

FCPA & Global Anti-Corruption Webinar: 2017 Year-in-Review and Predictions for 2018

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Agenda

- I. Enforcement Trends and Priorities
- II. New DOJ Policy Initiatives
- III. Notable Lessons from 2017 FCPA Enforcement Actions
- IV. Recent Legal Developments
- V. Key International Anti-Corruption Developments
- VI. Predictions for 2018



I. Enforcement Trends and Priorities



Six Key Take-Aways

1. Significant FCPA activity in the first year of Trump administration
2. Continued focus on individuals
3. Non-U.S. companies predominantly were the targets, intentionally or unintentionally, of FCPA enforcement
4. New DOJ FCPA Corporate Enforcement Policy
5. International cooperation and enforcement on the rise
6. Evolving sophistication of bribery schemes

FCPA Under Trump Administration

- President Donald Trump once said the FCPA is “ridiculous,” “horrible,” and “should be changed”
- Predictions that FCPA enforcement would dry up during the Trump administration proved to be exaggerated
- FCPA enforcement appears to remain a priority and many trends pre-dating the Trump administration continued:
 - The White House’ National Security Strategy (Dec. 18, 2017) includes countering foreign corruption among its top five priority actions
 - Continued focus on individual accountability
 - Continued emphasis on self-reporting and cooperation



DOJ and SEC Leadership Reaffirm Commitment to Enforcing the FCPA

The FCPA is the law of the land. We will enforce it against both foreign and domestic companies that avail themselves of the privileges of the American marketplace.

- Deputy Attorney General Rod Rosenstein, Nov. 2017



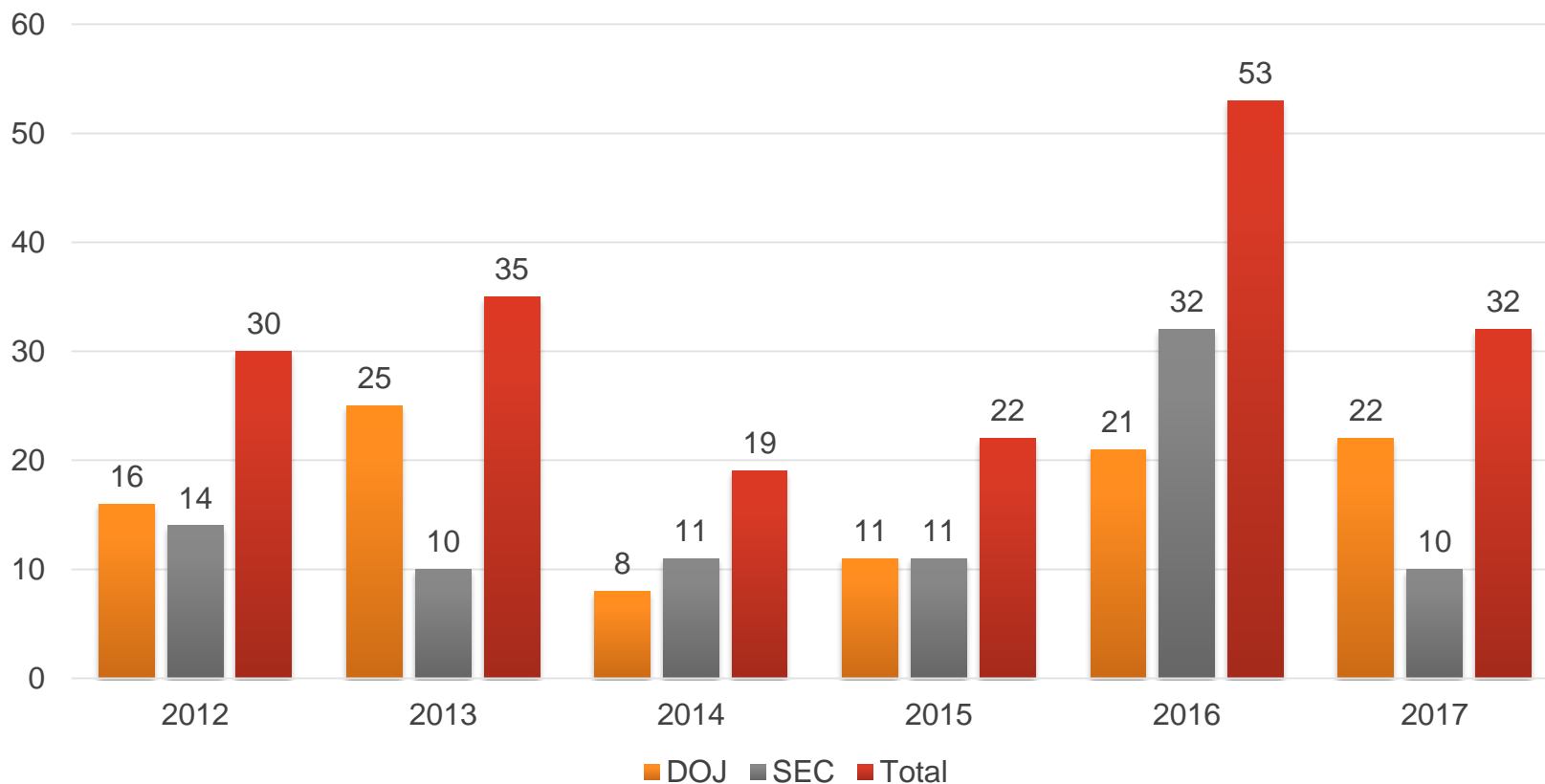
Over the last 40 years, enforcement of the FCPA has been a fundamental part of the SEC's enforcement mission. . . . What does the future hold for FCPA enforcement at the SEC? Will the SEC continue to be committed to robust FCPA enforcement? My answer to that question is simple: Yes. Combatting corruption . . . remains an important government mission, including at the SEC's Enforcement Division.

