Global bribery and corruption outlook 2018

Your guide to trends and developments in anti-bribery and corruption

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2018 in three minutes

For the most part, 2018 will see countries do more to enforce their anti-bribery and corruption laws. How authorities plan to go about this — from cooperating with foreign counterparts to adapting others' regimes — differs by jurisdiction.

There's no catch-all advice we can give. But we can share our lawyers' insights on areas that might affect you and what to watch out for. In terms of what you should do, we'd need to talk.

Enforcement

To date, the Trump administration has kept up enforcement of the U.S. Foreign Corrupt Practices Act (FCPA) cases that began under the Obama administration. The real test, of course, will come when new cases arise. If the result is more of the same, big settlements remain a prospect, too.

Seven of the 13 corporate enforcement actions by the U.S. Department of Justice (DOJ) and the U.S. Securities and Exchange Commission (SEC) in 2017 involved non-U.S. companies. This backs up the Trump administration's promise to counter foreign corruption. And if this continues — there are few signs it won't — individuals and foreign companies beware. See p. 6, "New administration, same policy? Only time will tell."

Monitorships

More than half DOJ's 35 deferred prosecution agreements (DPAs) and non-prosecution agreements in 2016 saw companies hire monitors. See p. 10, "Joint or dual monitorships — the finer points." Six out of 13 settlements with DOJ and the SEC resulted in appointing monitors. These were mostly where the companies' internal controls had failed. Use of monitors is here to stay.

DPAs

Worldwide take up of the DPA regime is some way off, if not unlikely. But as interagency cooperation and cross-border investigations increase, the UK, France, and Italy have become a testing ground. With prosecutors shaping how they'll work together across jurisdictions, you need to be aware of emerging DPAs in Europe and how it might affect you. See p. 14, "Deferred prosecution agreements in Europe."

Privilege

Privilege protection varies: documents protected in one jurisdiction may not have the same protection elsewhere. Case law has put privilege in the spotlight in Germany and the UK. We share steps you should know and take. See p. 18, "Privilege protection — its limits and good practice."

Bribery redefined

China's new Anti-Unfair Competition Law redefines commercial bribery. It has wider coverage — to include parties with influence over a transaction, for example, though who these are remains unclear — and increased penalties. See p. 22, "New law for China, while Hong Kong continues with high-profile actions." How it works in practice won't be known until we see judges interpret the law.

Cooperation

International cooperation is up. Authorities and agencies in countries in Africa and Latin America, for example, are working with their foreign counterparts to tackle domestic corruption. See p. 26, "Brazil and Mexico make strides in anti-corruption enforcement" and p. 33, "Africa leans toward cooperation."

This trend in cooperation goes both ways. The U.S. SEC acknowledged help in FCPA matters from 19 jurisdictions in 2017. Indeed, the larger FCPA resolutions — Telia Company and Rolls-Royce, to name two — were made possible through working with foreign counterparts. Fewer countries now go it alone, in fact, which makes it harder to evade enforcement.

Liability

The criminal liability systems in South East Asia are evolving. As local laws change, authorities collaborate to keep pace, and they do this increasingly well. See p. 30, "Anti-bribery and corruption trends in South East Asia." Enforcement is certain to rise. Seven out of 10 ASEAN jurisdictions have low scores in Transparency International's Corruption Perceptions Index, lower than 100 other jurisdictions.

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New administration, same policy? Only time will tell

U.S. authorities are holding course on bribery and corruption enforcement. That's despite a predicted slowdown in favor of a more business-friendly approach.

Record settlement for telecom operator

September saw the first notable FCPA resolution under the Trump administration: a US$965m global settlement with Swedish telecom operator Telia Company. It highlights DOJ's and the SEC's willingness to impose large penalties under the FCPA. Even with the hefty penalty, Telia dodged having a monitor, marking a trend worth watching.

Four years before his election, President Trump expressed contempt for the U.S. Foreign Corrupt Practices Act (FCPA). He called it a "horrible law" that "should be changed." He suggested efforts to stop global corruption amounted to the U.S. acting as "policemen for the world," which he called "ridiculous."

But recent remarks by Department of Justice (DOJ) and Securities and Exchange Commission (SEC) officials show enforcement of the FCPA remains a priority. Both agencies will target individuals at fault for corporate wrongs.

In fact, DOJ expanded the FCPA Pilot Program though the new FCPA Corporate Enforcement Policy (CEP), issued in November. The CEP strengthens incentives for companies to use compliance programs and to cooperate during investigations.

Also, in December the Trump administration released its National Security Strategy. It highlights countering foreign corruption as one of five priorities to "promote free, fair, and reciprocal economic relationships."

But FCPA cases aren't shaped solely by an aspirational commitment to fight global corruption. It takes specific DOJ policies like the CEP; these dictate how corporate fraud investigations will proceed. And it takes law enforcement priorities; these steer limited enforcement resources.

Agencies will focus on individuals to deter misconduct

In a keynote address on compliance and enforcement, Deputy Attorney General Rod J. Rosenstein expressed a "resolve to hold individuals accountable for corporate wrongdoing." Attorney General Jeff Sessions, in his nomination hearing, also said DOJ will "continue to emphasize the importance of holding individuals accountable for corporate misconduct." And at the Committee on Banking, Housing, and Urban Affairs, chairman of the SEC Jay Clayton restated his belief in "the deterrent effect of enforcement proceedings that include individual accountability."

Big settlements remain a prospect

Of course, actions speak louder than words. And no lack of aggressive enforcement was evident in the settlement with Telia Company. Along with its Uzbek subsidiary, Coscom, Telia admitted paying US$331m in bribes to an Uzbek government official.

Telia resolved the criminal investigation through a deferred prosecution agreement (DPA), in which DOJ imposed roughly US$274m in fines. The SEC required Telia to disgorge US$457m, to be reduced by US$40m paid in criminal fines. Telia also settled with the Public Prosecution Service of the Netherlands for another US$274m. The company's net cost for resolving the matter came to US$965m — the largest ever FCPA settlement against one defendant.

Compliance and cooperation can mitigate liability

Telia's criminal fines reflect credit for compliance and remedial measures it took during the investigation. It fired the employees involved in the misconduct and "all individuals who had a supervisory role over those engaged in the misconduct, including every member of the Company's board who took part in the decision to enter Uzbekistan," according to the DPA.

As a result, Telia received full credit for cooperation, as well as credit for implementing enhanced compliance measures and agreeing to additional measures to ensure compliance. In a novel provision, the DPA announced that "based on the Company's remediation and the state of its compliance program, the Fraud Section and the Office determined that an independent compliance monitor was unnecessary."

In October 2017, after the settlement was announced, Michaela Ahlberg, Telia's former chief ethics and compliance counsel, revealed details about the compliance program. Ms Ahlberg said she and Telia's former head of anti-corruption traveled to Washington, D.C. three times to discuss the program with prosecutors from DOJ and the SEC.

Telia focused on DOJ guidelines, while making sure the program was innovative and accessible to employees. For example, it created a mobile phone app that helps employees get answers to common anti-bribery questions.

Future defendants will no doubt model their behavior after Telia to try to persuade prosecutors an independent compliance monitor is unnecessary.

The new CEP — self-disclose, cooperate, and remediate

A few companies previously paid multimillion dollar fines to resolve bribery and corruption allegations. They also avoided the imposition of a monitor. But DOJ finding that Telia's compliance and remediation efforts negated the need for a compliance monitor is unique.

But the Telia resolution effectively telegraphed the Trump administration's new policy. In the new CEP, Mr Rosenstein outlines the opportunity for companies to avoid a compliance monitor by implementing an effective compliance program before an FCPA investigation is resolved.

Like the FCPA Pilot Program, the CEP provides guidelines on how companies will benefit if they self-disclose, fully cooperate, and execute timely and appropriate remediation. Whereas the Pilot Program promised that DOJ would "consider" a declination, the CEP promises a "presumption" of a declination. This assumes there are no aggravating circumstances, such as widespread misconduct, executive management involvement, and so on.

When a criminal resolution is called for despite full cooperation, prosecutors in the Fraud Section will recommend a 50% reduction off the low end of the U.S. Sentencing Guidelines' fine range, except in the case of a criminal reoffender.

Lessons learned from declinations

DOJ announced two such declinations this past year in the oil and gas and the construction and engineering sectors. It closed FCPA investigations of Linde North America Inc. and Linde Gas North America LLC (collectively Linde) and CDM Smith, Inc. without charges.

Both Linde and CDM Smith disgorged profits linked to their reported misconduct. Linde disgorged more than US$7.8m and forfeited to the U.S. government US$3.4m of corrupt proceeds owed to Georgian officials under a corrupt profit-sharing agreement. CDM Smith disgorged over US$4m.

