

# FCPA Update

A Global Anti-Corruption Newsletter



## Also in this issue:

8 Argentina Adopts Anti-Corruption Law Imposing Corporate Criminal Liability

[Click here for an index of all FCPA Update articles](#)

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## U.S. Department of Justice Announces Flurry of FCPA Cases Against Individual Defendants

In the past two months, the U.S. Department of Justice (“DOJ”) has announced seven guilty pleas, two indictments, and two arrests of individuals in connection with alleged FCPA offenses. Combined with a series of actions from earlier this year, a total of twelve individuals have been indicted (two) or pleaded guilty (ten) in 2017—three times the number of corporate criminal actions thus far and more guilty pleas than in any other year.

- On January 10, 2017, the DOJ announced that Juan Jose Hernandez Comerma and Charles Quintard Beech III each pleaded guilty to one count of conspiracy to violate the FCPA. Hernandez Comerma also pleaded guilty to one count of violating the FCPA.<sup>1</sup>

[Continued on page 2](#)

1. United States Department of Justice, Press Release No. 17-025, “Two Businessmen Plead Guilty to Foreign Bribery Charges in Connection with Venezuela Bribery Schemes,” (Jan. 10, 2017), <https://www.justice.gov/opa/pr/two-businessmen-plead-guilty-foreign-bribery-charges-connection-venezuela-bribery-schemes>.

**U.S. Department of Justice  
Announces Flurry of  
FCPA Cases Against  
Individual Defendants**

Continued from page 1

- On July 19, 2017, the DOJ announced that Amadeus Richers, a Brazilian citizen and former general manager of a Miami-based telecommunications company, pleaded guilty to conspiracy to violate the FCPA, becoming the ninth person to have pleaded guilty or been convicted in connection with bribes paid to Haiti Telco.<sup>2</sup>
- On October 4, 2017, the DOJ announced that Joseph Baptiste had been indicted for conspiracy to violate the FCPA as well as Travel Act and money laundering offenses in connection with allegedly soliciting bribes from undercover FBI agents to be paid on to officials in Haiti.<sup>3</sup>
- On October 11, 2017, the DOJ announced that Fernando Ardila Rueda had pleaded guilty to violating the FCPA and conspiracy to violate the FCPA in connection with the PDVSA bribery scheme. According to the DOJ press release, Ardila Rueda became the tenth person to be charged in the PDVSA case.<sup>4</sup>
- On November 7, 2017, the DOJ announced the guilty pleas of four individuals in connection with Rolls-Royce plc., and the indictment of a fifth, relating to an alleged scheme to bribe a Kazakh official in connection with bids by Rolls-Royce's indirect subsidiary in Ohio.<sup>5</sup>
- On November 9, the DOJ announced that two executives of SBM Offshore, a Dutch oil-services company, had pleaded guilty in connection with bribes paid to officials at the state-owned oil companies of Brazil, Angola, and Equatorial Guinea.<sup>6</sup> On November 29, 2017, the DOJ announced a resolution with SBM Offshore and its wholly owned U.S. subsidiary, SBM Offshore USA Inc. ("SBM USA") under which SBM entered into a deferred prosecution agreement, SBM USA pleaded to one count of conspiracy to violate

Continued on page 3

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2. United States Department of Justice, Press Release No. 17-798, "Telecom Executive Pleads Guilty to FCPA Charge in Connection with Haitian Bribery Scheme," (July 19, 2017), <https://www.justice.gov/opa/pr/telecom-executive-pleads-guilty-fcpa-charge-connection-haitian-bribery-scheme?src=ilaw>.
  3. United States Department of Justice, Press Release No. 17-1109, "Retired U.S. Army Colonel Indicted for Conspiring to Bribe Senior Government Officials of the Republic of Haiti," (Oct. 4, 2017), <https://www.justice.gov/opa/pr/retired-us-army-colonel-indicted-conspiring-bribe-senior-government-officials-republic-haiti>.
  4. United States Department of Justice, Press Release No. 17-1138, "Florida Businessman Pleads Guilty to Foreign Bribery Charges in Connection with Venezuela Bribery Scheme," (Oct. 11, 2017), <https://www.justice.gov/opa/pr/florida-businessman-pleads-guilty-foreign-bribery-charges-connection-venezuela-bribery-scheme>.
  5. United States Department of Justice, Press Release No. 17-1253, "Five Individuals Charged in Foreign Bribery Scheme Involving Rolls-Royce Plc and Its U.S. Subsidiary," (Nov. 7, 2017), <https://www.justice.gov/opa/pr/five-individuals-charged-foreign-bribery-scheme-involving-rolls-royce-plc-and-its-us>.
  6. United States Department of Justice, Press Release No. 17-1275, "Two Executives Plead Guilty to Role in Foreign Bribery Scheme," (Nov. 9, 2017), <https://www.justice.gov/opa/pr/two-executives-plead-guilty-role-foreign-bribery-scheme>.

