
2017 Year-End Review: Anti-Corruption Trends and Other Corporate Enforcement Issues

January 25, 2018

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Davis Polk & Wardwell LLP

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Agenda

- **2017 Facts and Figures**
- **DOJ Developments**
 - FCPA Corporate Enforcement Policy
 - Focus on Individuals
- **SEC Developments**
 - Impact of *Kokesh*
 - Whistleblower Awards
- **Global Developments**
 - Cross-Border Cooperation
 - New Anti-Corruption Legislation and Guidance
 - Proliferation of Deferred Prosecution Agreement Authority
- **Areas to Watch**

Presented by



Angela T. Burgess



James W. Haldin



Neil H. MacBride



Patrick S. Sinclair

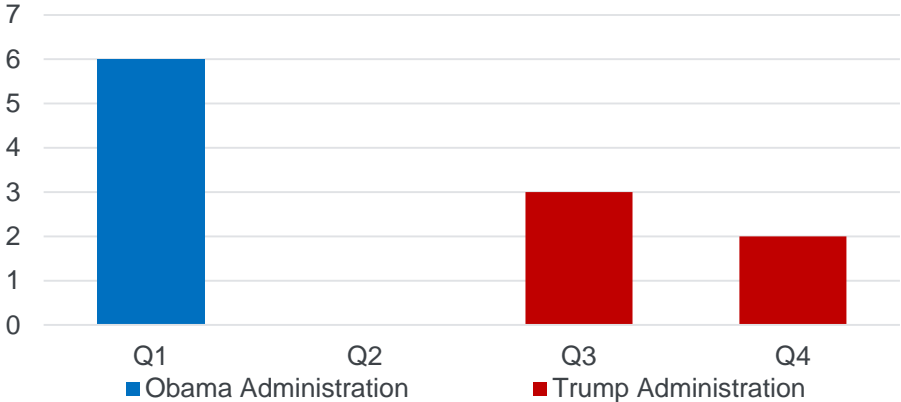


Linda Chatman
Thomsen

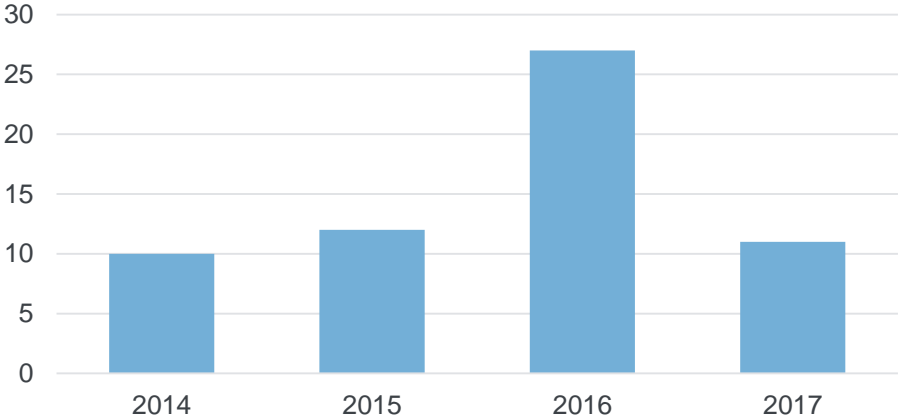
2017 Facts and Figures

CORPORATE ENFORCEMENT

2017 Enforcement Actions

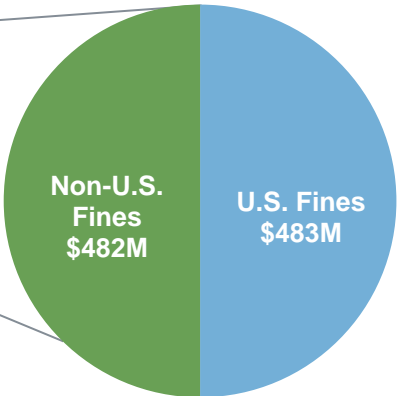


Enforcement Actions by Year



Telia – \$965 Million in Fines

Telia	\$965 Million
Rolls Royce	\$800 Million
Keppel	\$422 Million



DOJ Developments

FCPA CORPORATE ENFORCEMENT POLICY

On November 29, 2017, Deputy Attorney General Rod Rosenstein announced a new FCPA Corporate Enforcement Policy

What's new?

