

Client Alert

Special Matters & Government Investigations Practice Group

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Global Investigations Review Conference Highlights the Future of Anti-Corruption Enforcement *Recapping GIR Live DC*

On February 16, 2017, *Global Investigations Review* (“GIR”) held its second annual GIR Live DC in Washington, D.C. With an emphasis on global anti-corruption enforcement, the event featured a variety of experts in complex, multi-jurisdictional investigations who spoke about the challenges of navigating the ever-changing legal landscape. King & Spalding’s Special Matters and Government Investigations team sponsored and participated in the program. In case you missed it, here is a briefing about the conference.

Expect Rigorous FCPA Enforcement during the Trump Administration

In his first public remarks since joining the new administration, Trevor McFadden, the Deputy Assistant Attorney General of the U.S. Department of Justice Criminal Division with oversight of the Fraud Section, spoke at length about the history of the Foreign Corrupt Practices Act. In his speech, Mr. McFadden emphasized that DOJ’s anti-bribery enforcement priorities will remain consistent with past practices. With the 40th anniversary of the passage of the FCPA quickly approaching, Mr. McFadden highlighted the continued expansion of the statute since 1977 and reiterated that DOJ remains committed to rigorous enforcement moving forward. Importantly, Mr. McFadden’s statements underscored that the U.S. government will promote policies that encourage voluntary compliance with the law through a three-pronged framework: self-disclosure, cooperation, and remediation.

Stakeholders should look out for additional guidance in the near future in light of DOJ’s upcoming review of the Fraud Section’s FCPA Pilot Program.¹ Mr. McFadden noted that the policy will be evaluated—and possibly modified—this spring. Created in April 2016, the one-year program provides prosecutors and companies with guidance regarding the requirements for receiving credit for cooperation, offering businesses a clearer path for reducing fines and avoiding appointment of a monitor if there is a finding of wrongdoing. While the legal community has kept a close watch on implementation of the guidelines, questions still remain about the impact of the initiative and whether it will survive in its current form.

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Managing Improper Disclosures of Confidential Information

The recent rise of social media, whistleblowing, and sophisticated hacking has solidified the unwanted disclosure of confidential material as the new norm. During a panel on managing these challenges, King & Spalding partner John Richter and several other experts discussed the various responses a company should consider when faced with these unexpected developments. In his remarks, Mr. Richter emphasized the need to take swift action to properly address a data breach, explaining that any damage control must account for legal and practical concerns. Companies confronted with a leak of sensitive information to the public should consider the following strategies to minimize any adverse consequences that may follow:

- A rapid response is key. Depending on the nature of the disclosure, companies should take immediate action to formulate strategies aimed at assessing any potential legal exposure and limiting the value of the data to competitors. Consideration of the impact of a leak from both perspectives is essential to protect the best interests of the corporation.
- Protect privileged information. A damaging leak often leaves companies scrambling to investigate the cause of the revelation and analyze any possible damage from the fallout. It is critical that management takes appropriate steps to cloak any internal investigation under the attorney-client privilege immediately to prevent additional uninvited disclosures. Moreover, careful analysis of the exposed information is necessary to assess whether any of the underlying records made public are privileged. Particularly if the government is involved, a business should take steps to secure any privileged materials and ensure that an enforcement agency does not improperly utilize them in a related investigation.
- Consider interacting with the press. While engaging with journalists can be risky, at times the facts and circumstances require complementary public relations and legal strategies in order to best protect a company's reputation and defenses. Careful consideration must be given to the benefits and drawbacks of the proposed approach before any contact with the media.

A New Paradigm in Global Anti-Corruption Enforcement

Companies can expect to face new challenges managing international investigations as authorities across the globe work together to improve coordination of cross-jurisdictional enforcement efforts. Signaling the rise of Dutch authorities as leaders in global anti-corruption enforcement, GIR Live DC kicked off with a keynote address by Miranda van Turenout, the lead prosecutor from the Netherlands' Public Prosecution Service in the investigation of VimpelCom Limited, a global telecommunications provider based in Amsterdam. Ms. van Turenout discussed the coordination between U.S. and Dutch authorities, noting that international partnerships play a pivotal role in complex bribery cases. Through an emphasis on international cooperation, compliance and self-reporting, and aggressive asset forfeiture actions, U.S. and Dutch prosecutors reached a \$795 million global settlement in early 2016 for bribes paid in connection with VimpelCom's entry into Uzbekistan.² The settlement came on the heels of the two agencies' joint prosecution with British authorities of Rabobank in 2013 for manipulation of key benchmark interest rates.³

Ms. van Turenout attributed the success of anti-corruption investigations to improved international collaboration among government agencies. Panelists at the conference acknowledged this point, noting that in the anti-money laundering context, for example, enforcement authorities continue to push the envelope on tracking the flow of money in the U.S. and abroad. As a result, responding to requests and pressure from multiple government agencies to increase cooperation will require companies and defense counsel to think strategically about how best to manage any investigation.

Conclusion

Combatting corruption remains a top priority for enforcement authorities. Companies and executives should not expect any abatement in anti-corruption enforcement activity or cooperation between foreign law enforcement and the Trump administration. At a time when there are more and more ways in which allegations of wrongdoing can make their way into the public domain and come to the attention of law enforcement, companies should expect to face increasing challenges investigating in a timely manner and receiving full credit for early disclosure and cooperation.

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This alert provides a general summary of recent legal developments. It is not intended to be and should not be relied upon as legal advice. In some jurisdictions, this may be considered "Attorney Advertising."

¹ See Andrew Weissmann, Chief, Fraud Section, Criminal Division of the U.S. Department of Justice, *The Fraud Section's Foreign Corrupt Practices Act Enforcement Plan and Guidance* (April 5, 2016) available at <https://www.justice.gov/opa/file/838386/download>.

² See Press Release, U.S. Department of Justice, VimpelCom Limited and United LLC Enter into Global Foreign Bribery Resolution of More Than \$795 Million (Feb. 18, 2016) available at <https://www.justice.gov/opa/pr/vimpelcom-limited-and-united-llc-enter-global-foreign-bribery-resolution-more-795-million>.

³ See Press Release, U.S. Department of Justice, Rabobank Admits Wrongdoing in Libor Investigation, Agrees to Pay \$325 Million Criminal Penalty (Oct. 29, 2013) available at <https://www.justice.gov/opa/pr/rabobank-admits-wrongdoing-libor-investigation-agrees-pay-325-million-criminal-penalty>.