**U.S. Department of Justice  
Announces Flurry of  
FCPA Cases Against  
Individual Defendants**

Continued from page 2

the anti-bribery provisions of the FCPA, and SBM agreed to pay a total criminal penalty of \$238 million.<sup>7</sup> In addition, the UK's Serious Fraud Office charged two individuals with "conspiracy to make corrupt payments to secure the award of contracts in Iraq to Unaoil's client SBM Offshore."<sup>8</sup>

- Finally, on November 20, 2017, the DOJ announced that it had arrested and charged Patrick Ho, a Hong Kong resident and head of a Hong Kong and Virginia-based non-governmental organization funded by a "Chinese oil and gas conglomerate," and Cheikh Gadio, the former foreign minister of Senegal, in connection with an alleged multi-year scheme to bribe very senior officials in Chad (in Cheikh Gadio's case) and in both Chad and Uganda (in Patrick Ho's case) on behalf of the Chinese company.<sup>9</sup>

**“Combined with a series of actions from earlier this year, a total of twelve individuals have been indicted (two) or pleaded guilty (ten) in 2017—three times the number of corporate criminal actions thus far and more guilty pleas than in any other year.”**

Several things are noteworthy about these resolutions. First, most of the guilty pleas were filed under seal weeks or months before the public announcement.<sup>10</sup> This is a good reminder that DOJ often files indictments or pleas under seal, particularly when foreign nationals or other individuals living outside the U.S. are involved. As a result, any tally of individual actions is likely to lag behind corporate resolutions.

Second, eight of the twelve individuals are foreign nationals, once again demonstrating the long reach of the FCPA.

Continued on page 4

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7. United States Dept. of Justice, Press Release No. 17-1384, "SBM Offshore N.V. And United States-Based Subsidiary Resolve Foreign Corrupt Practices Act Case Involving Bribes in Five Countries," (Nov. 29, 2017), <https://www.justice.gov/opa/pr/sbm-offshore-nv-and-united-states-based-subsidiary-resolve-foreign-corrupt-practices-act-case>.
  8. Serious Fraud Office, News Release, "Two charged in SFO's Unaoil investigation," (Nov. 16, 2017), <https://www.sfo.gov.uk/2017/11/16/two-charged-sfos-unaoil-investigation/>.
  9. United States Department of Justice, Press Release No. 17-1315, "Head of Organization Backed by Chinese Energy Conglomerate, and Former Foreign Minister of Senegal, Charged With Bribing High-Level African Officials," (Nov. 20, 2017), <https://www.justice.gov/opa/pr/head-organization-backed-chinese-energy-conglomerate-and-former-foreign-minister-senegal-0>; *United States v. Chi Ping Patrick Ho and Cheikh Gadio*, Sealed Complaint, 17-MAG-8611 (S.D.N.Y. Nov. 16, 2017).
  10. See, e.g., United States Department of Justice, Press Release No. 17-1253, "Five Individuals Charged in Foreign Bribery Scheme Involving Rolls-Royce Plc and Its U.S. Subsidiary," (Nov. 7, 2017), <https://www.justice.gov/opa/pr/five-individuals-charged-foreign-bribery-scheme-involving-rolls-royce-plc-and-its-us>.



