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WHITE PAPER

January 2016

FCPA 2015 Year in Review

In 2015, a year after the DOJ resolved several long-term and large-dollar FCPA investigations, the most significant FCPA story was the sharp decrease in both the number and size of the DOJ's corporate FCPA resolutions. This slowdown may only be a temporary downturn, though, because the DOJ announced in 2015 an increase in FCPA enforcement resources, most notably the doubling of DOJ prosecutors in the FCPA unit. 2015 also brought stable small-dollar enforcement activity by the SEC, continued focus on prosecuting individuals by the DOJ and SEC, and several speeches and policy pronouncements by the DOJ and SEC regarding the importance of self-disclosure and cooperation and prosecuting individuals. Against the backdrop of continued FCPA enforcement in the U.S., several countries around the world are increasing anti-corruption enforcement, including cooperating with DOJ and SEC investigations and pursuing follow-on investigations after resolutions in the U.S. The continued FCPA enforcement and increased international anti-corruption enforcement are a reminder that companies doing business abroad need robust anti-corruption compliance policies and procedures to prevent, identify, and remediate any bribery or other corruption issues that may arise.

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INTRODUCTION

In 2015, the year after the Department of Justice ("DOJ") resolved several long-term and large-dollar Foreign Corrupt Practices Act ("FCPA") investigations, the most significant FCPA story was the sharp decrease in both the number and size of the DOJ's corporate FCPA resolutions. The DOJ settled FCPA cases with only two companies and collected $24.2 million in 2015, figures that equal only a fraction of the ten corporate enforcement actions and over $1.25 billion collected in 2014. Not since 2004 has the DOJ's corporate FCPA prosecution effort resulted in so few cases. The DOJ attributed this drop to fewer self-disclosures and to its focus on pursuing more complicated "higher-impact" bribery cases. Against this slowdown in FCPA enforcement, the DOJ invested in the future of its enforcement regime by tripling the number of Federal Bureau of Investigation ("FBI") agents devoted to investigating foreign bribery cases, hiring a dedicated compliance expert, and announcing plans to double the number of prosecutors devoted to FCPA prosecutions.

By comparison, the Securities and Exchange Commission ("SEC") had a more typical year with respect to FCPA enforcement statistics. It resolved ten relatively low-dollar corporate FCPA enforcement actions—with a settlement range of $75,000 to $25 million—and resolved two enforcement actions against individuals. The SEC's corporate enforcement activity demonstrated its more expansive view of the type of conduct that constitutes a civil FCPA violation. For example, one of the SEC's resolutions involved allegations that an internship program for family members of foreign government officials qualified as "anything of value" under the FCPA. Other noteworthy SEC settlements involved allegedly giving payments and benefits to Chinese health care providers who were, according to the SEC, "foreign officials" under the FCPA and allegedly providing extravagant gifts, travel, and entertainment to foreign government officials.

In the latter part of 2015, the DOJ received much publicity when it reaffirmed its pledge to prosecute individuals in a September 9 memorandum written by DOJ Deputy Attorney General Sally Yates (the "Yates Memo"). Consistent with these public statements, in 2015, the DOJ announced guilty pleas by individuals in connection with each of its two corporate FCPA enforcement actions and obtained significant prison sentences for several former executives who had pled guilty. The DOJ, however, continued its streak of FCPA trial struggles when its high-profile trial against Joseph Sigelman, former CEO of PetroTiger, abruptly ended with a plea deal for probation after the DOJ's star witness admitted to lying on the stand.

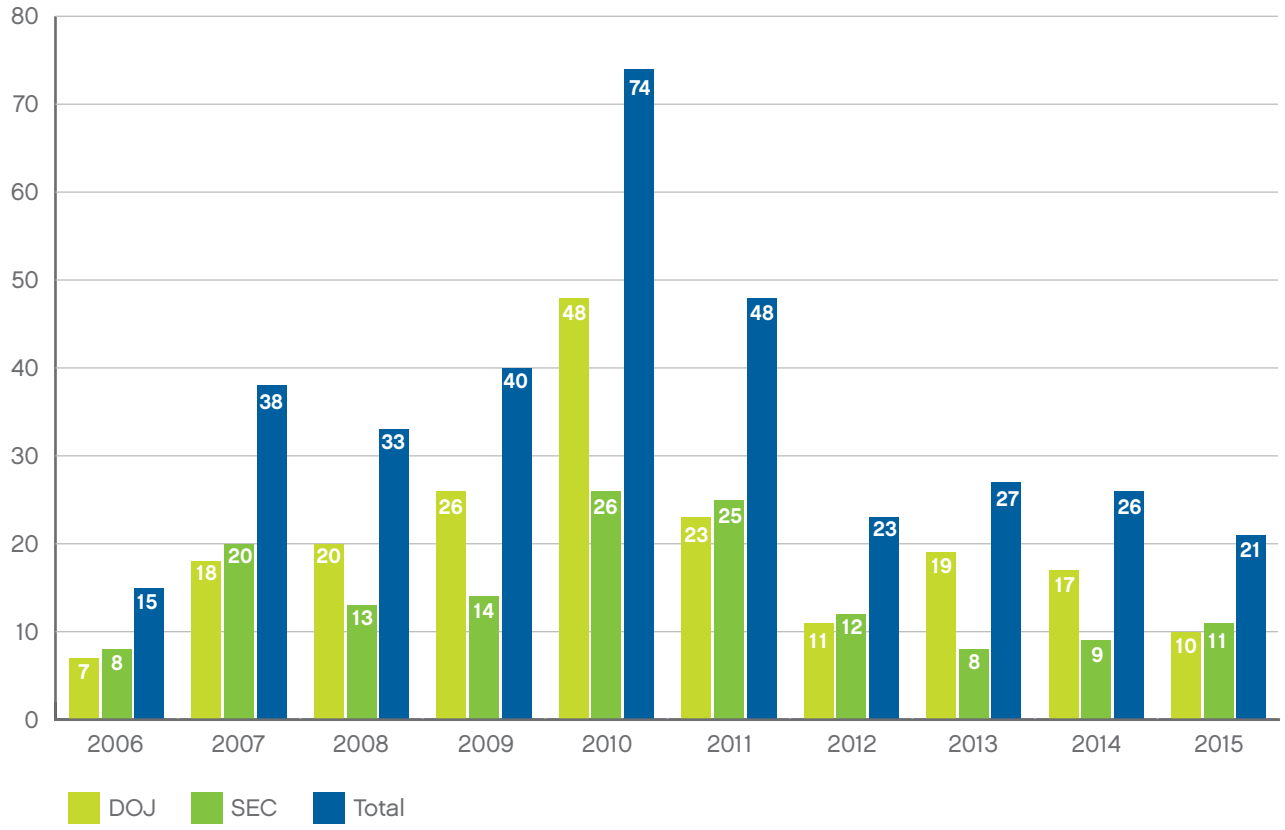
The DOJ and SEC also attempted to shed more light on the potential benefits of self-disclosure and cooperation in corporate FCPA cases. Specifically, the DOJ touted the impact of self-disclosure and cooperation on charging decisions and fine calculations, while the SEC explained that to qualify for a Non-Prosecution Agreement ("NPA") or a Deferred Prosecution Agreement ("DPA"), a company must self-disclose *and* cooperate. Faced with specific information about possible corruption, the decision whether to self-disclose and cooperate in a DOJ or SEC investigation can be complicated. The public statements of the DOJ and SEC appear to respond to questions about how self-disclosure and cooperation impact case resolution decisions and penalties. It remains to be seen, however, whether and how these statements will be applied by prosecutors.