- Voluntary disclosure = presumption of declination absent aggravating circumstances
- Incorporated into U.S. Attorneys' Manual

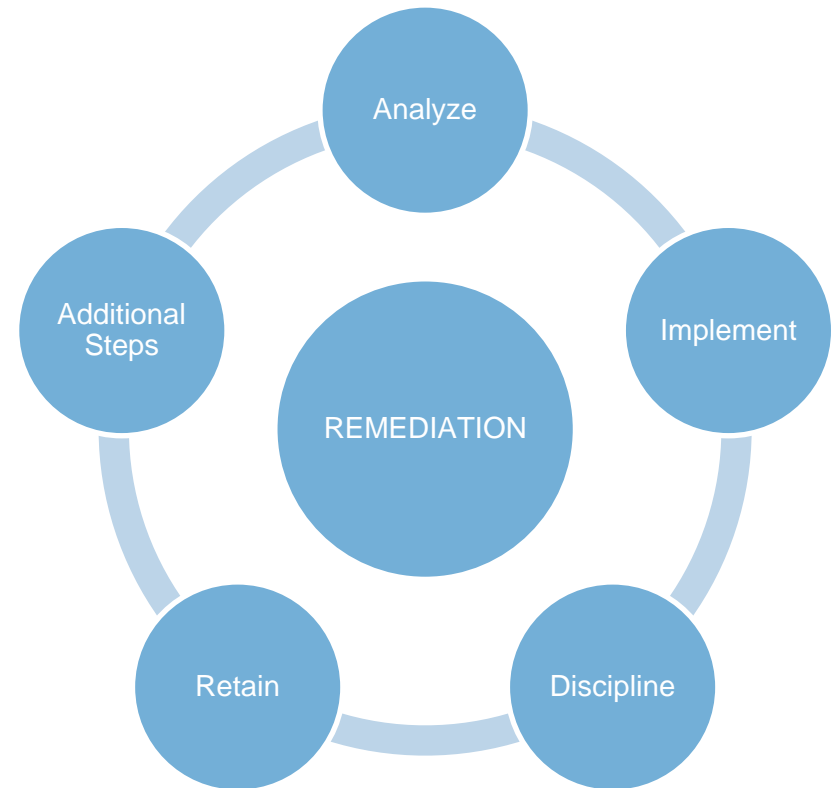
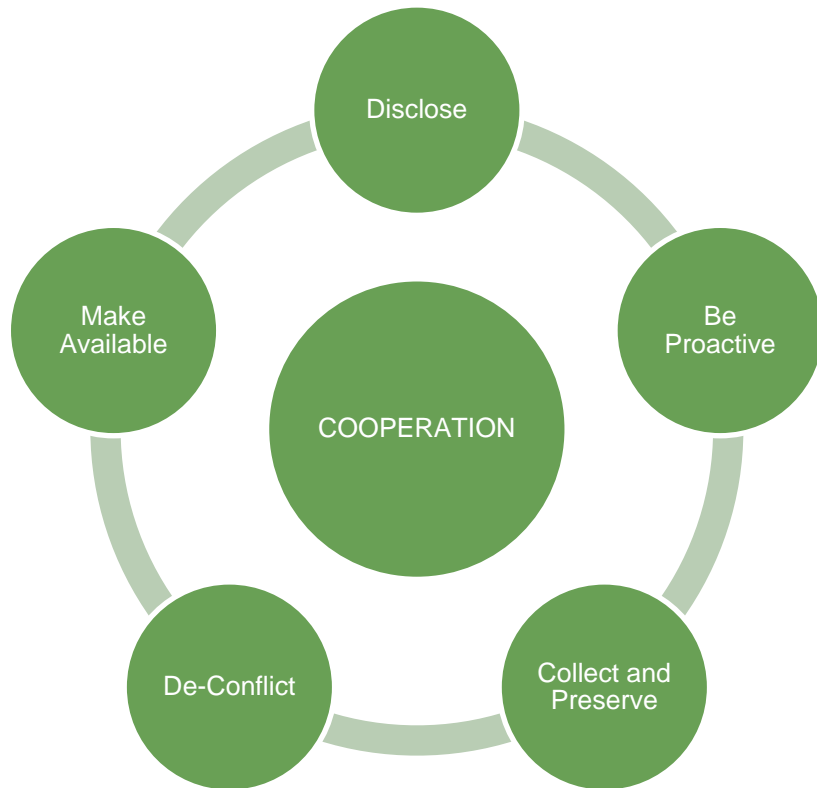
What's not?