- Steven Peikin, Co-Director, SEC's Enforcement Division, Nov. 2017



Enforcement Trend Line

FCPA Enforcement Actions (2012-2017)





Significant FCPA Activity in 2017

- 13 corporate enforcement actions in 2017 (6 by the DOJ and 7 by the SEC)
- 19 enforcement actions against individuals initiated in 2017 (16 by the DOJ and 3 by the SEC)
- Blockbuster penalties in global corporate resolutions:
 - *Telia*: One of the largest FCPA resolutions in history, totaling \$965 million in global penalties
 - Telia paid 50% of its criminal penalty (\$274 million) to Dutch Openbaar Ministrie (“OM”)
 - Depending on the amount of disgorgement paid to Swedish authorities, Telia’s U.S. penalties will likely range between \$482.5 million (if 50% disgorgement is paid to Swedish authorities) and \$691 million (if no disgorgement is paid to Swedish authorities)
 - *SBM Offshore*: U.S. criminal penalties of \$244 million in 2017; SBM Offshore paid \$240 million to Dutch OM in 2014; and expected settlement of approx. \$280 million with Brazilian prosecutors (possibly over \$750 million in total global penalties)
 - *Keppel*: Criminal penalty of \$422 million imposed in 2017 (half of settlement allocated to Brazil while the remaining half split equally between U.S. and Singapore)



Larger Monetary Settlements

Two of the top ten largest monetary settlements in FCPA history were reached in 2017. All but two were reached after 2010.

No.	Company	Total Resolution	DOJ Component	SEC Component	Date
1	Telia*	\$965,000,000	\$548,000,000	\$417,000,000	9/21/2017
2	Siemens AG	\$800,000,000	\$450,000,000	\$350,000,000	12/15/2008
3	Alstom S.A.	\$772,290,000	\$772,290,000	--	12/22/2014
4	KBR/Halliburton	\$579,000,000	\$402,000,000	\$177,000,000	2/11/2009
5	Teva Pharmaceuticals	\$519,000,000	\$283,000,000	\$236,000,000	12/22/2016
6	Keppel*	\$422,000,000	\$422,000,000	--	12/22/2017
7	Odebrecht S.A. & Braskem S.A.	\$419,800,000	\$354,800,000	\$65,000,000	12/21/2016
8	Och-Ziff	\$412,000,000	\$213,000,000	\$199,000,000	9/29/2016
9	BAE Systems**	\$400,000,000	\$400,000,000	--	2/4/2010
10	Total S.A.	\$398,200,000	\$245,200,000	\$153,000,000	5/29/2013

*Telia and Keppel were global settlements. Accordingly, the DOJ/SEC did not keep the “total resolution” amount. In these cases, the DOJ/SEC “credited” the companies for amounts paid to foreign authorities, but the companies remained liable to the DOJ/SEC for any unpaid amounts.

**BAE pleaded guilty to non-FCPA conspiracy charges of making false statements and filing false export licenses, but the alleged false statements concerned the existence of the company’s FCPA compliance program, and the publicly reported conduct concerned alleged corrupt payments to foreign officials.