Finally, one of the most significant anti-corruption stories of 2015 is the emergence of increasingly aggressive anti-corruption enforcement regimes outside of the United States. Countries such as China, Mexico, and South Korea adopted new anti-corruption reforms in 2015, and several other countries, such as the U.K., Brazil, and China, increased the intensity of their anti-corruption enforcement. Meanwhile, the DOJ and SEC continue to cooperate with their anti-corruption counterparts around the world, and more companies are finding themselves facing multi-sovereign investigations related to the same alleged conduct.

SUMMARY OF 2015 FCPA ENFORCEMENT ACTIVITY

In 2015, the DOJ and SEC brought a total of 21 enforcement actions against companies and individuals, which was five fewer than the 26 announced in 2014.[1] The size and scope of the monetary resolutions in 2015 declined significantly from 2014. The amount of fines and disgorgements for all FCPA enforcement actions in 2015 was $140 million, which is less than one-tenth of the amount the DOJ and SEC collected in 2014, a near record year at $1.57 billion, and less than one-fifth of the $720 million collected in 2013.[2] The drop in 2015 is largely attributed to the absence of any settlements above $25 million—2014's near-record year was driven by the resolution of four settlements above $100 million.[3]

Chart 1: Number of DOJ and SEC FCPA Enforcement Actions, 2006–2015



DOJ Enforcement Activity Significantly Declined in 2015. The DOJ brought ten FCPA enforcement actions against companies and individuals in 2015, a 41 percent drop from the 17 enforcement actions in 2014.[4] Additionally, for the first time since 2004, the DOJ resolved only two corporate FCPA cases, which is an 80 percent decline from the ten corporate resolutions in 2014.[5] The DOJ collected $24.2 million in FCPA fines in 2015, a small fraction of the over $1.25 billion it collected in 2014.[6]

In 2015, the DOJ settled two long-standing corporate investigations involving conduct that was in both instances at least five years old. First, the DOJ entered into an NPA with IAP Worldwide Services, Inc. to resolve an investigation into an alleged conspiracy between 2004 and 2008 to bribe Kuwaiti officials to obtain a technology services contract valued at $4 million.[7] IAP Worldwide agreed to pay a $7.1 million penalty and was not required to retain a monitor.[8] The DOJ cited IAP's cooperation as a factor that led to the NPA.[9] Second, the DOJ entered into a DPA with Louis Berger International ("LBI") in which the company admitted that between 1998 and 2010 several of its officials in Asia bribed officials in Kuwait, India, and Indonesia to win contracts.[10] LBI paid a $17.1 million penalty and agreed to a three-year monitorship to resolve the DOJ's investigation.[11] In agreeing to the DPA, the DOJ considered the company's self-disclosure, cooperation, remediation, and improvements to its compliance program and internal controls.[12]

In October, the DOJ made public statements to explain the decline in FCPA cases. A DOJ spokesman said that the agency's lower corporate enforcement activity was attributable to the slowdown in self-reported "smaller cases" and the DOJ's shift in focus to high-value enforcement actions.[13] Specifically, the spokesman stated that the DOJ "several years ago handled more cases based on self-reporting by companies, and as a result of that we saw more resolutions, but smaller cases."[14] As the DOJ spokesman explained, however, the DOJ is now adjusting its focus to "bigger, higher impact cases, including those against culpable individuals, both in the U.S. and abroad, [that] take longer to investigate and absorb significant resources," which has led to the slowdown in enforcement activity in 2015.[15] The DOJ stated that these cases "take years to investigate," which can impact year-over-year statistics.[16]

SEC's FCPA Enforcement Statistics Remain Consistent. The SEC brought eleven FCPA enforcement actions in 2015, up from the nine actions in 2014.[17] Specifically, the SEC resolved nine relatively low-dollar corporate enforcement actions—with settlements ranging from $75,000 to $25 million and an average settlement value of $12.6 million—and two individual actions. These results are consistent with 2014, when the SEC resolved seven corporate enforcement actions and two individual actions. In 2015, the SEC collected a total of $118 million in disgorgement, prejudgment interest, and penalties, just over a third of the $320 million it collected in 2014.[18] Several noteworthy SEC enforcement actions are discussed in the next section.

Chart 2: DOJ and SEC Corporate Enforcement Actions, 2015

#	Date	Company	Agency	Total Payment
1	May 20	BHP Billiton Ltd.	SEC	$25M
2	September 28	Hitachi Ltd.	SEC	$19M
3	July 17	Louis Berger International, Inc.	DOJ	$17.1M
4	February 24	Goodyear Tire & Co.	SEC	$16M
5	August 18	Bank of New York Mellon Corp.	SEC	$14.8M
6	October 5	Bristol-Myers Squibb Co.	SEC	$14M
7	July 28	Mead Johnson Nutrition Co.	SEC	$12M
8	April 8	FLIR Systems Inc.	SEC	$9.5M
9	June 16	IAP Worldwide Services Inc.	DOJ	$7.1M
10	January 22	PBSJ Corp.	SEC	$3.4M
11	September 29	Hyperdynamics Corp.	SEC	$75K

DOJ and SEC Announced Nine Individual Enforcement Actions. In 2015, the DOJ and SEC also followed up on their pledges to pursue individuals in FCPA investigations. The DOJ announced charges against seven individuals, six of whom have entered guilty pleas, and the SEC charged two individuals with civil FCPA violations.[19]

Chart 3: DOJ and SEC FCPA Individual Enforcement Actions, Announced in 2015

#	Date	Individual	Title, Company	Agency	Action
1	January 6	Dmitrij Harder	Former Owner and President, Chestnut Group	DOJ	Indictment (five substantive counts of violating FCPA and one count of conspiracy to violate FCPA)
2	January 10	Boris Rubizhevsky	Former President, NEXGEN Security	DOJ	Guilty Plea (conspiracy to commit money laundering)
3	January 22	Walid Hatoum	Former President, PBS&J International	SEC	Cease and desist order; $50K penalty
4	June 16	Daren Condrey	Former President, Transport Logistics International	DOJ	Guilty Plea (conspiracy to violate FCPA and conspiracy to commit wire fraud)
5	June 16	James Rama	Former VP, IAP Worldwide Services Inc.	DOJ	Guilty Plea (conspiracy to violate FCPA)
6	July 17	Richard Hirsch	Former SVP, Asia, Louis Berger International, Inc.	DOJ	Guilty Plea (substantive count of violating FCPA and conspiracy to violate FCPA)
7	July 17	James McClung	Former SVP, Asia, Louis Berger International, Inc.	DOJ	Guilty Plea (substantive count of violating FCPA and conspiracy to violate FCPA)
8	August 12	Vicente Garcia	Former VP, Global and Strategic Accounts, SAP SE	SEC	Cease and desist order; $86K disgorgement
9	August 27	Vadim Mikerin	Former President, TENAM Corp.; Former Director, JSC Techsnabexport	DOJ	Guilty Plea (conspiracy to commit money laundering); $2.1M forfeiture

Additional FCPA Resources to DOJ. Notwithstanding the drop in FCPA enforcement actions, the DOJ announced three major initiatives to boost FCPA enforcement, which will likely lead to increased FCPA enforcement activity in the future.