Although these two declinations preceded the CEP, the companies' conduct appears consistent with what is required to secure a declination under this new policy. They self-disclosed, conducted internal investigations, cooperated in full with investigators, agreed to disgorge profits from the conduct, enhanced their compliance programs and internal accounting controls, and took action against culpable employees.

CDM Smith, for example, fired the executives and employees involved in, or who directed, the misconduct. Linde also fired or disciplined other employees involved in the misconduct and ended contracts related to the scheme.

Direction of change, if any, is as yet unclear

With few FCPA corruption investigations resolved under the Trump administration's watch, it's too early to weigh up how the administration will affect enforcement or settlements in the long term. On its face, the new CEP signals a more business-friendly approach by removing the specter of a monitor in many situations and by committing to a presumption of a declination in certain circumstances.

We expect to see companies meeting the criteria for the CEP to resolve an SEC action on terms that include disgorgement and to receive a declination from DOJ. Also, it looks likely DOJ intends to continue providing "declinations with disgorgement" to companies that are not issuers and so not subject to an SEC action.

Certainly, U.S. enforcement agencies have committed to enforcing the FCPA and, as in the Telia case for example, to cooperating with foreign counterparts to do so, but with greater leniency for companies that comply and cooperate. The emphasis on individual accountability and policies designed to encourage self-reporting, compliance, and remediation also looks set to continue.

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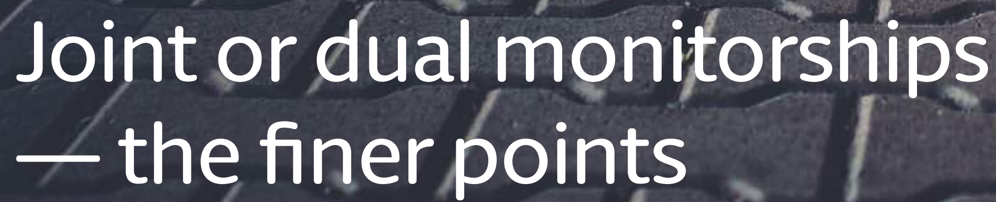

Joint or dual monitorships — the finer points

Having a monitor appointed is intrusive. It signals the enforcement authorities neither trust your company's compliance program nor believe your company can behave without outside oversight.

Embraer settles FCPA case

Brazilian aircraft maker Embraer S.A. settled its FCPA case with DOJ, the MPF, and Brazil's securities and exchange commission, or Comissão de Valores Mobiliários (CVM), in October 2016. Embraer agreed to hire a "joint" compliance monitor that will share reports with both countries' enforcement authorities. This marked the first time a company has joint reporting responsibilities to both the U.S. and Brazil.

In many corporate U.S. Foreign Corrupt Practices Act (FCPA) resolutions with the Department of Justice (DOJ), the company must agree to an independent compliance monitor. That's on top of a monetary penalty. And given that bribery and corruption investigations often involve regulators in multiple jurisdictions, the company may need dual monitors. This was the case for Brazilian group Odebrecht S.A. and its petrochemicals unit Braskem S.A., two companies in the so-called Operation Car Wash, or *Lava Jato*, investigation.

Because local jurisdictions want their interests addressed, companies should choose monitors that comply with DOJ's standards. This way, you can focus on complying and avoid the burden of reporting the same activity to two monitors. Although the government appoints monitors, the company pays for them.

More than half DOJ's 35 deferred prosecution agreements and non-prosecution agreements in 2016 saw companies hire independent monitors. That's a higher ratio than any other year since 2008, according to the policy think tank Manhattan Institute.

DOJ's standards for monitors

Outside the U.S., using monitors is a recent phenomenon; inside the U.S., it's nothing new. Since 2008, DOJ has issued three policies about choosing monitors — in the Morford, the Breuer, and the Grindler memos. The guidance seeks to make sure monitors are qualified, respected, and free from conflicts of interest.

Although you play a part in choosing your monitor, it is an agent of neither the company nor the government. But DOJ must have faith and confidence in the monitor. Indeed, the monitor is free to decide whether it should report new or undisclosed conduct.

DOJ's principles for evaluating monitors can be seen in recent plea agreements. According to the Odebrecht plea deal, for example, monitors must have expertise in anti-corruption laws, as well as corporate compliance policies, procedures and internal controls.

Use of monitorships abroad

In the wake of Operation Car Wash prosecutions, Brazil has more open FCPA-related investigations than any other country. In fact, reports say of the 104 companies that disclosed open and active FCPA-related investigations, 30 mentioned Brazil. China is second with 17, followed by Poland and India, with three apiece.

Brazilian authorities have entered into a number of settlements in the past year. Prosecutorial agency Ministério Público Federal (MPF) won *Global Investigations Review*'s Enforcement Agency for 2017 award — recognition that the agency is poised to bring more cases and impose more monitors in settlements.

Given the spate of monitors appointed for Brazilian companies, Brazilian law enforcement authorities view monitorships as reasonable and as evidence of international cooperation among regulators.

Monitorships in action

DOJ and the Securities and Exchange Commission investigated Embraer in the U.S.; the MPF and the CVM investigated in Brazil. Despite cooperation between the countries, the settlement agreements were negotiated separately. Fines amounted to US$205m, and the U.S. authorities imposed a monitor for three years, subject to extension or early termination by the government.

In Brazil, a monitorship wasn't a condition of the agreement. But Embraer's joint monitor has to give the MPF and the CVM access to documents and information shared with the U.S. authorities.

A joint (as opposed to dual) monitorship isn't new. In 2010, DOJ and the UK Serious Fraud Office agreed a three-year monitorship as part of a global settlement with Innospec Ltd. In approving this part of the settlement, the UK court noted the joint monitorship "should be no precedent for the future" and "that the dual monitorship risked incurring unnecessary costs."

Apart from Embraer, last year Odebrecht and Braskem settled with the U.S., Brazilian, and Swiss authorities for bribery and corruption-related offenses. In their settlements with the Brazilian government, they agreed to have local compliance monitors that would report their findings to the government.

As part of their U.S. settlement agreements, Odebrecht and Braskem were both required to retain additional compliance monitors — that satisfied DOJ's standards — for three years, subject to extension or early termination by the government. These dual monitorship agreements marked the first time local monitors, in addition to DOJ-approved monitors, have been required to oversee corruption settlements in Brazil.

Pointers to weigh up when you choose a monitor

Use of monitors in settlements has expanded and looks likely to continue. They can be intrusive and burdensome. Indeed, it was reported Walmart rejected a DOJ settlement offer that required an external monitor. As one observer pointed out, however, the reasons companies object to monitors are easy to discern.

First, "being snooped and second-guessed is never fun." Second, if a company has satisfied compliance objectives to overcome previous flaws, what's the point of a monitor? Third, monitors can be expensive. And if having one monitor is burdensome, then having two is doubly so.

The recent joint-monitorship settlements involving U.S. and Brazilian authorities signal that other international cases will likely include joint-monitorship components. When faced with choosing a compliance monitor, you should identify one that has the confidence of DOJ and deep experience in these matters.

Joint monitorships are a logical evolution in practice. You have two countries with strong enforcement regimes, and both want a company that's important in each country to be overseen, and overseen in a coordinated fashion.

Rather than paying for two monitors in separate jurisdictions, you should look to established practitioners with a multi-jurisdictional practice and experience in maintaining compliance. This avoids the need to pay for two monitors to oversee the same business operations.

