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Spring Update

The Practitioner's Guide to Global Investigations

Editors
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Following the successful launch of *The Practitioner's Guide to Global Investigations*, developments in the field show no signs of abating. In this Spring Update to the text, the editorial team have approached the panel of expert authors to bring readers up to date with significant changes around the world. The first part of this update covers developments in the United States – in particular the early signs of the focus of the new Attorney General – and in the United Kingdom in relation to deferred prosecution agreements and recent cases on privilege. The second part of this update covers developments in France, India and Turkey.

Part I

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Part I

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Global Investigations in the United States and United Kingdom

UNITED STATES

FCPA Pilot Program Extension

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On 10 March 2017, the Department of Justice (DOJ) announced that the one-year Foreign Corrupt Practices Act (FCPA) Pilot Program will remain in place when the initial period ends on 5 April 2017. As indicated by the chart below summarising the 2016 and 2017 FCPA enforcement actions, the Pilot Program has demonstrated the DOJ's commitment to rigorous FCPA enforcement, and by many accounts has been viewed as very successful.

Recent DOJ Enforcement Actions	2016	2017 YTD
Total Enforcement Actions	24	5
Plea Agreements	9	3
Deferred Prosecution Agreements	7	2
Non-Prosecution Agreements	4	1
DOJ Pilot Program Declination	5	0
DOJ Pilot Program Declination with Disgorgement	2	0
Corporate Compliance Monitor/Consultant Required in Resolution	7	3
Self-Disclosure by Corporations	6	1
Source: Department of Justice FCPA webpage, available at: https://www.justice.gov/criminal-fraud/foreign-corrupt-practices-act		

In addition, the DOJ has taken significant steps in 2017 to demonstrate its continued commitment to ensuring that companies maintain effective compliance programmes. Specifically, the DOJ extended its contract with compliance expert Hui Chen for two years and, on 8 February 2017, it published revised compliance guidance for companies called 'Evaluation of Corporate Compliance Programs' (the Guidance). The Guidance is composed of 119 common questions that the DOJ asks when evaluating a company's compliance programme. The Guidance focuses on three overarching areas: (1) company culture, (2) compliance structure and resources and (3) the effectiveness of company policies and procedures. This third category received considerable attention in the Guidance.

Although the content of the Guidance is largely familiar to practitioners, it does give a clearer picture of the DOJ's current approach to corporate compliance, which is informed by Hui Chen. The issuance of the Guidance underscores the DOJ's renewed focus on the operation, rather than the appearance, of corporate compliance programmes. The Guidance suggests that companies should expect to be asked detailed and challenging questions regarding the scope and effectiveness of their compliance programmes. If a company's compliance programme fails to withstand such scrutiny, it risks losing credit for the programme, paying higher penalties or even facing separate violations for inadequate internal controls.

In summary, as the new administration under Attorney General Jeff Sessions develops its enforcement priorities, the DOJ's renewal of the Pilot Program and issuance of the Guidance suggest that its focus on self-disclosure and rigorous compliance is not changing.

Noteworthy recent developments in the United States:

- *ZTE Corp.* (March 2017) – ZTE agreed to pay a combined US$892 million to three US agencies – the DOJ, the Treasury Department and the Department of Commerce – to settle violations of US sanctions and export control laws stemming from an alleged scheme to export US-made electronics to Iran, without obtaining proper export licences. ZTE pleaded guilty in federal court in Texas to such violations as well as to obstruction of justice. As part of the settlement, ZTE will be assigned a corporate monitor for three years. In an unusual development, the court in Texas rejected the monitors proposed jointly by the DOJ and the company and, instead, selected its own monitor. The court also amended the plea agreement to exert greater judicial control over the monitor, including referring to the monitor as a 'judicial adjunct'; inserting the court as the arbiter of disputes between ZTE and the monitor (as opposed to the DOJ); and also requiring all monitor reports to be submitted to the court (under seal).
- *USA v. HSBC Bank US* (March 2017) – the DOJ and HSBC asked the United States Court of Appeals for the Second Circuit to overturn a lower court's decision ordering the bank to unseal a monitor's report on the state of its anti-money laundering compliance programmes. HSBC's appeal was heard on 1 March, though a decision has not yet been issued.
- *Somers v. Digital Realty Trust Inc.* (March 2017) – the United States Court of Appeals for the Ninth Circuit recently weighed in on a circuit split among federal appeals courts on the issue of whether individuals who make internal disclosure of potential securities law violations – like those who report such alleged wrongdoing directly to the SEC – are protected as 'whistleblowers' under the Dodd-Frank Act and, as such, free from adverse employment actions by their companies. The Ninth Circuit held that Dodd-Frank's protections apply to internal whistleblowers, teeing the issue up for resolution by the US Supreme Court.
- *Volkswagen Emissions Scandal* (Jan 2017) – Volkswagen (VW) pleaded guilty in the United States to fraud, obstruction of justice and false statements in connection with the $4.3 billion settlement it has reached with the DOJ ($2.8 billion in criminal penalties and $1.5 billion to resolve civil claims with other US federal agencies). VW was sentenced on 21 April 2017 in connection with that plea at which the Judge formally approved the $2.8 billion fine and also sentenced VW to three years' probation and oversight by an independent monitor. In addition, the DOJ has indicted seven current and former VW executives and employees in connection with the allegations. One executive was arrested in Miami and is awaiting trial and another has pleaded guilty and agreed to cooperate.

Read the authors' chapter on 'Self-Reporting to the Authorities and Other Disclosure Obligations: The US Perspective' in GIR's *The Practitioner's Guide to Global Investigations* **here**.

UNITED KINGDOM

Privilege

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Fountain Court Chambers

In the Chapter 'Privilege: The UK Perspective' the authors provide some commentary on how the concept of 'the client' should be interpreted in the context of legal advice privilege (LAP) and corporations, and put forward some practical suggestions as to how the interviews of potential witnesses might be conducted to enable a claim for LAP to be made over the notes of such interviews (see paragraphs 31.3.2.2 and 31.9.1).

The position in relation to the scope of LAP and the implications for claiming privilege in respect of witness interview notes has unfortunately been made much more difficult since the decision of Mr Justice Hildyard in the RBS Rights Issue Litigation.[1] In that case the judge held that notes of witness interviews prepared by RBS's lawyers were not subject to LAP (although the interviewees were authorised by RBS to communicate with the lawyers). In Hildyard J's view, the Court of Appeal in *Three Rivers 5* established a general principle that 'the client' for the purposes of LAP must be someone who is authorised to seek and receive legal advice.[2] Plainly such an interpretation is likely to exclude the vast majority of employees in a corporation. Hildyard J also rejected RBS's alternative argument that the notes were subject to LAP on the basis that they comprised lawyers' working papers.

In the authors' view, as well as demonstrating little appreciation for the practical needs of companies seeking to run their business and investigate issues of concern – the RBS decision was wrong, and involved an erroneous interpretation of *Three Rivers 5*, which is inconsistent with the House of Lords decision in *Three Rivers 6*.[3] As the authors set out in their Chapter, they consider that the proper interpretation of *Three Rivers 5* is that LAP applies to communications between the lawyer and any individual who is authorised to communicate with the lawyer, to enable the lawyer to give advice (which is the approach that was taken by the Singapore Court of Appeal in *Skandinaviska v. Asia Pacific Breweries*, but which Hildyard J declined to follow.)[4] The communication may be limited to providing information only, and does not need to constitute the actual giving and receiving of advice. In this regard RBS is also at odds with the decision of the Hong Kong Court of Appeal in *Citic Pacific v Secretary of State for Justice*,[5] which recognised that a narrow definition of client was incompatible with the rationale for LAP as explained by the House of Lords in *Three Rivers 6*. The RBS decision also seems to be doubtful in relation to the lawyers' working papers doctrine. Notes of witness interviews that are prepared by lawyers, provided they are not verbatim transcripts, are types of document which should typically qualify as 'lawyers working papers', in line with the decision in *Balabel v Air India*.[6]

1 [2016] EWHC 3161 (Ch).
2 [2003] QB 1556.
3 [2005] 1 AC 610.
4 [2007] 2 SLR 367.
5 [2016] 1 HKC 157.
6 [1998] Ch 317.