U.S. Department of Justice  
Announces Flurry of  
FCPA Cases Against  
Individual Defendants  
*Continued from page 3*

Third, there is a “feast or famine” aspect to individual enforcement. Cases tend to either have many individuals (PDVSA, Haiti Teleco, Rolls-Royce) or none (all of the corporate actions filed or announced this year to date, although three former senior executives were charged in Sweden in the Teli matter).<sup>11</sup> The Richers and Ardila Rueda guilty pleas are the most recent entrants in a long line of individual enforcement actions connected to Haiti Telco and PDVSA, which together account for a disproportionate share of individual FCPA actions within the past several years. The Baptiste indictment is noteworthy in that it involves the use of undercover agents, which the DOJ hasn’t used in a published case since the so-called “Shot Show” cases.<sup>12</sup>

The Rolls-Royce-related pleas and indictments demonstrate that, pending the outcome of the *U.S. v. Pierucci (Hoskins)* decision in the Second Circuit, DOJ continues to bring conspiracy charges in the FCPA context and continues its aggressive use of the principle of agency (specifically with respect to agents of a domestic concern, under 15 U.S.C. § 78dd-2) to reach foreign employees of the parent company. The guilty plea of Anthony Mace, CEO of SBM Offshore from 2008 to 2011, offers a cautionary tale of what can happen to a senior executive who finds himself responsible for a scheme that long predated his tenure.

### Continued Use of Conspiracy Theory

DOJ charged five individuals in the Rolls-Royce-related actions: one former employee of the U.S.-based subsidiary, one former executive of the foreign parent (which was not a U.S. issuer), one employee of the parent’s Dutch subsidiary, and two individuals at third parties allegedly involved in the bribe scheme. The indictment and the guilty pleas charged the five defendants with conspiring to make payments to a Kazakh official in connection with the purchase of equipment for a gas pipeline between Kazakhstan and China.

For practitioners and legal scholars, the primary interest of the guilty pleas and the indictment will be the insight they provide regarding the DOJ’s view of jurisdiction in the context of the ongoing *Hoskins* case.<sup>13</sup> *Hoskins* involves whether conspiracy can be used to assert jurisdiction over persons who do not fall into one of the three statutory categories provided for in the FCPA: officers, directors, employees,

*Continued on page 5*

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11. Richard Milne, *Former Teli chief Lars Nyberg Faces Corruption Charges*, Financial Times (Sept. 22, 2017), <https://www.ft.com/content/94c0ce3a-9f7d-11e7-8cd4-932067fbf946>.
  12. See Paul R. Berger, Bruce E. Yannett, Sean Hecker, and David Fuhr, “DOJ Terminates Proceedings in O’Shea and the SHOT Show Cases,” FCPA Update, Vol. 3, No. 7 (Feb. 2012), [https://www.debevoise.com/~media/files/insights/publications/2012/02/fcpa%20update/files/view%20the%20update/fileattachment/fcpa\\_update\\_feb\\_2012.pdf](https://www.debevoise.com/~media/files/insights/publications/2012/02/fcpa%20update/files/view%20the%20update/fileattachment/fcpa_update_feb_2012.pdf).
  13. *United States v. Hoskins*, 123 F.Supp.3d 316 (D. Conn. 2015).

U.S. Department of Justice  
Announces Flurry of  
FCPA Cases Against  
Individual Defendants  
Continued from page 4

shareholders or agents of issuers (dd-1); officers, directors, employees, shareholders or agents of domestic concerns (dd-2); or “any person ... while in the territory of the United States” (dd-3).<sup>14</sup> The district court held that conspiracy theory could not be used to expand the jurisdictional bases of the FCPA;<sup>15</sup> the case is currently on appeal to the Second Circuit.<sup>16</sup> As with *Hoskins*, the Rolls-Royce related actions involve two employees of parent or sister companies of the domestic concern charged with conspiracy to violate the FCPA. One is also charged with a violation of the FCPA, under an agency theory of liability. The fact that both are treated as “agents” as well as co-conspirators, suggests that, regardless of the outcome of the *Hoskins* case, the DOJ will continue to look for ways to charge foreign nationals who are involved in a bribe scheme but not directly employed by the U.S. issuer or domestic concern, whether under a conspiracy theory or, if conspiracy becomes unavailable, under a broad agency theory. As it applies to these individuals, “agency,” which is assumed rather than explained in the informations, appears to mean that the individual acted in concert with the domestic concern as part of a bribery scheme, a definition that leaves little room for distinction between an agent and a co-conspirator.

