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MULTI-JURISDICTIONAL ANTI-CORRUPTION INVESTIGATION AND ENFORCEMENT TRENDS AND DEVELOPMENTS

Multi-jurisdictional anti-corruption investigations and prosecutions are on the rise as U.S. regulators increasingly cooperate with their foreign counterparts. In this article, the authors describe the trend and discuss in particular (i) the difficulties raised by variations in anti-corruption laws across jurisdictions; (ii) the tools in the DOJ's arsenal for collecting evidence abroad; and (iii) the new DOJ policy against the "piling on" of penalties and collateral consequences. They include a number of compliance and defense practice tips and takeaways.

By Warren T. Allen II and B. Michelle Bosworth *

After Congress expanded the scope of the U.S. Foreign Corrupt Practices Act (the "FCPA") in 1998, the U.S. Department of Justice (the "DOJ") and the U.S. Securities and Exchange Commission (the "SEC") actively began using the FCPA to combat overseas bribery. In recent years, a number of other nations have improved or expanded their own anti-corruption efforts (e.g., Argentina, Brazil, France, Mexico, South Korea, and Vietnam). Many countries now are working with the United States and independently to investigate and prosecute bribery and corruption, which presents a number of challenges to multinational companies trying to ensure compliance with the FCPA and other applicable anti-corruption laws.

This article explores the trend of increased cooperation among regulators, as demonstrated through recent statements by U.S. enforcement regulators and FCPA settlements. This article also provides practice tips to address the challenges related to multi-jurisdictional investigations and enforcement actions, including (i) variations in proliferating anti-bribery and anti-corruption laws across jurisdictions; (ii) regulators' sharing of information across borders; and (iii) the potential for "piling on" of penalties and collateral consequences.

INCREASED COOPERATION AMONG GLOBAL REGULATORS

For years, public comments by U.S. enforcement regulators have reflected an ongoing and steady trend to coordinate anti-corruption investigations with other countries. In 2014, then-Assistant Attorney General for the DOJ's Criminal Division Leslie Caldwell

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commented, "we increasingly find ourselves shoulder-to-shoulder with law enforcement and regulatory authorities in other countries. Every day, more countries join in the battle against trans-national bribery. And this includes not just our long-time partners, but countries in all corners of the globe."[1] Years later, in a November 2017 speech, Steven R. Peikin, Co-Director of the SEC's Division of Enforcement, continued to tout this trend and the need for cross-border cooperation:

> [I]n my view, in an increasingly international enforcement environment, the U.S. authorities cannot — and should not — go it alone in fighting corruption. As global markets become more interconnected and complex, no one country or agency can effectively fight bribery and corruption by itself. Anti-corruption enforcement is a team effort. The Enforcement Division's fight against corruption is much more effective when our international colleagues join us in a shared commitment to eradicating corruption and bribery, and leveling the playing field for businesses everywhere. Fortunately, I have observed that the level of cooperation and coordination among regulators and law enforcement worldwide is on a sharply upward trajectory, particularly in matters involving corruption. In fact, in the past fiscal year alone, the Commission has publicly acknowledged assistance from 19 different jurisdictions in FCPA matters.
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> I fully expect the trend of the Enforcement Division working closely with foreign law enforcement and regulators in anti-bribery actions to continue its upward trajectory in the coming years.[2]

In addition to comments by U.S. enforcement regulators, numerous FCPA settlements in recent years have highlighted the results of enforcement agencies' cross-border cooperation efforts, often in the form of fines and penalties shared with non-U.S. regulators, including, for example: (i) Swedish telecommunications company Telia Company AB and its subsidiary in Uzbekistan reached a global settlement in September 2017 with the SEC, the DOJ, and authorities in Sweden and the Netherlands for more than $965 million in combined penalties;[3] (ii) Keppel Offshore & Marine Ltd., a shipyard operator in Singapore, and its U.S.-based subsidiary reached a global settlement in December 2017 with authorities in the United States, Brazil, and Singapore, agreeing to pay more than $422 million in combined penalties to those authorities in "the first coordinated FCPA resolution with Singapore",[4] and (iii) French financial services institution Société Générale S.A. ("SocGen") and its subsidiary reached a settlement in June 2018 with the DOJ and French authorities, with approximately $585 million being paid in penalties for FCPA violations in "the first coordinated