- Voluntary disclosure + full cooperation + remediation = Guidelines discount of up to 50%
- Absent voluntary disclosure, limit on Guidelines discount remains 25%

DOJ Developments

FCPA CORPORATE ENFORCEMENT POLICY

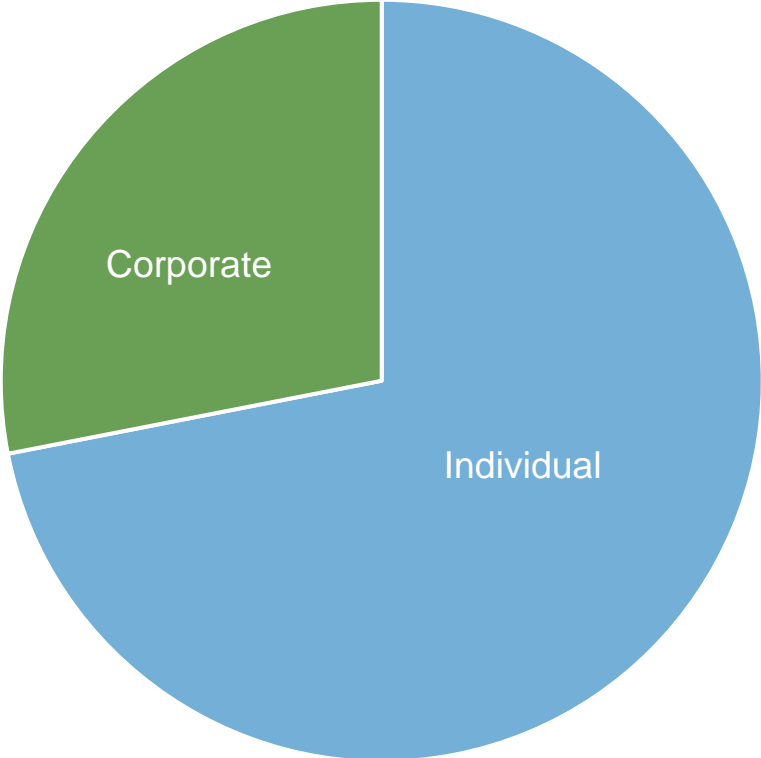
What Constitutes Full Cooperation and Remediation?



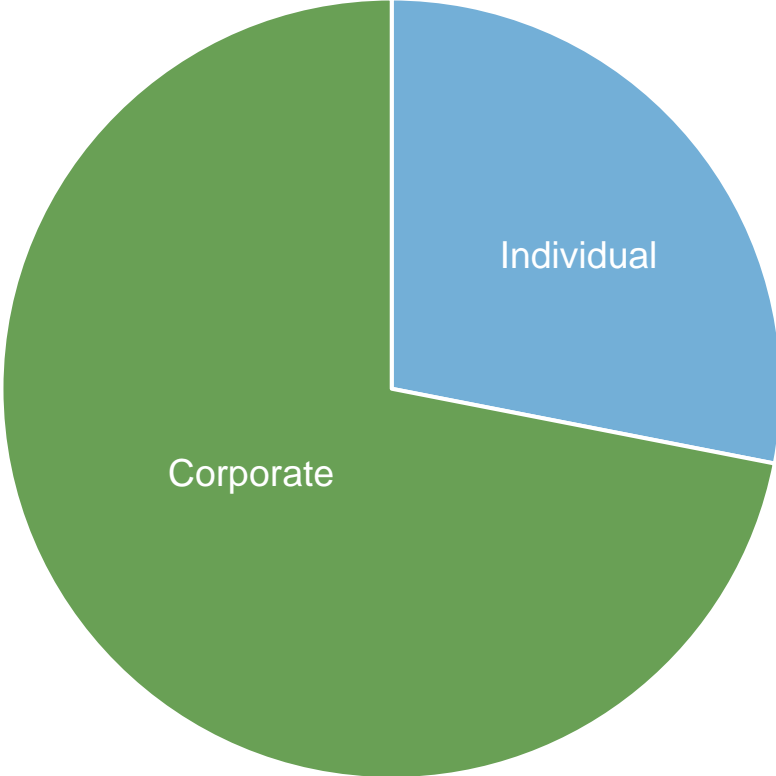
DOJ Developments

FOCUS ON INDIVIDUALS

2017 DOJ Enforcement Actions



2017 SEC Enforcement Actions



SEC Developments

IMPACT OF *KOKESH*

“SEC disgorgement thus bears all the hallmarks of a penalty: It is imposed as a consequence of violating a public law and it is intended to deter, not to compensate. The 5–year statute of limitations in § 2462 therefore applies when the SEC seeks disgorgement.”

- *Kokesh v. SEC*, 137 S. Ct. 1635 (2017)

Kokesh Challenges Moving Through the Courts

Are Injunctions
Subject to 5-Year
SOL?



When do
Disgorgement
Claims Accrue?



Do District Courts
have Authority to
Disgorge?

