Robust Action Dominates Global Government Enforcement Landscape

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In the global criminal and regulatory enforcement arena, robust enforcement actions against multinational companies are likely to continue worldwide in 2015. In North and South America, Europe and Asia, with criminal investigations and prosecutions across multiple areas, regulators are working together to comprehensively target alleged misconduct of global corporations and financial institutions.

In addition to U.S. enforcement activity, authorities outside the United States have increasingly pursued significant, complex international investigations of their own, a trend we expect to continue in 2015. Corruption investigations and enforcement have been particularly active areas in 2014 in the United Kingdom, Germany, France, China and Brazil, as have antitrust and fraud actions. This same active enforcement environment has pushed important governance and criminal law issues to litigation in Europe, testing the boundaries of board of director duties in Germany and double-jeopardy protections in France. These legal questions are expected to be addressed further in 2015.

United States: International Cooperation, Anti-Corruption and Tax Remain Key Issues for Enforcement Authorities

U.S. authorities continue to aggressively pursue cross-border investigations and to scrutinize closely the compliance programs of multinational corporations. Investigative activity by U.S. authorities in 2014 was particularly intense in the areas of market abuse, corrupt practices and bribery, and tax fraud, and that activity is anticipated to extend into 2015, perhaps with an even broader geographical reach. However, aggressive enforcement by U.S. and international regulators also led to tensions regarding employee rights, regulatory competition and double-jeopardy concerns, and conflicts between U.S. expectations and non-U.S. privacy and data protection rights. These concerns will continue in 2015.

Market Abuse Investigations Illustrate Challenges of International Cooperation

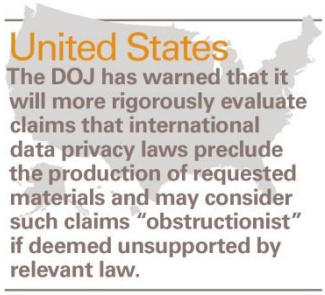
In November 2014, the U.S. Commodities Futures Trading Commission (CFTC), U.S. Office of the Comptroller of the Currency (OCC), U.K. Financial Conduct Authority (FCA) and Swiss Financial Market Supervisory Authority (FINMA) announced coordinated settlements with five international financial institutions in relation to alleged efforts by foreign exchange traders to manipulate the benchmark currency exchange rates. Like the LIBOR investigations before it, which resulted in nearly $6.5 billion in fines, the foreign exchange (FOREX) market settlements have resulted in $3.3 billion in fines. Notably, neither the U.S. Department of Justice (DOJ) nor the New York Department of Financial Services (DFS) was part of this round of settlements, reflecting the difficulties that entities face in achieving global peace in a multijurisdictional investigation. Indeed, according to public reports, one financial institution withdrew from the November 2014 settlement in an effort to achieve a global and more coordinated settlement at a later time.

The LIBOR and FOREX investigations also have illustrated the tensions that arise when multiple regulators pursue the same individuals. In the LIBOR investigations, for example, the DOJ has charged four U.K. bankers with violations of U.S. law (one of whom has pleaded

guilty) while these same individuals are subject to investigation by the U.K. Serious Fraud Office (SFO). In the FOREX investigations, numerous individuals reportedly have been targeted by multiple regulators, complicating the efforts of any one regulator to secure cooperation or testimony from individual bankers.

US Authorities Continue to Focus on Anti-Corruption Investigations

U.S. authorities are actively enforcing the U.S. Foreign Corrupt Practices Act (FCPA) — often resulting in significant settlements with the entity being investigated. In 2014, the DOJ and Securities and Exchange Commission (SEC) resolved several long-running FCPA investigations with significant settlements, including with Alstom S.A. ($772 million), Alcoa Inc. ($384 million), Avon Corporation ($135 million), Hewlett-Packard Co. ($108 million) and Marubeni Corp. ($88 million). The Alstom settlement is the largest criminal penalty to date in an FCPA matter.