[1] Leslie R. Caldwell, Speech, U.S. Dep't of Justice, *Assistant Attorney General Leslie R. Caldwell Speaks at American Conference Institute's 31st International Conference on the Foreign Corrupt Practices Act* (Nov. 19, 2014), *available at* https://www.justice.gov/opa/speech/assistant-attorney-general-leslie-r-caldwell-speaks-american-conference-institute-s-31st.

[2] Steven R. Peikin, Speech, U.S. Sec. & Exch. Comm'n, *Reflections on the Past, Present, and Future of the SEC's Enforcement of the Foreign Corrupt Practices Act* (Nov. 9, 2017), *available at* https://www.sec.gov/news/speech/speech-peikin-2017-11-09.

[3] Press Release 17-1035, U.S. Dep't of Justice, *Telia Company AB and Its Uzbek Subsidiary Enter Into a Global Foreign Bribery Resolution of More Than $965 Million for Corrupt Payments in Uzbekistan* (Sept. 21, 2017), *available at* https://www.justice.gov/opa/pr/telia-company-ab-and-its-uzbek-subsidiary-enter-global-foreign-bribery-resolution-more-965.

[4] Press Release 17-1476, U.S. Dep't of Justice, *Keppel Offshore & Marine Ltd. and U.S. Based Subsidiary Agree to Pay $422 Million in Global Penalties to Resolve Foreign Bribery Case* (Dec. 22, 2017) (internal quotation omitted), *available at* https://www.justice.gov/opa/pr/keppel-offshore-marine-ltd-and-us-based-subsidiary-agree-pay-422-million-global-penalties.

resolution with French authorities in a foreign bribery case."[5]

VARIATIONS IN ANTI-CORRUPTION LAWS ACROSS JURISDICTIONS

As a result of this cross-border cooperation and coordination, multinational companies often face difficulties in responding to anti-corruption investigations that involve multiple jurisdictions. Doing so may require companies to navigate differences in an expanding number of potentially applicable anti-corruption laws, as well as other laws, such as those governing privacy and data protection. Quickly identifying potential areas of exposure in response to an investigation can prove daunting for companies that have not stayed abreast of the various laws that might apply to their operations.

Until recently, companies' anti-corruption efforts tended to focus on compliance with the FCPA. However, companies now must be cognizant of other countries' anti-corruption laws as well because certain conduct permitted under the FCPA may be prohibited under other laws. For example, both the FCPA and the United Kingdom's Bribery Act 2010 (the "Bribery Act") prohibit offering or paying bribes to foreign officials, but only the latter prohibits commercial or private sector bribery and agreeing to receive bribes.

Companies should track the enactment of new anti-corruption laws, the issuance of guidance regarding those laws, material changes to existing laws, and the establishment of new law enforcement institutions. For example, in December 2016, France enacted a new anti-corruption law, Loi Sapin II ("Sapin II").[6] The new French anti-corruption agency, Agence Française Anti-Corruption ("AFA"), began operations in 2017 and published guidance for companies on implementing and maintaining effective compliance programs to detect and prevent corruption.[7] Significantly, unlike the FCPA and the Bribery Act, companies that are subject to Sapin II can be held liable under that law — even when there is no evidence of corrupt activity — for failure to map corruption risks and implement an effective compliance program.[8]

Sapin II's risk-mapping requirements and the Bribery Act's prohibition of commercial bribery are only two examples of differing legal obligations that demonstrate why focus on the FCPA alone is inadequate for companies that may be subject to multiple jurisdictions' anti-corruption laws. In recent years, Argentina, Belgium, Brazil, Colombia, France, Germany, Mexico, Peru, South Korea, Spain, Vietnam, and other jurisdictions have implemented or expanded anti-corruption laws and measures. Companies that are subject to multiple countries' jurisdiction should understand key anti-corruption requirements that might apply to their operations before they are the subject of an investigation or enforcement action.