SEC Developments

WHISTLEBLOWER AWARDS

NOVEMBER 30, 2017
Two awards
of over \$8 million

SINCE 2012
\$179 million to
50 whistleblowers



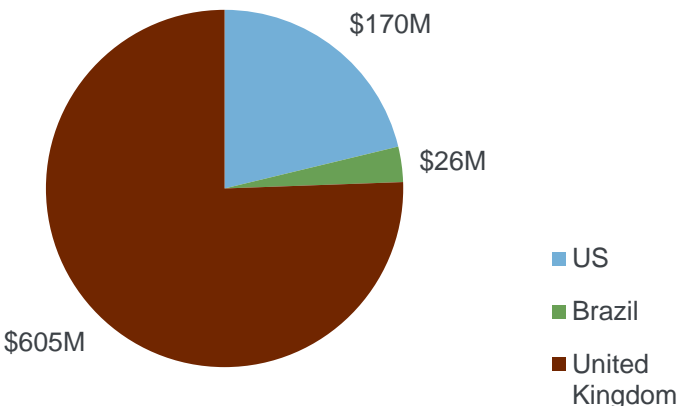
DECEMBER 5, 2017
Award of over
\$4.1 million

IN FY 2017
210 FCPA Tips

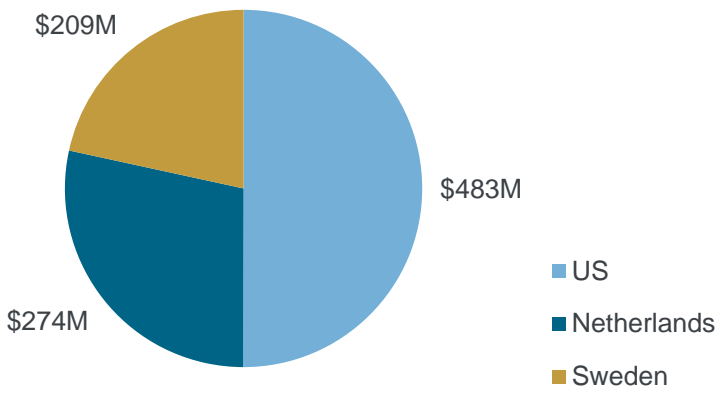
Global Developments

CROSS-BORDER COOPERATION

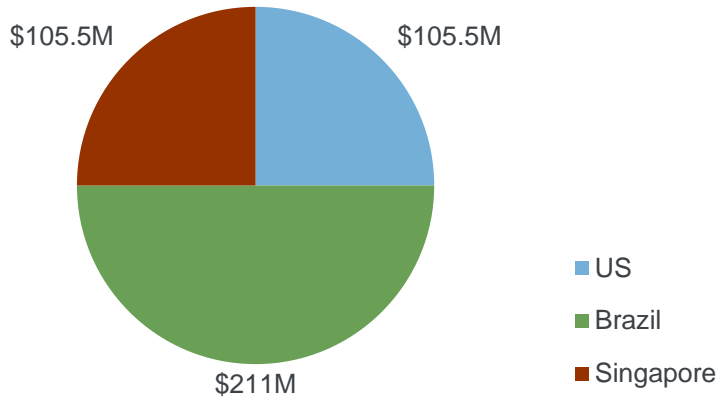
Rolls-Royce



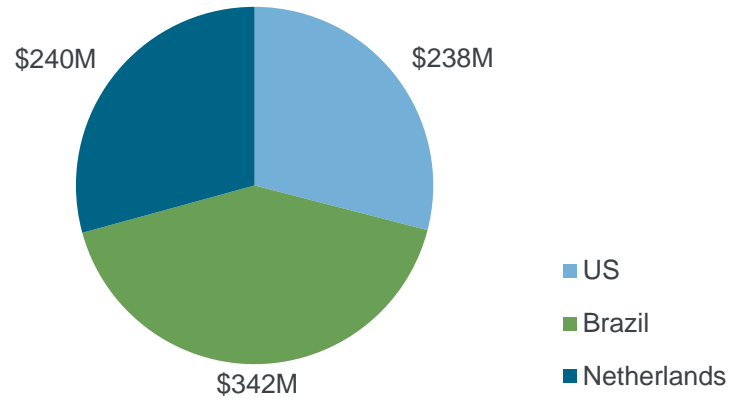
Telia



Keppel Offshore and Marine



SBM Offshore

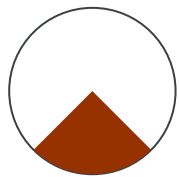


Global Developments

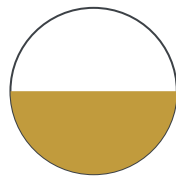
CROSS-BORDER COOPERATION



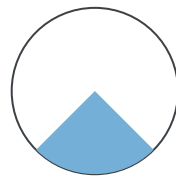
Total Penalty Paid Out: \$422 Million



United States
\$105.5M

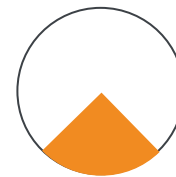


Brazil
\$211M

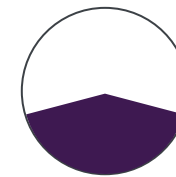


Singapore
\$105.5M

Total Penalty Paid Out: \$820 million



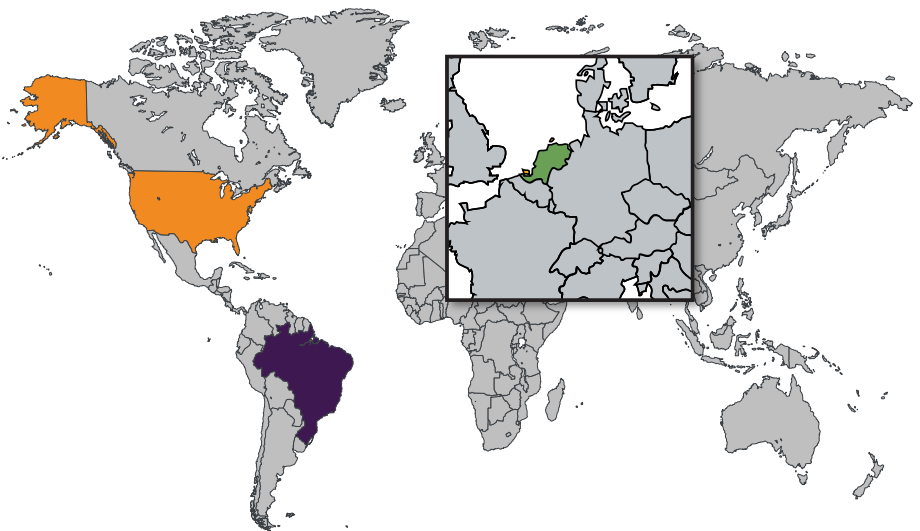
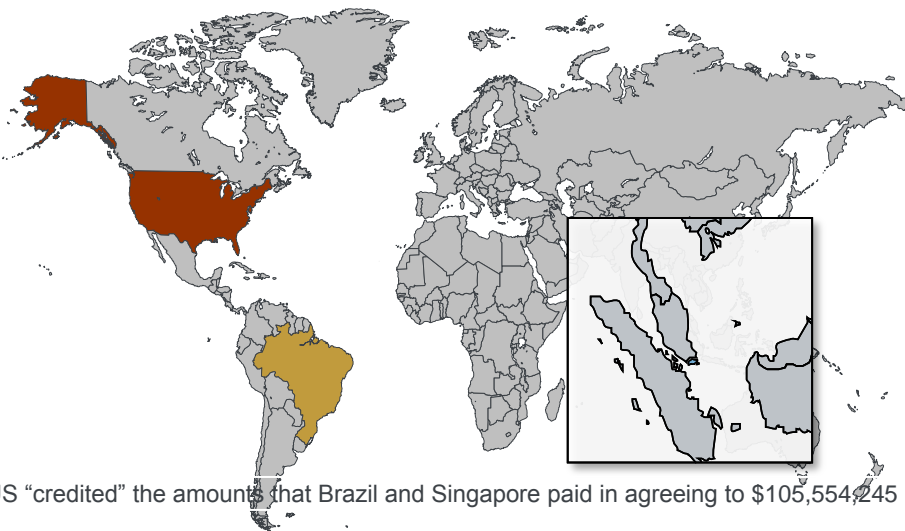
United States
\$238M



Brazil
\$342M



Netherlands
\$240M



US "credited" the amounts that Brazil and Singapore paid in agreeing to \$105,554,245

Global Developments

2017 AMENDMENTS TO CHINESE ANTI-UNFAIR COMPETITION LAW (AUCL)



Broadens definition of “bribery” to cover benefits offering “undue” or “improper” advantage to recipient (e.g. in exchange for information)



Expands definition of “bribe recipients” to encompass third parties



Imposes vicarious liability on employers for employees



Increases penalties



May exempt beneficial payments between two entities from scope of commercial bribery

Global Developments

NEW ANTI-CORRUPTION LEGISLATION



Brazil

- New guidance on leniency agreements issued August 2017
- Codifies existing practices
- Intended to create uniformity in application and enhanced transparency



Argentina

- New legislation on corporate liability enacted November 2017
- Expands criminal liability for legal entities
- Provides guidance on adopting compliance programs



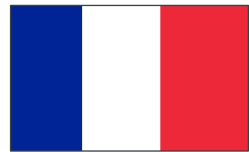
Peru

- New legislation on corporate liability effective January 2018
- Expands criminal liability for legal entities
- Provides guidance on adopting compliance programs

