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New Anti-Bribery Alert Shows Companies How to Avoid FCPA Land Mines

By *Sue Reisinger*

One of the biggest problems contributing to corporate corruption is not a lack of awareness of the law but a lack of corporate guidance and controls, according to a new study from law firm **Hughes Hubbard & Reed**.

In 2018's **FCPA & Anti-Bribery Alert**, the firm noted that while awareness is nearly omnipresent, "it is clear at this point that just knowing the risks and common mistakes is not sufficient to avoid them. Companies must provide both guidance for avoiding the '[land] mines' and controls to prevent employees from stepping on them."

The comment refers to a quote from the late actor Burt Reynolds, who said, "I can tell a young person where the mines are, but he's probably going to step on them anyway." The alert tries to point out the Foreign Corrupt Practices Act land mines that multinational companies have been stepping on all over the world.

Laura Perkins, a partner in Hughes Hubbard's Washington,



Laura Perkins, partner, Hughes Hubbard Photo: Diego M. Radzinski/ALM

D.C., office and co-chair of its anti-corruption and internal investigations practice, said in an interview, "the big takeaway is that enforcement internationally has increased tremendously over the last few years."

Perkins spent 10 years at the U.S. Department of Justice, including as assistant chief of the criminal fraud section's Foreign Corrupt Practices Act unit.

Of the alert's six chapters, four deal with international developments in anti-corruption. One chapter deals with enforcement in the United Kingdom, while another looks at what Perkins called the other active countries in enforcement—Brazil, France and Norway—and China.

"China is not particularly active, but it is an interesting jurisdiction for multinationals, because they

[companies] have gotten into trouble for activities in China," she explained.

The Brazil discussion includes details of the multiyear investigation called Operation Car Wash that has ensnared numerous multinational companies along with top politicians in that country. "Brazil has been of interest for several years now," Perkins said, "because Operation Car Wash resulted in a lot of individual and corporate prosecutions."

The probe included the oil company Petroleo Brasileiro S.A., known as **Petrobras**, which entered an \$853 million global settlement in September with U.S. and Brazilian authorities.

Perkins noted that France has begun using deferred prosecution agreements, "and for the first time this year it handled a case that had a joint resolution with the U.S. government." Perkins noted.

In that joint resolution, the French bank **Société Générale** agreed to pay over \$1.3 billion to settle U.S. and French charges that it bribed Libyan officials to obtain business. It was the first-ever coordinated bribery case between France and the United States.

The alert also includes a lengthy chapter on trends and developments in U.S. enforcement and FCPA cases. It discusses such factors as DOJ's recent statement on avoiding "piling on" corporate

defendants; the U.S. Securities and Exchange Commission's high-profile loss of a statute of limitations case that appears to limit the agency to claims over conduct less than five years old; and the widely watched case of **U.S. v. Hoskins** in the Second U.S. Circuit Court of Appeals.

In that case, the **appeals court affirmed** a district court's decision that Lawrence Hoskins, a British national and former executive of the French transportation company Alstom, could not be charged with conspiracy to violate the FCPA because he remained outside the U.S. during the conspiracy and he was never an agent, employee or shareholder of a U.S. company.

"I was somewhat surprised by Hoskins," Perkins said. "From my time at DOJ, I know they believe it was decided incorrectly." She said she expects DOJ to continue bringing such cases, especially in other circuits, to try and win a different decision. "It remains to be seen whether it ends up making a difference in enforcement," Perkins added.

One other DOJ development in the past year, a revision to DOJ's **corporate enforcement policy**, is expected to affect how a general counsel does her job, according to Perkins. "I think it is the Justice department sending the message that early remediation is very important. General counsel

and compliance officers should take notice," she said.

She advised that when wrongdoing is discovered, GCs and compliance officers should take immediate steps to stop the misconduct, and immediately enhance compliance to make sure it doesn't happen again.

"The policy talks about a key factor in deciding on whether to appoint a monitor, and that factor is whether there was early remediation," Perkins said.

"Companies need to demonstrate that they instituted new policies that are currently effective," she explained. "Most companies won't be able to show the second part unless they started remediation early."

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