Practice Tips and Takeaways:

- Determine which anti-corruption laws likely apply; understand what those laws require; and consider developing policies, procedures, and training programs that enable company personnel to meet the most stringent requirements of the applicable laws (e.g., consider prohibiting facilitation payments because, even though the FCPA technically permits such payments, the DOJ reads this exception narrowly, and the Bribery Act and other anti-corruption laws prohibit them);

- Ensure the code of conduct and tone-at-the-top messages reinforce broad ethical business principles and expected behavior because anti-corruption policies cannot address every possible scenario;

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[5] Press Release 18-722, U.S. Dep't of Justice, *Société Générale S.A. Agrees to Pay $860 Million in Criminal Penalties for Bribing Gaddafi-Era Libyan Officials and Manipulating LIBOR Rates* (June 4, 2018), *available at* https://www.justice.gov/opa/pr/soci-t-g-n-rale-sa-agrees-pay-860-million-criminal-penalties-bribing-gaddafi-era-libyan.

[6] Sapin II, French Law n° 2016-1691 of 9 December 2016, *available at* https://www.legifrance.gouv.fr/affichTexte.do?cidTexte=JORFTEXT000033558528&categorieLien=id.

[7] English Translation, Agence Française Anti-Corruption, *Guidelines to Help Private and Public Sector Entities Prevent and Detect Corruption, Influence Peddling, Extortion by Public*

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Officials, Unlawful Taking of Interest, Misappropriation of Public Funds and Favouritism (Version 12-2017), *available at* https://www.economie.gouv.fr/files/files/directions_services/afa/French_Anticorruption_Agency_Guidelines.pdf.

[8] While the French Parquet National Financier ("PNF") prosecutes anti-corruption offenses, the AFA audits companies to assess the state of their compliance programs under the requirements in Sapin II.

Sapin II also introduced the *convention judiciaire d'interêt public*, or a deferred prosecution agreement, as a settlement tool for French enforcement efforts.

- Identify persons in the organization who can serve as local experts on applicable anti-corruption laws and monitor developments; and

- Consider identifying local counsel resources to help clarify requirements.

COLLECTION OF DOCUMENTS AND INFORMATION ACROSS BORDERS

While companies face the challenge of potentially conflicting applicable anti-corruption laws, the U.S. government faces challenges obtaining evidence located outside of the United States when investigating and prosecuting foreign bribery cases. While practitioners debate the benefits of cooperating with the U.S. government, companies that are under investigation should consider the possibility of obtaining cooperation credit by facilitating that collection process because some of the tools that the U.S. government would otherwise have to use can be cumbersome.

The U.S. Attorneys' Manual describes a number of tools in the DOJ's arsenal for collecting evidence abroad, including subpoenas and formal requests through treaties, executive agreements, and letters rogatory.[9] The United States has executed a number of mutual legal assistance treaties ("MLATs"), other treaties, and executive agreements with other countries that permit the sharing of evidence; however, these treaties and agreements differ, and regulators have to remain cognizant of those differences in making requests.[10] A U.S. judge also can issue a letter rogatory to another nation's court system, "requesting the performance of an act which, if done without the sanction of the foreign court, would constitute a violation of that country's sovereignty."[11]