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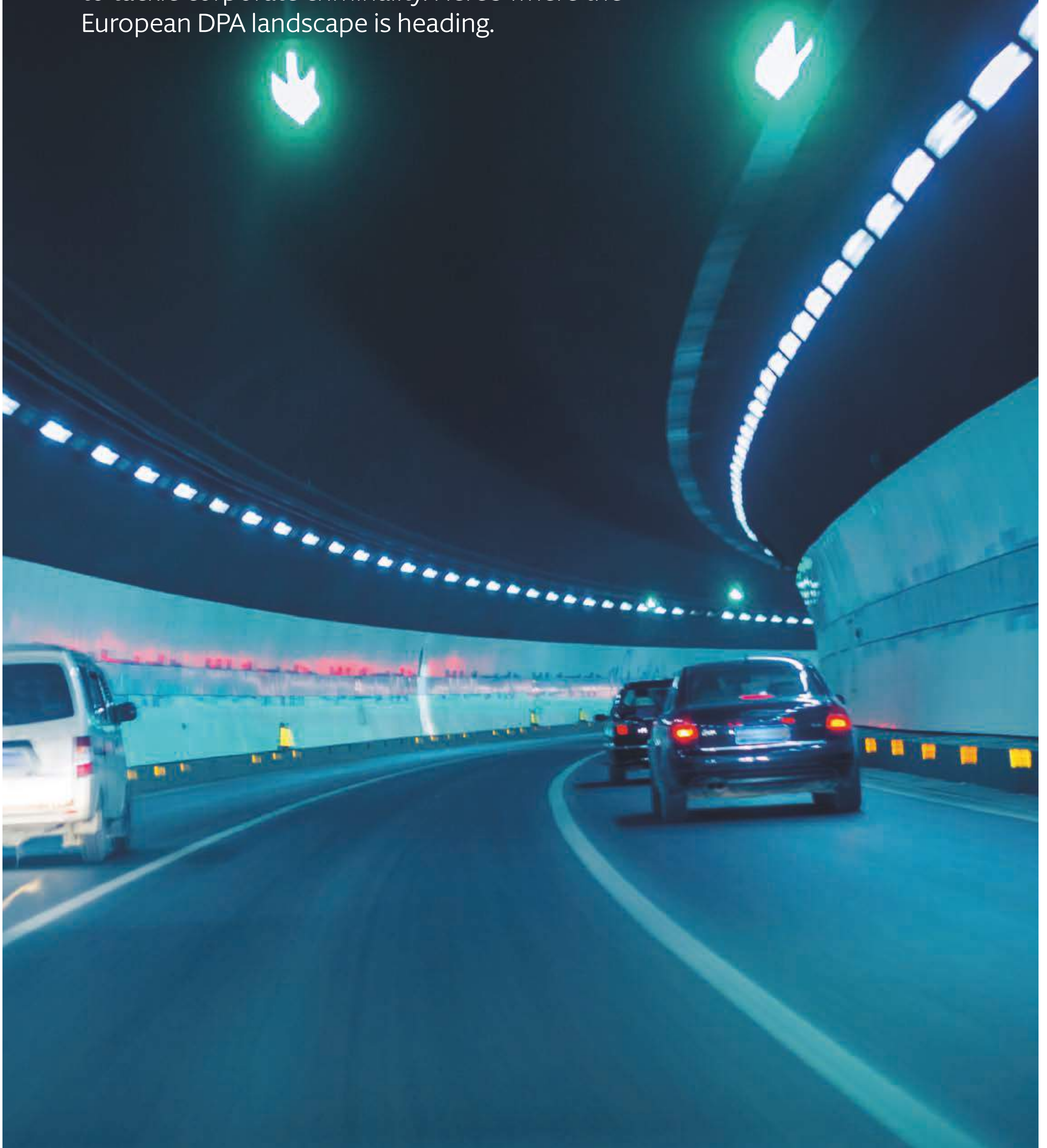
Deferred prosecution agreements in Europe

The global increase in white-collar investigations has led prosecutors in Europe to look for new ways to tackle corporate criminality. Here's where the European DPA landscape is heading.



Deferred prosecution agreements, or DPAs, are a growing part of Europe's toolkit for dealing with economic crime. But this acclimatization of European legal systems and enforcement authorities has been gradual, and it remains so. It's 23 years since the U.S. Department of Justice (DOJ) concluded the first corporate DPA in New York.

The UK reached its first DPA in 2015, followed by three more. France reached its first *convention judicaire d'intérêt public* (CJIP), equivalent to a DPA, in November 2017. And in Italy, corruption reforms have led to negotiation and cooperation with enforcement authorities becoming part of legal culture.

A powerful tool for prosecutors in the UK

The UK's adapting an enforcement mechanism that has long been central to the work of U.S. authorities like DOJ and the Securities and Exchange Commission followed criticism of the country's pre-existing framework for combatting corporate crime.

In his 2010 judgment in the case of Innospec, then Lord Justice Thomas criticized the use of opaque plea agreements and civil recovery orders by the UK Serious Fraud Office (SFO). Likewise, in BAE Systems, the SFO's decision to indemnify BAE for past offenses as part of a plea agreement caused public controversy. For companies, too, negotiated plea agreements failed to offer certainty while a full criminal prosecution could represent a threat to survival.

The DPA regime allows prosecutors to enforce corporate sanctions while avoiding the pitfalls of a lengthy criminal trial and the detrimental effect of prosecution on the company. The process can be seen in action in the £497m DPA with Rolls-Royce, approved in January 2017.

Unlike in the U.S., under the UK's DPA regime, a High Court judge must decide the agreement is just and the terms are fair, reasonable, and proportionate. Also unlike in the U.S., DPAs don't apply to individuals in the UK. The Code of Practice emphasizes the responsibility of companies to provide evidence to allow the prosecution of individuals to continue concurrently to the DPA.

Indications point toward DPAs becoming a feature of the UK's approach to tackling bribery and corruption. And continued judicial support indicates such instruments are not going anywhere soon — as Sir Brian Leveson, Head of the Queen's Bench Division, said in June, they are “now a legitimate part of our armory to combat corruption.”

A changing landscape in France

Following criticism for its incomplete anti-bribery and corruption legal framework, France, too, has tried to align its legislation with international standards. This culminated in the Sapin II Law on transparency, anti-corruption, and economic modernization, enacted in December 2016. It introduced the *convention judicaire d'intérêt public* (CJIP), a settlement system like the DPA in the UK.

The CJIP is open to companies, not private individuals. It may be proposed in cases of corruption, influence peddling, or money laundering or tax fraud, as well as their related offenses.

The prosecutor may propose the company implements a compliance program lasting up to three years. In parallel, a new offense is created for the obstruction or willful violation of the compliance program by the company's directors. This offense is sanctioned by a prison sentence of up to two years as well as a fine of up to €30,000 (€150,000 for companies).

With Sapin II, France raises its anti-bribery and corruption legislation to international standards. It also steps closer to compliance programs as intended by the Anglo-Saxon culture. Compliance has also become a crucial part of both prosecution and defense in French anti-corruption proceedings.

The CJIP allows new anti-corruption enforcement mechanisms into French law and a deep evolution of French legal culture. It's a new way of prosecuting companies, which includes negotiation processes that prosecutors, defendants, and lawyers alike will have to adapt to.

Another result of Sapin II, specifically the CJIP, is it turns French law toward prevention rather than punishment. This is shown by the importance put on compliance programs, under which it is not only the act constituting the offense that should be analyzed but also the company's behavior in general.

Reform in Italy

The Italian anti-bribery and corruption legal framework doesn't include anti-corruption enforcement practices focused on transactional justice, unlike in the UK and France.

There's no formal mechanism to allow companies to cooperate with prosecutors and enforcement authorities in exchange for non-prosecution or deferred prosecution. That's apart from sentencing on request (a means to dispose of a case before trial and agree on the sentence terms), which the Criminal Procedure Code introduced in the late 1980s. Yet the procedure differs from systems like DPAs in the UK and the U.S.

Besides sentencing on request, corporates may benefit from pre-trial cooperation with the prosecuting authorities. The monetary sanction is reduced by one-third if the corporate has compensated the damage caused and has adopted measures to that effect (for example, by removing the officers or employees responsible for the offense) or has adopted and put in place effective compliance programs. If both actions are pursued, the sanction can be halved.

Although Italian anti-corruption legislation is largely oriented to punishment, use of compliance programs and other forms of pretrial cooperation with the prosecuting authorities do show transactional justice and pretrial deals are making their way into the Italian legal system.

Where Europe is heading

Given the cross-jurisdictional nature of almost all major bribery and corruption offenses, the willingness of companies to cooperate with national enforcement agencies on DPAs has long been held back by a lack of certainty that doing so will cap the risk abroad. At the very least, prosecutors across Europe need to find a way to reassure companies that self-disclosure won't exacerbate concurrent investigations in other countries. The Rolls-Royce settlement shows a step in that direction. It involved simultaneous settlements with DOJ in the U.S. and Brazil's Ministério Público Federal.

We are some way from the first global DPA. But the SFO has pointed to such agreements as a sign that "choreographed resolutions are possible." Global jurisdictions from Australia to Canada to Scotland are considering DPAs, helping prosecutors formalize the growing interagency enforcement environment. Meanwhile, alignment of European regimes through changes such as Sapin II is making collaboration easier. The ongoing Anglo–French investigation into alleged corruption at Airbus shows this.

But it is not inevitable. Germany lacks any specific corporate criminal liability, for instance. Spain's system, which allows criminal courts rather than public prosecutors to lead investigations, makes a wholesale adoption of the DPA regime unlikely. Likewise, Brexit adds a layer of uncertainty to discussions over collaboration between enforcement authorities.

Jurisdictions undergoing consultations on DPAs are, like France before them, looking toward the UK as a model rather than the U.S. The attractiveness of the European approach is in its robust judicial safeguards, combined with a narrowed scope that excludes individuals from the regime. The UK and France have an opportunity to refine this formula and shape the global regime in the years ahead.

The direction of travel indicates this is a growing part of the continent's framework for tackling corruption and one companies need to monitor and understand.

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Privilege protection — its limits and good practice

Privilege entitles you to withhold documents in litigation or other adversarial proceedings. But recent case law, mainly in Germany and the UK, has put privilege under pressure.