- In March, the FBI, in conjunction with the DOJ, established three dedicated international corruption squads assigned to foreign bribery investigations.[20] These squads are based in New York, Los Angeles, and Washington, D.C.[21] This move tripled the number of agents assigned to foreign bribery investigations from ten to thirty.[22]

- In July, the DOJ announced the hiring of a new "compliance counsel" to advise the DOJ on matters relevant to the prosecution of business entities, including "the existence and effectiveness of any compliance program," and to aid the DOJ in deciding whether to prosecute.[23] In November, the DOJ announced that it had hired Hui Chen to fill this post.[24] Chen previously was the Global Head for Anti-Bribery and Corruption at Standard Chartered Bank, held various in-house and compliance roles at Pfizer, Inc. and Microsoft Corporation, and served as a prosecutor with the DOJ.[25]

- Finally, in November, the DOJ announced a plan to double the number of prosecutors in its FCPA unit from ten to twenty.[26]

While the DOJ's additional resources will likely lead to an uptick in FCPA enforcement activity, how quickly this will occur is unclear; results may not be apparent until much later this year or 2017.

NOTEWORTHY SEC CORPORATE ENFORCEMENT ACTIONS

In 2015, the SEC's FCPA corporate enforcement actions focused on violations of the FCPA's requirement that issuers maintain books and records that accurately reflect transactions and disposition of assets, and maintain internal controls sufficient to provide reasonable assurances that transactions are properly authorized, recorded, and accounted for. All nine SEC FCPA actions against companies alleged inadequate internal controls and eight of the nine alleged books-and-records violations. To pursue an internal controls or books-and-records action, the SEC does not need to allege a violation of the anti-bribery provisions of the FCPA. Indeed, the SEC often charges companies with books-and-records and internal controls violations in the absence of anti-bribery charges. Last year, the SEC alleged anti-bribery violations in only three of the nine enforcement actions.

Highlights from five of the SEC's enforcement actions—with settlements ranging from $9.5 million to $25 million—are discussed below. These enforcement actions demonstrate the broad applicability of the FCPA's internal controls and books-and-records provisions.

Expansive Interpretation of the FCPA's Restriction on Providing "Anything of Value" to Foreign Officials. Bank of New York Mellon Corp. ("BNY Mellon") settled allegations that it provided internships to unqualified family members of foreign government officials. The SEC applied the FCPA's internal controls provisions to BNY Mellon's human resources hiring practices. It viewed internships for the relatives of two government officials, in one case unpaid, as conferring something of value to a government official to obtain or retain business.[27] Without admitting or denying the charges, BNY Mellon agreed to pay $14.8 million consisting of $8.3 million in disgorgement, $1.5 million in prejudgment interest, and a $5 million penalty.[28] BNY Mellon's settlement was the first of its kind in numerous respects; it was the first enforcement action involving internships and the first settlement in connection with the SEC's sweep of sovereign wealth funds.

The SEC took an expansive view of the FCPA's prohibition against providing "anything of value" to a foreign official to obtain or retain business, alleging that giving internships to unqualified family members of foreign government officials constituted something of value to the officials.[29] In announcing the settlement, the chief of the SEC's Enforcement Division warned that "cash payments, gifts, internships, or anything else used in corrupt attempts to win business can expose companies to an SEC enforcement action."[30] In light of BNY Mellon, companies must be aware that even items lacking any direct monetary value—such as an internship awarded to a foreign government official's relative—may still be viewed as a thing "of value" by the SEC or DOJ. As a result, if conferred on a foreign official (either directly or indirectly through a family member), such items may still trigger liability under the FCPA. As part of its cooperation and remedial efforts, BNY Mellon enhanced its anti-corruption compliance program to specifically address the hiring of government officials' relatives.[31]

Payments and Benefits to Chinese Health Care Providers Under Scrutiny. The SEC's settlements with Mead Johnson Nutrition ("Mead Johnson") and Bristol-Meyers Squibb ("BMS") highlight the significant level of risk involved in doing business in the healthcare industry in China, where many healthcare providers are employees of state-owned hospitals and could qualify as "foreign officials" under the FCPA.

First, in July 2015, Mead Johnson resolved an SEC investigation into alleged payments through third parties to health care professionals in government-owned hospitals in China.[32] The SEC alleged that Mead Johnson's Chinese subsidiary made improper payments to third-party distributors, who then allegedly paid cash and other incentives to health care professionals in Chinese state-owned hospitals to induce them to recommend Mead Johnson's infant formula to new and expectant mothers.[33] The physicians in the state-owned hospital constituted "foreign officials," according to the SEC, within the meaning of the FCPA.[34] The SEC ultimately alleged that the company's failure to accurately record the transactions and its "lax internal controls" enabled its subsidiary to misuse funds in violation of the FCPA.[35]

Mead Johnson settled with the SEC for $12 million—$7.77 million in disgorgement, $1.26 million in prejudgment interest, and a $3 million penalty.[36] Mead Johnson did not admit or deny the SEC's allegations.[37] In resolving the SEC's investigation, Mead Johnson engaged in remedial measures that included terminating employees (specifically, senior staff), updating its internal controls, and creating China-specific compliance policies.[38] The SEC's order also

focused on Mead Johnson's extensive cooperation, including voluntarily disclosing its internal investigation findings.[39]

Second, in October 2015, BMS agreed to settle SEC allegations that it provided cash and other benefits to local health care providers at Chinese state-owned and state-controlled hospitals in exchange for prescription drug sales.[40] The SEC alleged that between 2009 and 2014, sales representatives of BMS's majority-owned joint venture in China, BMS China, provided cash, gifts, meals, travel, entertainment, and conference sponsorships to health care providers.[41] The SEC also alleged that BMS China inaccurately recorded this spending as legitimate business expenses, failed to respond to red flags indicating bribes, did not investigate claims of terminated employees, and was too slow in its remedial response.[42]

Without admitting or denying the allegations, BMS resolved the SEC's allegations that it violated the FCPA's internal controls and recordkeeping provisions by agreeing to a two-year self-monitorship and agreeing to pay a $14 million fine.[43] Like Mead Johnson, the BMS settlement highlights the risk of doing business in the healthcare sector in China due to extensive state involvement in the industry and the SEC's expansive view of who qualifies as a foreign government official.[44]

Focus on Providing "Gifts, Travel, and Entertainment" to Government Officials. The SEC's enforcement actions against BMS and BHP Billiton Ltd. highlighted the SEC's enforcement of allegedly illicit gifts, travel, and entertainment to foreign government officials. In May 2015, the SEC alleged that BHP Billiton lacked adequate internal controls over its Olympic Games hospitality program.[45] Even with no allegation of bribery, BHP Billiton's alleged failure to institute policies and procedures designed to adequately protect against corruption risk led to a $25 million settlement, making it the largest FCPA settlement of 2015.[46] The SEC alleged that BHP Billiton invited 176 foreign officials, mostly from Africa and Asia, to attend the 2008 Beijing Olympic Games and ultimately sponsored the attendance of 60 foreign officials and 24 of their spouses.[47] The company paid between $720,000 and $960,000 in total for the hospitality packages.[48] BHP Billiton did not admit or deny the SEC's allegations.