II. New DOJ Policy Initiatives

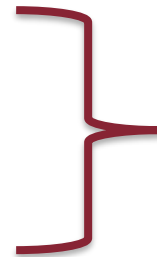
FCPA Corporate Enforcement Policy

- DOJ FCPA Pilot Program announced in April 2016 was a success in the DOJ's eyes:
 - 22 companies self-reported potential violations in the Program's first year, compared to 13 self-reports made the year prior
 - 2 declinations in 2017: *Linde North America Inc.* and *CDM Smith, Inc.*
- DOJ FCPA Pilot Program was made permanent, with minor changes, in November 2017
 - Goal: To encourage voluntary self-disclosure by being more transparent about benefits of disclosure and cooperation
- Not a game changer, but places more value on voluntary disclosure; whether that value outweighs potential costs will continue to require case-by-case evaluation

FCPA Corporate Enforcement Policy, cont'd

- Requirements:

- Voluntary self-disclosure
- Full cooperation
- Remediation and disgorgement



When satisfied, presumption of declination under the new policy

- Generally disclosure and cooperation must be timely and proactive

- Defines “declination” as:

- “a case that would have been prosecuted or criminally resolved except for the company’s voluntary disclosure, full cooperation, remediation, and payment of disgorgement, forfeiture, and/or restitution,” distinguishing a declination from cases where the government concludes it does not have sufficient evidence to bring a case

New Policy's Changes to the Pilot Program

Up to 50% off the bottom of the Sentencing Guidelines Range

- If all requirements are met
- No compliance monitor (if compliance program is effective)
- **Presumed** declination of prosecution

Up to 25% off the bottom of the Sentencing Guidelines Range

- If cooperation and remediation, but no voluntary self-disclosure

- The new policy provides for a “50%” reduction, where the Pilot Program provided for “up to” a 50% reduction in cases of voluntary disclosures
- The new policy also adds a “presumption” that DOJ will issue declinations when certain standards are met
- The new policy retains the “up to” 25% language for reductions where no voluntary disclosure occurred



FCPA Corporate Enforcement Policy in Action

- “Aggravating circumstances” exception to presumption of declination:
 - Even where a company meets the requirements under the Policy—(1) voluntary self-disclosure, (2) full cooperation, and (3) remediation and disgorgement—the existence of “aggravating circumstances” can remove the presumption
- Aggravating circumstances include:
 - Executive management involvement in misconduct
 - Significant profits gained from misconduct
 - Pervasive misconduct within organization
 - Criminal recidivism
- Aggravating circumstances do not necessarily bar companies from receiving fine reductions
- The aggravating circumstances factor creates substantial uncertainty for companies weighing the benefits of disclosure

FCPA Corporate Enforcement Policy in Action, cont'd

- Consistent with its application of the Pilot Program, DOJ is applying the Policy in cases that began prior to its November 2017 implementation:
 - November 30, 2017 DPA with SBM Offshore
 - SBM Offshore and its subsidiary engaged in 16-year bribery scheme, paying at least \$180 million in “commissions” to intermediaries around the world
 - SBM Offshore settlement announced day after release of the Policy
 - DOJ appears to have applied the Policy in reducing fine in SBM Offshore settlement
 - SBM Offshore received a 25% reduction off the bottom of the Sentencing Guidelines range for its cooperation and remediation
 - Received additional (significant) reduction, likely based on DOJ’s interest in protecting the company’s ongoing viability



Evaluating Corporate Compliance Programs in FCPA Investigations

- 2017 also saw new guidance from the DOJ regarding corporate compliance programs (“Compliance Program Guidance”)
- Many topics echo the 2012 FCPA Resource Guide and USAM, but the Compliance Program Guidance demonstrates a more nuanced focus on certain topics:
 - Instead of the often-noted “*tone at the top*” compliance factor, the guidance denotes a focus on “[*c*]onduct at the top”
 - Compliance independence, highlighting the need for compliance personnel to have unmitigated access to the Board of Directors to ensure adequate independence
 - Importance of internal auditing and control testing
 - Providing guidance and training to gatekeepers
 - Monitoring third-party arrangements



Evaluating Corporate Compliance Programs in FCPA Investigations, cont'd

- Useful checklist for companies to design, enhance, and implement strong compliance programs; at the same time, it serves as a reminder that there is no one-size-fits-all compliance model
- On the heels of its Compliance Program Guidance, the DOJ saw the departure of Hui Chen, the principal drafter of this document
- DOJ said it plans to fill Chen's position
- Remains to be seen how a new compliance counsel may further shape the DOJ's assessment of compliance programs going forward



III. Notable Lessons from 2017 FCPA Enforcement Actions



Overview

- Corporate FCPA repeat offenders
- Focus on individuals
- Increased cross-border cooperation and enforcement
- Emphasis on employee discipline/termination
- Evolving sophistication of bribery schemes
- Continued rise of criminal internal controls charges
- Rise of the external monitor