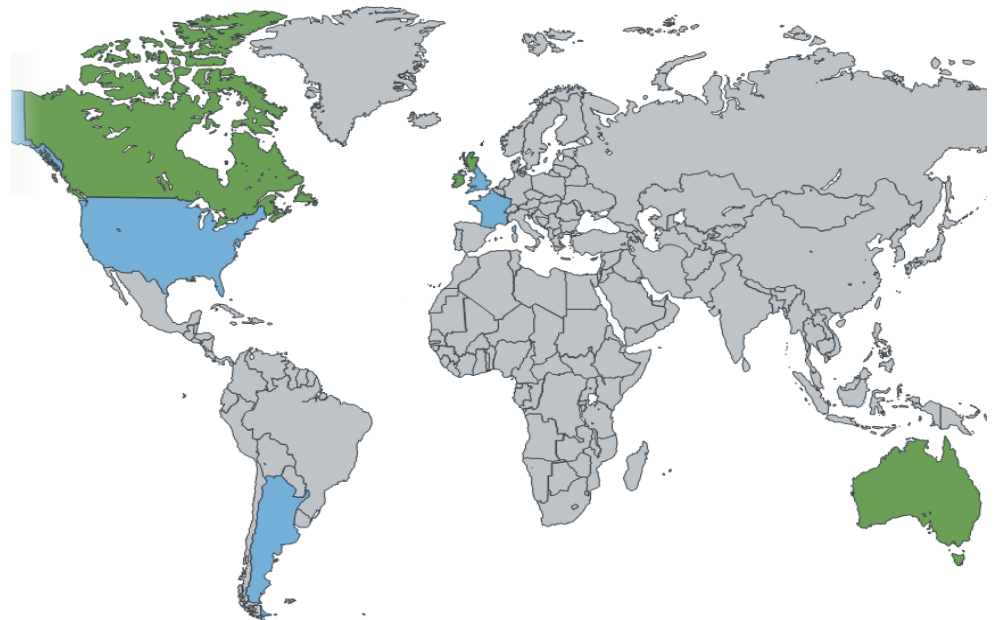
Global Developments

GLOBAL PROLIFERATION OF DEFERRED PROSECUTION AGREEMENT AUTHORITY

Countries with DPA-Like Frameworks:



Countries Considering DPA-Like Frameworks:



Areas to Watch



- Application of FCPA Corporate Enforcement Policy



- *Kokesh* Challenges



- Enforcement Efforts in South America



- Proliferation of Deferred Prosecution Agreement Authority

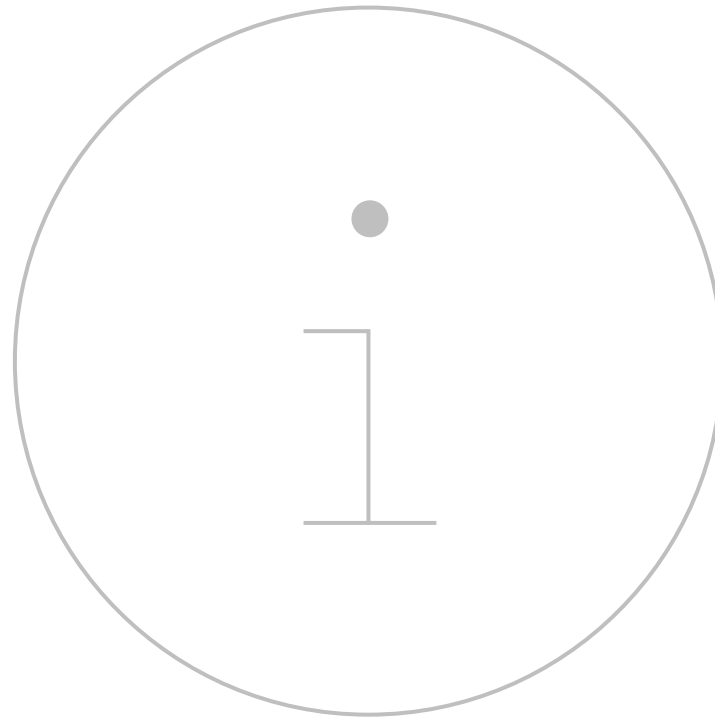


- Second Circuit Decision in *US v. Hoskins*

Thank you!

