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Annual Compliance
Conference 2022

Anti-Bribery & Corruption and Economic Crime

Key Takeaways from the Annual Compliance
Conference 2022

In Brief

The landscape for Anti-Bribery, Corruption and Economic Crime investigations has significantly changed in recent times. As countries emerge out of lockdowns, there is a shift away from wholly remote investigations and back to more in-person or hybrid investigations. Amidst the geopolitical turbulence and developments in enforcement authorities' behavior, companies should be aware of a number of challenges when approaching investigations.

This week's sessions focus on developments across the Anti-Bribery, Corruption and Economic Crime area, including:

- The latest anti-bribery and corruption trends and developments in the UK and US
- The intersection between Anti-Bribery Compliance and the ESG agenda
- Bribery and Corruption in a turbulent world
- Hot topics in Bribery and Corruption investigations

Session 1: Latest Anti-Bribery and Corruption Developments in the UK and US

6 September 2022

UK Developments

- **UK corporate enforcement by the SFO:** The UK Bribery Act (UKBA) came into force in July 2011, with the deferred prosecution agreement (DPA) regime being introduced in February 2014. Despite the real uptick in the use of DPAs from 2015-2021 to secure settlements with companies, the Serious Fraud Office (SFO) has not announced any DPAs since July 2021, with the SFO instead announcing two significant corporate convictions. It is possible that corporates may be evaluating more critically whether to self-report conduct and/or cooperate with the SFO, or it may be the case that the SFO is more selective around the types of cases that it is willing to settle and instead increasingly willing to prosecute corporates.
- **UK enforcement against individuals by the SFO:** The SFO has faced considerable criticism for failing to convert any of its corporate settlements into successful convictions of individuals involved in bribery-related conduct, with two recent failures resulting in two independent reviews of SFO practices. The reviews, both of which were published in July 2022, made wide-ranging recommendations regarding the SFO's practices and referred to a number of underlying issues with the SFO's disclosure and documentation process, including the inadequate supervision of case teams, a lack of resources, and insufficient compliance with SFO policies and procedures. The SFO and UK government have noted their intention to address the recommendations, but the SFO is likely to face further difficulty given reports that the SFO has been asked to consider reducing its headcount by up to 40%.
- **Outlook for future SFO enforcement:** In summary, the SFO has a lot of work to do to address the recommendations, rebuild its reputation, and re-establish itself as a credible and effective global enforcement agency, and corporates may be more skeptical than ever to engage with the SFO. Notwithstanding this, the SFO remains steadfast in its priorities, which include: confident case progression; smart use of technology; international cooperation; and an intelligence- and evidence-led approach to all its work.
- **UK enforcement by other bodies:** There have been increasing levels of enforcement of bribery, corruption and other economic crimes by bodies other than the SFO, including the Financial Conduct Authority (FCA), Met Police, and HM Revenue & Customs (HMRC). The FCA, in particular, has been active in this area, with its fines for anti-money laundering rising in 2021 to GBP 568 million (up from GBP 193 million in 2020), and issuing its first criminal conviction in December 2021. These bodies also have a number of ongoing investigations into these offences, suggesting that this trend will continue – the SFO is no longer the only enforcing body in this sector.
- **Reform of UK Corporate Criminal Liability:** In June 2021, the Law Commission provided potential options for reform shifting away from the identification principle, but has rejected the introduction of a "failure to prevent economic crime" offence, instead providing options for an incremental approach by expanding the "failure to prevent" model to fraud and potentially to other non-economic crimes. Other potential reform options include the use of publicity orders for corporate offenders, the introduction of administratively imposed monetary penalties and a requirement on large corporations to self-report on anti-fraud procedures akin to current Modern Slavery reporting. However, no deadline has been set for the UK Government to consider these options.

US Developments

- **FCPA Enforcement:** While the past year was a relatively quiet one for corporate Foreign Corrupt Practices Act (FCPA) resolutions, several pronouncements were made by the authorities on the US Department of Justice (DOJ)'s approach to corporate defendants. Similar to what we have seen in the UK, the US has seen a broadening of anti-corruption enforcement efforts and a number of enforcement agencies involved in prosecuting corruption and related offenses. October 2021 saw the publication of a policy memo from the Deputy Attorney General Lisa Monaco (Monaco Memo), which created a Corporate Crime Advisory Group and introduced the following three key pronouncements on the Department's corporate criminal enforcement policy: (1) instruction to the DOJ to

consider a corporation's entire history of misconduct when investigating a company; (2) obligation on companies to provide information related to all individuals involved in corporate misconduct in order to qualify for cooperation credit; and 3) revision of the guidance on the imposition of corporate monitors. While there has been a lower number of FCPA enforcement cases involving companies, this is certainly not the case with individual prosecutions (consistent with the DOJ policy restated by Monaco with a focus on holding individuals responsible for corporate criminal conduct). Many individual prosecutions now follow (or sometimes even precede) corporate resolutions. However, similar to the UK, prosecuting individuals is where US authorities have seen the greatest pushback and challenge from defendants, particularly around challenging prosecutors' aggressive assertion of jurisdiction on non-US persons and conduct occurring wholly outside of the US. Meanwhile however corporate resolutions still show liberal use of conspiracy and agency theories by DOJ as a means of establishing jurisdiction for enforcement.

- **US Strategy on Countering Corruption:** Under the Biden administration, as reflected in a White House Strategy Memo in late 2021, there has been a shift in focus to tackle corruption as a central US national security interest, expanding beyond DOJ and FCPA enforcement to include the State, Treasury and other US Government Departments. While this strategy document is not directly binding on companies, it does provide insight on enforcement actions and the inter-departmental approach. This could have a significant impact on how these cases are brought and coordinated moving forward, for example through a greater focus on corruption-related money laundering and identifying the proceeds of corrupt conduct located in the US.
- **Anti-Kleptocracy Initiatives:** US authorities have also been increasingly focused on attacking the demand side of bribery (i.e., those that request or receive bribes) and providing recovery to victims of white-collar crime. However, a number of challenges remain when it comes to returning assets to the victims of public corruption. Multi-agency and multijurisdictional cooperation is key to recovering assets improperly obtained through foreign government corruption. There are also incentives offered to whistleblowers through the Kleptocracy Asset Recovery Rewards Program of up to USD 5 million for relevant information.

Annual Compliance Conference 2022

Our popular Annual Compliance Conference, which attracts over 6,000 in-house senior legal and compliance professionals from across the world, took place across five weeks from 6 September - 6 October 2022. These sessions virtually delivered our cutting-edge insights and guidance on key global compliance, investigations and ethics issues.

The sessions provided practical insights and analysis on significant developments across:

- Anti-bribery, corruption and economic crime
- Customs and FTAs
- Export controls, sanctions and foreign investment
- Antitrust and competition
- ESG, supply chain and product compliance



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