The SEC and DOJ have used the 2014 investigations and settlements to emphasize the importance of corporate voluntary disclosures and unfettered cooperation in investigations. In speeches last year concerning FCPA investigations, Marshall Miller and Leslie Caldwell, principal deputy attorney general and assistant attorney general and chief of the DOJ's Criminal Division, respectively, warned that as a result of the DOJ's deepening international relationships and increasing sophistication in analyzing non-U.S. law, the DOJ will more rigorously evaluate claims that international data privacy laws preclude the production of materials requested by the DOJ and may consider such claims "obstructionist" if deemed unsupported by relevant law. In resolving the Marubeni investigation, the DOJ noted "Marubeni's decision not to cooperate with the department's investigation when given the opportunity to do so, its lack of an effective compliance and ethics program at the time of the offense, its failure to properly remediate and the lack of its voluntary disclosure of the conduct." In the Alstom settlement, the DOJ noted (among other factors related to the resolution and fine), "Alstom's failure to voluntarily disclose the misconduct even though it was aware of related misconduct at a U.S. subsidiary that previously resolved corruption charges with the department in connection with a power project in Italy [and] Alstom's refusal to fully cooperate with the department's investigation for several years."

Nevertheless, voluntary disclosures and full cooperation and disclosures do not guarantee minimal penalties. In settling FCPA investigations with the DOJ and SEC, Bio-Rad Laboratories agreed to disgorgement and penalties totaling $55 million despite having voluntarily disclosed compliance concerns to the government and cooperating fully with their investigations. Similarly, the DOJ and SEC credited Avon's cooperation in their investigations but still obtained $135 million in disgorgement and penalties.

Cross-Border Tax Resolutions Gain Additional Momentum

Non-U.S. banks and financial advisors suspected of aiding U.S. taxpayers in evading their tax obligations by opening and maintaining undeclared accounts overseas continue to face investigation and prosecution from U.S. authorities. (See also "Latest Swiss Cross-Border Tax Investigation Reflects Wider US Enforcement Agenda" (June 26, 2014).)

In May 2014, Credit Suisse AG pleaded guilty to conspiracy to aid and assist U.S. taxpayers in filing false income tax returns and other documents with the Internal Revenue Service (IRS). Credit Suisse AG also agreed to pay $2.6 billion in fines in connection with the plea. The prosecution of Credit Suisse arose from a long-running investigation resulting in indictments of eight of its executives since 2011, two of whom have pleaded guilty.

In December 2014, Bank Leumi Group entered into a two-year deferred prosecution agreement with the DOJ in relation to allegations that the bank conspired with U.S. taxpayers to prepare and present false tax returns to the IRS by assisting taxpayers in shielding income and assets in offshore bank accounts. Bank Leumi Group entities agreed to pay a total of $270 million to the DOJ. In a simultaneous and related settlement, Bank Leumi agreed to fines of $130 million imposed by DFS in relation to conduct by Bank Leumi USA and regarding Bank Leumi clients in New York state. In addition to the DFS fine, Bank Leumi agreed to an independent monitor, selected by DFS, to review the bank's compliance programs, policies and procedures.

Additionally, approximately 80-100 Swiss banks reportedly are still participating in the voluntary disclosure program, which began in 2013, that allows Swiss banks that may have committed a tax- or monetary-related offense under U.S. law to obtain a nonprosecution agreement (NPA). Banks participating in the program must pay a substantial fine and disclose a significant amount of information about U.S. accountholders, which has included details that will help in drafting requests to Swiss authorities for information related to undisclosed accounts.

The DOJ's investigation and resolution of tax matters will continue to be significant in 2015. Several financial institutions remain targets of DOJ investigation, and settlements are likely to be reached that are consistent with the Credit Suisse and Bank Leumi matters. In addition, the U.S.-Swiss Amnesty Program can be expected to result in numerous nonprosecution agreements with banks that are participating in the program. Finally, the DOJ has used its investigations and the program to gather information on U.S. taxpayers as well as individuals and entities that have assisted taxpayers in maintaining funds abroad, and the DOJ and IRS are likely to use such information to pursue additional investigations in 2015.

United Kingdom: The SFO Focuses on Corporate Fraud and Corruption

Once the subject of speculation regarding its possible consolidation with other agencies, the Serious Fraud Office (SFO) had an exceedingly busy 2014, with all signs suggesting that it will continue its aggressive enforcement in 2015.