The SEC's order alleged that BHP Billiton failed to devise and maintain internal controls and failed to accurately maintain books and records related to the company's Olympic Games hospitality program. The SEC did not allege that BHP Billiton gained any specific business from the provision of the hospitality packages and did not allege the existence of a *quid pro quo*. The SEC's use of the FCPA's books-and-records and internal controls provisions—without any allegation that bribery occurred—to impose the agency's largest penalty of 2015 highlights the SEC's broad reading of the FCPA's recordkeeping and internal controls provisions.

YATES MEMORANDUM RENEWED EMPHASIS ON PROSECUTING INDIVIDUALS

In 2015, DOJ officials delivered multiple public statements re-emphasizing the DOJ's focus on bringing individual prosecutions in connection with corporate wrongdoing. This strategy was highlighted in the Yates Memo, which outlined the DOJ's enforcement policies and practices and reiterated the DOJ's focus on the prosecution of individuals involved in corporate wrongdoing.[49] The DOJ's emphasis on prosecuting individuals is intended to address the limited number of individual enforcement actions in recent years compared to the number of corporate enforcement actions. In the area of anti-corruption enforcement, of the 84 DOJ FCPA enforcement actions against companies since 2004, only 20 (24 percent) of the actions have resulted in charges against individuals.[50]

Although some of the Yates Memo's policies and practices will likely do little to alter the DOJ's current practice and the conduct of cooperating companies under investigation, other pronouncements will have consequences for FCPA investigations moving forward, as discussed below.

Affirmative Requirement to Provide All Relevant Facts Relating to Individuals for Corporate Cooperation Credit. The Yates Memo indicates that a prerequisite for corporate cooperation "credit" is that a corporation must disclose all relevant facts "relating to the individuals responsible for the misconduct."[51] In a speech she delivered on September 10, the Deputy Attorney General clarified this requirement when she stated that a corporation must serve up a prosecutable case against individuals to receive *any* cooperation credit from the DOJ, which suggests cooperation credit is now an "all-or-nothing" proposition:[52]

> [I]f a company wants any credit for cooperation, any credit at all, it must identify all individuals involved in the wrongdoing, regardless of their position, status or seniority in the company and provide all relevant facts about their misconduct. It's all or nothing. No more picking and choosing what gets disclosed. No more partial credit for cooperation that doesn't include information about individuals.[53]

While corporate cooperation credit is not contingent on whether any company personnel are ultimately prosecuted, companies seeking cooperation credit can no longer "end [an investigation] with a conclusion of corporate liability, while stopping short of identifying those who committed the underlying conduct."[54] According to the DOJ, an exception will be made only where "a company truly is unable to identify the culpable individuals … and provides [the DOJ] with the relevant facts and otherwise assists [the government] in obtaining evidence."[55]

In practical terms, the obligation to turn over all relevant facts related to culpable individuals may not represent a substantial change for cooperating companies. A company cooperating in an investigation already has little incentive to withhold relevant, non-privileged facts—including facts potentially implicating individuals in criminal activity. However, the increased focus on individual prosecutions, and the disclosure of evidence to support investigations into individuals, may have a chilling effect on employees with knowledge of or involvement in the underlying misconduct. Employees' decreased incentive to cooperate with internal investigations—for fear of their own prosecution—may further increase the difficulty of conducting internal investigations into potential FCPA violations.

With its emphasis on individual prosecutions, the Yates Memo also raises the question of whether it will be harder for companies to receive cooperation credit. Many cases involving alleged corporate misconduct lack direct evidence of individual criminal responsibility, as the Deputy Attorney General has acknowledged,[56] and may leave companies at the mercy of the DOJ's sense of whether the company was "truly [] unable to identify culpable individuals …."[57] Only time will tell whether the DOJ will fairly assess a company's good faith efforts to uncover evidence of corporate and individual wrongdoing, or whether prosecutors will withhold cooperation credit based on erroneous judgments regarding a company's compliance with the factors set forth in the Yates Memo.

DOJ to Investigate Individuals From the Outset and Include Plan to Resolve Individual Cases Before Resolving Corporate Cases. The Yates Memo also explains the DOJ's own approach to investigating individuals involved in corporate criminal conduct.[58] DOJ investigations must "focus on individual wrongdoing from the very beginning of any investigation …."[59] This approach is intended to improve the efficiency of investigations, increase the level of individual cooperation from lower-level employees, and "maximize the chances that the final resolution of an investigation uncovering the misconduct will include civil or criminal charges against not just the corporation but against culpable individuals as well."[60]

Along with this focus at the outset of the investigation, the DOJ now requires prosecutors to present a "clear plan" for resolving related individual cases prior to resolving cases against corporations.[61] With respect to a corporate investigation that has concluded and for which resolution is sought, and if the investigation is ongoing as to individuals, the corporate prosecution memorandum "should include a discussion of the potentially liable individuals, a description of the current status of the investigation regarding their conduct and … an investigative plan to bring the matter to resolution."[62] Any decision not to bring civil or criminal claims against individuals must also be memorialized and approved before resolving the corporate case.[63]

Despite the DOJ's assertions that these measures will improve investigation efficiency and effectiveness, these added mandates could lengthen the time for resolving government investigations, forcing companies to wait in limbo while the government's investigation into individuals continues. Indeed, the Assistant Attorney General stated that the policies are designed to remedy situations where the DOJ was "quick to resolve cases with corporations" without individual liability.[64] The suggestion that some previous resolutions were too "quick" strongly indicates that the new policy may impact the ability of companies to resolve allegations of misconduct in a timely manner.

MIXED SUCCESS WITH CRIMINAL ENFORCEMENT ACTIONS AGAINST INDIVIDUALS

In 2015, the DOJ continued to make some progress on its pledge to bring enforcement actions against individuals. It announced seven individual FCPA enforcement actions and secured significant prison sentences against former

executives. However, the DOJ experienced a significant setback when its only FCPA trial in three years ended with a plea deal after its chief witness admitted he lied on the stand. After the trial, the DOJ acknowledged the challenges in bringing FCPA actions against individuals.

DOJ Announced Seven Individual Enforcement Actions. The DOJ's seven individual FCPA enforcement actions included actions against a former president and two former senior vice-presidents.[65] Six of these individuals have pled guilty, while the seventh, Dimitrij Harder, a Russian national and former President of Chestnut Group, is fighting the DOJ's charges.[66] Notably, and in accordance with the recent guidance announced in the Yates Memo, the DOJ announced individual enforcement actions in connection with each of its 2015 corporate enforcement actions. A summary of the seven criminal individual enforcement actions announced in 2015 is located at Chart 2, on page 4.

Former Executives Received Significant Prison Sentences. In 2015, the DOJ secured significant prison sentences against nine individuals who pled guilty to FCPA and other violations. These individuals also disgorged collectively millions of dollars. Four noteworthy cases that involved prison sentences are discussed below.