For more information, please visit our FCPA webpage:

<https://www.davispolk.com/practices/litigation/anticorruption-and-fcpa/>



Questions



Appendix

TARGET	ENFORCER	RESOLUTION	ALLEGED FCPA VIOLATION	INDUSTRY	GEOGRAPHY	ALLEGATIONS
Mondelēz Int'l, Inc. f/k/a Kraft Foods, Inc.	SEC	\$13M (no-admit, no-deny, cease & desist order)		Food/Beverage	India	Failed to properly vet or monitor agent hired to work with officials to obtain licenses and approvals for new factory
Juan Jose Hernandez Comerma Charles Quintard Beech III	DOJ	Pled guilty; sentencing scheduled for 2/8/2018		Natural Resources	Venezuela	Bribed officials at state-owned oil company
Zimmer Biomet, f/k/a Biomet JERDS Luxembourg Holding S.á.r.l. (Sub)	DOJ; SEC	SEC: \$13M (cease & desist order) DOJ: \$17.5M (DPA) DOJ: Pled guilty		Medical Equipment/ Healthcare	Brazil, Mexico	Used third parties to bribe customs officials and falsified records to hide transactions with prohibited distributor
Sociedad Quimica y Minera de Chile S.A. ("SQM")	DOJ; SEC	SEC: \$15M (cease & desist order) DOJ: \$15.5M (DPA)		Chemicals/Mining	Chile	Made payments to politically connected individuals and foundations
Las Vegas Sands Corp.	DOJ	\$7M (NPA)		Entertainment	China, Macau	Failed to properly authorize or document payments to a consultant
Rolls-Royce plc	DOJ	\$169.9M (DPA)		Aerospace/Energy	Angola, Azerbaijan, Brazil, Iraq, Kazakhstan, Thailand	Used intermediaries to bribe government officials to win contracts
Orthofix Int'l Jeff Hammel Kenneth Mack Bryan McMillan Brian McCollum	SEC	\$6.1M (cease & desist order) \$20K (no-admit, no-deny, cease & desist order) \$40K (no-admit, no-deny, cease & desist order) \$25K (no-admit, no-deny, cease & desist order) \$35K (no-admit, no-deny, cease & desist order)		Medical Equipment/ Healthcare	Brazil	Subsidiary used high discounts and improper payments to induce government doctors to use products
Tamas Morvai (Magyar Telekom)	SEC	\$60K (no-admit, no-deny, final judgment)		Telecommunications	Macedonia	Used sham consultancy contracts with intermediary to pay officials
Andras Balogh Elek Straub (Magyar Telekom)	SEC	\$150K (no-admit, no-deny, final judgment) \$250K (no-admit, no-deny, final judgment)		Telecommunications	Macedonia, Montenegro	Used sham contracts with intermediary to pay officials
Francis Lorenzo	DOJ	Pled guilty; sentencing scheduled for 2/26/2018		Entertainment	China, Macau	Accepted and funneled bribes to United Nations official to obtain benefits including UN sponsorship of conference center
Linde Group	DOJ	\$11.2M (declination with disgorgement)		Natural Resources	Republic of Georgia	Subsidiary made corrupt payments to officials at state-owned company to win bid to buy natural resources
CDM Smith Inc.	DOJ	\$4M (declination with disgorgement)		Engineering/ Construction	India	Subsidiary bribed officials to get construction contracts

2017 DOJ and SEC FCPA Resolution Tracker

Davis Polk

TARGET	ENFORCER	RESOLUTION	ALLEGED FCPA VIOLATION	INDUSTRY	GEOGRAPHY	ALLEGATIONS
Amadeus Richers	DOJ	Pled guilty; time served (approx. 7 months)		Telecommunications	Haiti	Bribed officials at state-owned telecommunications company
Halliburton	SEC	\$29.2M (no-admit, no-deny, cease & desist order)		Natural Resources	Angola	Outsourced business to friend of state-owned oil company official to obtain oilfield services contracts
<i>Jeannot Lorenz</i>		<i>\$75K (no-admit, no-deny, cease & desist order)</i>				
Ng Lap Seng	DOJ	Convicted after trial; sentencing scheduled for 2/4/18		Entertainment	China, Macau	Bribed Francis Lorenzo (see above) and United Nations official for help promoting development of a conference center
Telia Company AB	DOJ; SEC ¹	DOJ: \$275M (DPA) SEC: \$457M (cease & desist order)		Telecommunications	Uzbekistan	Bribed government official for rights to enter and operate in Uzbek telecom market
Coscom LLC (Uzbek Sub)		DOJ: Pled guilty				
Alere Inc.	SEC	\$13M (no-admit, no-deny, cease & desist order)		Medical Equipment / Healthcare	India, Colombia	Bribed government officials to obtain or retain business
Fernando Ardila Rueda	DOJ	Pled guilty; sentencing scheduled for 2/8/2018		Natural Resources	Venezuela	Bribed officials at state-owned oil company
Kevin Barnett James Finley Aloysius J.J. Zuurhout <i>(Rolls-Royce plc)</i>	DOJ	Pled guilty; sentencing not yet scheduled		Natural Resources	Kazakhstan	Conspired to bribe officials to direct gas pipeline business to Rolls-Royce plc subsidiary
Andreas Kohler <i>(Unnamed consulting firm for Rolls-Royce plc)</i>						
SBM Offshore N.V.		\$238M (DPA)				
SBM Offshore USA (Sub)	DOJ	\$13.2M (pled guilty)		Natural Resources	Angola, Brazil, Equatorial Guinea, Iraq, Kazakhstan	Bribed officials at state-owned oil companies
<i>Robert Zubiarte</i> <i>Anthony Mace</i>		<i>Pled guilty; sentencing scheduled for 1/31/2018</i> <i>Pled guilty; sentencing scheduled for 2/8/2018</i>				
Colin Steven <i>(Embraer S.A.)</i>	DOJ	Pled guilty; sentencing not yet scheduled		Aerospace/Aviation	Saudi Arabia, South Africa	Conspired to bribe officials at state-owned oil company for jet contracts
Keppel Offshore & Marine Ltd.		\$422M ² (DPA)				
Keppel Offshore & Marine USA Inc. (Sub)	DOJ	\$4.7M (pled guilty)		Shipping/Freight/Transportation	Brazil	Used sham contracts with intermediary to bribe officials at state-owned oil company
<i>Jeffrey Chow</i>		<i>Pled guilty; sentencing scheduled for 5/2/2018</i>				