### The Mace Guilty Plea: A Cautionary Lesson

Two former executives at SBM Offshore pleaded guilty in early November to charges of conspiracy to violate the FCPA.<sup>17</sup> The charging documents alleged that from approximately 1996 through 2012, SBM Offshore and one of its Houston-based subsidiaries entered into agreements with intermediaries in order to pay bribes to foreign officials in Angola, Brazil, and Equatorial Guinea. The alleged purpose of the bribes was to assist SBM Offshore and its Houston subsidiary in winning bids for offshore oil and gas drilling equipment and other projects with a number of state-owned old companies.<sup>18</sup>

Mace, a U.K. citizen, was CEO of SBM Offshore from around April 2008 to December 2011 (long after the scheme commenced in 1996). Mace also served as either an executive or a board member for the company’s Houston-based subsidiary from 2000 to 2011.<sup>19</sup> It is not clear from the Information whether Mace was involved

Continued on page 6

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14. *Id.* at 321-27.

15. *Id.*

16. *United States v. Pierucci (Hoskins)*, Notice of Appeal, 16-1010 (2d Cir. filed Apr. 1, 2016).

17. United States Department of Justice, Press Release No. 17-1275, “Two Executives Plead Guilty to Role in Foreign Bribery Scheme” (Nov. 9, 2017), <https://www.justice.gov/opa/pr/two-executives-plead-guilty-role-foreign-bribery-scheme>. Although SBM Offshore is not named, the link has been made in the press. See, e.g., Samuel Rubenfield, *Two Former SBM Offshore Executives Plead Guilty to Bribery*, Wall Street Journal (Nov. 9, 2017), <https://blogs.wsj.com/riskandcompliance/2017/11/09/two-former-sbm-offshore-executives-plead-guilty-to-bribery/>.

18. *United States v. Mace*, Information, ¶¶ 7-12, 4:17-cr-618 (S.D. Tex. Oct. 19, 2017).

19. *Id.* ¶¶ 3-4.

U.S. Department of Justice  
Announces Flurry of  
FCPA Cases Against  
Individual Defendants  
*Continued from page 5*

with the scheme prior to becoming CEO, as the earliest overt act alleged against him dates from one month after he became CEO of the parent.<sup>20</sup> As CEO, Mace was responsible for approving payments exceeding a certain amount.<sup>21</sup> The Information alleges that Mace authorized payments to shell accounts “knowing there was a high probability that these payments were being sent to foreign officials as bribes, and deliberately avoiding awareness that such payments were bribes.”<sup>22</sup> For example, Mace and others “caused” SBM Offshore to pay an intermediary’s commissions to two separate bank accounts — one in Brazil, the other in Switzerland — knowing that the intermediary would wire a portion of the money in the Swiss account as bribes to Petrobras officials.<sup>23</sup> A similar scheme was described with regard to Sonangol and GEPetrol officials.<sup>24</sup>

Zubiate, a U.S. citizen, served as a Sales and Marketing Executive for one of SBM Offshore’s Houston-based subsidiaries from 1990 to February 2016.<sup>25</sup> Zubiate, whose portfolio included Latin America (and specifically Brazil), was accused of taking part in a scheme to pay bribes to Petrobras in exchange for confidential information on the bidding process. Unlike Mace, he was present for the entire period of the alleged scheme. Moreover, Zubiate is alleged to have personally benefitted from the scheme, being paid at least \$5.5 million in kickbacks on commission payments the intermediary received from SBM Offshore related to certain lease payments made by Petrobras to SBM Offshore.<sup>26</sup>

Assuming Mace’s involvement with the alleged scheme is limited to the period of the overt acts listed in the Information, the Mace Information should become an invaluable tool for compliance officers. According to the Information, within a month of being promoted to the top position, Mace was presented with renewing a contract with an intermediary, was shortly thereafter provided a spreadsheet showing payments to individuals through that intermediary, and was then asked to approve the payments. The alleged scheme had been going on for more than ten years before Mace became CEO. Instead of asking questions or stopping the activity, Mace “deliberately avoiding awareness that such payments were bribes,”

*Continued on page 7*

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20. *Id.* ¶ 24.

21. *Id.* ¶ 13.

22. *Id.* ¶ 19.

23. *Id.* ¶ 21.a.

24. *Id.* ¶ 21.b.

25. *United States v. Zubiate*, Information, ¶¶ 3-4, 4:17-cr-591 (S.D. Tex., Oct. 6, 2017).

26. *Id.* ¶ 15.