U.S. law enforcement agents recently gained another tool they can use in some circumstances to compel U.S. electronic communication service providers to produce data stored outside the United States — the Clarifying Lawful Overseas Use of Data Act, or the CLOUD Act, which was enacted as a federal law on March 23, 2018. The CLOUD Act was enacted while *United States v. Microsoft Corporation* was pending before the U.S. Supreme Court.[12] In the underlying drug trafficking investigation that led to that litigation, the U.S. Government faced difficulty obtaining data stored on Microsoft's servers abroad, despite issuing a warrant for the data under the Stored Communications Act, 18 U.S.C. Section 2701 *et seq.* (the "SCA"). Microsoft argued that the SCA did not cover the data stored on its servers in Ireland, even though the data could be accessed from the United States. The CLOUD Act resolved the dispute, by amending the SCA to clarify that a U.S. electronic communication service provider shall "disclose the contents of a wire or electronic communication, and any record or other information pertaining to a customer or subscriber within such provider's possession, custody, or control, *regardless of whether such communication, record, or other information is located within or outside of the United States.*"[13] The CLOUD Act permits these service providers to challenge warrants seeking data if they reasonably believe (i) compliance "would create a material risk that the provider would violate" applicable laws *and* (ii) the customer or subscriber that is the subject of the warrant "is not a United States person and does not reside in the United States."[14] The CLOUD Act also enables non-U.S. law enforcement agents of governments that enter into bilateral agreements with the United States to request data directly from U.S. electronic communication service providers, instead of using the MLAT process.[15]

In addition to the formal evidence collection tools noted above, the U.S. Attorneys' Manual makes clear that prosecutors also can rely on informal mechanisms.[16]

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[9] U.S. Attorneys' Manual ("USAM"), Criminal Resource Manual ("CRM"), § 274 (listing the three categories of methods "for obtaining evidence from abroad," including subpoenas, formal requests, and informal means); *see also id.* §§ 275–79.

[10] *Id.* § 276 (discussing treaty requests) and § 277 (discussing executive agreement requests).

[11] *Id.* § 275 (discussing letters rogatory).

[12] *United States v. Microsoft Corp.*, No. 17-2, 584 U.S. __ (Apr. 17, 2018) (per curiam), *available at* https://www.supremecourt.gov/opinions/17pdf/17-2_1824.pdf.

[13] CLOUD Act § 103(a)(1) (emphasis added). *See also Microsoft Corp.*, No. 17-2, 584 U.S. __, at *3 ("No live dispute remains between the parties over the issue with respect to which certiorari was granted. Further, the parties agree that the new warrant has replaced the original warrant. This case, therefore, has become moot." (internal citation omitted)).

[14] CLOUD Act § 103(b) (emphasis added). A court can quash the subpoena if it concludes the U.S. electronic communication service provider is correct on both points, ***and***, after balancing a number of different factors, the interest of justice requires doing so. *Id.*

[15] CLOUD Act §§ 104–105.

[16] USAM, CRM, § 274 (listing informal means) and § 278 (describing such informal means).

As multi-jurisdictional cooperation efforts have expanded, U.S. authorities are obtaining evidence informally through relationships cultivated with non-U.S. regulators. The United States has strengthened such relationships through activities like assisting other nations' efforts to develop and enhance their enforcement institutions by placing legal advisors in those countries. During remarks in May 2017, then-Acting Principal Deputy Assistant Attorney General Trevor McFadden stated that,

> formal assistance pursuant to bilateral or multilateral treaties are not our only tools. The United States and countries around the world also share evidence and information with one another pursuant to the principle of reciprocity, or through various informal mechanisms.
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> The Department of Justice and its investigative agencies post attachés in embassies all over the world, including here in Brazil. One of the primary goals of the attachés is to provide and receive information related to ongoing investigations and prosecutions. Such information may provide significant leads to us or our counterparts.[17]

Both the DOJ and the SEC have credited other jurisdictions' authorities' assistance in press releases announcing FCPA enforcement resolutions.[18] For example, in announcing its settlement with Panasonic Corporation, the SEC thanked the DOJ and authorities in the following countries for their assistance: Australia, Canada, Japan, Malaysia, Pakistan, Singapore, Switzerland, and the United Arab Emirates.[19] Similarly, during the 16th Annual International Bar Association Anti-Corruption Conference in Paris, France, on June 12–13, 2018, the Chief of the DOJ's FCPA Unit, Daniel Kahn, and the Head of France's PNF, Éliane Houlette, discussed regular communications and evidence exchanged when the United States and France were coordinating resolution of the SocGen matter.[20] More recently, the Director of Strategic Analysis and International Affairs for AFA, Renaud Jaune, expressed the view that the AFA "sees itself as an informal advisor to foreign authorities that are working with France's prosecutors on investigations into French companies."[21]