However, at present the RBS case presents significant difficulties for corporates that wish to conduct witness interviews. These difficulties extend beyond questions of strategy in an enforcement context but to the very practicalities of running businesses in circumstances where the RBS judgment will inhibit fact-finding. Unfortunately RBS's appeal of the decision did not proceed as the underlying claim between the relevant claimants and the bank was compromised, so it will be necessary to await another case to see if Hildyard J's analysis is to be doubted. Further light may be shed in the forthcoming judgment in *SFO v Eurasian Natural Resources Corporation*, which is expected in early May. That case raised similar issues of LAP in relation to interview notes, and also issues of litigation privilege, including at what point, in a criminal context, litigation can be said to be in reasonable contemplation. It must be hoped that at some stage the law is corrected and the practical realities of modern commercial legal needs are recognised by the courts.

Read the authors' chapter on 'Privilege: The UK Perspective' in GIR's *The Practitioner's Guide to Global Investigations* **here**.

Third-party rights victory for the FCA in its Supreme Court debut

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On 22 March 2017, the UK Supreme Court handed down its long-awaited decision in *FCA v. Macris* holding by a majority of 4-1 that Achilles Macris, a former JP Morgan employee, had not been improperly identified in notices published by the FCA in September 2013 in relation to its settlement with JP Morgan Chase after the bank incurred US$6.2 billion of losses in 2012.

The Supreme Court overturned the Court of Appeal's decision of 19 May 2015, which held that Macris had been prejudicially identified in the FCA settlement notices where the notices referred to him as 'CIO London management' and said that 'CIO London management' had deliberately misled the FCA in an April 2012 phone call. Macris argued that he had been improperly identified under section 393 of the Financial Services and Markets Act 2000 (FSMA) despite not having been identified by name because the FCA notice at issue contained references through which he was identifiable. Section 393 provides that the FCA must give identified third parties reasonable opportunity to respond to notices. The FCA appealed this decision to the Supreme Court, with the key issue before the court being the meaning of 'identifies' in section 393 of FSMA.

The majority of the Supreme Court held that Macris was not improperly 'identified' by the FCA's decision notice under section 393 of FSMA. Lord Sumption, writing for the majority, said that someone is identified in a notice if 'he is identified by name or by a synonym for him, such as his office or job title.' Such a synonym would, in the view of Lord Sumption, need to be 'apparent from the notice itself that it could apply to only one person and that person must be identifiable from information which is either in the notice or publicly available elsewhere.' Information from other sources can only be used to interpret the language of the FCA's notice, rather than to supplement it, and must be easily ascertainable. An example of such interpretation is provided by Lord Sumption, who states that reference to the 'chief executive of X company' may be interpreted by checking on X company's website who their chief executive is. It would not, however, be permissible to resort to additional research in order to 'piece together' the identity of an individual referenced in a notice.

In concluding that it was not permissible to rely on information publicly available elsewhere, Lord Sumption said that he was influenced by the deliberate drafting of section 393 in regards to fairness and the requirement for the material identifying the individual to come from the notice itself, as well as concern over the impact on the FCA's effectiveness if section 393 were to be interpreted differently. Lord Sumption also said that the envisaged constituency (i.e., readership) of notices was the public at large and not just those familiar with a particular industry.

While agreeing with Lord Sumption, Lord Neuberger said that an individual is identified in a document if '(i) his position or office is mentioned, (ii) he is the sole holder of that position or office, and (iii) reference by members of the public to freely and publicly available sources of information would easily reveal the name of that individual by reference to his position or office.'