You can use privilege to deny regulators and prosecutors access to confidential or sensitive documents. But not every document is privileged, even those between you and your lawyer, and not every jurisdiction recognizes privilege in the same way. In a global investigation, for example, documents protected in one jurisdiction may not be protected in another. It depends on the rules that apply.

Privilege in Germany

German law grants public prosecutors vast search and seizure powers. On the other hand, there are legal grounds for protection. There is little case law that grants privilege over documents your company keeps — even if outside counsel drafted them. To be on the safe side, you should assume documents are no longer protected if kept by your company.

In contrast, attorney–client communication and documents prepared by outside counsel are protected from seizure — if kept by outside counsel. But there are two exceptions. Documents can be seized if the lawyer is suspected of criminal conduct. And lower courts have in the past allowed seizure of internal investigation documents, mainly interview file notes, even without allegations of criminal behavior against the lawyer.

Understand the prosecutors' rights

In a case before the District Court of Hamburg, decided on 15 October 2010 (608 Qs 18/10), the court ruled the public prosecutor had the right to seize minutes of interviews with employees during an internal investigation. Although an outside law firm drafted and kept these minutes, the court concluded privilege didn't apply because the attorney–client relationship doesn't extend to employees.

But this dates back to before legislative changes in Germany. The District Court of Mannheim decided on 3 July 2012 (ref. 24 Qs 1/12) that documents produced during an internal investigation may not be seized if kept by outside counsel.

Know your grounds for protection

Some courts have ruled that the protection is solely granted after the formal launch of an investigation, for example in a decision of 21 June 2012 (27 Qs 2/12) in the District Court of Bonn. In contrast, on 25 June 2012 (7 Qs 100/12) the District Court of Gießen ruled that the mere possibility of criminal or administrative investigations, based on objective indications is grounds for protection. This is in line with a recent decision of the District Court of Braunschweig, dated 21 July 2015 (6 Qs 116/15).

In short, in-house counsel has little protection. But documents of an outside counsel kept safe by outside counsel are protected, though, as above, there are inconsistencies.

Privilege in the UK

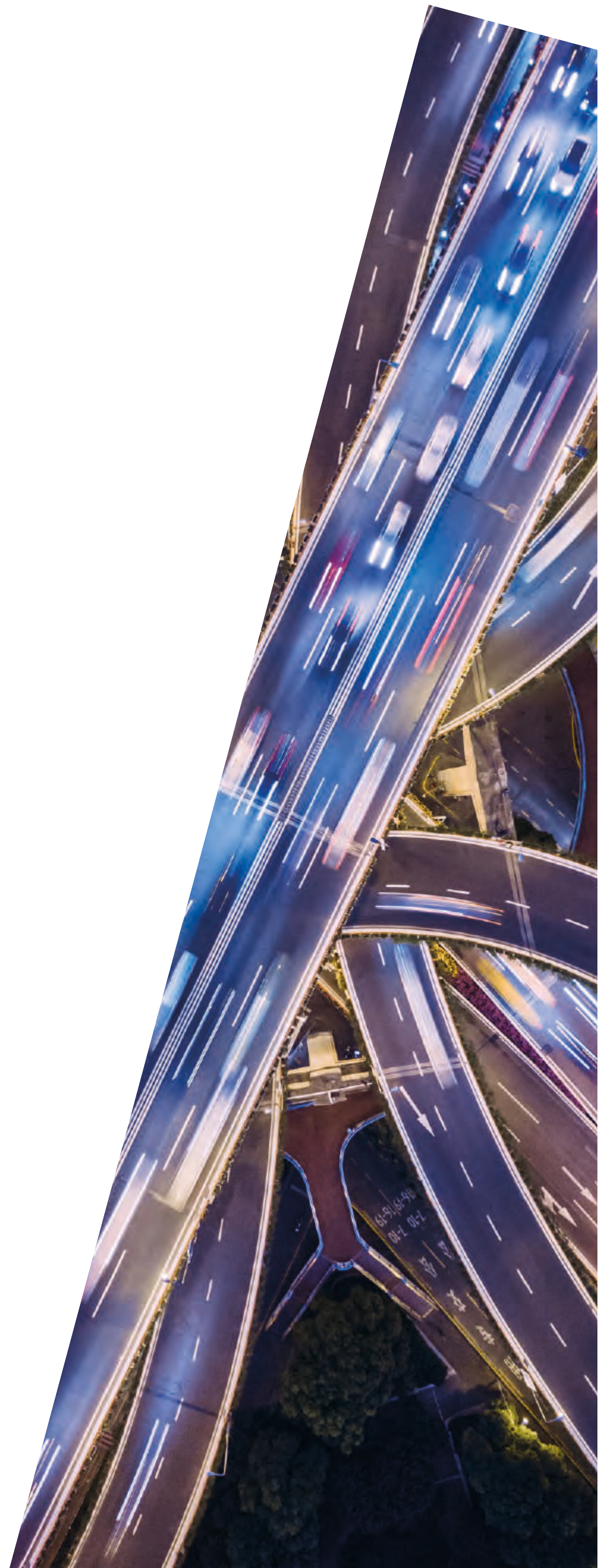
Legal professional privilege in English law protects certain confidential communications from disclosure. If a document is privileged, the client has an absolute legal right to withhold it both in civil proceedings and from the criminal authorities.

There are two forms of legal professional privilege: legal advice privilege, which protects communications between a client and their lawyer for the purposes of giving or getting legal advice; and litigation privilege, which protects communications between a lawyer, client, and third parties made for the purposes of adversarial proceedings, either actual or reasonably contemplated.

Identify who the client is

Two recent cases have cast the spotlight on one aspect of legal advice privilege: who is the 'client' where the client is a company?

In *The RBS Rights Issue Litigation* and *SFO v ENRC*, the companies retained outside lawyers for their internal investigations. The lawyers interviewed various employees. Third parties — the claimants in civil proceedings in the RBS case and the Serious Fraud



Office (SFO) in a criminal investigation in the ENRC case — afterward sought disclosure of the lawyers' interview notes.

In both cases, the High Court decided the interview notes were not privileged. It considered the interviewees were witnesses — not "the client" — because they were not responsible for requesting or receiving legal advice on behalf of the company.

In ENRC, the court also considered litigation privilege in criminal investigations. Litigation privilege applies if — and only if — adversarial proceedings are ongoing or in reasonable contemplation. The High Court decided an anticipated criminal investigation by the SFO isn't considered adversarial proceedings.

Investigation or litigation — know the difference

It also decided that, simply because a criminal investigation is being considered, this doesn't mean criminal litigation — in other words, a prosecution — is also in contemplation. Finally, it decided for a prosecution to be in reasonable contemplation, the person asserting privilege must know it has "a problem which makes criminal prosecution a real rather than fanciful prospect."

A company seeking to assert litigation privilege over documents created during an internal investigation may have to put evidence before the court (and, in a case in which the SFO is challenging privilege, before the SFO). And this is potentially self-incriminating.

In the RBS case, the judge granted a so-called leapfrog certificate, which allowed an appeal directly to the UK Supreme Court. In the event, the appeal wasn't pursued. But the Court of Appeal is due to consider the ENRC case in July 2018. ENRC has appointed us to act on its appeal. Just as we were finalising this publication, the High Court handed down a further decision which further calls into question aspects of the ENRC judgment (*Bilta (UK) Ltd v Royal Bank of Scotland*).

Good practice to increase protection

The following measures help reduce potential risks of seizure. To what extent they should be applied depends on the sensitivity of the matter. In any case, ways of communication should be defined early on in an investigation.

1. Limit circulation of sensitive documents

In Germany, information to be protected from seizure should remain with the attorney or the respective subcontractor.

To reduce risks of seizure under German law, sensitive documents — such as file notes on employee interviews, investigation reports, memoranda, and presentations — should be drafted by external lawyers and only submitted to the company's server after careful consideration.

Before this, drafts can be shared via data rooms kept by the law firm. Only selected employees and the lawyers should get access to the data room. Clients should only be able to view but not download or print the documents. Only lawyers should be able to upload, edit, or delete documents.

In the UK, the dissemination of such sensitive documents should also be minimized. They should be shared only with those individuals within the client company who are responsible for instructing the lawyers, and then only to provide legal advice.

2. Comply with local rules

The investigation team should comply with local privilege rules. This can mean only locally admitted lawyers can provide privilege. For example, the European Court confirmed that only EU/EEA-qualified attorneys can grant privilege in an investigation by the European Commission.

3. Label attorney work product

Sensitive documents should be labeled as an attorney work product that is attorney–client privileged and confidential. This is not sufficient in itself to avoid unintended disclosure in the UK or Germany. But documents labeled as privileged are more likely to be noticed as covered by privilege than unlabeled documents, for example during a dawn raid or discovery.