U.K. criminal enforcement investigations and enforcement actions in 2014 were typified by significant corporate fraud and corruption cases across numerous sectors, including financial services, transport, mining, energy, pharma, retail, aerospace and defense.

Financial Crisis-Related Actions

Post-financial crisis enforcement proceedings continue to dominate the investigations landscape. The SFO and the Financial Conduct Authority (FCA) brought several new criminal and regulatory enforcement proceedings against global banks and financial services firms in 2014, including the FCA's involvement in the November 2014 FOREX settlements with six international banks. To date, the SFO has brought criminal charges in the LIBOR investigation against 13 individuals. One defendant reportedly has pleaded guilty but has not been named. The first trial has been scheduled for May 2015 and will undoubtedly be followed by more trials regarding rate-setting.

New Fraud and Corruption Actions

The SFO also has opened a number of new and significant fraud and corruption matters. U.K. government procurement remained in the spotlight over public services contracts involving Serco Group plc and G4S plc, which fraudulently overcharged for providing prisoner electronic tagging services to the Home Office. Suspected revenue recognition and accounting irregularities investigated by the SFO at Autonomy and Gyrus (a subsidiary of Olympus plc) have been followed by similar allegations against Tesco Plc, including charges of overstating its profits.

In addition to opening significant corruption investigations against Eurasian Natural Resources Corp. plc (ENRC) and Rolls Royce, this past summer the SFO concluded the long-running prosecution of Innospec Ltd, with corruption convictions of two former CEOs and two other directors for bribing Indonesian public officials to maintain or increase sales of a lead-based petroleum product. The conviction and jailing of three of the four Innospec executives followed a $40 million settlement of the case brought by SFO in partnership with the DOJ, SEC and OFAC. Finally, the SFO opened an investigation of GlaxoSmithKline (GSK), following investigations by Chinese authorities, further reflecting the multijurisdictional trends in corporate corruption investigations.

Changes to the UK Criminal Justice System

The trend of internationalization of U.S. investigation and settlement techniques was confirmed with the introduction of deferred prosecution agreements (DPAs) in the U.K. in February 2014. Under a U.K. DPA, a company that admits certain economic and financial offenses, cooperates with the authorities and commits to significant remediation will be able to avoid prosecution if it complies with set conditions that include the payment of financial penalties. Notably, this disposition was available but rejected by the SFO in the long-running and heavily contested Alstom matter — in July 2014, the SFO charged the U.K. subsidiary of Alstom with corruption in the transport sector in India, Poland and Tunisia that allegedly

occurred between 2000 and 2006. The lack of a DPA is an aggressive approach adopted against Alstom and suggests that the SFO will only offer DPAs to companies in selective circumstances.

United Kingdom

The internationalization of U.S. investigation and settlement techniques included the introduction of DPAs in the U.K. in 2014, but at least one case suggests that the SFO will only offer DPAs to companies in selective circumstances.

In another potentially significant 2014 development, the U.K. Sentencing Council announced significant reforms of sentencing principles to be applied in serious economic crime cases. The Sentencing Council clarified the central factors for criminal sentencing for fraud, money laundering and corruption offenses. Focusing on harm and culpability, the reform brings U.K. sentencing principles recognizably closer to the structured approach set forth in the U.S. Federal Sentencing Guidelines. As a result, companies facing enforcement proceedings in the U.K. in 2015 and beyond can expect a more certain enforcement terrain for contested trials and settlements.

Reforms of the U.K. justice system also have been consolidated by the introduction of new criminal offenses. In the wake of the banking crisis, the U.K. has criminalized negligent banking and the manipulation of benchmarks such as LIBOR. In addition, the SFO and other interested parties have advocated for the criminalization of inadequate or negligent supervision of companies committing fraud.

Outlook for 2015

Over the past year, enforcement proceedings have become easier to bring in the United Kingdom. On December 5, 2014, the SFO announced the convictions of two individuals in an investment fraud case in which Bribery Act offenses were brought. Undoubtedly, it will not be long before the agency brings its first significant Bribery Act enforcement proceeding against a company.