Corporate FCPA Repeat Offenders

- Three 2017 corporate resolutions involved repeat offenders:
 - **Zimmer Biomet** (Jan. 12, 2017)
 - “Knowingly and willfully” continued to interact with a distributor “known to have paid bribes to government officials on Biomet’s behalf,” despite 2012 DPA requirements
 - Self-reported the repeat offense
 - DOJ filed a superseding information in connection with 2017 DPA
 - \$30 million to settle parallel SEC and DOJ proceedings
 - **Orthofix** (Jan. 18, 2017)
 - Despite DOJ and SEC enforcement actions against Orthofix in 2012, company failed to implement and maintain sufficient internal controls to detect and prevent improper payments subsequently made to doctors in state-owned hospitals in Brazil
 - Self-reported the repeat offense and admitted wrongdoing
 - Paid \$14 million to the SEC to settle accounting violations and FCPA charges (DOJ took no action)
 - **Halliburton** (July 27, 2017)
 - Halliburton settled charges with the SEC in connection with improper payments made to secure contracts in Angola
 - Previously, in 2009, Halliburton settled with the DOJ and SEC in connection with a long-running bribery scheme involving improper payments to Nigerian officials to win contracts
 - \$29.2 million in penalties and independent compliance consultant for 18 months (DOJ took no action)



Corporate FCPA Repeat Offenders, cont'd

- Zimmer Biomet and Orthofix were under existing DPA reporting obligations when their repeat offense occurred
- DOJ brought superseding information in Zimmer Biomet and took no action in Orthofix
- Criminal recidivism will be considered an “aggravating circumstance” under the new FCPA Corporate Enforcement Policy
- Government action against recidivists tends to emphasize their failure to devise, implement, and/or maintain sufficient internal controls despite prior charges
- A company’s repeat-offender status can increase the criminal penalty amount owed

Focus on Individuals

- DOJ prioritized holding individuals accountable in *Yates Memorandum* (Sept. 9, 2015 and not rescinded):
 - Company must provide DOJ with “all relevant facts” relating to individual misconduct to be eligible for cooperation credit
- Significant activity against individuals in 2017:
 - DOJ announced convictions or guilty pleas by more individuals in FCPA-related cases than in any previous year





Representative DOJ Actions Against Individuals in 2017

Rolls-Royce

- Five individuals charged in connection with bribes paid to a state-owned oil and gas joint venture
- Four individuals pleaded guilty; one is a fugitive

SBM Offshore

- Two former executives pleaded guilty in connection with bribes paid to a Brazilian state-owned oil company and a kickback scheme

Embraer

- Former executive at Brazilian aircraft manufacturer pleaded guilty to misconduct in negotiations between Embraer and Saudi Arabia's national oil company

Keppel

- Former senior lawyer pleaded guilty and admitted to drafting and executing contracts to conceal bribery payments at a Brazilian state-owned oil company

Ng Lap Seng et al.

- Ng Lap Seng was convicted in connection with bribes paid to U.N. ambassadors—first successful DOJ FCPA trial since 2011
- Four additional individuals pleaded guilty—one sentenced to 20 months in prison, others awaiting sentencing

SEC Individual Charges in 2017

Och-Ziff

- Amended complaint filed against two former Och-Ziff employees in connection with their alleged involvement in numerous instances of bribery connected with Och-Ziff's investment in many African countries
- Litigation is ongoing

Halliburton

- SEC found that former Halliburton VP caused company violations of the FCPA's books and records and internal controls provisions, circumvented internal accounting controls, and falsified the company's books and records
- Fined \$75,000

Magyar Telekom

- Three former executives settled with the SEC in connection with bribes paid to Macedonian and Montenegrin authorities to secure competitive regulatory advantages in those markets
- Penalties included fines and officer/director bars

Non-U.S. Companies Targeted in 2017

- 4 of the 6 DOJ and 3 of the 7 SEC FCPA corporate enforcement actions in 2017 involved non-U.S. parent companies
 - DOJ: *Telia* (Sweden), *SBM Offshore* (Netherlands), *Keppel* (Singapore), *Sociedad Quimica y Minera de Chile* (“SQMC”) (Chile)
 - SEC: *Telia* (Sweden), *SQMC* (Chile), *Orthofix International N.V.* (Curacao-incorporated, headquartered in Texas)
- Consistent with the Trump administration’s rhetoric of leveling the playing field for U.S. companies
- Time will tell whether this is a lasting, intentional priority for the current administration

Cross-Border Cooperation and Enforcement

- Cooperation and information-sharing among governments continued through 2017, strengthening anti-corruption laws and enforcement efforts outside the U.S.
- DOJ and SEC officials made various public statements regarding importance of foreign partnerships
- Increasing trend of global settlements
 - In large joint resolutions with foreign prosecutors, DOJ credited penalties paid to foreign authorities in calculation of the company's U.S. fine
- Increased interaction and discourse between U.S. and foreign prosecutors