4. Avoid purely factual documents

Within an internal investigation, avoid preparing purely factual documents. The link between the documents and the potentially necessary legal defense should always be made clear.

For example, instead of interview minutes the document should be referred to and drafted as attorney file notes, only containing the information relevant to the legal assessment. On the same note, there should be no investigation report without a link to legal advice.

And the engagement letter should make clear that the law firm is not only engaged for an investigation of facts but also for legal advice and the defense in potential criminal and administrative proceedings.

Privilege and e-discovery, or e-data review

Attorney–client privilege issues should also be considered during e-discovery, or e-data review.

If an external service provider is used, for example, for imaging and processing of data or other e-discovery services, this should happen via subcontracting by outside counsel. The service provider would then have the status of the attorney's professional aid. It should also be defined that the vendor does not work under the direction of the company, but under the direction of outside counsel.

For privilege in other jurisdictions, see our 2016 report.

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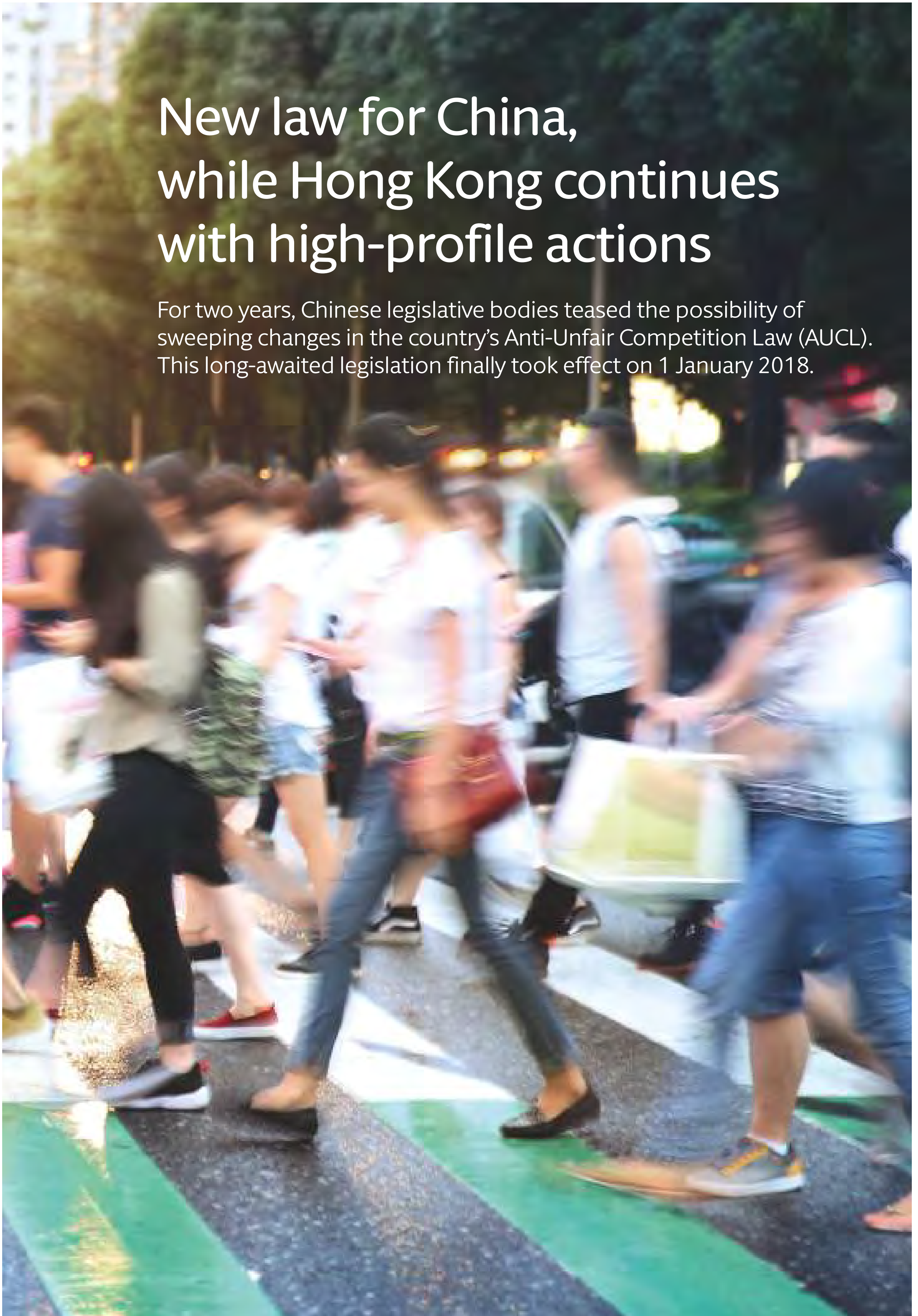

New law for China, while Hong Kong continues with high-profile actions

For two years, Chinese legislative bodies teased the possibility of sweeping changes in the country's Anti-Unfair Competition Law (AUCL). This long-awaited legislation finally took effect on 1 January 2018.

After dramatically varying drafts released in February 2016, February 2017, and September 2017, the Standing Committee of the National People's Congress approved the revised AUCL on 4 November 2017. Earlier drafts suggested Chinese lawmakers were moving toward greater clarity and consistency with international standards of anti-corruption legislation. But later drafts moved in the opposite direction, causing confusion.

How Chinese authorities will react to the legislation remains open, particularly where it offers a new corporate strict liability offense and increased sanctions. With these incentives, regulators may have greater motivation to expand their enforcement efforts. Companies may find that despite positive legislative developments in the long term, the short-term environment may be rougher to navigate.

Redefined coverage of the anti-bribery rules

The original AUCL, enacted in 1993, is the core legislation that bans unfair competition. It includes conduct such as passing off, false advertising, and misuse of trade secrets. It's also the hallmark law for China's ban on commercial bribery.

The original bans a business operator from resorting to bribery to "sell or purchase commodities." The new AUCL bans bribery of certain types of entities and individuals with the purpose of "seeking a business opportunity or competitive advantage." This is a step in the right direction — away from "sales results," and toward a bribe intent.

The new law also clarifies coverage; it restricts the offense to bribery of:

- employees of a transaction counterparty;
- an entity or individual entrusted by the transaction counterparty to handle relevant affairs; and
- an entity or individual that uses its authority or impact to influence the transaction.

By limiting the recipients of bribes to the "employees of a transaction counterparty," not the transaction counterparty itself, arguably, the new definition should limit the authorities' ability to pursue transparent sales incentives offered to business counterparties — incentives such as sales-based rebates and discounts, or payments for prime display space. It may take time and several cases, however, to see how authorities interpret this new statutory language.

The new law also extends the coverage of commercial bribery to parties that are not directly involved in, but may otherwise have influence over, a transaction. However, the law is unclear about who "has influence over a transaction."

It remains a question if this provision intends to include a party that is the transaction counterparty itself; that only acts as an intermediary to pass on bribes, but otherwise has no role in the transaction; that has the capability or potential to influence a transaction, but has not done so; or that only exercises remote or marginal influence over a transaction.

Again, in the short term, the new law may cause more confusion than clarity as authorities struggle to interpret its provisions. But on the face of it, China's law is moving closer to that of its international counterparts.

Presumptive employer liability

An addition to the AUCL is the codification of employer liability for bribes paid by its employees — like the strict liability offense under the UK Bribery Act. The law provides a rebuttable presumption that the bribe conduct of an employee shall be deemed the conduct of the employer. That is unless the employer can prove the employee's conduct "has nothing to do with seeking a transaction opportunity or competitive advantage for the employer." The burden of proof is on the employer. It cannot be excused because the conduct of the employee is unauthorized or is against the employer's policy or interest.

In practice, it's unclear how widely authorities and courts will interpret this "defense" to the corporate liability offense. It may be difficult to rely on. Even where an employee's bribe conduct may have been committed for their own interest, in most cases involving sales, there will be an attendant business opportunity or competitive advantage for the employer. That's the case even where such conduct violates the employer's policies and procedures and harms the employer's interests.

Sanctions

The AUCL also gives authorities more discretion to penalize offenders. Earlier drafts removed the "clawback of unlawful income" sanction — one of the most easily abused provisions, given its vagueness.

The legislation not only retains this provision, but increases the administrative fine from the range of RMB 10,000—200,000 to RMB 100,000—3,000,000. In "serious circumstances" — a term open to interpretation — the enforcement authority may even revoke the business license of the violating business operator. Business operators who had hoped for greater process or predictability in sanctions may be disappointed.

Questions without answers

Businesses in China should be pleased that the approved legislation, on paper, takes steps toward clarifying conduct that may be deemed commercial bribery. And against the backdrop of aggressive Chinese regulators pursuing a range of conduct, this couldn't be more timely.