Despite reported comments by the U.K. home secretary that she may restructure the SFO or merge it with other U.K. enforcement agencies, the SFO remains active in several significant, complex and internationalized cases of national and international importance. With the U.K. chancellor's recent pronouncement following the FOREX bank settlements that he would write a "blank cheque" to finance the SFO's FOREX enforcement proceedings against bank traders and executives, it seems that the agency's short-term future is assured and that it will continue to investigate and bring significant enforcement proceedings in the foreseeable future.

Germany: High-Profile Enforcement Actions and Increased Cartel Prosecution Dominate Enforcement Landscape

Several high-profile corporate criminal investigations and prosecutions in Germany have led to the scrutiny of directors and officers for failure of controls and supervision. Several recent notable German enforcement actions against directors and officers under both private and

criminal law demonstrate the challenges members of boards of directors face under German corporate law and highlight the potential need to change director's liability rules. In addition, the German Federal Cartel Office (Bundeskartellamt) has significantly stepped up its efforts in cartel prosecution, culminating in the imposition of cartel fines exceeding €1 billion in 2014, an all-time high in Germany, putting companies, boards, and their directors and officers on high alert for increased scrutiny in these areas in 2015.

Actions Against Directors and Officers: Civil Law

Unlike U.S. corporate law, German corporate law provides for a two-tier board system, comprising a management board (Vorstand) and a supervisory board (Aufsichtsrat). The management board is directly responsible for day-to-day management and represents the company in and out of court. The supervisory board oversees the management board and represents the company in claims against members of the management board.

In December 2013, the Regional Court (Landgericht) Munich ordered Heinz-Joachim Neubürger, former CFO of Siemens AG, to pay €15 million in damages for failing to implement and monitor an appropriate compliance system for identifying and stopping corruption within Siemens. Even though the decision was appealed and the parties have settled, the judgment has been scrutinized closely by the legal community, as it addressed the important question of which requirements a compliance system must fulfill. The court stated that each member of the managing board had the duty to set up an effective compliance system that prevented and uncovered compliance violations and enabled the company to address them. The court ruled that the managing board also must monitor the effectiveness of the compliance system and, if need be, make necessary adjustments.

The Neubürger decision has fueled a discussion regarding the need to change the (rather strict) German director's liability rules. For example, German company law provides for joint and several liability of board members for full damages, even in cases of mere negligence, including some circumstances in which the alleged failure does not fall within the area of responsibility of the sued board member. Another much-debated rule is the burden of proof for diligent behavior, which lies with the board member, not the company.

Actions Against Directors and Officers: Criminal Law

In criminal law, three ongoing cases are likely to have a significant impact in the coming year:

Three current and former CEOs of Deutsche Bank AG (Rolf Breuer, Joseph Ackermann and Jürgen Fitschen) and other bank officers have been indicted for allegedly attempting to defraud the court in the civil litigation proceedings between the late Leo Kirch and Deutsche Bank. Kirch, a Munich-based film mogul, raised claims for damages against Deutsche Bank following a 2002 Bloomberg interview by Breuer that allegedly led to the collapse of Kirch's film empire. Although the parties settled the civil litigation in early 2014, the dispute continues to command attention because Deutsche Bank and the law firms of Hengeler Mueller and Gleiss Lutz were raided by the prosecution, which is investigating whether the firms' partners illicitly exerted influence on witnesses (as opposed to legally preparing them

for trial). If the investigation leads to legal action against the law firms, it would likely have a substantial impact on how attorneys prepare witnesses. The Regional Court Munich's decision on whether to try the current and former Deutsche Bank CEOs is expected in early 2015.

Five years after the near-collapse and nationalization of Hypo Real Estate (HRE), which led to the largest bank rescue in German history, former management board Chairman Georg Funke and other HRE officers face criminal charges. Funke is accused of falsely representing HRE's financial position in financial statements in 2007 and 2008. The decision as to whether to proceed with a trial currently rests with the Regional Court Munich.

In November 2014, Thomas Middelhoff, the former CEO of Arcandor AG, was sentenced to three years in prison for embezzlement and tax evasion in connection with the company′s insolvency. The judgment has not become final yet. Both the HRE and Arcandor situations demonstrate the increased risk of criminal prosecution that board members now face.