Three individuals received four-year prison sentences. In March, Benito Chinea, the former CEO of Direct Access Partners, and Joseph DeMeneses, the former Managing Director, each received a four-year prison sentence for conspiring to violate the FCPA and Travel Act in connection with a scheme to bribe a Venezuelan development bank official.[67] Chinea and DeMeneses were also ordered to forfeit $3.6 million and $2.7 million, respectively.[68]

In December, the DOJ announced that Vadim Mikerin, the former President of TENAM Corporation and former director of the Pan American Department of JSC Techsnabexport, had been sentenced to four years in prison and ordered to forfeit $2.1 million for conspiracy to commit money laundering in connection with more than $2 million in corrupt payments made to influence contracts with a Russian state-owned nuclear energy corporation.[69]

On the other end of the spectrum, in October, James Rama, a former vice president for IAP Worldwide, was sentenced to 120 days in prison after pleading guilty to conspiracy to violate the FCPA.[70] Rama's sentence departed significantly from the federal sentencing guidelines' recommendation of fifty-seven to sixty months due to his significant cooperation and resulting financial ruin in the aftermath of the enforcement action.[71] In June, IAP Worldwide resolved an FCPA enforcement action with the DOJ by paying a $7.1 million penalty and agreeing to an NPA.[72]

The Eleventh Circuit Upheld a Nine-Year Prison Conviction of a Foreign Government Official Under the U.S. Money Laundering Control Act, Demonstrating the DOJ's Expansive Approach to Anti-Corruption Enforcement. On February 9, the United States Court of Appeals for the Eleventh Circuit upheld the nine-year prison sentence of a foreign government official, Haitian national Jean Rene Duperval, under the U.S. Money Laundering Control Act ("MLCA").[73] This case demonstrates the DOJ's ability to prosecute foreign government officials in foreign corruption schemes under the MLCA.

At trial, the DOJ proved Duperval, the former Director of International Affairs at the state-owned Telecommunications D'Haiti ("Haiti Teleco"), received $500,000 in bribes from Terra Telecommunications Corp. in return for telecommunications contracts and favorable rates.[74] Since Duperval was a foreign government official according to the DOJ and ineligible for prosecution under the FCPA, the DOJ charged Duperval with violations of the MLCA by establishing that the bribes were proceeds of FCPA violations that had been laundered through U.S. banks.[75] In March 2012, he was convicted of two counts of conspiracy to commit money laundering and nineteen counts of money laundering and was sentenced to nine years in prison.[76] Duperval appealed his conviction on several grounds, including whether there was sufficient evidence to find that Haiti Teleco was a government instrumentality, whether the trial court judge improperly denied Duperval's requested jury instruction on the facilitating payments exception, and whether his nine-year prison sentence was unreasonable.[77]

In upholding Duperval's conviction, the Eleventh Circuit rejected Duperval's argument that he was not a "foreign official" because Haiti Teleco was not an "instrumentality" of

the government of Haiti. The Eleventh Circuit reaffirmed the definition of "instrumentality" it adopted in *United States v. Esquenazi*: "an entity controlled by the government of a foreign country that performs a function the controlling government treats as its own."[78] Based on this finding, the court concluded that Duperval was a foreign official under the FCPA.[79]

The Eleventh Circuit also rejected Duperval's argument that the trial court judge should have provided an instruction on the FCPA exception that "allows 'any facilitating or expediting payment to a foreign official . . . the purpose of which is to expedite or to secure the performance of a routine governmental action,'"[80] sometimes known as the facilitating payments exception to the FCPA.[81] In rejecting Duperval's argument, the Eleventh Circuit found that Duperval was "pay[ing] a decision-maker to continue a contract with the government," rather than performing the "routine governmental action" and the "largely non-discretionary, ministerial activities," such as processing visas, that Congress envisioned when it made the exception.[82]

The Eleventh Circuit went on to find that Duperval's nine-year sentence was substantively reasonable.[83] Duperval's petition for certiorari to the U.S. Supreme Court was denied.[84]

DOJ Trial of Former CEO Ends with Probation. The DOJ's only FCPA trial in 2015, and its first in three years, ended abruptly in June with a plea deal between the prosecution and the defendant that called for the defendant to serve a three-year term of probation. This deal was struck after the DOJ's chief witness admitted he lied on the stand. In January 2014, the DOJ charged Joseph Sigelman, the former CEO of PetroTiger Ltd., with conspiracy to violate the FCPA (along with several other counts) for allegedly authorizing bribes to a Colombian national oil company to procure service contracts.[85] Sigelman was the DOJ's first FCPA trial of an individual since a judge dismissed the DOJ's case against John Joseph O'Shea, a former general manager of ABB, Inc., in January 2012 because the DOJ's chief witness could not tie O'Shea to the alleged crimes.[86]

At Sigelman's trial, the DOJ's cooperating witness—who previously pled guilty for conspiring to violate the FCPA and received a sentence of two years of probation—admitted that he lied on the stand before the jury in testimony given the day earlier.[87] In the wake of the cooperating witness's reversal, the trial was adjourned and the DOJ offered Sigelman a plea deal for substantially reduced charges, effectively dropping the FCPA charge.[88] Sigelman accepted the new plea deal and avoided a term of imprisonment, with the trial judge criticizing both the DOJ and the witness.[89] After Sigelman entered his plea, the DOJ declined to bring a corporate prosecution against PetroTiger for FCPA violations.[90]

The Sigelman trial underscores the DOJ's difficulty in securing guilty verdicts at trial. Since 2011, all DOJ prosecutions of individuals at trial have resulted in mistrials, dismissals, or acquittals of substantive FCPA charges, highlighting the challenges for the DOJ when it has the burden of proof.

DOJ Acknowledged Challenges With FCPA Individual Enforcement Actions. Despite the increased DOJ focus on individual culpability under the FCPA, the DOJ has recognized several challenges in bringing FCPA actions against individuals. First, the DOJ has acknowledged that it is often difficult to obtain the evidence necessary for a conviction. In an attempt to explain the DOJ's poor trial record in FCPA cases after the Sigelman trial, a DOJ spokesman stated, "FCPA cases by their very nature, often require proof of criminal acts carried out in foreign countries [and] obtaining foreign evidence—documents and witnesses—poses particular challenges in FCPA cases."[91]

Second, in addition to evidentiary challenges, individuals who violate the FCPA, according to the Assistant Attorney General, "often are located overseas—sometimes in jurisdictions with which the U.S. government has limited relationships."[92] Indeed, extradition of these individuals may prove difficult. For example, in April, an Austrian judge refused to order the extradition of a businessman in the Ukraine natural gas industry for allegedly paying $18.5 million in bribes to Indian government officials, calling the DOJ's enforcement action "politically motivated" and lacking "sufficient proof."[93]

Finally, it is often difficult to pin improper activity on a particular individual within a vast corporate structure. Depending on the complexity of the corporation and the conduct at issue, internal and government investigations may involve various corporate subsidiaries, multiple levels of management, and complex fact patterns. Individuals outside of the corporate structure may be involved, given that FCPA investigations often encompass "one or more third parties, such as resellers or agents, also located overseas."[94] Consequently, concluding internal and government investigations into potential violations can take several

years, which can hinder individual civil and criminal FCPA prosecutions that are subject to a five-year statute of limitations.[95]

These evidentiary and logistical challenges are significant because while companies may hesitate to contest criminal charges at trial and settle for many reasons, individuals are typically less averse to facing a trial. In addition, the evidentiary proof necessary for conviction at trial is more stringent than evidence proffered at corporate settlement negotiations. Therefore, individual FCPA prosecutions are more likely to be contested in court rather than resolved in settlement or plea negotiations.

DOJ AND SEC EMPHASIZED VALUE OF SELF-DISCLOSURE AND COOPERATION IN FCPA ENFORCEMENT ACTIONS

In 2015, the DOJ and SEC placed an increased emphasis on the benefits of self-disclosure and cooperation for companies that face possible prosecution for violations of the FCPA. They also sought to articulate some benefits, and consequences, of a company's decision to self-disclose and cooperate. In doing so, the DOJ and SEC elaborated on their longstanding policies that, in order to receive maximum cooperation credit and possibly a declination, NPA, or DPA, companies must (i) self-disclose potential violations and (ii) cooperate in the ensuing investigation. A failure on either aspect, according to the DOJ and SEC, could result in the company receiving little to no cooperation credit and a stiffer charging decision and financial penalty.