Resolution: *Rolls-Royce* (2017)

- In January 2017, U.K.-based power system manufacturer and distributor Rolls-Royce agreed to pay the U.S. nearly \$170 million as part of an \$800 million global resolution of investigations by DOJ, the U.K. Serious Fraud Office (“SFO”), and Brazilian authorities for a long-running scheme to bribe government officials for contracts (~\$600 million went to U.K.)
- Rolls-Royce signed a DPA with the DOJ, admitting to misconduct in Thailand, Brazil, Kazakhstan, Azerbaijan, Angola and Iraq
 - Rolls-Royce did not disclose conduct even after media reports of corruption, but received a 25% reduction in fine because of its cooperation and remedial measures
- The U.K. resolution covered conduct in China, India, Indonesia, Malaysia, Nigeria, and Russia



Rolls-Royce



Resolution: *Telia* (2017)



- In September 2017, Telia entered into a DPA with the DOJ relating to one count of conspiracy to violate the FCPA's anti-bribery provisions and settled cease-and-desist proceedings with the SEC relating to alleged violations of the FCPA's anti-bribery and accounting provisions; its Uzbek subsidiary pleaded guilty
 - From 2007 to 2012, Telia paid approximately \$331 million in bribes to an Uzbek government official to enter the mobile telecom market in Uzbekistan
 - Telia's total gain from the scheme is estimated in the DPA to be approximately \$457 million
- Including credits for penalties and disgorgement paid to Dutch and Swedish authorities, Telia's global resolution totaled a record-breaking \$965 million (U.S. penalties likely to range between \$482.5 million to \$691 million)

Resolution: *SBM Offshore* (2017)

- In November 2017, DOJ entered into a DPA with SBM Offshore, a Dutch manufacturer of offshore oil and gas drilling equipment; its U.S. subsidiary pleaded guilty
 - SBM Offshore and its Houston-based subsidiary engaged in a 16-year bribery scheme involving payments of at least \$180 million to foreign officials to win oil and gas-related contracts
 - The total amount of estimated gain to SBM Offshore from the scheme was \$2.8 billion
- To date, SBM Offshore has paid approximately \$478 million (including \$240 million to Dutch OM in 2014) and can reasonably be expected to pay over \$750 million in total global settlements
- DOJ extended SBM Offshore a dramatically discounted penalty (over 80% off the bottom of the U.S. Sentencing Guidelines)
 - The DPA and associated press release indicate that the DOJ took into consideration “SBM’s inability to pay a fine” and sought to “avoid substantially jeopardizing [SMB’s] continued viability”



Resolution: *Keppel* (2017)

- In December 2017, DOJ entered into a DPA with Keppel, a Singapore-based shipyard and vessel repair company, to resolve charges brought by authorities in the U.S., Brazil, and Singapore for Keppel's role in a decade-long bribery scheme involving officials in Brazil; U.S. subsidiary pleaded guilty
 - \$55 million in bribes paid to officials at Petrobras, as well as the then-governing political party in Brazil, in order to secure thirteen contracts with Petrobras and another Brazilian entity
- Total criminal penalty of over \$422 million
 - Half of total settlement was allocated to Brazil
 - Remaining half split between the U.S. and Singapore
- The DOJ's first coordinated FCPA resolution with Singapore

Emphasis on Employee Discipline/Termination

- Increased focus on employee discipline by both companies and government agencies
- Companies credited for significant disciplinary actions:
 - **Telia**: Credited for terminating all individuals involved in the misconduct, as well as their supervisors (including senior executives and Board members)
 - **Las Vegas Sands**: Fully remediated by no longer employing the individuals, including senior executives, implicated in the misconduct
 - **SQMC**: Fired the CEO who had misused his discretionary fund, and disciplined other employees involved in or aware of the improper payments
 - **Rolls-Royce**: Terminated business relationships with employees and intermediaries implicated in the corrupt scheme
- Trend raises difficult issues for companies, placing substantial pressure to show that “heads have rolled” in order to receive substantial remediation credit



Evolving Sophistication of Bribery Schemes

- Recent enforcement cases indicate that bribery schemes continue to evolve and become more sophisticated
 - **Halliburton** (July 27, 2017)
 - Halliburton’s former VP intentionally bypassed internal accounting controls to direct two procurement contracts to a local Angolan company
 - Owner of the local Angolan company was a friend and neighbor of the official who would ultimately approve the contract award to Halliburton
 - Halliburton’s controls required that the supplier-qualification process begin with an assessment of the necessary materials/services, not with a particular supplier
 - Yet, Halliburton’s former VP “started with a particular supplier and then backed into a list of services it could provide”