Despite these tools and coordination amongst regulators, companies and their counsel should consider taking steps to facilitate the collection and production of evidence located outside of the United States in order to obtain cooperation credit. On November 29, 2017, Deputy Attorney General Rod Rosenstein announced a new FCPA Corporate Enforcement Policy that, absent aggravating circumstances, the DOJ presumes it will decline to prosecute a company that voluntarily self-reports misconduct, thoroughly cooperates, and effectively remediates.[22] In describing what constitutes full cooperation for purposes of receiving credit, the FCPA Corporate Enforcement Policy includes making employees available for interviews, including "*officers, employees, and agents located overseas*," and:

> Timely preservation, collection, and disclosure of relevant documents and information relating to their provenance, including (i) *disclosure of overseas documents, the locations in which such documents were found, and who found the documents;* (ii) facilitation of third-party production of documents; and (iii) *where requested and appropriate, provision of*

[17] Trevor N. McFadden, Speech, U.S. Dep't of Justice, *Acting Principal Deputy Assistant Attorney General Trevor N. McFadden Speaks at American Conference Institute's 7th Brazil Summit on Anti-Corruption* (May 24, 2017), *available at* https://www.justice.gov/opa/speech/acting-principal-deputy-assistant-attorney-general-trevor-n-mcfadden-speaks-american.

[18] *See, e.g.*, Press Release 18-722, U.S. Dep't of Justice, *supra* note 5 (thanking authorities in France, Switzerland, and the United Kingdom for their "significant cooperation").

[19] Press Release 2018-73, U.S. Sec. & Exch. Comm'n, *Panasonic Charged with FCPA and Accounting Fraud Violations* (Apr. 30, 2018), *available at* https://www.sec.gov/news/press-release/2018-73.

[20] Nicole Di Schino, *What SocGen and Legg Mason Say About French and American Enforcement*, THE ANTI-CORRUPTION REPORT, Vol. 7, No. 14 (July 11, 2018), *available at* https://www.anti-corruption.com/article/2811.

[21] Michael Griffiths, *France's Anti-Corruption Authority Seeks Diplomatic Role*, THE GLOBAL INVESTIGATIONS REVIEW (July 24, 2018).

[22] Rod J. Rosenstein, Speech, U.S. Dept. of Justice, *Deputy Attorney General Rosenstein Delivers Remarks at the 34th International Conference on the Foreign Corrupt Practices Act* (Nov. 29, 2017), *available at* https://www.justice.gov/opa/speech/deputy-attorney-general-rosenstein-delivers-remarks-34th-international-conference-foreign. *See also*, USAM, § 9-47.120 (outlining the FCPA Corporate Enforcement Policy), *available at* https://www.justice.gov/criminal-fraud/file/838416/download.

> *translations of relevant documents in foreign languages*[.][23]

Notably, the FCPA Corporate Enforcement Policy clarifies:

> *Where a company claims that disclosure of overseas documents is prohibited due to data privacy, blocking statutes, or other reasons related to foreign law, the company bears the burden of establishing the prohibition.* Moreover, a company should work diligently to identify all available legal bases to provide such documents[.][24]

Despite their improved abilities to obtain documents and information abroad, U.S. enforcement agencies will continue to expect companies to identify and produce relevant information and documents, and make witnesses available. In responding to such requests, companies must comply with local laws and regulations that may affect their ability to conduct internal reviews, interview employees, and gather data, such as privacy, data protection, and employment laws. Local laws with respect to privileges and protections also are not typically uniform in scope or applicability. Moreover, during multi-jurisdictional investigations and enforcement actions, companies might simultaneously receive demands from different jurisdictions and may need to manage the expectations of several regulators regarding the timing and content of productions.