In his dissent, Lord Wilson argued that the majority unfairly prioritised protecting regulatory efficiency over individual reputation. Lord Wilson expressed concern about the majority's analysis that the general public are the constituency for FCA notices, arguing that this failed to reflect how the most serious damage of wrongly being identified for a third party would be within the market in which they operate, as being so identified would damage their employment prospects. Lord Wilson said the decision had failed to strike a balance between protecting the rights of individuals and regulatory efficiency.

The decision of the Supreme Court marks a significant shift away from the test adopted by the Court of Appeal, with the relevant reader of the FCA notice being a member of the public, as opposed to a market operator. This decision is likely to be seen as validating the FCA's approach to identifying third parties in notices and provides useful guidance for practitioners. The decision also helps to ensure that the FCA is able to continue using notices as an effective tool for disseminating the outcomes of regulatory findings.

The Supreme Court's decision to prioritise regulatory efficiency over individual rights presents a challenging situation for financial professionals who fear being identified as a result of FCA notices, and is best seen as another limb of the general move towards individual accountability in UK enforcement. The lack of provisions equivalent to section 393 of FSMA in the Crime and Courts Act 2013 suggests that, perhaps inevitably, there will be less concern from prosecutors who reach settlements with corporates about the potential damage to individual reputations whether or not they are ultimately prosecuted.

Read Elizabeth Robertson's chapter on 'Individual Penalties and Third-Party Rights: The UK Perspective' in GIR's *The Practitioner's Guide to Global Investigations* **here**.

Cabinet Office review of UK agencies combating economic crime

Amanda Raad, Marcus Thompson and Katerina Sandford

Ropes & Gray

The UK Cabinet Office is conducting a review of UK agencies that combat economic crime in order to assess 'the effectiveness of [the] organisational framework and the capabilities, resources and powers available to organisations that tackle economic crime'. The agencies subject to review include the SFO, the National Crime Agency (NCA), HM Revenue & Customs, the FCA and the Competition and Markets Authority.

The latest review follows similar assessments conducted in 2011 by the Cabinet Office and the Home Office in which proposals were made to dismantle the SFO and merge it into the NCA. Previous attempts to make significant structural reforms to the existing agencies have been unsuccessful.

Corruption Watch has criticised the government for reviving its scrutiny of the SFO's existence 'just when it is starting to get real results'.

While the most recent review was confirmed by the Home Secretary, Amber Rudd, during parliamentary questions in December 2016, the government has provided no further information on the grounds that it is an internal review that will not be open to public consultation.

Read the authors' chapter on 'Self-Reporting to the Authorities and Other Disclosure Obligations: The UK Perspective' in GIR's *The Practitioner's Guide to Global Investigations* **here**.

The Serious Fraud Office – deferred prosecution agreements

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On 17 January 2017, the English court for the first time approved a deferred prosecution agreement (DPA) concerning a company that had not self-reported its bribery offences to the Serious Fraud Office (SFO). The Rolls-Royce DPA[1] follows the largest SFO investigation to date and is the United Kingdom's third DPA since their introduction in February 2014. In the first two DPAs (concerning Standard Bank and XYZ Limited), the judge, Sir Brian Leveson, President of the Queen's Bench Division, emphasised the importance of self-reporting in the court's decision to approve a DPA. By contrast, Rolls-Royce did not self-report its offence to the SFO and only began cooperating with the SFO's investigation once it became aware of the SFO's formal interest in 2012.

Despite its lack of self-reporting, Leveson P cited the 'extraordinary cooperation' demonstrated by Rolls-Royce and described by the SFO as a key factor in the court's decision to approve the DPA, including:

- 'genuine cooperation with the SFO in the conduct of Rolls-Royce's own internal investigation', including deferring its own internal investigation interviews until the SFO had completed its interviews;
- 'disclosure of all interview memoranda … (on a limited waiver basis)' despite Rolls-Royce's view that the material was likely to be privileged and was capable of resisting an order for disclosure;
- 'providing all materials requested by the SFO voluntarily … without requiring recourse to compulsory powers';
- providing the SFO with 'pertinent information which may not otherwise have come to its attention'; and
- 'consulting the SFO in respect of development in media coverage, and seeking the SFO's permission before winding up businesses that may have been implicated in the SFO's investigation'.