Evolving Sophistication of Bribery Schemes, cont'd

- ***Colin Steven, Former Embraer VP*** (Dec. 21, 2017)
 - Steven admitted to misconduct in connection with negotiations between Embraer and Saudi Arabia's national oil company over an aircraft sale
 - During contract negotiations, Steven and a Saudi official agreed that the Saudi company would award a contract to Embraer for new, instead of used, aircraft, and that Embraer would pay ~\$1.5 million in bribes in return
 - Steven also admitted to:
 - Disguising the bribes as commissions to a separate company
 - Receiving part of the bribes as a kickback
 - Lying to law enforcement about the kickback

Criminal Internal Controls Charges

- Difficult burden of proving beyond a reasonable doubt that an issuer *knowingly* failed to devise or maintain an adequate system of internal controls
- 2017 saw continued use of criminal FCPA internal controls allegations
- Notably, SEC and DOJ took action against two companies for violations of internal controls provision—*absent* any evidence of bribery—on the mere ground that the companies’ insufficient internal controls created a heightened risk of misconduct:
 - Cadbury Limited and Mondelez International, Inc.
 - Las Vegas Sands





External Monitors

- DOJ's Pilot Program precipitated sharp uptick in imposition of monitors, a trend continuing through 2017
 - 6 out of 13 DOJ and SEC resolutions with companies resulted in imposition of monitor or consultant:
 - SQMC (DOJ/SEC): 2 years
 - *Zimmer Biomet* (DOJ/SEC): 3 years
 - *Orthofix* (SEC): 1 year
 - *Halliburton* (SEC): 18 months
- } Repeat Offenders
- Per FCPA Corporate Enforcement Policy, DOJ will generally not impose monitor on a non-recidivist company that has met the self-disclosure, cooperation, and remediation requirements, *even if* there are “aggravating circumstances”
 - Encouragement to companies to timely self-disclose, cooperate, and remediate



IV. Recent Legal Developments

Disgorgement

- On June 5, 2017, the Supreme Court unanimously ruled in *Kokesh v. SEC* that disgorgement in SEC enforcement actions is subject to the five-year statute of limitations set forth in 28 U.S.C. § 2462
 - 28 U.S.C. § 2462 generally bars suit to enforce “any civil fine, penalty, or forfeiture” five years after the claim accrues
- The Court reasoned that because disgorgement in SEC cases operates as punishment for violations of public laws rather than compensation for private wrongs, the disgorgement sanction in SEC enforcement actions “bears all the hallmarks of a penalty”
- SEC already feeling pressure to conduct investigations and bring actions more quickly
- Will DOJ’s use of disgorgement change? TBD



Jurisdiction Over Foreign Nationals

- ***United States v. Hoskins*** (D. Conn. Mar. 16, 2016)
 - DOJ charged Hoskins, a British national, with conspiring to participate in a bribery scheme involving a \$118 million project to build power stations for Indonesia’s state electricity company
 - District court below held that “a non-resident foreign national could not be subject to criminal liability under the FCPA pursuant to accomplice theories of liability . . . where he is not acting as an agent of a domestic concern or does not act while physically present in the United States”
 - The Second Circuit has heard oral arguments; no decision has yet been released
 - Answer may come down to legislative intent behind the FCPA
 - Case could have significant ramifications on the scope of foreign nationals’ liability under the FCPA



Territorial Reach of the FCPA

- ***United States v. Firtash*** (N. D. Ill. June 20, 2013)
 - In June 2013, a grand jury indicted Firtash for conspiracy to violate the FCPA, and other charges, for allegedly authorizing at least \$18.5 million in bribes to Indian government officials to secure licenses to mine materials
 - Case has been under scrutiny for attenuated ties between the U.S. and the foreign nationals charged
 - The only alleged connection between Firtash and the U.S. were: (1) two co-conspirators' travel to the U.S.; (2) one co-conspirator alleged to be a domestic concern; and (3) the transmission of funds through the U.S.
 - Oral argument on motion to dismiss (improper venue, lack of jurisdiction based on the FCPA and RICO statutes, and violation of Firtash's due process rights) was heard in September 2017
 - Firtash unlikely to face extradition in immediate future



Second Circuit Ruling on DPAs

- ***United States v. HSBC Bank USA, N.A.*** (2d Cir. July 12, 2017)
 - Defendant companies and DOJ agreed to five-year DPA under which HSBC retained independent compliance monitor
 - District court granted waiver of Speedy Trial Act but conditioned its approval on the court’s monitoring of the DPA’s implementation
 - In April 2015, government filed independent compliance monitor’s first annual report under seal
 - In 2016, an individual moved to unseal the monitor’s report, and the court granted the motion, referring to the report as a “judicial record,” which carries with it a right of public access
 - Second Circuit overturned the district court
 - Courts do not have “freestanding supervisory power to monitor the implementation of a DPA”
 - Existence of Speedy Trial Act does not give district courts right to proactively monitor implementation of a DPA



