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FCPA Powerhouse: Gibson Dunn & Crutcher LLP

By Ama Sarfo

Law360, New York (June 03, 2013) -- The Foreign Corrupt Practices Act team at Gibson Dunn & Crutcher LLP has developed a reputation for being the experts who corporations call when they're dissatisfied with their initial counsel, landing the firm clients like Allianz SE and Allied Defense Group and sealing its spot on Law360's list of FCPA Powerhouses.

Gibson Dunn's FCPA group essentially began 20 years ago with group co-chair and partner F. Joseph Warin and since has mushroomed into a global juggernaut of 110 attorneys who've handled FCPA matters in 40 countries and speak 15 languages — a deep bench of experience that has helped the firm land major clients like General Electric Co., Daimler AG and Wal-Mart Stores Inc.

"We are very visible, and we've been really blessed to be trusted by clients," Warin told Law360. "We aren't cheap, but what we hope we bring to our clients is a level of intellectual dissection and advocacy that really pushes the issues we encounter."

Before landing at Gibson Dunn, group co-chair and partner Debra Wong Yang served as the U.S. attorney for the Central District of California, where on occasion she would turn down FCPA cases in exchange for work that she considered to be more pressing, robust and have greater damages.

"Twenty years ago, these were mostly small cases — and there was a widespread belief that they were small potatoes," Yang said. "If you would have told me that they'd eventually become a staple of my practice, I wouldn't have believed it. But this is a reflection of the world of today — the world is much more international and interwoven; companies have holdings all over the globe."

And as the FCPA climate changes, Gibson Dunn has become an industry leader by issuing webcasts on emerging markets, international anti-corruption enforcement and other developing issues that routinely attract 600 to 700 attendees from foreign governments, corporations and even peer law firms, Warin said.

"We construct the materials into slides so that they can be easily transferred into training materials for our clients," Warin said. "Corporations are stretched a thousand ways, so this is a way for us to give information that they can readily utilize."

Gibson Dunn's clients have been so impressed with the group's authoritative voice on FCPA matters that they've asked it to issue academic writings on FCPA issues they believe have been neglected, Warin said.

"A client will say, Joe, there's no good writing on Chinese gifts, it would be interesting if you guys thought about it and put it in a more vigorous legal construct," Warin said.

Those requests prompted Gibson Dunn in 2010 to write two law review articles that also were the first of their kind. One article compares the UK Bribery Act to the FCPA, and the other discusses FCPA compliance in the face of China's gift giving business culture, Warin said.

But notching firsts is something the group is accustomed to. Warin is the only person ever to serve as a compliance monitor or counsel to a compliance monitor in three separate FCPA investigations — Statoil ASA, Alliance One International Inc. and Siemens AG, according to the firm.

And in the pro bono realm, the practice is a trailblazer: In August, Gibson Dunn became the first global law firm to provide anti-corruption training in Kenya through a partnership with nonprofit organization Lawyers Without Borders.

The firm delivered a weeklong trial advocacy and anti-corruption training program to more than 100 Kenyan magistrates, prosecutors and private practitioners in Nairobi that was so successful that Gibson Dunn will return in August to conduct a similar program.

"Training judges and prosecutors in Kenya on anti-corruption issues had never been done before like this," Joel Cohen, a Gibson Dunn partner and LWOB board member said. "We have FCPA teams in many locations that are participating in this work, including New York, London, Munich, Washington, D.C., and Los Angeles, and it's the sort of work that benefits from our global team."

Gibson Dunn is also so adept at disentangling thorny FCPA issues that two major corporations — Allianz and Allied Defense Group — shed their existing counsel and turned to Gibson Dunn for help with their government investigations, according to public filings.

Gibson Dunn assisted Allianz when it was hit with an SEC investigation alleging it failed to stop a subsidiary from bribing Indonesian officials for insurance contracts. The company paid \$12.4 million in a settlement that neither admitted nor denied the SEC's allegations.

In the Allied Defense matter, the firm persuaded the SEC to close its investigation against a company official who was arrested in 2010 along with 21 other individuals in a massive DOJ and SEC sting. The DOJ investigation is still ongoing.

"We tend to get hired by clients after the client has become disenchanted with the way in which their first counsel handled their case," Cohen said. "We've become a firm of choice to clean up a mess, and we like doing that kind of work."

Several issues likely will capture the group's attention in the year to come, according to John Chesley, a senior associate in Gibson Dunn's litigation and FCPA groups. Within the past few years, the firm has seen an increase in individual prosecutions, an increase in international cooperation among regulators and a move from monitorships toward corporate self-reporting, Chesley said.

"It used to be that when there was an enforcement action against a company, the government typically didn't file anything against individuals," Chesley said. "As we moved into the last two or three years, the government adopted the stance that in order for people to take the statute seriously, it can't just be the cost of doing business through corporate settlements. Individuals have to be held accountable."

And in addition to watching U.S. regulators, companies now have to watch foreign regulators as there's been increased pressure on foreign governments to open their own investigations into conduct that occurred on their home turf and involved their own government officials, Chesley said.

Last year, roughly one third of all FCPA resolutions had a China component, but one of the struggles in doing business in the country is that China has a strict privacy and state secrets regime that makes it difficult to explore data and conduct a U.S. investigation, Chesley said.

"One thing that we have done to comply with Chinese law and meet the needs of our clients is to move into China physically. We moved into Hong Kong, we moved into Beijing, and that allows us to have people on the ground," Chesley said. "China has always been a challenging business environment, but it's also a necessary business environment. The challenge is to do it right."

--Editing by Richard McVay.

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