Indicating the continued importance of self-reporting, Leveson P stressed 'the fact that the investigation was not triggered by self-reporting would usually be a highly relevant factor' to his assessment of the suitability[2] of a

1 Rolls-Royce Holdings plc and Rolls-Royce Energy Systems Inc.

2 The balance between prosecution and DPA and whether a DPA would be in the interests of justice.

DPA over prosecution but that the level of cooperation by Rolls-Royce in this case proved 'highly material' to his decision.

The latest DPA demonstrates that self-reporting is not a prerequisite to the court approving a DPA in place of prosecution and that the court will take into consideration other influencing factors such as the 'extraordinary' level of cooperation offered by a company under investigation.

Other significant factors in the court's decision to approve the Rolls-Royce DPA included the change in the corporate culture and senior management demonstrated by Rolls-Royce since the relevant period of the offences.

One other significant factor was the extent of voluntary production in the case of materials by Rolls Royce:

- Among the materials voluntarily provided by Rolls-Royce to the SFO were:
  - regular reports on the findings of the internal investigations;
  - unfiltered access to the 'digital repositories or email containers'[3] for over 100 past and present employees;
  - general access to hard copy documents at Rolls-Royce; and
  - key documents identified by the internal investigations, including interview memoranda.
- In total, Rolls-Royce collected over 30 million documents and subjected them to electronic document review as part of the investigation. This led to the SFO receiving information that may not have otherwise come to its attention.
- While the decision to voluntarily provide documents to the SFO was one of a number of measures taken by Rolls-Royce to demonstrate its cooperation with the investigation, this was of fundamental importance to the Court when deciding to approve the DPA, saving Rolls-Royce from facing a full-blown criminal prosecution, and the more serious resultant consequences.

On 10 April 2017, the Crown Court approved a DPA between the SFO and Tesco Stores Limited. The DPA only relates to the potential criminal liability of Tesco Stores Limited and does not address whether liability of any sort attaches to Tesco plc or any employee, agent, former employee or former agent of Tesco plc or Tesco Stores Ltd. Tesco plc will take a total exceptional charge of £235 million in respect of the DPA of £129 million, the expected costs of an FCA compensation scheme of £85 million, and related costs. This has been recorded in the financial statements in the year to 25 February 2017 of Tesco plc as an adjusting post balance sheet event.

On 28 March 2017, the FCA issued a Final Notice against the company finding that it had committed market abuse on 29 August 2014 when it issued a trading update with an overstated profit forecast.

In making its finding, the FCA expressly stated it had not concluded the Board of Directors knew or could reasonably be expected to have known that the trading statement was false or misleading. However, the level of seniority of those who did know was sufficient to constitute the knowledge of the company within the specific context of market abuse. The FCA has decided not to fine Tesco, rather the company will pay an estimated £85 million excluding interest into a compensation scheme established under the FCA's statutory powers to compensate purchasers of ordinary shares and listed bonds between 29 August and 19 September 2014.

Read the authors' chapter, co-authored with Dechert US partners Hector Gonzalez and Rebecca Kahan Waldman, on 'Production of Information to the Authorities' in GIR's *The Practitioner's Guide to Global Investigations* **here**.

3 *Serious Fraud Office v Rolls-Royce PLC and Rolls-Royce Energy Systems Inc* (U20170036), at para. 19.

