



Global Anticorruption Update

Countries are taking steps to enhance or enact meaningful anticorruption legislation in an effort to comply with international legal obligations such as those posed by the OECD *Convention on Combating Bribery of Foreign Public Officials in International Business Transactions* ("OECD Antibribery Convention"). The Organisation for Economic Co-operation and Development (OECD) requires signatories to its convention to criminalize bribery of foreign public officials; establish liability for legal persons for the bribery of foreign officials; impose criminal sanctions comparable to domestic bribery sanctions or alternatively, impose "effective, proportionate and dissuasive" non-criminal sanctions (e.g., monetary fines); and provide prompt and effective legal assistance to other countries. There are 40 signatories to the OECD Antibribery Convention, including 34 member countries and six non-member countries (Argentina, Brazil, Bulgaria, Colombia, Russia and South Africa).

- Upgrade your existing FCPA compliance policies and procedures to incorporate the local antibribery laws of the non-U.S. jurisdictions in which you do business.
- Educate and train your officers, directors, employees and agents on these antibribery laws of the non-U.S. jurisdictions in which you do business.
- Incorporate into your company's third part agreements in these non-U.S. jurisdictions appropriate compliance language, reps and warranties that embrace these antibribery laws.
- Require annual certifications of compliance by your company personnel and third parties with these non-U.S. antibribery laws.
- Monitor compliance by your third parties with these antibribery laws in the non-U.S. jurisdictions in which these third parties serve your company.
- Negotiate audit and terminations rights with your third parties so that your company can walk away from a third party it in good faith believes may be violating either the FCPA or the antibribery laws of the non-U.S. jurisdiction.

Summary of Laws by Country

Brazil

Brazil enacted a new anticorruption law called the "Clean Company" Law, which took effect on January 29, 2014. This new law imposes strict liability on legal entities that commit corrupt acts through their officers, directors, employees and agents. Any domestic or foreign entity doing business in Brazil or that has a local subsidiary, branch or representation is covered by this law. Now, corporations face civil and administrative liability for their corrupt acts including a penalty between 0.1% to 20% of the entity's annual gross revenues from the previous year, or up to R\$60 million (approximately US \$25 million) if gross revenues cannot be ascertained; publication of the entity's misdeeds in a national public registry; seizure and confiscation of assets; debarment; interdiction of business activities and compulsory dissolution of the entity.

Companies doing business in Brazil with anticorruption compliance programs, policies and procedures will now need

to update them to include this law. A robust compliance program that incorporates this new law can serve as a mitigating factor to an enforcement agency or a court in Brazil. We have prepared and attached a chart that compares the Foreign Corrupt Practices Act (FCPA) to the Brazil "Clean Company" Law for your review.

Colombia

On January 19, 2013, Colombia became the 40th and most recent signatory to the OECD Antibribery Convention. Under Law N° 1474, legal entities that commit corrupt acts directly or indirectly may be subject to temporary or permanent suspension of their legal status and fined from 500 to 2,000 times the current monthly minimum wages. Corporations (excluding publicly-traded) whose employees or officers are found guilty of transnational bribery will be ineligible to contract for up to 20 years. Commercial bribery is also criminalized under Colombian law with penalties of imprisonment from four to eight years and fines of 10 to 1,000 times the current monthly minimum wages.

China

China is not a member of the OECD or a signatory to the Anticorruption Convention, but is considered a “key partner” to the organization. Chinese law criminalizes commercial bribery, involving corrupt payments to non-state employees. Generally, China continues to focus enforcement efforts on government officials, specifically members of the Communist Party of China (CPC) receiving the bribe, rather than on the individual or business entity as the source of the bribe. However, in China, companies convicted of bribing government officials may be subject to a two-year ban on doing business with State Owned Enterprises (SOE). Sanctions against the legal entity providing the bribe may be mitigated or waived if the entity “voluntarily confesses.” Mitigation is not applicable in certain circumstances, such as when bribes have been offered to more than three persons, or when the bribery results in “serious harmful consequences.”

It was reported on December 25, 2013 that the CPC Central Committee had issued a “2013-2017 Work Plan for the Establishment of a Sound System for Punishing and Preventing Corruption.” The Plan pledges to curb the proliferation of corruption over the next five years. In doing so, China is threatening its “tigers” (high-ranking officials) and “flies” (low-level officials), with prosecution to maintain the purity of the party.

Mexico

As an OECD member and under pressure, Mexico passed the “Federal Anticorruption Law in Public Procurement,” which went into effect on June 12, 2012. The law establishes liability and sanctions for individuals and legal entities, whether national or foreign, acting in any capacity (either as shareholders, partners,

legal representatives, clients or agents, advisors, subcontractors, employees, or others) for corrupt acts committed directly or indirectly while participating in federal government contracting or in international commercial transactions. Legal entities could be subject to a monetary fine ranging from 10,000 to 2 million times the daily minimum wage in effect in the Federal District (\$67.29 Mexican pesos (approximately US \$5.18)) based on 1,000 “fine days.” Additionally, legal entities face disqualification from federal procurement for three months to ten years and exclusion from any subsidies or benefits provided by federal law.

Russia

Russia acceded to the Anticorruption Convention as a non-member on February 1, 2013. Facing similar pressure from the OECD, it approved a “National Anti-Corruption Plan for 2012-13.” The Plan includes guidance and recommendations for the government, federal executive bodies, and other government agencies regarding: efforts to counteract corruption; establishment of a legal framework for lobbying; increasing transparency of state officials’ personal finances and a gift acceptance policy. On December 3, 2013, Russia created a new Anti-Corruption Department “On the Department of the President of the Russian Federation on the Issues of Combatting Corruption.” While not an investigative or prosecutorial office, the Department has the authority to file requests for information with the Prosecutor’s Office, Investigative Agencies, other federal, regional, local and municipal authorities, with legal entities (commercial and non-commercial), their executive officers and with non-governmental organizations to provide information on issues that coincide with the Department’s stated purpose and to obtain the requested materials.

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Rebekah Poston joined a panel of other experts to speak on anticorruption compliance and enforcement issues at KPMG’s annual Legal and Compliance Share Forum at the North American International Auto Show on 15 January 2014. This program provided the opportunity for executives and attorneys working in this industry to discuss current issues and emerging developments from a legal perspective.

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