**U.S. Department of Justice  
Announces Flurry of  
FCPA Cases Against  
Individual Defendants**  
Continued from page 6

thereby violating 15 U.S.C. § 78dd-2(a)(3), which prohibits giving anything of value to “any person, while knowing that all or a portion of such ... thing of value will be offered, given or promised, directly or indirectly, to any foreign official...”

As noted in the Yates Memorandum, one of the primary goals in bringing individual prosecutions is to deter illegal behavior. The situation of a person reaching the highest ranks of his or her company and discovering a corruption-related mess dating back to years prior is not uncommon. The unfortunate example of Mace’s decision to look away and his yet-to-be-decided fate before the Southern District of Texas could serve as a powerful lesson to senior executives, providing some of the deterrent effect the DOJ seeks in bringing individual actions.

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Continued on page 8

## Argentina Adopts Anti-Corruption Law Imposing Corporate Criminal Liability

On November 8, 2017, the Argentine Congress passed the Law on Criminal Liability of Legal Entities (the “Law”), which imposes criminal liability on corporations for corruption-related offenses.<sup>1</sup> President Mauricio Macri has shown support for the bill and is therefore expected to sign it.<sup>2</sup> The Law will become effective ninety days after its publication in the Official Gazette (“Boletín Oficial”).

As we have written previously, Argentina’s government seems increasingly committed to combating corruption.<sup>3</sup> The Law further bolsters Argentina’s anti-corruption landscape, following the “anti-corruption package” that President Macri sent to congress in December 2015, which included a proposal regarding corporate criminal activity.<sup>4</sup>

Before the Law’s enactment, only natural persons could be prosecuted in Argentina for corruption-related crimes.<sup>5</sup> The Law expands the scope of punishable conduct to include transnational bribery committed by legal entities. In enabling Argentina to hold legal entities criminally liable for foreign bribery, the new Law also fulfills Argentina’s commitment when joining the Organisation for Economic Co-operation and Development (“OECD”) Convention on Combating Bribery of Foreign Public Officials in International Business Transactions (the “Convention”). Indeed, in a report issued earlier this year, the OECD stated that Argentina urgently needed to enact a corporate liability law to address its obligations under the Convention.<sup>6</sup>

In this article, we review the criminal offenses and associated penalties established by the Law, as well as steps companies should consider in light of this new legislation.

Continued on page 9

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1. Ministerio de Justicia y Derechos Humanos Presidencia de la Nación, Diputados convirtió en ley el proyecto de responsabilidad penal empresaria [The House of Representatives Turned Bill on Corporate Criminal Liability into Law] (Nov. 8, 2017), <https://www.justicia2020.gob.ar/diputados-convirtio-ley-proyecto-responsabilidad-penal-empresaria>.
  2. See Marcos Shaw, La Cámara de Diputados aprobará la ley para penar la corrupción empresaria que pidió Mauricio Macri [The House of Representatives Will Pass the Law to Punish Corporate Corruption Asked for by Mauricio Macri.], Infobae (Nov. 8, 2017), <https://www.infobae.com/politica/2017/11/08/la-camara-de-diputados-aprobara-la-ley-para-penar-la-corrupcion-empresaria-que-pidio-mauricio-macri>.
  3. See Sean Hecker, *et al.*, “The Year 2016 in Anti-Corruption Enforcement: Record-Breaking Activity and Many Open Questions,” FCPA Update, Vol. 8, No. 3 (Jan. 2017), <https://www.debevoise.com/insights/publications/2017/01/fcpa-update-january-2017>.
  4. See Andrew M. Levine, *et al.*, “Argentine Government Considers New Anti-Corruption Legislation,” FCPA Update, Vol. 8, No. 3 (Oct. 2016), <https://www.debevoise.com/insights/publications/2016/10/fcpa-update-october-2016>.
  5. See Diputados convirtió en ley el proyecto de responsabilidad penal empresaria, *supra* n. 1.
  6. See OECD, Phase 3bis Report on Implementing the OECD Anti-Bribery Convention in Argentina (March 2017), <http://www.oecd.org/corruption/anti-bribery/Argentina-Phase-3bis-Report-ENG.pdf>.