Practice Tips and Takeaways:

- Companies considering disclosing potential violations to an enforcement agency should anticipate that disclosure to one authority could result in disclosures to others, and leniency programs might not be available in all relevant jurisdictions;
- Conversely, increased information sharing and coordination among investigating authorities increases the likelihood that authorities may learn of a company's misconduct before the company determines whether to self-disclose, which could eliminate the opportunity to obtain credit for doing so;
- In some circumstances, enforcement authorities' cooperation may benefit companies that are the subject of multi-jurisdictional investigations if the authorities agree to accept identical productions, which would reduce burdens that might otherwise result from responding to multiple, varied requests;
- In some cases where local laws prohibit direct production of documents to U.S. authorities, companies may still be able to preserve cooperation credit by working with local authorities to facilitate the transfer of information; and
- While companies can reasonably presume authorities in multi-jurisdictional enforcement actions are cooperating and sharing information, they should nonetheless typically try to make sure that the enforcement agencies involved receive information simultaneously (and, of course, be mindful of the potential negative impact of providing inconsistent information).

"PILING ON" AND COLLATERAL CONSEQUENCES

Regulators' cooperation and coordination across borders affects companies' efforts to structure global settlements and avoid duplicative penalties. To respond to concerns about the potential for excessive fines, the DOJ recently announced a policy against the "piling on" of penalties.[25] "Piling on" refers to authorities in multiple jurisdictions (or multiple agencies in the same jurisdiction) imposing duplicative fines and penalties against a company for the same underlying conduct. In announcing the policy on May 9, 2018, Deputy Attorney General Rod Rosenstein said the policy's "aim is to enhance relationships with our law enforcement partners in the United States and abroad, while avoiding unfair duplicative penalties."[26] The U.S. Attorneys' Manual

[23] USAM § 9-47.120(3)(b) (emphasis added).

[24] *Id.* (emphasis added).

[25] Rod J. Rosenstein, Memorandum, U.S. Dept. of Justice, *Policy on Coordination of Corporate Resolution Penalties*, § 1-12.100 (May 9, 2018), *available at* https://www.justice.gov/opa/speech/file/1061186/download ("The Department should also endeavor, as appropriate, to coordinate with and consider the amount of fines, penalties, and/or forfeiture paid to other federal, state, local, or foreign enforcement authorities that are seeking to resolve a case with a company for the same misconduct.").

[26] Rod J. Rosenstein, Speech, U.S. Dept. of Justice, *Deputy Attorney General Rod Rosenstein Delivers Remarks to the New York City Bar White Collar Crime Institute* (May 9, 2018), *available at* https://www.justice.gov/opa/speech/deputy-attorney-general-rod-rosenstein-delivers-remarks-new-york-city-bar-white-collar ("It is important for us to be aggressive in pursuing wrongdoers. But we should discourage disproportionate enforcement of laws by multiple authorities.

incorporates the new policy as guidance for the DOJ; however, the policy is not binding and cautions Department attorneys to "consider all relevant factors in determining whether coordination and apportionment . . . with other enforcement authorities allows the interests of justice to be fully vindicated" (e.g., the egregiousness of the case and whether defendants self-disclosed misconduct and cooperated).[27] Moreover, other regulators might not agree to avoid piling on or to coordinate with the DOJ when imposing fines. Indeed, cynics speculate that at least some jurisdictions may have expanded their anti-corruption enforcement efforts because those countries would rather collect fines themselves than watch the United States penalize their companies and citizens.