But with coverage broadened and penalties increased, the AUCL still leaves unanswered many questions on how government regulators should interpret and implement it. We expect the AIC to continue to pursue enforcement actions aggressively. Motivated by the AUCL, it may even gather pace.

Until implementing guidelines or judicial interpretations are issued, companies doing business in China may find the anti-corruption environment harder to grasp.

Hong Kong continues to tackle high-level corruption

News of the Independent Commission Against Corruption's (ICAC) enforcement actions has gripped the public. In February 2017, a criminal court convicted the former chief executive of Hong Kong on a charge of misconduct in public office. The judge sentenced Donald Tsang, who led the government from 2005 to 2012, to 20 months in prison.

Mr Tsang was involved in the decision-making of a broadcaster's application for a license. But he had failed to make known his dealings with the broadcaster over a penthouse in Shenzhen.

The jury couldn't decide on the substantive charge of bribery. It was alleged Mr Tsang accepted renovation work on the penthouse as a reward for his involvement. He faced a retrial on this charge in October 2017, which again ended with a hung jury. Prosecutors won't seek another retrial.

Firm but fair

In an earlier case, the former chief secretary of Hong Kong, Rafael Hui, was sentenced to seven-and-a-half years in prison. Mr Hui was jailed along with tycoon Thomas Kwok, former joint chairman of Sun Hung Kai Properties; Thomas Chan, an executive director at the company; and Francis Kwan, a stock exchange official. Convicted in 2014 after a 131-day trial, the four defendants lost their final appeals in June 2017.

In September 2017, in contrast, the ICAC dropped bribery charges against businessmen Richard Yin and Chui Chuen-shun. The ICAC accused the pair of offering an advantage to an agent for various corporate activities between 2007 and 2009. But the prosecution didn't drop charges against a third defendant, Kennedy Wong, at the same time. His trial began in November 2017, and he was acquitted in January 2018. A fourth defendant, Herbert Hui Ho-ming, died in 2014.

ICAC will maintain its vigor

Cases continue to rise. Although in these examples the outcomes were mixed, Hong Kong's ICAC is no less aggressive than its mainland counterparts. It has effective anti-corruption laws. It treats bribe givers and takers as equally guilty, and it penalizes both. Today's ICAC is more than capable, and it remains relentless in its approach.

It's unlikely the government will change Hong Kong's anti-bribery regime. Likewise, for now, we don't foresee any developments in criminal liability for senior management for events within an organization in another jurisdiction, as under the U.S. Foreign Corrupt Practices Act and the UK Bribery Act.

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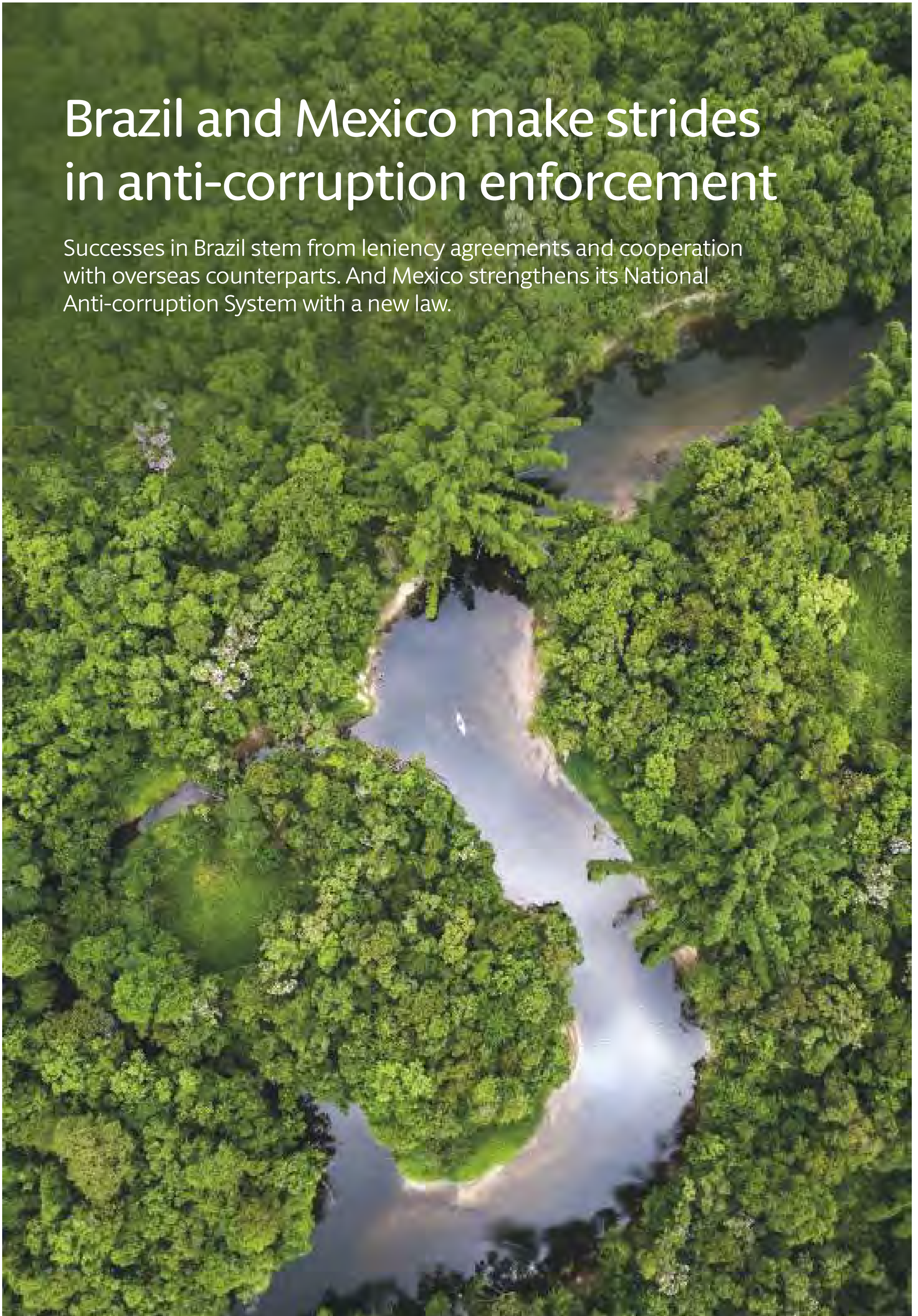
Brazil and Mexico make strides in anti-corruption enforcement

Successes in Brazil stem from leniency agreements and cooperation with overseas counterparts. And Mexico strengthens its National Anti-corruption System with a new law.



Leniency agreements and cooperation with foreign authorities play a big part in Brazil's enforcement operations. In Operation Car Wash, or *Operação Lava Jato*, which exposed graft at state oil company Petrobras, they resulted in 190 convictions against 113 people for roughly BRL 6.4bn in bribes.

And so far BRL 10.1bn out of BRL 38.1bn made from crimes committed has been returned. That was at November 2017, according to the Brazilian Federal Prosecutor's Office.

This isn't a one-off. Operation Weak Meat, an investigation alleging a J&F Investimentos subsidiary, meatpacker JBS, bribed food inspectors to allow rancid meat into the market, has seen J&F pay a BRL 10.3bn fine. But the leniency agreement has been suspended and risks being invalidated because of an alleged breach by J&F shareholders and executives.

And Operation Unfair Play, in which Brazilian and French police are investigating alleged bribery in the bid for the 2016 Olympics in Rio de Janeiro, has so far resulted in the arrest of Carlos Nuzman, the president of Brazil's Olympics committee, as well as other suspects. Federal prosecutors worked with their counterparts in France, Antigua and Barbuda, the U.S., and the UK.

Beware ill-defined agency functions

The latest leniency agreements allow prosecutors from other agencies and other branches of the Public Prosecutor's Office to join in. At the same time, to a degree, they protect companies from liability that results from their disclosures.

But because several regulatory agencies' roles overlap, and not all are defined in the 2014 Clean Company Act, companies looking to remedy wrongs in exchange for leniency need to be aware of the pitfalls.

In August 2017, the Public Prosecutor's Office issued guidelines to help make cooperating with authorities more predictable for companies. Yet the guide says little about cooperation among enforcement and regulatory agencies. As a result, companies and individuals sometimes come up with contractual ways to mitigate risks when swapping information for leniency. You may want to consider these, too.

Mexico targets private companies

Meanwhile, in July 2017, Mexico's Congress passed the General Law of Administrative Accountability. It replaces the Federal Law of Administrative Accountability of Public Officials and the Federal Anti-Corruption Law on Public Procurement.

The new law focuses on public officials, private individuals, and private companies. If you contract or engage with the government — to get a license, a permit, or an authorization, for example — your conduct comes under the law. Fall foul and the penalties are severe, from bans to fines to damages.

