

FCPA Update

A Global Anti-Corruption Newsletter



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Latin America in Flux: Recent Anti-Corruption Developments

In recent years – and notwithstanding encouraging windows of progress – economic difficulties, political shifts, and the pandemic's lingering effects have undercut anti-corruption efforts in Latin America. The fourth annual Capacity to Combat Corruption Index ("CCC Index"), published in June 2022, reflects these recent challenges. Most countries in Latin America experienced declines in their assessed anti-corruption capabilities, with only a few demonstrating stability or improvement.¹

With the relative easing of the pandemic and several key elections taking place, 2022 may be an inflection point for regional anti-corruption efforts. Perhaps as a prelude, following the June 2022 Summit of the Americas, the American

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1. "The Capacity to Combat Corruption (CCC) Index: Assessing Latin America's Ability to Detect, Punish, and Prevent Corruption," Americas Society, Council of the Americas, and Control Risks (June 2022), at 2, https://www.as-coa.org/sites/default/files/inline-files/CCC_Report_2022_1.pdf.

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chapters of Transparency International called on Latin American leaders to reaffirm the 2018 Lima Commitment to fight corruption. Their open letter warns against the concentration of power in executives and the intimidation of anti-corruption agencies, and it encourages leaders to allocate greater resources to strengthening anti-corruption efforts.²

Despite persistent and seemingly unavoidable challenges, Latin America also has seen some notable anti-corruption progress in the first half of 2022. For example, Honduras's newly elected president successfully campaigned on an anti-corruption platform and has begun implementing legislation to increase transparency. The Chilean government recently proposed anti-corruption-focused amendments to its constitution. And, in July, Brazil issued a new decree to regulate its Anti-Corruption Law (rapidly approaching its ten-year anniversary), supplanting the decree issued in 2015.

In parallel, U.S. anti-corruption enforcement continues to involve substantial activity in Latin America. Notable recent actions demonstrate ever-increasing cooperation between U.S. and local authorities, including crediting penalties in coordinated resolutions:

- In April, Stericycle, a waste management company, entered into a three-year deferred prosecution agreement with DOJ and agreed to pay over \$84 million³ to resolve investigations by U.S. and Brazilian authorities. At the direction of an executive in its Latin America division, Stericycle employees allegedly made hundreds of bribe payments to officials in Brazil, Mexico, and Argentina. In addition to the parallel Brazilian resolution, DOJ reported that authorities in Brazil and Mexico assisted with its investigation.⁴
- In May, Glencore, a Switzerland-based commodities trader, settled with DOJ for \$1.1 billion on account of its alleged payment of nearly \$100 million in bribes to government officials in various countries. The company admitted to approximately \$147,202 in corrupt payments to officials in Brazil and over \$1.2 million in corrupt payments to officials in Venezuela. Glencore also

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2. Open Letter from the American Chapters of Transparency International, "Governments Must Act Now to Rescue Promise of Lima Commitment," Transparency International (June 6, 2022), <https://www.transparency.org/en/press/summit-of-the-americas-governments-must-act-now-to-rescue-promise-of-lima-commitment>; Eighth Summit of the Americas, Lima Commitment "Democratic Governance Against Corruption" (Apr. 14, 2018), <https://www.state.gov/lima-commitment-eighth-summit-of-the-americas>.
 3. All references to monetary values are in U.S. dollars, unless otherwise specified.
 4. U.S. Department of Justice, "Stericycle Agrees to Pay Over \$84 Million in Coordinated Foreign Bribery Resolution" (Apr. 20, 2022), <https://www.justice.gov/opa/pr/stericycle-agrees-pay-over-84-million-coordinated-foreign-bribery-resolution>; Kara Brockmeyer, Andrew M. Levine, et al., "How Offering Cookies and Chocolates Can Expand Your Business: Stericycle Settles Parallel U.S. and Brazilian Bribery Investigations," FCPA Update, Vol. 13, No. 10 (May 2022), <https://www.debevoise.com/insights/publications/2022/05/fcpa-update-may-2022>.

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reached a resolution with Brazil's Public Prosecutor's Office (*Ministerio Publico Federal* or "MPF").⁵

- In June, the SEC settled with Tenaris, a Luxembourg-based manufacturer, for \$78 million to resolve FCPA charges. Tenaris's Brazilian subsidiary allegedly paid \$10.4 million in bribes in connection with bids for business from Brazil's state-owned oil entity, Petrobras. The SEC reported receiving assistance from Brazilian, Panamanian and Italian authorities in its investigation.⁶

“[G]rowing distrust in democratic institutions and perceived futility in the government's ability to prevent corruption have weakened certain aspects of Brazil's anti-corruption capabilities.”

Below, we highlight noteworthy anti-corruption developments – both progress and setbacks – in Latin America since the start of 2022.

