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SUSPECT CORRUPT PAYMENTS? HOW TO NAVIGATE A POTENTIAL CORPORATE CRISIS

In this article, the authors discuss the global surge in anti-corruption efforts, including how U.S. and foreign authorities are increasingly working together to combat and penalize those who engage in corrupt activities. Given the significant penalties for entities that violate anti-corruption laws, the authors discuss key steps companies should take when faced with corruption allegations and offer some considerations for response strategies.

By Laura Perkins, Michael DeBernardis, and Katherine Taylor *

Being embroiled in a corruption scandal can have significant consequences for a company. Not only can it result in reputational harm, but it can lead to lengthy investigations, hefty fines (with recent examples nearing \$4 billion), costly litigation, and a resulting drop in stock prices. It is essential for companies to understand how to proactively and appropriately respond to corruption allegations when they come to light. Having a strong crisis response can mitigate corporate harm and liability.

UPTICK IN GLOBAL ANTI-CORRUPTION ENFORCEMENT

Enacted in 1977, the Foreign Corrupt Practices Act (“FCPA”) was the first law of its kind. The FCPA prohibits (1) the payment of bribes to foreign officials in exchange for business advantages and (2) the use of fraudulent accounting practices to cover up those payments. The FCPA applies to U.S. companies, U.S. citizens, nationals or residents, and companies that are publicly traded on U.S. exchanges or are required to report to the U.S. Securities and Exchange Commission, as well as their personnel.^{1,2} It also applies to foreign

companies and foreign nationals who commit violations while in the United States.³ Violators of the FCPA face numerous repercussions, including hefty criminal fines,⁴ imprisonment,⁵ and civil penalties.⁶

² 15 U.S.C. §§ 78dd-1(a), 78dd-2(a).

³ 15 U.S.C. §§ 78dd-1(g), 78dd-2(i), 78dd 3(a).

⁴ Companies and individuals who willfully violate the anti-bribery provisions of the FCPA face criminal fines of up to \$2 million and \$250,000 per violation, respectively, or an alternative fine of twice the pecuniary gain. 15 U.S.C. §§ 78ff(c), 78dd-2(g), 78dd-3(e); 18 U.S.C. § 3571(b)(3), (d), (e). Organizations and individuals found to have willfully violated the internal accounting control provisions of the FCPA face maximum criminal fines of \$25 million and \$5 million, respectively, or, if greater, the alternative fine of twice the pecuniary gain. 15 U.S.C. § 78ff(a); 18 U.S.C. § 3571(d), (e).

⁵ Individuals found to have willfully violated the anti-bribery provisions of the FCPA face up to five years of imprisonment. 15 U.S.C. §§ 78ff(c)(2)(A), 78dd-2(g)(2)(A), 78dd-3(e)(2)(A). Individuals who willfully violate the internal accounting control provisions of the FCPA face up to 20 years of imprisonment. 15 U.S.C. § 78ff(a).

¹ This includes their officers, directors, employees, agents, and stockholders.

* LAURA PERKINS and MICHAEL DEBERNARDIS are partners and KATHERINE TAYLOR is an associate at Hughes Hubbard & Reed LLP’s Washington, DC office. Their email addresses are laura.perkins@hugheshubbard.com, michael.debernardis@hugheshubbard.com, and katherine.taylor@hugheshubbard.com.