The law also incentivizes companies to use integrity policies. These are like compliance programs under the U.S. Foreign Corrupt Practices Act (FCPA) and the UK Bribery Act. They reduce the potential for corruption and may mitigate liability for offenses.

Steps you can take to mitigate liability

Which sanctions apply depends on whether your company promotes ethical values and whether it has measures in place to prevent corruption.

With an integrity policy that meets new provisions, you are well placed to defend alleged wrongdoing. You should design your policy to prevent unlawful conduct that would give you an unfair benefit.

Article 25 of the General Law of Administrative Accountability outlines minimum measures for an integrity policy, though none are mandatory.

These include, for example, a procedures manual; a published code of conduct; systems of control, monitoring, and audit; a process for whistleblowers to report concerns; and systems to ensure transparency.

If you are investigated for alleged wrongdoing, the authorities will look at any integrity policies and procedures when they determine liability.

Your integrity policy must also comply with other laws, regulations, and directives, such as the U.S. FCPA, the UK Bribery Act, the French Sapin II Law, and the United Nations Convention against Corruption.

Enforcement at work in Mexico

Four former governors have been charged with alleged corrupt behavior — embezzlement to money laundering — including felonies, during their terms in office.

Federal auditors allege Javier Duarte stole more than $55bn pesos ($US2.97bn). Roberto Borge stands accused of corruption and fraud. César Duarte is suspected of embezzling $79m pesos (US$4.2m) and passing the money to his party. Charges against Tomás Yarrington Ruvalcaba include organized crime and links to Mexican drug cartels.

And in the private sector, OHL, a Spanish construction group, allegedly diverted economic resources to finance political campaigns in Mexico. It also filed false accounts before the Mexican Stock Exchange. The case is ongoing, and several OHL Mexico executives and public officials have been fired.

Prepare for business under the new law

The General Law of Administrative Accountability has more scope than its predecessors. Liability for misconduct, for example, can transfer to spouses, immediate family, employees, and related businesses.

The law can ban officials from public service, and it can ban individuals and companies from public bids, as well as fine them. This is good news in that it gives Mexican authorities broader investigative and sanctioning powers. It may well be on the right track to not only sanctioning cases like OHL, but to preventing them in the first place.

But this is also why compliance matters more than ever. With the right procedures in place — integrity policies, ethics codes, audit and surveillance systems, background checks, accountability and transparency policies — you can minimize your company's risk factors.

Political corruption claims could block reforms in Brazil

Anti-bribery and anti-money laundering enforcement in Brazil will develop further. There will also be more pressure from citizens for companies and individuals to comply with the laws.

But the system isn't devoid of political pressure. President Temer has been implicated under corruption allegations in the J&F leniency agreement. Mr Temer has survived two attempts at a public indictment against him. Although his term ends in 2018, he is expected to resist the probe into his involvement in the scandal, which could affect the prospects for anti-bribery efforts.

The Public Prosecutor's Office is an independent body. Other agencies, though, such as the Ministry of Transparency, which can also enter into leniency agreements, is subject to the executive branch. At the end of 2017, the Ministry of Transparency suspended Operation Car Wash investigations into companies seeking leniency agreements with the agency.

Under Mr Temer, we've also seen the appointment of a new head of the Public Prosecutor's Office, which is the country's attorney general, and the head of the Federal Policy Office. Although both appointees have confirmed their commitment to fight corruption, we've yet to see if they will keep up with public expectations.

Cooperation among authorities will make borders irrelevant

Presidential elections in October 2018 mean political uncertainty. But you should expect continued cooperation among Brazilian and foreign enforcement agencies and multi-jurisdictional leniency agreements. The Public Prosecutor's Office will continue to investigate and prosecute, too.

For international companies, this cooperation means borders are even thinner if not nonexistent when it comes to exposure to prosecution. If you operate in more than one jurisdiction and are subject to a domestic probe, you should assume enforcement agencies in foreign countries have, or soon will have, the same information as domestic agencies.

You should plan to address these risks and challenges. You'll need a multi-jurisdictional, risk-based approach to anticipate exposure in different jurisdictions.

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Anti-bribery and corruption trends in South East Asia

ASEAN is an environment of differing economic, political, and cultural sophistications, where languages and habits melt, merge, and intersect. The anti-corruption enforcement landscape reflects this.

Despite the region's differences, there are trends. Traditionally, enforcement focused on individuals; the penalties were often harsh and well publicized. Take former Thai tourism official Juthamas Siriwan, sentenced to 50 years in prison, and her daughter, sentenced to 44 years. They were also ordered to repay US$1.81m in bribes.

In contrast, pipe bomber Wattana Phumret, who planted a nail bomb in an army-run hospital, was jailed for 27 years.

The focus on individuals, which may continue, can be motivated by political plots to exercise power. Thailand suggests this through its pursuit of former Thai prime minister Yingluck Shinawatra, her brother former prime minister Thaksin Shinawatra, and the August 2017 sentencing of former commerce minister Boonsong Teriyapirom.

A new focus on corporate liability

Recently, however, across South East Asia, there's greater attention toward corporates. Laws enforcing corporate liability in Thailand have developed, introduced by a 2015 amendment to the Organic Act on Counter Corruption. And a strict liability corporate offense for failure to prevent bribery has emerged. Before, it was unclear whether corporates could be prosecuted for such an offense, and this affected enforcement efforts.

The Thai Criminal Code adds that active and passive bribery are banned. But like the U.S. Foreign Corrupt Practices Act, a narrow exception is made for facilitation payments.

Indonesia, Singapore, and Malaysia are examples of countries where corporates can be liable for the acts of their intermediaries. But such laws are rarely and inconsistently enforced. Corporate prosecutions are rare in Singapore despite liability for companies being espoused in the Prevention of Corruption Act and in Singapore's Penal Code.

In Malaysia, meanwhile, under domestic law, a person includes a body of persons, corporate or unincorporated. The Malaysian Anti-Corruption Commission Act and other statutes apply to companies and to individuals. And companies can be liable for the acts of their intermediaries, like in Indonesia, Thailand, and Singapore.

Beware that laws vary across jurisdictions

Some ASEAN countries, such as the Philippines and Vietnam, do not have the corporate liability offense. In the Philippines, a corporate is not liable for the acts of its subsidiaries and third parties, and laws tend to focus on individuals. But corporates can still be liable under civil law for vicarious acts by their employees. Vietnam appears to be moving away from that. From 1 January 2018, Vietnam will introduce a new Penal Code.

This Penal Code introduces corporate criminal liability for both Vietnamese- and foreign-incorporated entities in relation to a range of criminal offenses. Of more than 30 offenses corporates can be criminally liable for, as listed in the Penal Code, which include tax evasion, insider trading, money laundering, and so on, there's no liability for embezzlement and bribery for corporates. These offenses continue to apply solely to individuals, though corporates can be liable for commercial bribery.

Deferred prosecution agreements in Asia

With greater focus on corporate liability and corporate compliance programs, the question remains whether the next stage is the introduction of the deferred prosecution agreement (DPA). We have not seen indications that DPAs will be deployed by local South East Asian authorities. But early stages of this movement in the form of self-reporting to government bodies do exist.

The DPA regime is designed for companies to reduce the consequences of corporate criminal acts by creating a culture that owns up. Australia has considered this as well. Its government introduced, in December 2017, new laws akin to these Western models that incentivize firms to work with government agencies.

Although Vietnam and the Philippines have been slower to adopt corporate liability in statute, compliance in these regions is paramount. One only needs to consider the Philippines, through its Code, which is a stepping-stone to good governance.

We anticipate ASEAN nations and governments may adopt the DPA model in the coming years. But as is the case with a diverse region, its uptake has yet to materialize, is likely to be piecemeal, and is unlikely to be universal.

What's next?

Expect an evolution in the criminal liability framework. Despite little corporate liability enforcement to date, it is certain to increase. We anticipate some of the rush to corporate prosecutions will be politically motivated, and the enforcement that does take place will be inconsistent. But that's the nature of operating in ASEAN. A mix of geographies, cultures, and social forces exerts pressures on political and economic powers.

There may be a resulting backlash to local prosecutorial intervention. Aggressive prosecutions, of course, ignore the benefits companies bring to the economy, and influential businesses won't take kindly to this. Nevertheless, corporate criminal liability provisions and the subsequent, albeit likely, erratic enforcement that will follow merely underlines the need for corporate compliance programs.

Multinationals must acknowledge that despite local law changes bribery and corruption investigators are not geographically static or mute. Authorities will cooperate and communicate. By the time of remedial action, it's often too late. If you operate, or look to, in South East Asia, corporate compliance, heightened by this year's developments, is an active, not reactive decision.

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Africa leans toward cooperation

States within Africa have raised their efforts to combat bribery and corruption — of that there's no doubt. But those efforts have yet to translate into results.