**Argentina Adopts Anti-Corruption Law Imposing Corporate Criminal Liability**

Continued from page 8

**Overview of the Law**

The Law sets forth criminal liability for corporations that commit certain corruption-related offenses referenced in the Argentine Criminal Code. These offenses include: (1) bribery; (2) national and transnational influence-trafficking; (3) negotiations incompatible with the exercise of public duties; (4) illegal levies; (5) unlawful enrichment of public officers and employees; and (6) false accounts and reports.<sup>7</sup> A prior version of the bill included the offense of fraud to the public administration, which was later removed.<sup>8</sup>

The Law also provides that a corporation will be held liable for offenses committed directly or indirectly on its behalf. Corporations may avoid liability in such circumstances only if the individual who committed the offense acted exclusively for his or her own benefit, and without creating any benefit for the company.<sup>9</sup> Where a culpable corporation engages in a merger or acquisition, the Law indicates that corporate liability will transfer to the resulting entity.<sup>10</sup>

Potential penalties for violating the Law include:

- fines of two to five times the amount of the unlawful benefit obtained or that could have been obtained;
- suspension of activities for up to ten years;
- suspension from participating in bidding procedures, tenders of public works or services, and any other state-related activity;
- dissolution and liquidation of the corporation;
- loss or suspension of state benefits; and
- disclosure of an excerpt of the sentence of conviction and related costs.<sup>11</sup>

In addition, the Law specifies that compliance programs must comply with regulatory requirements established by national, provincial, and local authorities.

Continued on page 10

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7. See Diputados convirtió en ley el proyecto de responsabilidad penal empresaria, *supra* n. 1.

8. See Proyecto Original de Régimen de Responsabilidad Penal para las Personas Jurídicas por Delitos contra la Administración Pública y por Cohecho Transnacional [Original Bill on Legal Entities' Criminal Liability for Crimes against the Public Administration and for Transnational Bribery] (Oct. 20, 2016), [https://www.argentina.gob.ar/sites/default/files/oa-responsabilidad\\_penal\\_personas\\_juridicas\\_-\\_proyecto\\_pen.pdf](https://www.argentina.gob.ar/sites/default/files/oa-responsabilidad_penal_personas_juridicas_-_proyecto_pen.pdf).

9. El Senado aprobó el proyecto de Responsabilidad Penal Empresaria y vuelve a diputados [The Senate Passed the Bill on Corporate Criminal Liability and It Returns to the House of Representatives], *El Cronista* (Sept. 27, 2017), <https://www.cronista.com/economia/politica/VIVO-Senado-debate-el-proyecto-de-Responsabilidad-Penal-Empresaria-20170927-0103.html>.

10. Gabriela Carissimo, Proyecto de ley de Régimen de Responsabilidad Penal para Personas Jurídicas [Bill on Criminal Liability for Legal Entities], *Abogados* (July 31, 2017), <http://www.abogados.com.ar/proyecto-de-ley-de-regimen-de-responsabilidad-penal-para-personas-juridicas/20166>.

11. See Proyecto de Régimen de Responsabilidad Penal para las Personas Jurídicas por Delitos contra la Administración Pública y por Cohecho Transnacional [Bill on Legal Entities' Criminal Liability for Crimes against the Public Administration and for Transnational Bribery], art. 7 (Nov. 2017).

**Argentina Adopts Anti-Corruption Law Imposing Corporate Criminal Liability**

Continued from page 9

**Agreements with Companies Accused of Misconduct**

The Law provides for a form of possible resolution entitled an Effective Collaboration Agreement (“Acuerdo de Colaboración Eficaz”).<sup>12</sup> If entering into such a leniency agreement with the prosecutor’s office, the corporation must commit to cooperate and disclose verifiable, useful, and precise information sufficient to understand the facts, identify the offenders and accomplices, and recover the profits gained by the commission of the offense.<sup>13</sup>

Such agreements may be entered into only before the parties are summoned to trial, not after that point in the relevant proceedings.<sup>14</sup> In order to reach such an agreement, the company must comply with several conditions, including payment of a fine, disgorgement of the benefits of the illegal action, and transfer to the state of all goods that would be seized if the company were convicted.<sup>15</sup> Other possible

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conditions include undertaking actions to repair the damage inflicted, engaging in community service, administering disciplinary measures to culpable individuals, and implementing or improving a compliance program.<sup>16</sup>

This form of agreement, once signed by the prosecutor’s office and the corporation’s legal representative, must be submitted to a judge, who decides whether to approve or reject it.<sup>17</sup>