Part II

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Global Investigations around the World

France

The French Anti-Corruption Agency (AFA) under Sapin II

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Navacelle

Publication of decree implementing roles and responsibilities of the AFA

The Sapin II decree becomes effective on 16 March 2017 and establishes the AFA, immediately replacing its predecessor, the Central Corruption Prevention Department. The decree also establishes the following in relation to the AFA:

- **Tasks**: The AFA will prepare a multiyear plan against corruption and will assist the competent French authorities and international organisations.
- **Composition**: The AFA includes control and expertise units, a Strategic Committee responsible for providing the overall policy and an Enforcement Committee.[1]
- **Procedure**: When someone fails to comply with the duty to prevent and detect corruption, the Director of the AFA will send an inspection report to the defendant and allow him or her to present written observations. Afterwards, the Director will be able to issue a warning or submit a complaint to the Enforcement Committee. The Director will also communicate the inspection report, observations, an opinion as to the facts and the sanction that the Director deems appropriate. The defendant will be given information on the charges. The Enforcement Committee will appoint a *rapporteur* in charge of investigating the facts in an adversarial manner. The defendant, who can be assisted by counsel, will receive the Director's opinion and will be able to address observations. After two months, the defendant will be summoned to a public hearing (except when this could interfere with public policy, business secrecy or any other legally protected secrets) during which the defendant will be able to present oral observations, responding to the Director's representative's observations.[2]

  Judges and category A civil servants who are part of the control and expertise unit 'should present their accreditation cards when they conduct onsite controls, which can only be done within business premises, or within private individuals' home, and need to take place during business hours, after informing the representative of the controlled entity that he can be assisted by any person of his choice'.[3]
- **Conflicts of interest and recusal**: Articles 6 and 8 address conflicts of interest between members of the control and expertise units and those from the Enforcement Committee, and the recusal of those persons.
- **Additional subdirectorates of the AFA**: Pursuant to the terms of the administrative decision of 14 March 2017 on the organisation of the AFA, the AFA 'includes, in addition to the Enforcement Committee and the Strategic Committee, the Advisory, Strategic Analysis and International Affairs Subdirectorate, the Control Subdirectorate and the General Secretariat'.[4]

1 Sapin II, Article 2.
2 Ibid. at Article 5.
3 Ibid. at Article 7.
4 Ibid. at Article 1.

- **The Advisory, Strategic Analysis and International Affairs Subdirectorate**: The Advisory, Strategic Analysis and International Affairs Subdirectorate is in charge of centralisation, dissemination of information and good practices, and the development of recommendations to assist companies that must implement a system to prevent and detect corruption or influence-peddling risks.[5]
- **The Control Subdirectorate**: The Control Subdirectorate conducts off-site and on-site verifications of the implementation of compliance measures (e.g., code of conduct, whistleblower mechanism, risk mapping, evaluating procedures of clients, internal or external accounting control procedures, training arrangements for executives and personnel most exposed to the risk of corruption and influence peddling, the disciplinary regime, internal framework for controlling implemented measures). It monitors the execution of decisions taken by the Enforcement Committee and assesses compliance with orders to implement a compliance programme. It is tasked with controlling the adequacy of measures regarding the prevention and detection of corruption and compliance measures put in place. It can issue recommendations for the purpose of improving existing procedures.[6]

Read the authors' chapter on France in GIR's *The Practitioner's Guide to Global Investigations* **here**.

5 Ibid. at Article 2.

6 Ibid. at Article 3.

India

Operation Clean Money unearths large amounts of unaccounted wealth

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Archer & Angel

In a move to curb widespread accumulation of unaccounted wealth and circulation of counterfeit currency, the Indian government abruptly withdrew the legal tender of 500 and 1,000 rupee banknotes issued by the Reserve Bank of India (RBI) on 8 November 2016. Instead, the government started issuing a new series of currency notes in denominations of 500 and 2,000 rupees. The government gave the general public until 30 December 2016 to exchange the demonetised currency notes at offices of RBI and at branches of commercial banks.

From November 2016, the Income Tax Department launched a fully fledged effort against black money in the form of Operation Clean Money. The Income Tax Department has investigated and identified 1.8 million people who deposited amounts of 500,000 rupees (approximately US$7,700) or more between 9 November 2016 and 30 December 2016, whose income profiles did not match the amounts deposited. Wherever applicable, the Income Tax Department has sought to continue investigations into these individuals and corporates by seeking clarifications regarding the source of depositors' income.