V. Key International Anti-Corruption Developments

International Anti-Corruption Efforts

- Brazil
- Mexico
- Argentina
- United Kingdom
- China
- Canada
- World Bank



Brazil

- Robust anti-corruption enforcement efforts by Brazil in 2017, including coordinated settlements with U.S. and other authorities (*Rolls-Royce, SBM Offshore, Keppel*)
- Investigations by Brazilian authorities into corruption at Petrobras and its related company, Odebrecht, collectively known as “Operação Lava Jato” or “Operation Car Wash” continued in 2017
 - Operation Car Wash is now in its fourth year and expanded significantly in scope
 - In April 2017, the Operation Car Wash prosecutors opened new investigations into dozens of politicians from both the Workers Party and others; among them eight members of the President’s cabinet
 - Brazil’s former president Luis Inácio Lula da Silva was sentenced to nine and a half years in prison
 - Obstruction of justice charges brought against current President Michel Temer; Congressional members voted against him having to stand trial



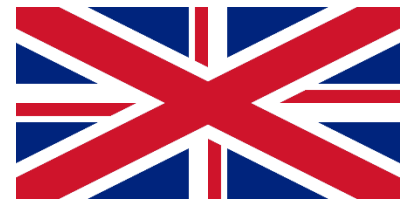
Mexico

- Sweeping reforms of anti-corruption laws in recent years, including, in May 2014, the creation of National Anti-Corruption System (“SNA”)
 - Coordinates Mexican federal, state, and local authorities in combatting corruption; ***legislation implementing the SNA came into effect in 2017***
 - New laws established framework for anti-corruption efforts, created a new federal tribunal, and established an independent prosecutor’s office
 - Evaluating the SNA’s effectiveness in practice is not yet possible
- SNA undertook first case involving corruption in the construction of the Cuernavaca-Acapulco highway, where a sinkhole killed 2 people
 - Audit reportedly uncovered \$15 million in unjustified payments and services
- Brazil’s Operation Car Wash has reached Mexico and individuals close to Mexico’s current president Enrique Peña Nieto
 - Media reports that \$1.5 million in bribes from Odebrecht’s sub, Braskem, was deposited into the account of company linked to Emilio Lozoya, former Pemex president; additional allegations of at least \$10 million in bribes; Lozoya denies



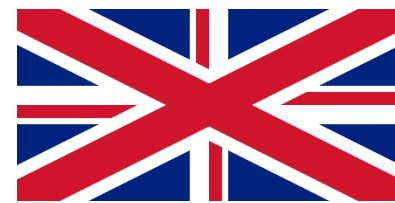
Argentina

- Legislative Developments: In November 2017, Argentina's Congress passed the Corporate Liability Bill, a law that for the first time permits companies, not just individuals, to be held accountable for bribery both inside and outside of Argentina; law will take effect on February 8, 2018
 - Companies may be prosecuted for bribery on their behalf in Argentina, and, in the case of Argentine companies, for bribery committed abroad
 - Consequences: fines up to five times the quantity fraudulently acquired; blacklisting from public contracts for up to 10 years; prohibition on participating in public bids if no anti-bribery compliance program in place
 - Companies may negotiate leniency agreements in exchange for providing relevant information to prosecutors
- Investigative Developments: In March 2017, an Argentine judge ordered Argentina's former president, Cristina Fernandez de Kirchner, to stand trial for defrauding the government of approx. \$3.5 billion
 - Fourteen other officials also ordered to stand trial; two former ministers arrested



United Kingdom

- In 2017, the U.K. SFO secured two additional DPAs, commenced 14 new investigations, and saw several corporate and individual defendants charged and awaiting trials
 - DPAs with Rolls-Royce and Tesco Stores; both DPAs were significantly larger in financial terms than either of their predecessors
- In 2016, the U.K. SFO announced an investigation into alleged bribery, corruption, and money-laundering activities at Monaco-based firm Unaoil
 - Wider investigation is ongoing, but 2017 saw four individuals charged and one individual subject to an extradition request in connection with conspiracy to make corrupt payments to secure contracts in Iraq
 - Related investigations into KBR, Inc.'s U.K. subsidiaries and Petrofac
- In September 2017, the U.K. SFO announced it had secured six individual convictions and one corporate conviction in its case against logistics and freight operations company F.H. Bertling Ltd.