Antitrust Enforcement

This past year marked the first time that the German Federal Cartel Office (FCO) imposed cartel fines exceeding €1 billion. (See "Insights Conversations: Cartels.") The key reasons for the record year include an expansion of the FCO's staff, newly effective key witness programs and so-called "leniency" programs. Dating back to 2000, the FCO has utilized leniency programs, granting immunity from or a reduction of fines to cartel participants whose cooperation contributes to uncovering a cartel. Almost 50 percent of cartels that have been found in that time were uncovered because of such leniency programs.

In addition, private "follow-on" claims for damages suffered from cartel law violations complement the increasing public antitrust enforcement activity. The effectiveness of private damages actions has been strengthened through legislative action in recent years, which has established Germany as a "claimant-friendly" country for such claims. Most notably, where damages are claimed for an infringement of competition law, German courts are bound by a finding that an infringement has occurred if such a finding was made in a final decision by the cartel authority. Furthermore, the individual damage does not have to be calculated precisely but rather can be estimated by the relevant court. Given the current state of antitrust enforcement in Germany, most of the requirements of the new Directive on Antitrust Damages by the European Union, which was signed on November 26, 2014, and has been a hotly discussed topic, already are fulfilled under German law. (See "EU Nonmerger Antitrust Enforcement Gets Stricter.")

France: The *ne bis in idem* Principle and Settlements With US Authorities

Successive investigations in France following U.S. prosecutions and settlements have led to court challenges on the grounds of double jeopardy, a trend that will only increase as more

countries scrutinize the same conduct in multijurisdictional investigations. Under Article 113-9 of the French Criminal Code (and Article 692 of the Code of Criminal Procedure), a French citizen cannot be prosecuted for crimes and misdemeanors (délits) committed outside France, nor can a foreigner if the offense involved a French victim, if the perpetrator has been tried abroad for the same facts and, if convicted, a sentence was served or is time-barred.

However, for offenses committed at least in part on French republic territory, French courts consistently have held that decisions rendered by foreign tribunals in connection with the same facts do not have *res judicata* effect in France. In 2013, the French Supreme Court (Cour de cassation) slightly tempered that principle by holding that any period of imprisonment spent abroad should be taken into consideration by the French criminal court at the sentencing stage.

In recent years, the broad interpretation of the scope of certain laws and regulations, especially in corruption, economic sanctions and money laundering cases, has increased the number of cases in which an individual or legal entity is prosecuted and possibly sanctioned twice for the same set of facts — especially in situations in which U.S. authorities have secured an NPA, DPA or guilty plea. This has led the Paris criminal court of first instance (Tribunal correctionnel) to revisit the above jurisprudence and decide that the *ne bis in idem* principle should in fact be enforced by French courts. (See "France's Double-Trial System for Market Abuses May Be Headed for Reform.")

One significant matter involves prosecutions in France following the U.N. Oil-for-Food investigations. In this matter (*TGI Paris, 11ème ch. Correctionnelle*, July 8, 2013), the oil company Vitol, among many others, was prosecuted in France for bribing foreign public officials in connection with the allocation of contracts in Iraq. The Paris criminal court held that the plea deal between Vitol and U.S. authorities prevented prosecution in France. The court ruled that the French Code of Criminal Procedure section governing *res judicata* and the International Covenant on Civil and Political Rights of 1966 section guaranteeing *ne bis in idem* protections were not limited to "domestic" sentencing decisions.

A second important matter relates to the investigations and prosecutions of Jeffrey Tesler for corruption in connection with a liquidated natural gas (LNG) facility construction project in Nigeria. Tesler, a British lawyer, concluded an FCPA plea agreement with the U.S. in 2011; Tesler admitted guilt, waived his rights to challenge the facts and served 21 months in prison. French authorities subsequently sought to bring charges against him, and the French court held that such a follow-on prosecution was precluded (*TGI Paris, 11ème ch. Correctionnelle*, June 24, 2014). In light of Tesler's covenants under the plea agreement, the court held that he was no longer in a position to receive a fair trial in France pursuant to Article 6, Section 1, of the European Convention on Human Rights (ECHR). The court also ruled that the *ne bis in idem* principle should be applied under these circumstances.

