Global Anti-Corruption Standards and Enforcement: Implications For Energy Companies

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GLOBAL ANTI-CORRUPTION STANDARDS AND ENFORCEMENT: IMPLICATIONS FOR ENERGY COMPANIES

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I. INTRODUCTION:

While every country has laws, usually of a criminal nature, prohibiting bribery -- particularly in the public sector -- until recently, laws prohibiting foreign bribery were relatively rare. The U.S. Foreign Corrupt Practices Act (“FCPA”) stood for almost 20 years as the only transnational bribery statute in the world, focusing only on the “supply side” of the bribery equation, and leaving the “demand side” and lower-level corruption, to domestic enforcement. The last ten years have, however, seen dramatic changes in this landscape. With the adoption of a series of international treaties, some highly targeted and others far-reaching, today dozens of countries have laws criminalizing the bribery of foreign public officials in international business. Some of these countries have extended their laws to purely commercial conduct as well. Moreover, these treaties create a legal infrastructure to facilitate cross-border investigations and enforcement. International financial institutions such as the World Bank, which previously turned a blind eye to corruption in projects they financed, are now investigating and sanctioning firms and their personnel found to have engaged in improper practices. As exemplified by the Siemens case, multijurisdictional investigations are on the rise, as are the penalties for violations, particularly where so-called “grand” corruption is concerned.

Although enforcement is still quite uneven across countries, where there is the political will and capacity to enforce, the level of enforcement activity is rising rapidly. In the United States, enforcement of the FCPA is at an all-time high, with cases focusing not only on grand corruption in the procurement or business development context, but in many cases on lower-level operational corruption, in dealings with customs, tax, immigration, and other regulatory