zimbabwe.

Yet the prosecutors’ account of Mr Mebiame’s activities raises the question of what if anything these four individuals knew about the alleged bribery schemes. None has been accused of wrongdoing. Och-Ziff, Mr Cohen and Mr Baros declined to comment. Neither Mr Hennig nor Mr Willcox responded to requests for comment put to their representatives.

The prosecutors have said their information about Mr Mebiame’s dealings is drawn from sources including “business records obtained from the hedge fund” at the centre of the case — a reference to Och-Ziff. In the criminal complaint, Mr Mebiame is described discussing his alleged schemes with an unnamed “co-conspirator”, identified as the owner of a “Turks and Caicos entity”. Palladino is registered on those islands, suggesting that the alleged co-conspirator is Mr Hennig.

Nothing in the Mebiame complaint appears to describe Mr Willcox, Mr Baros or Mr Cohen. But people briefed on the probe say Mr Cohen is under investigation by the DoJ as part of the Och-Ziff case. If the US believes there is any evidence to pursue charges it could seek his extradition from the UK — where he has been granted citizenship. Mr Cohen left Och-Ziff in 2013, after the start of the US investigation; Mr Baros has also departed.

The DoJ’s push for individual prosecutions has generated concern among some defence lawyers who say prosecutors are straining to establish culpability where there is none. But the department also has critics who bemoan its patchy record for bringing people — rather than corporations — to book.
“The DoJ has preached about the importance of FCPA individual prosecutions for nearly a decade and every corporate FCPA enforcement action provides an opportunity for the DoJ to match its rhetoric,” says Mike Koehler, a legal scholar who runs the FCPA Professor (http://fc paprofessor.com/) blog. “Yet the fact remains that approximately 75 per cent of DoJ corporate enforcement actions never result in any related individual prosecutions.”

Since the Yates memo in September 2015, Mr Koehler notes, there have been five corporate FCPA enforcement actions. None has involved related charges against individuals. The coming weeks will show whether the Och-Ziff case will buck that trend.

Additional reporting by Lindsay Fortado in London

Business fixer's arrest adds fresh dimension to battle for Africa's natural wealth

A recent US criminal complaint about an alleged bribery scheme in Africa adds a fresh dimension to one of the fiercest recent battles to control the continent’s natural wealth, one that has pitted the Israeli billionaire Beny Steinmetz against the government of resource-rich Guinea.

Prosecutors allege that Samuel Mebiame, a Gabonese fixer in the mining industry who was arrested in the US in August, has told investigators he paid bribes to unnamed top officials in Guinea as part of an effort to secure mining rights. The alleged bribes included a Mercedes-Benz and six-figure cash payments. One of the officials involved was President Alpha Condé, according to people familiar with the circumstances of Mr Mebiame’s account — parts of
which, including the alleged Mercedes, are disputed by a person close to Guinea’s government. The government did not respond to a request for comment.

The company Mr Mebiame is alleged to have been representing in Guinea is not identified in the complaint but three people familiar with the matter said it was Palladino, the investment vehicle of South African businessman Walter Hennig. He did not respond to a request for comment put to his representatives.

In 2011, Mr Mebiame signed a loan deal — later published — under which Palladino would lend Guinea $25m. If the country had defaulted, Palladino would have stood to gain stakes in mining ventures that were due to be transferred to a state mining company. The deal unravelled when details emerged and generated a scandal (http://next.ft.com/content/db0642da-2827-11e2-a335-00144feabdc0) in Guinea.

BSG Resources, the mining arm of Mr Steinmetz’s family business empire, has seized on the allegations about Mr Mebiame’s conduct to support its claims that the Guinean government engaged in a corrupt plot to seize its assets.

In 2014, Guinea rescinded BSGR’s claim to half of the Simandou iron ore deposit, arguably the best untapped resource of its kind, after an inquiry (http://next.ft.com/content/be0d00bc-bfc3-11e3-9513-00144feabdc0) found the company had won its rights through a bribery scheme involving the wife of a former dictator. The US and Switzerland, where Mr Steinmetz lives, have launched investigations into that alleged corruption.

BSGR and Mr Steinmetz have denied wrongdoing. The company’s former rights to mining remain in limbo, the subject of multiple legal claims. Guinea has said it will tender the rights anew but an auction has yet to materialise.

Reputational risk could see some big hedge fund investors pull their capital

An acute sensitivity to reputational risk among pensions, endowments and foundations makes Och-Ziff’s involvement in an alleged bribery probe in Africa particularly perilous. Those investors account for almost half of the hedge fund’s $39bn of assets, writes Mary Childs in New York.

Some clients have already pulled their money, shrinking the company’s assets from a peak of $48bn in July 2015. The settlement will be a relief for the company as the uncertainty has
deterred new investors, at a time when the hedge fund sector overall struggles with outflows and souring sentiment over high fees and underperformance.

Och-Ziff declined to comment.

As of July 1, pension funds accounted for 37 per cent of the assets Och-Ziff oversees, and foundations and endowments another 12 per cent. Those groups are “the most concerned” with reputational risk, according to Jefferies analysts led by Daniel Fannon.

“Obviously these clients are not all going to redeem, but we do view them as more conservative in nature and at greater risk of leaving” than other types of investor, they wrote.

Helping its prospects, performance in Och-Ziff’s Master Fund has improved. The fund, which accounts for just over half of assets, returned 2 per cent in August, its best month since November 2014. That pulled this year’s performance above its high watermark — meaning the fund can again earn incentive fees.

The company is under pressure to retain client money, as its fee-paying assets must not fall below $22bn for two successive quarters, or it will be judged to be in default against its five-year unsecured revolving credit facility.

Further, if a subsidiary pleads guilty, it must obtain a waiver from the US Department of Labor to continue managing money for retirement plans as a “qualified professional asset manager”.

“Yes losing QPAM would make life more difficult for Och-Ziff,” said Urska Velikonja, a law professor at Emory University.

But relatively little money is at stake — just 1 per cent of Och-Ziff’s assets would be affected, according to a person with knowledge of the matter — and the DoL has granted exemptions in most other cases to allow business to continue uninterrupted, with stipulations including reporting requirements and mandatory employee training over legal and ethical duties. Legal experts say a settlement can be tailored to avoid triggers, like in a deferred-prosecution agreement.

“My guess is this is probably what they’re hammering out in the final seconds,” said John Hunt, a compliance specialist at Sullivan & Worcester. “The money is almost the easier part of it.”

Och-Ziff went public in 2007 at $32 a share, and remains one of only a handful of hedge funds to have listed, alongside Man Group and Fortress.
Its shares had declined more than 70 per cent over the past year, hitting $3.21 in July. The stock has climbed above $3.90 since the company said in August that its partners were in talks to put $500m towards a settlement.