¹ US resolution amounts may be further offset by payments to foreign enforcers.

² The United States will credit Keppel Offshore & Marine Ltd. for amounts paid to Brazilian and Singaporean authorities up to 75% of the fine; at least 25% (\$105M) will be paid to the United States.

Presenters



Angela T. Burgess

Angela is a partner in our litigation department and co-chair of the firm's White Collar Criminal Defense and Government Investigations Group. She has represented leading clients in some of the most high-profile and complex white collar and regulatory matters in recent years. Her global practice focuses on representing companies as well as individuals in matters involving allegations of insider trading, violations of anti-bribery laws, money laundering, antitrust, fraud, and other financial crimes. Angela also routinely advises boards of directors, audit committees, and companies on corporate governance and compliance matters, including the design of strategies, policies and procedures to mitigate risk.



James W. Haldin

James is counsel in Davis Polk's Litigation Department. He represents financial institutions and other multinational corporations in criminal, regulatory and internal investigations with a particular focus on Foreign Corrupt Practices Act (FCPA) matters. He has conducted FCPA investigations in Bangladesh, Brazil, China, Hong Kong, India, Mexico, Russia and the United Kingdom for clients in a range of industries, including banking, life sciences and technology.

Presenters



Neil H. MacBride

Neil is a partner in Davis Polk's Litigation Department and co-chair of the firm's White Collar Criminal Defense and Government Investigations Group who was the former U.S. Attorney for the Eastern District of Virginia and former Associate Deputy Attorney General of the Justice Department. He is based in Washington DC and his practice focuses on government enforcement actions, internal investigations, congressional investigations, and complex civil litigation. His matters have included advising clients in connection with foreign corrupt practices, economic sanctions, cybersecurity risks, health care fraud, False Claims Act violations, market manipulation, insider trading, securities, and procurement and tax fraud. His wide-ranging investigations and trial experience span more than two decades, and he has conducted more than 25 jury trials and dozens of bench trials.



Patrick S. Sinclair

Patrick is a partner in our Litigation Department, resident in Hong Kong. His practice focuses on white collar criminal defense matters and government and internal investigations. Patrick has more than a decade of experience representing U.S.-based and international corporations, audit committees, banks, individuals, and the government in corporate criminal investigations. He regularly leads internal investigations for multinational corporations in Asia, and has represented a number of individuals in Asia who were the subject of inquiries from U.S. Attorneys' Offices, the SEC, CFTC, and other U.S. regulators. From 2007 to 2014, Patrick was a prosecutor in the U.S. Attorney's Office for the Eastern District of New York. He was appointed Deputy Chief of the General Crimes Section in 2013.

Presenters



Linda Chatman Thomsen

Linda is a partner in our litigation department and practices in our Washington, DC office. Her practice concentrates on matters related to the enforcement of the federal securities laws. She returned to the firm after serving for 14 years in various positions within the SEC. Linda joined the SEC staff in 1995 as Assistant Chief Litigation Counsel. In 1997, she was named Assistant Director of the Enforcement Division. She became an Associate Director in 2000, Deputy Director in 2002, and was named Director of the Enforcement Division in 2005, a position she held until 2009.