Additionally, the Special Investigation Team (SIT) on Black Money, a panel of two retired Supreme Court of India judges, claims that their investigations reveal that approximately 700 billion rupees (US$10.7 billion) has been brought into the system through various schemes and policies put forward by the government. The engaging of an SIT was ordered by the Supreme Court in 2011, in response to a public interest litigation, filed seeking tighter checks on black money being accumulated abroad. The SIT has since been involved in various black-money investigations and has been an advocate for sharing of financial data, particularly data pertaining to foreign exchange transactions by the RBI and commercial banks with other government agencies, to detect transactions that appear to be made with the objective of evading taxes. It is also claimed that following investigations regarding claims made by global data leaks such as the Panama Papers incident, approximately 162 billion rupees (US$2.5 billion) of black money that was stashed abroad has now been detected.

In recent years, the Indian government has announced several initiatives and schemes to curb black money and to mandate disclosure of unaccounted wealth. It has also sought to enter into treaties and agreements with other countries to facilitate cross-border measures to prevent stashing of wealth abroad. Additionally, it has sought to facilitate requests for mutual legal assistance and sharing of information by other contracting states in investigating foreign exchange transactions that are the subject of scrutiny of the authorities in India.

Read the authors' chapter on India in GIR's *The Practitioner's Guide to Global Investigations* **here**.

Turkey

Anti-corruption climate in Turkey – a quick guide for multinational companies

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As an emerging market, Turkey is considered a business hub for the EMEA region and an important market for many multinational companies. In 2016, Turkey scored 41 points in Transparency International's Corruption Perceptions Index, on a scale of 0 (highly corrupt) to 100 (very clean).[1] As this score is somewhat closer to the lower end of the scale, multinationals who are or who will be active in Turkey should keep well informed about the local anti-corruption climate. This will enable multinationals to take precautionary measures that mitigate their liabilities under extraterritorial legislation such as the US Foreign Corrupt Practices Act (FCPA) and the UK Bribery Act (UKBA), as well as local legislation.

Turkey has up-to-date anti-corruption legislation and has ratified all territorially applicable international treaties on anti-corruption, including the OECD Anti-Bribery Convention. Turkey has criminalised (1) direct and indirect bribery; (2) the promise, offer, provision and receipt of bribery; (3) bribery of foreign public officials; and (4) private-to-private bribery with regard to publicly traded companies. The Turkish legal system does not accommodate corporate criminal liability, non-prosecution or deferred prosecution agreements, or compliance programmes as mitigation.

Legal persons cannot be held criminally liable under Turkish law. Instead, companies that engage in corruption are penalised through a combination of administrative fines and security measures. These security measures are (1) the invalidation of the licence granted by a public authority; (2) the seizure of goods used in the commission of a crime or that are the result of a crime by representatives of a legal entity; or (3) the seizure of pecuniary benefits arising from or provided for the committing of a crime. The administrative fine is between 16,409 Turkish liras (approximately US$4,400) and 3,282,503 Turkish liras (approximately US$881,000) if the crime of bribery is committed for the benefit of a company by an organ of that company, a representative or someone acting within the scope of its business.

Under Turkish law, companies are not required to have compliance programmes. Having a compliance programme is not a mitigating factor, although doing so in a jurisdiction with a different cultural context is always an asset. For example, the widespread hospitality and gift-giving culture in Turkey cannot be changed by merely telling employees not to engage in such acts. The company would need to have written rules, train its employees, conduct audits and enforce disciplinary measures when rules are broken in order for the company to foster a culture of compliance. Therefore, multinationals are encouraged to have compliance programmes aimed at detection and prevention of possible illegal acts that will raise awareness on combating corruption. This is important not only in terms of compliance with local legislation, but also in the face of the increasing extraterritorial reach of many national anti-corruption laws, such as the FCPA and the UKBA.

Read the authors' chapter on Turkey in GIR's *The Practitioner's Guide to Global Investigations* **here**.

1 http://www.transparency.org/news/feature/corruption_perceptions_index_2016.