Whether to self-disclose a potential FCPA violation to U.S. regulators typically involves a multi-factored and otherwise complicated analysis. Companies must weigh the potential risks of self-disclosure (e.g., DOJ and/or SEC investigation, fines, penalties, remedial action, civil suits, administrative sanctions, reputational damage, investigations by foreign regulators) against the benefits they may receive from self-reporting and cooperating with the government (e.g., cooperation credit, narrower charges, limited sanctions, and a declination, NPA, or DPA). Notwithstanding the DOJ's attempt to cite specific examples, as discussed below, uncertainty often confronts companies when they try to determine the benefits of disclosing otherwise unknown FCPA violations and whether, on balance, such self-disclosure is advisable. Nevertheless, statements by the DOJ and SEC in 2015 regarding the potential benefits of self-disclosure and cooperation on charging decisions should assist companies with their analyses.

DOJ and SEC Emphasized that Self-Disclosure Is Required for Maximum Cooperation Credit and Clarified What Qualifies as "Self-Disclosure." This past year, the DOJ and SEC emphasized the vital role self-disclosure can play in enabling a corporation to receive cooperation credit. In a November speech, the Assistant Attorney General in charge of the DOJ's Criminal Division, which supervises the DOJ Fraud Section's FCPA unit, explained that companies that fail to self-disclose a known FCPA violation but otherwise cooperate with the DOJ's investigation will not be eligible for the maximum amount of cooperation credit.[96] Touting the benefits of self-disclosure, the Assistant Attorney General pointed to the DOJ's decision not to prosecute or seek an NPA or DPA against one company based on the company's voluntary disclosure and full cooperation.[97] In contrast, she highlighted another company's lack of disclosure and cooperation, which resulted in the DOJ's largest FCPA penalty to date, $772 million in 2014.[98]

In a speech given that same day, the SEC Director of Enforcement went even further and stated that a company *must* self-disclose to be eligible for an NPA or DPA with the SEC.[99] The Director emphasized that if the government uncovers an FCPA violation on its own, the SEC will not only refuse to give the company cooperation credit, but also likely will impose harsher consequences as a result. The Director made clear that companies are "gambling" if they choose not to self-report.[100]

Last year, FCPA enforcement authorities also clarified what qualifies as "self-disclosure." The Assistant Attorney General stated that disclosure should occur within a "reasonably prompt time after becoming aware of an FCPA violation."[101] She explained that a company need not call authorities on day one of discovering the illegal conduct, but that timely disclosure after an internal investigation is required to obtain cooperation credit.[102] She also made clear that self-disclosure must occur before a government investigation—whether by the DOJ, SEC, or any other agency—is initiated, and that the disclosure cannot be required by law, agreement, or contract.[103] The SEC—like the DOJ—is confident that between whistleblowers, foreign law enforcement, competitors, current and former employees, foreign media, and others, it will uncover FCPA violations eventually.[104] These comments suggest that FCPA enforcement authorities are focused on the voluntary nature of

a company's disclosure. As such, waiting until a whistleblower threatens dissemination may be too late for self-disclosure—an important consideration given that FCPA-related whistleblower complaints are on the rise. According to the SEC, whistleblowers provided 186 FCPA-related whistleblower tips in Fiscal Year 2015, the highest number of FCPA-related tips in the four-year history of the SEC's Whistleblower Program.[105] Under this program, an individual who voluntarily provides original information that leads to a successful SEC enforcement action resulting in a monetary sanction above $1 million is entitled to 10 to 30 percent of the total recovery.[106] To date, the SEC has not yet granted an award to a whistleblower in an FCPA-related enforcement action.

DOJ and SEC Pronounce Support for Tailored Internal Investigations. In addition to explaining the expectations for corporate cooperation credit as it relates to individuals, the DOJ provided more clarity on its expectations for cooperation. Although the DOJ will not provide cooperation credit where it is not warranted, the Assistant Attorney General also stated that the DOJ does "not expect companies to aimlessly boil the ocean" during an investigation.[107] She emphasized that the DOJ does not want, much less expect, a company to embark on an unnecessarily broad and costly "investigative frolic."[108] Instead, the DOJ will look to whether a company engaged in a quality, tailored, and thorough investigation when determining cooperation credit.[109] If a company is unclear what that entails in a given situation, the Assistant Attorney General encouraged the company to call the DOJ to engage in an open dialogue with the DOJ.[110] The DOJ also pledged to provide "guideposts" to a company under investigation and make clear the DOJ's areas of interest while also "pressure test[ing]" the company's investigation.[111] It remains to be seen whether this pronouncement will have a meaningful impact on prosecutors who generally bring to bear their own views, on behalf of the DOJ, about the proper scope of a company's investigation.

Tangible Benefits of Self-Disclosure and Cooperation. Last year, FCPA enforcement officials acknowledged the complexity surrounding a company's decision to self-disclose and cooperate, and sought to encourage increased self-disclosure and cooperation by providing companies with specific examples of the benefits associated with such actions. The Deputy Chief of the DOJ's FCPA Unit stated that self-disclosure and cooperation will result in measurable cooperation credits to a company.[112] The Deputy Chief observed that two companies could have saved $565 million (73 percent) and $20 million (32 percent) from their respective settlements of $772 million and $62 million had they voluntarily disclosed and cooperated with the DOJ.[113] In a May speech, the Assistant Attorney General further explained the benefits of self-disclosure and cooperation. She stated that when self-disclosure is paired with cooperation, "[t]here is a real chance that the company might not be prosecuted at all—not just an NPA or DPA—but a declination."[114] However, as the Assistant Attorney General explained, cooperation must ultimately be candid, timely, and complete.[115]

The SEC likewise touted the benefits of self-disclosure and cooperation for corporations. In line with the DOJ's standards, the SEC Director of Enforcement stated that a company must provide all relevant facts and share information regarding individual wrongdoers to receive full cooperation credit.[116] In a speech earlier in the year, the Director discussed the type of conduct the SEC regards as cooperation, referring to the agency's NPA with Ralph Lauren Corporation in 2013 and its DPA with PBSJ Corporation in 2015 as positive examples.[117] According to the Director, both companies not only self-reported, but also quickly provided the factual findings of their internal investigations, including providing foreign language documents and summaries of interviews, making witnesses available to the SEC, and bringing some witnesses to the U.S. for interviews.[118] The Director emphasized that, as a result, both companies only paid 10 percent of their disgorgement as penalties—a significant reduction from the typical 100 percent ratio.[119] The Director also referred to one instance in which a company's self-disclosure and cooperation was the driving force behind the SEC requiring disgorgement but no penalty.[120]

DOJ Pledged More Transparency in Corporate Charging Decisions. Despite efforts to describe the benefits of self-disclosure and cooperation, the DOJ recognized that companies could benefit from specific guideposts and objective standards. In an April speech, the Assistant Attorney General acknowledged that corporate decision-making would be well served by increased transparency as to the weight the DOJ applies to a company's self-disclosure and cooperation and pledged to provide more detail.[121] She explained that by making transparency a DOJ priority, companies will have greater insight into the benefits of engaging with the agency and the consequences of not receiving cooperation credit.[122] According to the Assistant Attorney General, the DOJ believes more companies are likely to disclose

wrongdoing and cooperate if they have a better idea of the benefits they may receive in return.[123] Companies will also be able to evaluate the consequences they might face if they choose not to cooperate with the DOJ.[124] In return, she pledged to provide "even more detailed explanations" of the factors that led to a guilty plea, NPA, or DPA, and to provide more details regarding declinations.[125]

