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## **U.S., Other Nations Step Up Bribery Battle; Prosecutions Climb On Tougher Laws Aimed at Businesses**

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A global crackdown on companies that use bribery to advance their foreign business interests is rapidly gathering steam.

Governments in the U.S. and other nations have dramatically increased their investigation and prosecution of foreign corruption cases in recent years, thanks to a spate of new anticorruption laws that has fostered growing international cooperation.

The effort logged another high-profile catch earlier this month with the conviction of former Halliburton Co. executive Albert J. "Jack" Stanley, who led a scheme to bribe Nigerian government officials to secure lucrative contracts related to the natural-gas business. Investigators in France, Switzerland, the U.K. and Nigeria are investigating the matter, according to Halliburton corporate filings.

The U.S. federal government had open investigations into 84 companies at the end of last year, up from three in 2002, according to Shearman & Sterling LLP, a law firm based in New York that tracks anticorruption cases. "In the 30-plus years I have followed these matters, there were long periods of little activity and few prosecutions in the early years. Recently there has been a dramatic increase in such activity," says Danforth Newcomb, a partner at Shearman & Sterling.

Mark F. Mendelsohn, deputy chief of the U.S. Justice Department's fraud section, says pursuing anticorruption cases has become "a significant priority in recent years." Additional lawyers have been assigned to these cases and, a year ago, the Federal Bureau of Investigation created a team to work on foreign bribery and antitrust cases, he says.

"U.S. companies that are paying bribes to foreign officials are undermining government institutions around the world," he says. "It is a hugely destabilizing force." The Justice Department declined to comment on the Stanley matter or any other specific cases.

The severity of the penalties is increasing. Mr. Stanley, who was removed as chairman of Halliburton subsidiary Kellogg, Brown & Root and is cooperating with prosecutors, received a

seven-year prison sentence, equaling the longest term ever given in the 30-year history of the Foreign Corrupt Practices Act.

Last year, a subsidiary of Houston-based oil-field services firm Baker Hughes Inc. entered a guilty plea in U.S. District Court in Houston and agreed to pay \$44 million in fines and to return profits for bribing Kazakhstan officials to win oil-related work. It was the largest financial penalty yet given under the act. The parent company separately agreed to a Securities and Exchange Commission settlement without admitting or denying the allegations.

Increased cooperation among investigators in different nations is believed to be a primary reason for the escalation, say lawyers who handle these cases. German prosecutor Anton Winkler says international legal assistance has greatly improved in the last 15 years, particularly in corruption and bribery cases.

"A decade ago, requests for international legal assistance meant months of waiting or no answer at all. That has changed," Mr. Winkler said in a telephone interview. He says the quality of assistance varies from country to country, depending on a variety of factors including bilateral treaties and agreements.

Another factor: More companies are voluntarily turning over evidence of wrongdoing in the hope of getting leniency from prosecutors. The 2002 Sarbanes-Oxley law in the U.S., which requires executives to certify that their company's financial disclosures are accurate, has also led to more disclosures. A bribe that is mischaracterized as a legitimate payment to a consultant, for instance, can be considered a misleading entry on the corporate books.

Companies are getting the message. Having a written antibribery policy that isn't enforced in a muscular manner won't be enough to protect a company, says Shearman & Sterling's Mr. Newcomb. "Real investigations are happening and real fines are being paid," he said.

As the Stanley case highlights, bribing foreign officials was seen by some executives as a routine part of doing business up until the 1990s.

In a 21-page document filed by the Justice Department in connection with Mr. Stanley's plea agreement, investigators described a 1994 fax sent as the scheme to funnel more than \$180 million in bribes to top Nigerian officials was taking shape. Mr. Stanley had agreed to send a message "to the top man that we are ready to do business in the customary manner," according to the document.

Indeed, while bribing foreign officials has been illegal in the U.S. since the 1977 passage of the Foreign Corrupt Practices Act, other nations had been more lenient until recent years. Until 1999 in Germany and until 2000 in France, tax laws allowed bribes to be deducted from corporate taxes, says Lucinda Low, a partner with Steptoe & Johnson LLP. Globally, she says, "there is a much greater recognition of the problem and much less tolerance."

The U.S.'s pursuit of corruption got a boost in 1997 with the passage of an international antibribery convention by the Organization of Economic Cooperation and Development. This agreement requires countries to work with each other to pursue allegations of bribery.

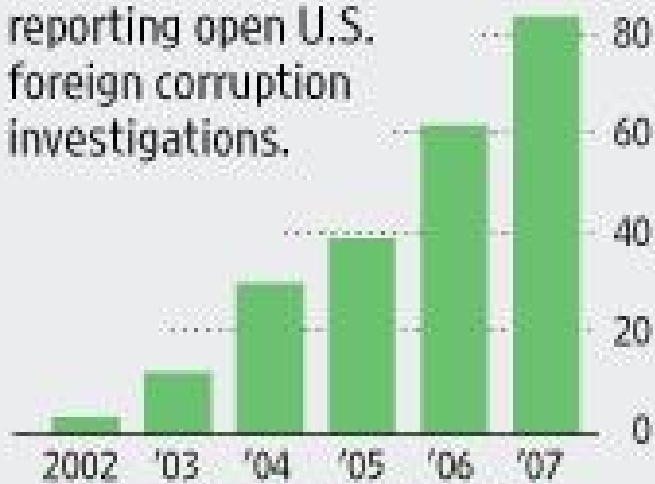
It took time for the convention to make an impact, as signatory countries moved slowly to adopt antibribery laws and investigators dragged their feet developing relationships with foreign counterparts.

More recently, working ties between prosecutors in different nations have been expanding. In a meeting in Paris this summer, antibribery prosecutors from several countries gathered for the first time in an informal, roll-up-your-sleeves meeting, according to lawyers briefed on the meeting. There they discussed ongoing investigations and strengthened collaboration.

A continuing Siemens AG investigation, which resulted in an unprecedented 201 million euro fine against the Munich-based electronics company, is an example of this improved cross-border communication. Prosecutors in Germany received multiple inquiries from other countries about suspicious payments and began to piece together the wide-ranging scheme. Prosecutors in the case allege that a number of former Siemens executives created slush funds to bribe potential customers around the world.

## Bribery Clean-Up

The number of companies reporting open U.S. foreign corruption investigations.



Note: As of Dec. 31 for each year; data are for public companies only.

Source: Shearman & Sterling LLP