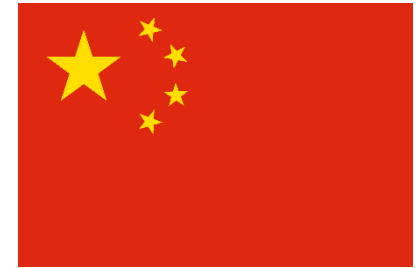


United Kingdom, cont'd

- Activity to continue in 2018 with two trials scheduled in U.K. SFO's long-running investigation into alleged corruption at Alstom subsidiaries and a healthy roster of other active matters
- Future of U.K. SFO is no longer under threat, as government plans to incorporate the U.K. SFO into the National Crime Agency ("NCA") were dropped in September 2017
 - However, the exact role of the planned National Economic Crime Centre ("NECC")—which will sit within the NCA and be tasked with tackling high-level fraud and money laundering, and its interaction with the U.K. SFO and other agencies—is not yet clear
 - Current U.K. SFO Director, David Green, is "confident" that NECC will not impinge on the U.K. SFO's independence, but NECC will have powers to task U.K. SFO with investigations; government also began to advertise for Green's replacement
- In light of U.K. SFO's proactive attitude in recent months, it seems likely that many companies under investigation will try to demonstrate the "extraordinary co-operation" required to secure a DPA



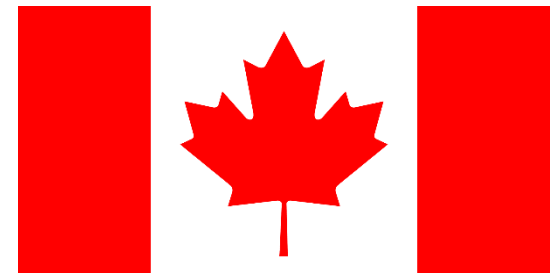
China



- Legislative Developments:
 - In November 2017, the Standing Committee of the National People’s Congress passed an amendment to the Anti-Unfair Competition Law which provides more clarity on the scope of commercial bribery and substantially increases penalties for this offense
- Enforcement Efforts:
 - Next phase of anti-corruption campaign to root out corruption in China launched in 2017
 - In the past five years, 1.55 million cases involving corruption were filed, with 1.54 million people disciplined; criminal charges brought against 58,000 individuals
 - China’s top anti-corruption agency brought 383,000 cases in 2017
 - International manhunt “Sky Net,” a campaign by the Chinese government to prosecute corruption suspects and repatriate money procured through illegal means, continued in 2017
 - Corruption investigations of several government officials continued



Canada



■ Legislative Developments:

- In September 2017, the Canadian government launched a public consultation to seek input on whether to institute a DPA scheme in Canada; consultation period closed and government considering proposed legislation in light of comments received
- In October, the Canadian government announced that it was repealing the facilitation payments exception under the Canadian Corruption of Foreign Public Officials Act (“CFPOA”)

■ Enforcement of the CFPOA (mixed record):

- In February 2017, three individuals were acquitted by the Ontario Superior Court in the SNC-Lavalin case, more than four years after they were charged with CFPOA violations in connection with the Padma Bridge project in Bangladesh
- In July, the Court of Appeal for Ontario upheld the 2013 conviction of Nazir Karigar, the first individual prosecuted under the CFPOA



World Bank



- Leadership Changes:
 - Longtime Vice President for Integrity stepped down
 - Pascale Helene Dubois took over the position
- FY2017 Negotiated Resolution Agreements (“NRAs”) and Debarments:
 - 26 NRAs with 29 respondents
 - 58 entities and individuals debarred (debarments ranging from periods as short as five months to as long as 14 years)
 - Research shows that the World Bank tends to reward companies that settle with shorter debarments
- New Inquiries:
 - Opened 179 “preliminary inquiries” and selected 51 for full investigations which cover 55 different projects in 33 countries



VI. Predictions for 2018



Predictions for 2018

- FCPA enforcement will remain a priority
- Many trends pre-dating the Trump administration continued to play out in 2017 and will likely extend into 2018
 - Continued focus on individual accountability in conjunction with pursuing large corporate fines from both U.S. and non-U.S. companies, often in coordination with foreign authorities
 - Continued emphasis on self-reporting and cooperation through more frequent use of DOJ declinations
- SEC movement away from “broken windows” policy and greater clarity from SEC on reasons for cooperation credit



Predictions for 2018, cont'd

- Continued focus on oil and gas business and financial services industry
 - Approximately 27 open and disclosed global anti-corruption investigations of companies in the oil and gas sector
 - SEC's Charles Cain previously stated that the SEC will "likely" bring more FCPA cases in the financial services sectors
- Continued geographic focus on Latin America and China

Latin America:

- 8 of the estimated 34 newly opened and disclosed global anti-corruption investigations involve Brazil (over 23% of total)



China:

- 4 of the estimated 34 involve conduct in China (almost 12% of total open investigations)





Questions?

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