Consistent with its pledge for more transparency, the DOJ indicated it could soon release information that will increase the incentive for companies to be forthcoming about wrongdoing.[126] A draft DOJ policy that has yet to be released recommends that prosecutors will decline to bring charges against a company that self-discloses FCPA violations, cooperates in any ensuing investigation, and disgorges ill-gotten gains.[127] The overall goal is to provide more certainty that self-disclosure and cooperation will not result in a penalty or criminal charge.[128] On the other hand, the draft policy also contemplates prosecutors imposing harsher treatment on companies that make the decision not to self-disclose.[129]

Notwithstanding the DOJ and SEC's attempts to tout the benefits of disclosure and cooperation, the agencies did not elaborate on what specific guidelines must be met in order to receive a declination, NPA, or DPA or reduced penalty, leaving companies with no objective standards to measure the value of self-disclosure and cooperation. If the DOJ or SEC do provide clarity regarding the benefits of self-disclosure and cooperation, companies will have even more information to consider in their decisions whether to self-disclose and cooperate.

IMPLICATIONS OF THE INCREASED INTERNATIONAL ANTI-CORRUPTION ENFORCEMENT

In addition to U.S. FCPA enforcement, companies with foreign operations must also be aware of the risks of non-compliance with foreign countries' anti-corruption laws. Increasingly, the FCPA is no longer the only anti-corruption enforcement mechanism impacting multinational companies. Since 2010, many countries—most notably the U.K., Brazil, Russia, India, China, and Mexico—have implemented or enhanced their own enforcement regimes targeting government corruption and are enforcing them against multinational corporations and their executives.

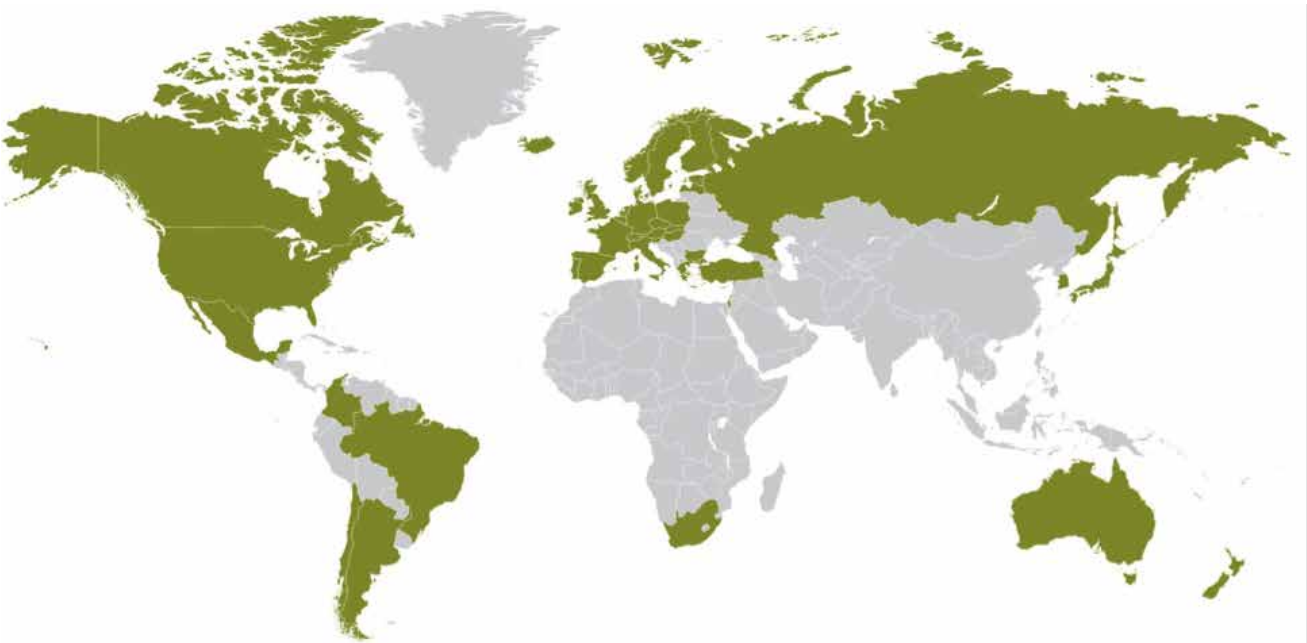
One offshoot of the increase in international anti-corruption efforts is the rise in multi-jurisdictional investigations. These investigations greatly increase the complexity of compliance for multinational companies. Companies also need to be aware of the possibility of facing anti-corruption enforcement actions in more than one country, as 2015 evidenced that disclosures or settlements in one country may lead to enforcement actions in other countries.

Major international anti-corruption developments in 2015 included:

- New or enhanced anti-corruption laws in China, Mexico, and South Korea;
- The first DPA in the U.K.;
- A Chinese government official sentenced to sixteen years in prison for receiving bribes as part of China's "Operation Fox Hunt" anti-corruption crackdown;
- An investigation into state-owned oil company Petrobras in Brazil as part of "Operation Car Wash"; and
- An investigation by Colombian authorities of PetroTiger in 2015 after the DOJ charged two PetroTiger executives in 2014.

Increased Global Anti-Corruption Enforcement. In the past ten years, several countries have adopted or enhanced anti-corruption laws and regulations and have strengthened their anti-corruption enforcement regimes. There are 41 signatories to the Organization for Economic Cooperation and Development Convention on Combating Bribery of Foreign Public Officials in International Business Transactions ("OECD Anti-Bribery Convention"), which requires signatory countries to make bribery of foreign officials a crime under their respective laws.[130] The U.K., Brazil, and Russia are signatories and have adopted anti-corruption laws. In 2015, Mexico and South Korea, also signatory countries, adopted new anti-corruption laws and regulations,[131] while China, a non-signatory country, reformed its anti-corruption laws.[132] These examples demonstrate the increasing anti-corruption enforcement activity in foreign countries that multinational corporations must consider. In these countries in particular, multinational companies must contemplate the risks of prosecution under local anti-corruption laws as well as under the FCPA.

