

Regulators to re-energize enforcement efforts globally, with growing personal liability for directors and a focus on ESG

Washington, D.C., Los Angeles, and London, 18 January 2022 – After a stop-start year, 2022 is expected to bring re-energized anti-bribery and corruption enforcement and prosecution activities around the world.

Hogan Lovells' annual Global Bribery and Corruption Outlook, published today, forecasts an increased compliance burden on corporations and individuals this year – particularly as a result of heightened environmental, social and governance (ESG) expectations. Other key trends that are reshaping risk include a growing collaboration between regulators, an increased personal liability for directors and technology risks including the criminal misuse of cryptocurrencies.

Stephanie Yonekura, Global Head of Investigations, White Collar and Fraud at Hogan Lovells, commented: “We expect 2022 to bring a renewed focus on enforcement and prosecution activities throughout many parts of the world. We also expect to see the continued increase in cross-border cooperation among nations that are committed enforcers, such as the UK and U.S., alongside increased activity from other countries that are building up their anti-bribery and corruption efforts.

“Regulators appear committed to ramping up their anti-corruption enforcement efforts that stalled over the past two years. Financial consequences aside, companies could face devastating reputational damage if an investigation is

announced, and directors may be held personally liable.

“There is also a growing body of case law regarding corporate liability for ESG, data and technology risks. Recent trends suggest the future sanctioning of misconduct in these areas may operate like existing ABC laws. Businesses would do well to review their existing compliance programs to ensure they are prepared for these emerging risks.”

Around the World

The full Global Bribery & Corruption Outlook report examines enforcement trends across a number of regions. The report is co-edited by Hogan Lovells partners Ann Kim and Liam Naidoo.

Commenting on the U.S., Ann Kim said: “Following the Biden administration’s release of the-first ever United States Strategy on Countering Corruption, we can expect to see the U.S. government corraling its resources to more efficiently combat corruption, increasing efforts to work with foreign partners and nations, and implementing rules to curb illicit finance. The Strategy calls for the Department of Justice to employ new tools to prosecute money laundering, and continue its commitment to aggressive enforcement of the Foreign Corrupt Practices Act (FCPA). In light of these developments, companies should carefully consider recent policy changes at the DOJ, which includes, among other things, directing prosecutors to consider a corporation’s full criminal, civil and regulatory record when determining appropriate resolutions, and the announcement of a new whistleblower program aimed at recovering proceeds that may be related to corruption.”

Commenting on the UK and Europe, Liam Naidoo added: “In recent months the Serious Fraud Office (SFO) has come under criticism for failing to successfully prosecute individuals associated with corporate wrongdoing. We expect the SFO to focus on this while continuing to use DPAs in the coming year. In

Continental Europe, there is a movement to expand corporate criminal liability for corruption potentially exposing companies to an increased compliance burden. Businesses should carefully review their compliance programmes to ensure they are prepared.”

Other key trends outlined in the report include:

ESG – There is a growing overlap between corruption enforcement and expectations around environmental and social behaviours of large companies. Companies with good anti-corruption compliance procedures should be well-prepared for growing ESG-related compliance obligations.

EU – In France, a draft law plans to broaden the scope of companies that are subject to Article 17 of the Sapin II Act. At the EU level, regulators are preparing to implement the EU Whistleblower Directive, which provides additional protections for whistleblowers.

Southeast Asia –In recent times, Asia has been the most frequently implicated region in U.S. FCPA-related bribery schemes. Countries in Southeast Asia are recovering from setbacks of the pandemic and introducing new policies and measures to fight bribery and corruption.

Latin America – A renewed enforcement push is expected this year, particularly around processes for buying vaccines and supporting vulnerable populations.

China – The digital evolution of brick-and-mortar retailers driven by the establishment of a cashless payment infrastructure and upgraded logistics networks will give rise to novel compliance risks and challenges.

Africa – Domestic enforcement of corruption is likely to pick up speed particularly in the more developed economies of Nigeria and South Africa.

Key industries to watch in 2022

Life Sciences – Life sciences companies have been in the spotlight during the pandemic and have more touchpoints with government officials than companies in other industries. This

presents unique challenges and exposes them to more potential FCPA investigation risks.

Technology – Tighter regulation is expected as well as a jump in the number of controls in 2022.

Sports, media and entertainment – The fierce competition in the sector is causing mergers of major industry players, which could lead to a rise in post-acquisition compliance risks.

The Global Bribery and Corruption Outlook 2022 report is available [here](#).