Continued on page 11

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12. Lucha contra la corrupción: una ley indispensable [The Fight Against Corruption: An Essential Law], La Nación (Sept. 21, 2016), <http://www.lanacion.com.ar/1939777-lucha-contra-la-corrupcion-una-ley-indispensable>; Mariano Casal, Empresas: delitos de corrupción prescribirán a los seis años [Corporations: Corruption Crimes’ Statute of Limitation Will Run After Six Years], *Ámbito* (Sept. 21, 2017), <http://www.ambito.com/897883-empresas-delitos-de-corrupcion-prescribiran-a-los-seis-anos>.
  13. See Gimena Fuertes, Responsabilidad Penal Empresaria, media sanción sin artículo 37 [Corporate Criminal Liability, Half Approval Without Article 37], *Tiempoar* (July 5, 2017), <https://www.tiempoar.com.ar/articulo/view/68782/responsabilidad-penal-empresaria-media-sancion-sin-articulo-37>.
  14. See Bill on Legal Entities’ Criminal Liability, *supra* n.11, at art. 16.
  15. See Senado debate el proyecto de Responsabilidad Penal Empresaria [The Senate Debates the Bill on Corporate Criminal Liability], *Cronista* (Sept. 17, 2017), <https://www.cronista.com/economiapolitica/VIVO-Senado-debate-el-proyecto-de-Responsabilidad-Penal-Empresaria-20170927-0103.html>.
  16. See Bill on Legal Entities’ Criminal Liability, *supra* n.11, at art. 18.
  17. See *id.*, at art. 17.

**Argentina Adopts Anti-Corruption Law Imposing Corporate Criminal Liability**

Continued from page 10

**Measures Companies Should Consider Taking**

To the extent a company previously has been subject to a transnational bribery law such as the U.S. Foreign Corrupt Practices Act, the Law likely will not usher in a radical compliance overhaul. For a company operating in Argentina that has not been subject to such a transnational bribery law, the Law's enactment is potentially momentous.

To the extent it has not already done so, any entity subject to the Law should consider implementing a compliance program that includes procedures designed to protect against the commission of the offenses covered by the Law. This program should be proportionate to the resources and risk profile of the company.

Under the Law, companies in Argentina that do not have such programs will be excluded from participating in bids for public contracts.<sup>18</sup> To qualify for public bidding, a company's compliance program must include certain elements established in the Law, including:

- policies applicable to every agent and employee of the company listing duties and obligations related to anti-corruption;
- rules that are specifically designed to prevent offenses when the company is dealing with the public sector;
- periodic training on the compliance program, monitoring and continuing development of the compliance program;
- mechanisms to report non-compliance; and
- policies prohibiting retaliation against whistleblowers.<sup>19</sup>

Notably, a corporation may be exempt from liability, even if it did receive a benefit from an agent's actions, if it: (1) proactively reported the offense, found through its own internal monitoring activity, to the government; (2) previously implemented an adequate compliance program; and (3) returned (disgorged) the benefit obtained.<sup>20</sup>

Continued on page 12

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18. See *Corrupción: ya es ley la responsabilidad penal de la empresa* [Corruption: Corporate Criminal Liability Is Already Law.], *La Nación* (Nov. 12, 2017), <http://www.lanacion.com.ar/2081433-corrupcion-ya-es-ley-la-responsabilidad-penal-de-la-empresa>.

19. See Bill on Legal Entities' Criminal Liability, *supra* n.11, at art. 23.

20. See *id.*, at art. 9.

**Argentina Adopts Anti-  
Corruption Law Imposing  
Corporate Criminal Liability**

Continued from page 11

**Conclusion**

For the first time, Argentina's new law allows corporations to be held liable for corruption-related crimes. This development is another step in Argentina's ongoing effort to prevent and punish corruption in both the public and private sectors. This legislation also helps Argentina enhance its compliance with the OECD Convention and generally increase transparency and promote Argentina as a reliable recipient of foreign investments.<sup>21</sup>

Of course, the Law's influence in Argentina and beyond depends most on its ultimate enforcement. We have seen elsewhere in Latin America how new anti-corruption laws and sweeping enforcement can influence dramatically a country's anti-corruption landscape. Only time will tell how Argentina enforces the Law and therefore to what extent it potentially represents a watershed moment in Argentina's anti-corruption journey.

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21. See "The Year 2016 in Anti-Corruption Enforcement: Record-Breaking Activity and Many Open Questions," *supra* n.3.

# FCPA Update

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