Although the struggle to combat bribery and corruption is multifaceted, the most important part is enforcement. Unless stolen assets can be recovered and the people responsible subjected to criminal sanctions, political efforts to alter the cultural view of corruption won't take hold.

The difficulty President Muhammadu Buhari, for example, has met since his election in Nigeria two-and-a-half years ago is putting into practice his pledges to combat corruption. Plus, in South Africa and elsewhere, there are simmering corruption scandals.

But to address corruption through political and judicial systems that are themselves corrupt is complex. Which is why central governments in Africa often rely on foreign agencies to do the governments' enforcement work.

When foreign agencies intervene

Given the shared common law traditions and historical links between anglophone Africa and the UK, it's no surprise the UK National Crime Agency (NCA) has been among the most active in bringing criminal charges in these circumstances.

One high-profile case involves the former Nigerian oil minister and president of OPEC, Diezani Alison-Madueke. In October 2015, under the Proceeds of Crime Act, the NCA arrested Ms Alison-Madueke along with four others as part of an inquiry into suspected bribery and money laundering.

The allegations against Ms Alison-Madueke surround her tenure as oil minister. The government-run oil company NNPC allegedly failed to pay billions of dollars of revenues to the state. In August 2017, the NCA was reported to have frozen £10m worth of property in the UK belonging to Ms Alison-Madueke. The Nigerian Economic and Financial Crimes Commission (EFCC) charged Ms Alison-Madueke with corruption and fraud offenses in Nigeria as well.

International cooperation on domestic corruption

A cooperative approach was also used in the case of James Ibori, the former governor of one of Nigeria's largest oil-producing states. After an investigation by the EFCC and the London Metropolitan Police, Mr Ibori pled guilty to 10 counts of money laundering and fraud in February 2012. He was sentenced to 13 years in a British prison. Although released after four years, his conviction does show the effectiveness of cooperation between African agencies and their overseas counterparts.

Enforcement agencies from other European jurisdictions participate in these collaborative methods, too. A French court convicted Teodoro Nguema Obiang Mangue — Vice President of Equatorial Guinea, son of the President, and self-styled Instagram star — of embezzling public money in October 2017. On top of a €30m fine and a three-year suspended prison sentence, the French court confiscated all Mr Obiang's assets in France.

Cooperation on civil claims

Another method used to address corruption in African states is cooperation on foreign civil, as well as criminal, claims. Indeed, using civil claims this way has been the preferred approach of U.S. enforcement agencies to date, with the U.S. Department of Justice (DOJ) having brought notable claims to recover stolen assets.

The Diezani Alison-Madueke case, for example, took a turn in July 2017 when DOJ issued a civil complaint to recover around US$144m in assets from two Nigerian businessmen: Kolawole Akanni Aluko and Olajide Omokore. They were close to Ms Alison-Madueke during her reign as oil minister.

Authorities primed for civil actions

While U.S. enforcement authorities' use of civil claims has been effective, they have not to date been used to the same extent in the UK. This would seem curious considering the availability in the UK of the worldwide freezing order and English law causes of action to trace stolen funds.

Countless recent cases in the English courts show this. The cases are brought by defrauded banks and institutions, often from Russian or other CIS states. And they are against their former owners and managers, often oligarchs who have set up home in London.

These actions have been successful, and the English freezing order is rightly held as one of the most powerful tools in combatting fraud. Many wealthy Africans live in or come to London. And the connection between the legal systems in England and Nigeria, Ghana, Tanzania, Kenya, etc., no doubt means we will see more of these actions.

Governments steer clear of multinationals

Domestic enforcement has focused on prosecuting historical cases of corruption, not on preventing current public sector corruption. Most action against multinationals comes from Western enforcement agencies.

On the face of it, lack of action within Africa is a surprise, considering the possible revenue from fines. But there is no doubt a fear such actions will harm investment. And without good political motivation, there's little incentive at the moment.

There has been headline domestic action in the extractive industry, where multinationals have had their licenses suspended or stripped because of their corrupt conduct. But in many cases the multinationals are collateral damage in a politically motivated action.

Progress in the pipeline

Corruption culture in Africa, indeed, in other parts of the world, is in flux. But right now that's because OECD countries are combatting corruption. Multinationals are concerned about investigations in their home countries. So they're changing the way they do business in Africa. Political corruption is being tackled, but often in London or Paris or Washington.

Corruption within society can only be addressed with domestic political systems. If those systems are themselves corrupt, progress can't be made. It's essential that real progress is made in this regard. Until then, we will continue to see cooperation between African governments and foreign enforcement agencies, to bring criminal and civil claims against those accused of corruption.

But the game changer may be the use of civil remedies to recoup stolen funds. That will hit corrupt politicians and businessmen where it hurts. While there remains much to do, and the task of addressing corruption across Africa would still seem rather Herculean, there are positive moves afoot to address decades of imbalance in the fight against corruption.

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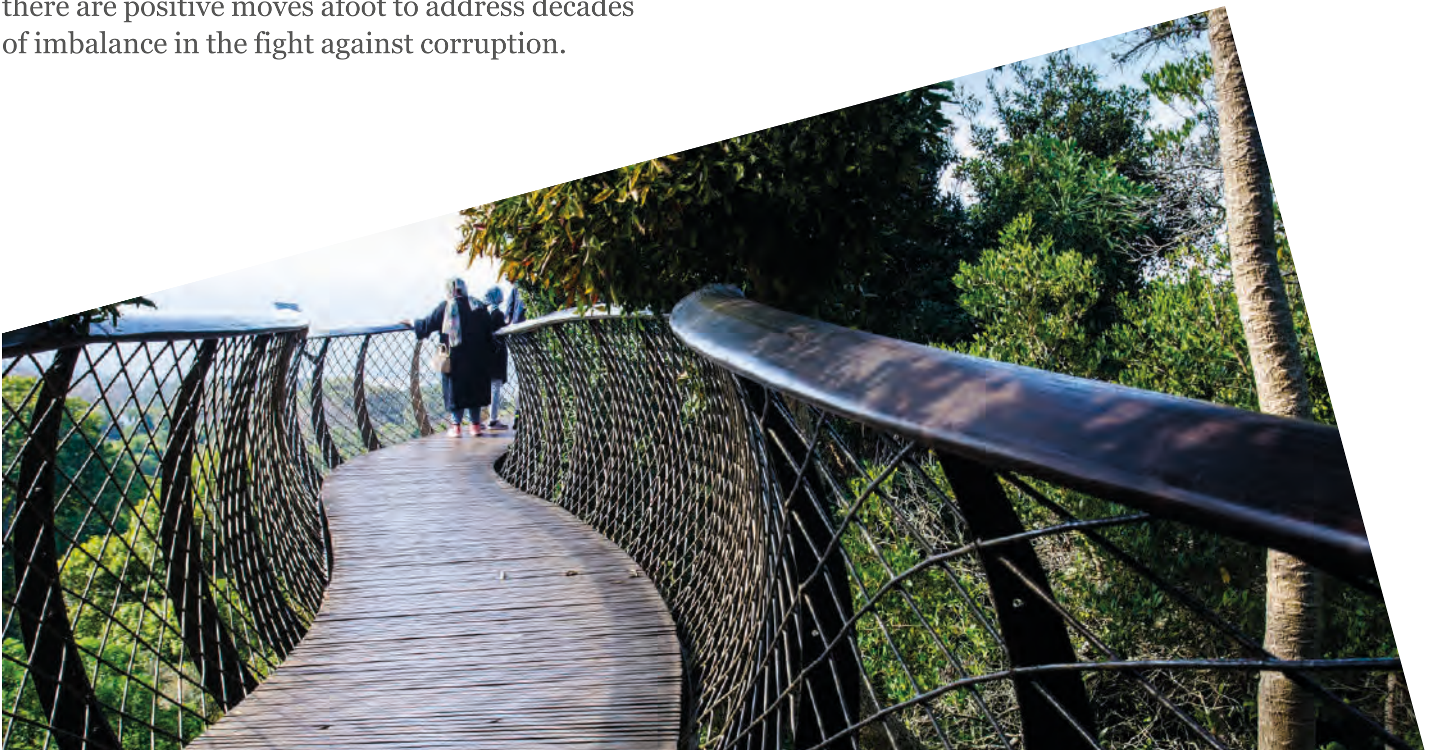

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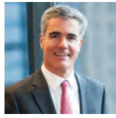
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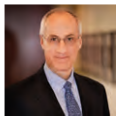
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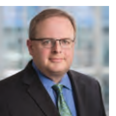
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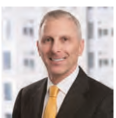
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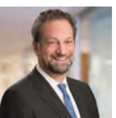
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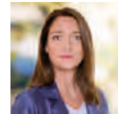
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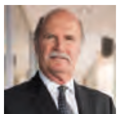
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