



Glenn Leon, Esq.
Chief,
FCPA Unit Chief, Fraud Section,
Criminal Division, U.S. Department of Justice
Bond Building
1400 New York Ave, N.W.
Washington, DC 20005

Per email: FCPA.Fraud@usdoj.gov

15 September 2022

Dear Mr. Leon

Re: Bain and Company Incorporated's Potential Breach of the U.S. Foreign Corrupt Practices Act of 1977.

I write to you as a concerned citizen of South Africa, where I serve as Director of the Helen Suzman Foundation (“**HSF**”). The HSF is a non-profit organisation that seeks to promote constitutional democracy in South Africa and in recent years has put a great deal of its efforts towards defending our fledgeling democracy from the influence of corruption. In this regard, I am encouraged by the Biden administration’s release last year of the United States Strategy on Countering Corruption (“**U.S. AntiCorruption Strategy**”) and the commitment expressed to rooting out corruption domestically and abroad.

It is in the spirit of the U.S. AntiCorruption Strategy’s commitment to “consult and coordinate with representatives of civil society” that I hope we might engage on an especially egregious instance of corruption by a U.S. entity in South Africa – one that I have been advised warrants further investigation by the Department of Justice (“**DOJ**”) for potential breaches of the U.S. Foreign Corrupt Practices Act of 1977 (“**FCPA**”). The evidence I present is not mere opinion. It is sourced from reports produced by two separate judicial commissions of inquiry, chaired by eminent South African judges: first, the Judicial Commission of Inquiry into State Capture Report (“**State Capture Report**”); second, the final report of the Commission of Inquiry into Tax Administration and Governance at the South African Revenue Services, colloquially referred to in South Africa as the ‘Nugent Commission Report.’

In summary, the facts are these: around 2012, Boston-based management consulting firm Bain & Company Incorporated (“**Bain Global**”), through its South African Office (“**Bain SA**”), found itself struggling to break into the lucrative market for providing consulting services to South Africa’s stateowned companies. Unable to compete on merit, Bain SA allied with a shadowy South African intermediary entity, ‘Ambrobrite’, whose directors’ sole credentials were their promise – and ultimate delivery – of unparalleled access to South Africa’s President at the time, Jacob Zuma. Bain SA’s relationship with Ambrobrite, which saw several hundred thousand dollars’ worth of “business

Director: Nicole Fritz

Trustees: Nick Binedell • Cecily Carmona • Max du Plessis • Cora Hoexter • Nick Jonsson • Daniel Jowell • Kalim Rajab • Gary Ralfe • Phila Zulu

Patrons: Prof. Thuli Madonsela • Lord Robin Renwick



HELEN SUZMAN FOUNDATION

development fees” changing hands, generated some 17 meetings with former President Zuma and Bain SA’s head, Vittorio Massone between 2012 and 2014.

During this time, Bain SA provided valuable consulting work pro bono to former President Zuma’s political party, the African National Congress (“**ANC**”), producing a party manifesto and conceptualizing a strategy document that detailed a vast reform agenda to remake key sectors of the South African economy according to Mr. Zuma’s corrupt political vision. Bain SA’s corrupt relationship with Ambrobrite and former President Zuma reached its crescendo when Bain SA engaged in an unlawful procurement process for consultancy work at South Africa’s tax collector, the South African Revenue Service (“**SARS**”).

Long before SARS had initiated a formal procurement process for consulting work, Bain SA had already leveraged its paid-for access to former President Zuma, and the valuable work that it provided for the ANC, to install itself as the consultant that would ultimately oversee SARS’s restructuring for the benefit of former President Zuma’s personal business interests. It is worth noting that at the time, SARS was a world-renowned tax collecting institution and was in no need of restructuring. Bain SA knew this and, despite openly acknowledging its lack of expertise in tax collection, formulated a detailed plan that informed SARS’s illicit restructure.

Prior to SARS’s formal procurement process beginning in December 2014, Bain SA had already produced a detailed strategy document for restructuring SARS and a ‘First 100 Days’ plan for its yet to be-announced incoming head, Tom Moyane. The State Capture Report found that so blatant was Bain SA’s flouting of South African procurement laws that its director, Fabrice Franzen had in fact drafted the criteria against which SARS would ultimately adjudicate bids in the course of its formal procurement process.

This was not only a clear violation of South African procurement laws but also a fundamentally anticompetitive business practice. It undermined the rule of law and irreparably tarnished the reputation of a significant U.S. business. The HSF has been advised that the FCPA was introduced to combat, among others, this litany of mischiefs. Further, the HSF has been advised that Bain SA’s corrupt relationship with Ambrobrite is worth further investigation by the DOJ under the FCPA for the following reasons –

1. Bain SA may well have contravened the FCPA’s anti-bribery provisions, by doing either or both of two things in order to win consultancy work at SARS: purchasing access to former President Zuma from Ambrobrite; or by offering pro bono consulting work to the ANC.
2. The U.S. principles of corporate liability impute Bain SA’s conduct to its Boston-based parent, Bain Global.
3. Bain Global falls squarely in the FCPA’s definition of a ‘domestic concern’ and, therefore, is within the DOJ’s jurisdiction.
4. Neither the DOJ nor the government of South Africa could, in the exercise of reasonable diligence, have discovered Bain SA’s activities before at the earliest February 2018, when the Zuma administration was replaced. Thus, the five-year statute of limitations applicable to the FCPA presents no bar to pursuing the case.



HELEN SUZMAN FOUNDATION

In making this request, I recognise that in December of 2018 representatives from Bain SA and Bain Global approached the DOJ and disclosed, amongst other information, a truncated report produced by law firm Baker McKenzie that Bain SA commissioned in the course of an internal investigation. Since then, however, no public statement has been communicated as to the outcome of this initial approach to the DOJ. Given the great importance of this matter to the South African public – and in the spirit of cooperation so laudably expressed in the U.S. AntiCorruption Strategy – we would greatly appreciate being appraised of the nature and extent of the DOJ's initial discussions with representatives from Bain SA and Bain Global.

I make this request bearing in mind that Bain SA saw fit to withhold even the truncated version of Baker McKenzie's report from the South African public. This has left us in the invidious position of being forced to accept Baker McKenzie's analysis and findings – which conflict with those of the State Capture Report and Nugent Commission Report – at face value, when the DOJ has been able to properly apply its mind to the Baker McKenzie report's full contents.

If it so happens that the DOJ has made a decision not to pursue investigation into Bain Global, we would greatly appreciate your insight into the DOJ's reasoning in this regard. The HSF's position is that the matter is worth even a revisitation by the DOJ for the above-mentioned reasons and given that the revelations of the State Capture Report were only made public this year. I recognise that Bain SA has paid back the roughly eleven and a half million dollars in fees that it received for its illicit work at SARS.¹ However, I have been advised that the idea that Bain SA can remedy its liability under the FCPA by simply repaying its fees is misguided. This is because the harm deserving of criminal sanction under the FCPA is the damage that Bain SA wrought on SARS's revenue generation ability.

For this systemic damage, the effects of which continue to be borne most profoundly by poor South Africans in need of properly funded state services, Bain SA and Bain Global remain liable.

Yours sincerely,

Nicole Fritz

Director, Helen Suzman Foundation.

¹ Calculated at the exchange rate at the time that Bain SA paid back the fees in December 2018.