In structuring a global settlement with multiple jurisdictions, companies should try to negotiate reserving an amount to be paid to non-U.S. regulators. FCPA settlements demonstrate that U.S. enforcement agencies have in some instances agreed to share or split monetary penalties with non-U.S. counterparts. For example, when the SEC announced the $965 million settlement with Telia in September 2017, it stated that Telia had agreed to pay the SEC $457 million in disgorgement and the DOJ more than $508 million as a criminal penalty, but that "[p]ortions of each amount could be offset by payments made in overseas settlements or proceedings brought by the Dutch Openbaar Ministerie or the Swedish Åklagarmyndigheten," as long as "Telia's overall payment to the four agencies [was] at least $965 million."[28] In other instances, the U.S. Government has issued a credit based on payments companies have made to non-U.S. authorities for the same conduct: In January 2017, the DOJ issued a press release regarding Rolls-Royce plc's $800 million global settlement with authorities in the United States, the United Kingdom, and Brazil. Rolls-Royce agreed to pay more than $195 million as a criminal penalty under its deferred prosecution agreement with the DOJ, but the DOJ credited Rolls-Royce more than $25 million of that penalty because Rolls-Royce was paying the Brazilian Ministério Público Federal ("MPF") more than $25 million and "the conduct underlying the MPF resolution overlap[ped] with the conduct underlying part of the department's resolution."[29]

DOJ officials have suggested that corporations facing multi-jurisdictional enforcement actions are more likely to avoid duplicative fines if they cooperate and support enforcement agencies' efforts to coordinate across borders. The examples above might appear to support the position that inter-agency cooperation may benefit corporations, but the available data does not clarify whether coordination actually reduces the total amount of fines and penalties imposed.

The potential expansion of collateral consequences that may result from indictments, pleas, and convictions in multi-jurisdictional enforcement actions has received less attention than the specter of duplicative fines. For certain heavily regulated entities and government contractors, potential debarments and violations of covenants that can result as a consequence of indictments, convictions, or guilty pleas may be a significant or even a primary concern. The U.S. Attorneys' Manual directs U.S. prosecutors to consider collateral consequences (e.g., disproportionate harm to shareholders, pension holders, and employees who are not culpable) when determining how to resolve cases involving corporate defendants.[30] Such factors can influence prosecutorial decisions that may be of great significance to companies (e.g., whether to charge a parent entity or only a responsible subsidiary). Often settling companies and their counsel analyze collateral consequences as one factor to weigh when negotiating charging decisions and corporate resolutions. However, given the expansion of anti-corruption laws in jurisdictions where deferred prosecutions might not be an option, companies may wish to proactively assess their exposure to these types of risks even in the absence of an enforcement action.

Practice Tips and Takeaways:

- The DOJ's piling on policy is not binding and other jurisdictions are not obligated to cooperate with the United States on corporate fines;

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In football, the term 'piling on' refers to a player jumping on a pile of other players after the opponent is already tackled.").

[27] USAM § 1-12.100.

[28] Press Release 2017-171, U.S. Sec. & Exch. Comm'n, *Telecommunications Company Paying $965 Million for FCPA Violations* (Sept. 21, 2017), *available at* https://www.sec.gov/news/press-release/2017-171.

[29] Press Release 17-074, U.S. Dep't of Justice, *Rolls-Royce plc Agrees to Pay $170 Million Criminal Penalty to Resolve Foreign Corrupt Practices Act Case* (Jan. 17, 2017), *available at* https://www.justice.gov/opa/pr/rolls-royce-plc-agrees-pay-170-million-criminal-penalty-resolve-foreign-corrupt-practices-act.

[30] USAM § 9-28.1100 (discussing collateral consequences).

- Nonetheless, in appropriate circumstances, companies should consider seeking to structure a global settlement with all authorities positioned to penalize potential misconduct to avoid duplicative fines, achieve finality, and resume focus on their core business operations; and

- When analyzing which jurisdictions' anti-corruption laws might apply, heavily regulated companies should pay particular attention to any potentially significant collateral consequences that might result from an indictment, plea, or conviction.

CONCLUSION

Cooperation and coordination among regulatory authorities across borders is likely to continue and expand. With the increasingly global approach to anti-corruption investigations and enforcement actions, companies should be mindful of legal developments in jurisdictions where they operate and re-examine their compliance programs and controls accordingly. ■