Finally, the exact same issue also will arise in 2015 in the upcoming Total S.A. trial, in which the French oil company will be prosecuted for alleged bribery in Iran in the context of the attribution of oil and gas fields. In May 2013, Total entered into a DPA with the U.S. for the same facts and agreed to pay a $398 million settlement.

Whether these decisions will be confirmed on appeal will constitute one of the major criminal law developments in the coming months in France.

China: Multinationals Continue to Adapt to Active Enforcement Environment

Over the past few years, the U.S. authorities have continued their aggressive stance toward corrupt activity in China; 2014 saw significantly increased enforcement efforts by Chinese authorities, both of local companies and multinationals doing business in China.

Two of the highest-profile FCPA settlements in recent years involved alleged conduct in China. Avon paid $135 million in 2014 in its settlement with U.S. authorities and reportedly spent nearly $400 million on its five-year FCPA investigation. Diebold Inc. paid $48 million in 2013 in its settlement with U.S. authorities and reportedly spent nearly $23 million on its own FCPA investigation.

Chinese enforcement actions against prominent multinationals have ramped up considerably in connection with both China's well-publicized anti-corruption campaign and the increasingly expansive application of its Anti-Monopoly Law. Those actions have involved multiple government agencies, including the State Administration for Industry and Commerce (SAIC), the Ministry of Public Security (MPS) and the National Development and Reform Commission (NDRC). Chinese authorities have emphasized that they are not targeting multinationals per se, yet investigations of businesses based overseas appear to be increasing in number, reflecting at least a heightened interest in the conduct of foreign entities operating in China.

The Anti-Corruption Campaign and Heightened Anti-Monopoly Enforcement

As has been well-reported, the Chinese authorities are in the midst of a wide-ranging anti-corruption campaign, which has resulted in the detention or arrest of a large number of current and former Chinese government officials. In December, authorities arrested Zhou Yongkang, former member of the Chinese Communist Party Politburo Standing Committee and the most prominent official to be arrested thus far. But the anti-corruption campaign has targeted multinational companies operating in China as well. The investigation into GSK, a multinational pharmaceutical company headquartered in the U.K., was perhaps the largest and best-publicized enforcement action against a non-Chinese company. It was alleged that GSK sales representatives made improper payments or offered other incentives to doctors to prescribe GSK pharmaceuticals, including via third parties such as travel agencies and consultancies. In July 2013, the Chinese police detained large numbers of China-based GSK personnel, and on September 19, 2014, GSK's Chinese subsidiary was found guilty in the Changsha Intermediate People's Court in Hunan Province of bribing nongovernment personnel to obtain improper commercial gain and fined almost $500 million.

The GSK enforcement actions were not limited to the company itself. GSK's former top executive in China, Mark Reilly, also was convicted of bribery charges, received a suspended three-year prison sentence and will be expelled from China. Four other senior GSK executives received suspended sentences as well. Chinese authorities also prosecuted Peter Humphrey and Yu Yingzeng, a husband-and-wife team of investigators hired by GSK to examine the whistleblower allegations, on charges that they illegally purchased personal data in connection with their investigation. Humphrey and Yingzeng were sentenced to two and a half years and two years in prison, respectively.

While the investigation of GSK is perhaps the clearest example of the increased regulatory scrutiny of multinationals, Chinese authorities reportedly also have initiated investigations or made inquiries of other multinational pharmaceutical companies doing business in China, including AstraZeneca, Roche, Bayer, Eli Lilly and Novartis. Nor have these inquiries been confined to the pharmaceutical industry. Multinational automobile and chipmakers also have come under scrutiny by the NDRC and SAIC, often for alleged violations of China's anti-monopoly laws. The NDRC has pursued Qualcomm Inc. for alleged monopolistic behavior, claiming that Qualcomm charged excessive licensing fees. The SAIC also announced an anti-monopoly probe of Microsoft after reportedly visiting company offices in Beijing and several other cities. In July, foreign car companies including Mercedes-Benz, Audi and Jaguar Land Rover reportedly agreed to cut prices for cars, parts or service following pressure from the NDRC probes, and both Chrysler and General Motors' Shanghai joint venture reportedly have been subject to regulatory inquiries. Some of these regulatory inquiries can have ripple effects outside China, prompting investigations in other jurisdictions. For example, the Qualcomm investigation reportedly has triggered inquiries by the U.S. Federal Trade Commission (FTC) and the EU, and GSK is reportedly now facing additional corruption probes in the U.S., the U.K., Iraq, Jordan, Lebanon, Poland and Syria.