Chart 4: OECD Anti-Bribery Convention Signatories



ARGENTINA	CZECH REPUBLIC	IRELAND	NORWAY	SWEDEN
AUSTRALIA	DENMARK	ISRAEL	POLAND	SWITZERLAND
AUSTRIA	ESTONIA	ITALY	PORTUGAL	TURKEY
BELGIUM	FINLAND	JAPAN	RUSSIAN FEDERATION	UNITED KINGDOM
BRAZIL	FRANCE	LATVIA	SLOVAKIA	UNITED STATES
BULGARIA	GERMANY	LUXEMBOURG	SLOVENIA	
CANADA	GREECE	MEXICO	SOUTH AFRICA	
CHILE	HUNGARY	NETHERLANDS	SOUTH KOREA	
COLUMBIA	ICELAND	NEW ZEALAND	SPAIN	

Brazilian Authorities Continued "Operation Car Wash" Anti-Corruption Investigation. One of the biggest international anti-corruption enforcement actions of the year was the ongoing investigation by Brazilian authorities into corruption allegations against the Brazilian-controlled oil company Petróleo Brasileiro S.A. ("Petrobras"). This investigation spurred other anti-corruption investigations in the country under Operação Lava Jato ("Operation Car Wash").[133] Brazilian authorities began investigating Petrobras after its former director, Paulo Roberto Costa, was arrested in March 2014 on allegations of corruption spanning over a decade.[134] After further investigation, additional allegations arose that engineering and construction companies received inflated contracts from Petrobras and that these companies provided kickbacks to Petrobras executives and politicians.[135]

In May 2015, Brazilian investigators alleged that a staggering 6.19 billion reals ($2.1 billion) in bribes were paid in the corruption scheme.[136] A Brazilian prosecutor announced criminal charges against thirteen people, including four former Brazilian congressmen.[137] The prosecutor also stated that the Brazilian government was seeking to recover the bribes through fines and the return of stolen funds.[138] Meanwhile, Brazil's chief prosecutor asked for twenty-eight separate inquiries to be opened into the activities of politicians who allegedly benefitted from the scheme.[139] In June, Brazilian prosecutors notified the DOJ that they had evidence suggesting at least four foreign companies allegedly paid bribes to win Petrobras contracts.[140] This notification may lead to FCPA charges against these companies and associated individuals in the U.S.

U.K. Entered into First DPA. Another noteworthy international anti-corruption enforcement story of 2015 involved the U.K.'s first DPA. On February 24, 2014, the U.K. introduced DPAs to resolve corporate enforcement actions.[141] These agreements are meant to provide companies with the opportunity to avoid formal prosecution and any resulting admission of guilt.[142] The U.K.'s first DPA was approved more than a year and a half later in November, in connection with allegations that a bank "failed to prevent bribery" in connection with a payment by its African affiliate to a

local partner to induce government officials to accept the bank's proposal for a private placement transaction.[143] As the Director of the U.K. Serious Fraud Office ("SFO") observed: "[the landmark DPA] will serve as a template for future agreements."[144] Separately, the DOJ closed its investigation and settled a related enforcement action by the SEC regarding alleged disclosures in connection with the private placement.[145] The SFO noted that it worked with the DOJ and SEC throughout its investigation and appreciated their assistance.[146]

Operation Foxhunt Anti-Corruption Crackdown Continued in China. "Operation Foxhunt"—an anti-corruption initiative implemented in 2014 by the Chinese government—continued in 2015.[147] This initiative was designed to track down wealthy Chinese officials or criminals suspected of corruption who may have fled abroad.[148] In January, the Chinese Ministry of Public Security announced that it would work with U.S. law enforcement to catch corrupt Chinese officials who may be fugitives in the U.S., which has become one of the most popular destinations for corrupt officials fleeing China.[149] In August, however, the Obama administration decried the strong-arm tactics that the Chinese government used to convince fugitives to return to China, including threats against family members.[150] According to the Chinese Ministry of Public Security, more than 930 fugitives have been brought back to China since 2014.[151]

Meanwhile, there were several notable corruption convictions of government officials last year in China, as the country continued the crackdown on corruption it began in 2012 when President Xi Jinping took office.[152] In October, Jiang Jiemin, previously head of China National Petroleum Corporation, was convicted of "receiving bribes, possessing large amounts of assets of unknown provenance, and abusing power as a state-owned company employee."[153] News sources stated that Jiang had collected $2.3 million in bribes.[154] Jiang was sentenced to sixteen years in prison for his crimes.[155]

Increased Multi-Sovereign Cooperation. Alongside the increase of international anti-corruption enforcement, there was a corollary trend during 2015 in multi-sovereign cooperation—where two or more countries worked together to prosecute a company for foreign bribery. The DOJ and SEC have described a growing responsiveness from, and cooperation with, countries around the world when conducting their investigations. In a November speech, the Assistant Attorney General stated that the DOJ is increasingly working with international enforcement authorities around the world.[156] Indeed, the SEC FCPA Unit Chief stated that working with foreign regulators is a key priority as it has provided access to evidence not previously accessible, allowing the SEC to resolve cases earlier than expected.[157] Last year, the DOJ and SEC announced cooperation with foreign regulators in several actions, including cooperation with organizations as diverse as the SFO,[158] the United Arab Emirates Securities and Commodities Authority,[159] the Australian Federal Police,[160] the Integrity and Anti-Corruption Department of the African Development Bank,[161] and the South African Financial Services Board.[162] In addition, U.S. regulators periodically host training conferences for anti-corruption investigators from abroad.[163] Such cooperation is only expected to increase in the coming years.

Impact of Multi-Sovereign Enforcement Actions. Another result of increased anti-corruption enforcement is the effect of a public investigation of a company in one country on the investigation and prosecution of that same corporation in another country. Disclosure of violations of law in one country (either by the company or otherwise) may lead to a duplicative enforcement action in another country because there is no principle of double jeopardy under international law.[164] Although some countries are beginning to engage in multilateral investigations, not all countries will cooperate in investigations or take each other's penalties into account.[165] This further complicates a company's decision to self-disclose to the DOJ and SEC, insofar as self-disclosure may result in cooperation credit domestically with the DOJ and SEC, but could also lead to significant, unfettered prosecution abroad. For example, after two former co-CEOs of PetroTiger were charged by U.S. federal prosecutors in 2014 with bribing an executive of Colombian state oil company Ecopetrol to secure a $39.5 million oil-service contract,[166] the Colombian Attorney General began investigating Ecopetrol in 2015 and is currently working with U.S. officials in that investigation.[167] Similar follow-on actions are expected to continue as countries enact and enhance their anti-corruption laws and increasingly enforce existing anti-corruption laws.

The rise of anti-corruption enforcement by foreign regulators and the increase in multi-sovereign cooperation and enforcement underscore that U.S.-based multinational companies must not only recognize their compliance obligations with the FCPA and foreign anti-corruption laws, but also plan for the possibility of enforcement activity in multiple countries.

CONCLUSION

2015 was a notable year for FCPA enforcement. It included a sharp decline in enforcement actions and financial penalties by the DOJ, stable corporate enforcement activity by the SEC, continued focus on prosecuting individuals by the DOJ and SEC, and several speeches and policy pronouncements by the DOJ and SEC regarding the importance of corporate self-disclosure and cooperation and prosecuting individuals. The guidance from both enforcement agencies continued to stress that the U.S. government will prioritize individual enforcement actions and will reward companies that self-disclose and cooperate. The slowdown in enforcement activity may be a temporary downturn as the DOJ announced an increase in FCPA enforcement resources, most notably the doubling of DOJ prosecutors in the FCPA unit.

Against the backdrop of continued FCPA enforcement in the U.S., several countries around the world are increasing anti-corruption enforcement, including cooperating with DOJ and SEC investigations, cracking down on government bribery at home, and pursuing follow-on investigations after resolutions in the U.S. The continued FCPA enforcement and increased international anti-corruption enforcement are a stark reminder that companies need robust anti-corruption compliance policies and procedures to prevent, identify, and remediate any bribery or other corruption issues that may arise.

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Special thanks to Samir Kaushik, Rebecca Anthony, Kristen Bamberger, Ashley Goff, Tyson Lies, Greg Martin, Lauren Refinetti, Brooke Schultz, and John Sullivan for their assistance with this publication.

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