Adjusting to the New Enforcement Environment

The recent wave of enforcement activity in China requires continued vigilance for multinational companies and underscores the importance of an integrated global compliance infrastructure responsive to the different enforcement environments in various jurisdictions. Rigorous and regular evaluation and refinement of corporate compliance programs, enhanced monitoring of operations and careful attention to the regulatory and enforcement landscape will assist multinationals in limiting their risks worldwide. However, it seems clear that companies increasingly must have the capability to manage an ever larger number of regulators and respond to multiple simultaneous, parallel enforcement actions in different countries, including China.

Brazil: Recent Corruption Scandals Offer First Test of Brazilian Anti-Corruption Act

As in China, in 2014, authorities in Brazil significantly increased investigations and enforcement actions. Brazilian headlines recently have been dominated by the corruption scandal involving Petrobras (Brazil's state-run, U.S.-listed energy company) and numerous Brazilian politicians and companies. The Petrobras case centers on the alleged granting of large contracts by certain senior Petrobras managers to Brazilian companies at inflated costs in exchange for "commissions" later transferred to political parties, politicians and others. The Brazilian federal police are investigating the allegations, and the scandal will be a test of the strength and independence of the Brazilian judicative, as well as the first chance to enforce the 2013 Brazilian Anti-Corruption Act. Highlighting the risks of multijurisdictional matters, the U.S. Department of Justice also is investigating the allegations, demonstrating the challenges companies face as various regulators exert increasingly broad jurisdiction to conduct anti-corruption and related investigations.

The Petrobras situation highlights the fact that Brazilian entities increasingly are subject to scrutiny by external regulators, including U.S. authorities, even when alleged corruption involves mostly local Brazilian entities. To avoid serious disruptions and significant penalties in 2015 and beyond, Brazilian companies must adapt their business, risk-management and compliance practices to satisfy the heightened local and international anti-corruption standards and investigations associated with the increasingly globalized world. The Marubeni settlement highlights the broad jurisdictional reach of the FCPA.

DOJ and Other US Investigations

In March 2014, Marubeni pleaded guilty to one count of conspiring to violate the FCPA's anti-bribery provisions and seven counts of violating the FCPA's anti-bribery provisions by using third-party consultants to funnel bribes to high-ranking Indonesian government officials. While the company's stock did not trade on a U.S. stock exchange, the evidence turned on the fact that it made payments through its employees to a consultant's U.S. bank account knowing that a portion would be used for bribes. Knowingly making payments for illicit purposes, such as bribery, through third parties in the United States was sufficient to sustain a FCPA violation, even for an unregistered, foreign corporate entity.

Implications for 2015

The Petrobras situation demonstrates that Brazilian companies must adapt their business, risk-management and compliance practices to the new reality of global enforcement in order to avoid potentially serious consequences. With this in mind, companies, regardless of their ties to the United States, should have an effective internal compliance program to govern their activities and be prepared for any investigation, including by U.S. or other non-Brazilian

regulators. Compliance programs should address local and international concerns and take into consideration, at a minimum:

- enhanced codes of conduct and related anti-corruption/government procurement policies and procedures;
- targeted education of employees regarding relevant anti-corruption laws and how to respond to high-risk situations;
- effective recordkeeping procedures and regular compliance audits of high-risk subsidiaries;
- effective internal reporting and investigative procedures to follow up on any indication of improper conduct;
- effective controls over monetary transfers, cash accounts and other disbursements; and
- thorough and meaningful due diligence on third-party business partners, including consultants, intermediaries and agents.