Brazil

Following years of robust enforcement in Operation *Lava Jato* and its progeny, Brazilian authorities – including MPF, the Attorney General's Office (*Advocacia-Geral da União* or "AGU"), and the Comptroller General's Office (*Controladoria-Geral da União* or "CGU") – continue investigating and prosecuting corruption. Last month, Brazil's executive branch promulgated Anti-Corruption Decree No. 11,129 ("Decree 11,129" or the "Decree"), which regulates the implementation of Brazil's Anti-Corruption Law and replaces previous guidance issued in Anti-Corruption Decree No. 8,420 of 2015.⁷ And, earlier this year, Brazil was invited to accede to the Organisation for Economic Co-operation and Development ("OECD"), which may yield anti-corruption reinforcements as Brazil works toward admission.⁸

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5. U.S. Department of Justice, "Glencore Entered Guilty Pleas to Foreign Bribery and Market Manipulation Schemes," (May 24, 2022), <https://www.justice.gov/opa/pr/glencore-entered-guilty-pleas-foreign-bribery-and-market-manipulation-schemes>.
 6. U.S. Securities and Exchange Commission, "SEC Charges Global Steel Pipe Manufacturer with Violating Foreign Corrupt Practices Act," (June 2, 2022), <https://www.sec.gov/news/press-release/2022-98>.
 7. Decree No. 11,129, Official Gazette (July 12, 2022), <https://www.in.gov.br/en/web/dou/-/decreto-n-11.129-de-11-de-julho-de-2022-414406006>.
 8. OECD, "The OECD and Brazil: A mutually beneficial relationship," <https://www.oecd.org/latin-america/countries/brazil>.

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At the same time, growing distrust in democratic institutions and perceived futility in the government's ability to prevent corruption have weakened certain aspects of Brazil's anti-corruption capabilities.⁹ In a recent example, after the former Brazilian Minister of Education's arrest in July on corruption charges, evidence emerged that President Jair Bolsonaro allegedly attempted to interfere with the investigation.¹⁰ Such challenges are reflected by Brazil's score on the CCC Index, which declined for the third consecutive year, falling from 5.07 in 2021 to 4.76 in 2022.¹¹

Legal and Policy Developments

On July 11, 2022, Brazil's executive branch promulgated Decree 11,129, modifying as of July 18, 2022 certain aspects of the enforcement of Brazil's 2013 Anti-Corruption Law (or Clean Companies Act).¹² The most notable changes include: (1) codifying and enhancing the preliminary investigation and administrative liability proceeding (*processo administrativo de responsabilização* or "PAR") processes; (2) altering the sanctions calculus, including with fine reductions for effective compliance programs; and (3) providing additional guidance for leniency agreements.

First, the Decree formalizes the procedures applicable to both preliminary investigations and PARs, which in significant part already exist in practice. Under the Decree, when an authority learns of potential corruption, it can initiate a confidential, non-punitive preliminary investigation to substantiate the allegations. At the end of the investigation, a report is sent to the competent government authority, which then decides whether to initiate a PAR or dismiss the action.¹³

The Decree also codifies and enhances PAR procedures previously promulgated by the CGU in 2019.¹⁴ Under the Decree, PARs resulting in administrative charges must include: a clear and objective description of the alleged misconduct and relevant

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9. Cristiane Noberto, "Bolsonaro diz não ter controle sobre a corrupção" ["Bolsonaro Claims Not to Have Control Over Corruption"], Estado de Minas (June 16, 2022), https://www.em.com.br/app/noticia/politica/2022/06/16/interna_politica,1373779/bolsonaro-diz-nao-ter-controle-sobre-corrupcao.shtml.
 10. Márcio Falcão e Fernanda Vivas, "STF decreta sigilo em inquérito que avalia suposta interferência de Bolsonaro em investigação do MEC" ["SFT Orders Secrecy in Inquiry into Bolsonaro's Alleged Interference in MEC Investigation"], Globo (June 30, 2022), <https://g1.globo.com/politica/noticia/2022/06/30/supremo-decreta-sigilo-no-inquerito-que-apura-suposto-esquema-de-corrupcao-no-mec.ghtml>.
 11. CCC Index, *supra* note 1, at 26.
 12. Decree No. 11,129, Official Gazette (July 12, 2022), <https://www.in.gov.br/en/web/dou/-/decreto-n-11.129-de-11-de-julho-de-2022-414406006>; Law No. 12,846, Official Gazette (Aug. 2, 2013), <https://www.in.gov.br/web/dou/-/lei-n-12-846-de-1-de-agosto-de-2013-30042696>.
 13. Decree No. 11,129, Official Gazette (July 12, 2022), <https://www.in.gov.br/en/web/dou/-/decreto-n-11.129-de-11-de-julho-de-2022-414406006>; "Novo decreto que regulamenta a Lei Anticorrupção, Lei nº 12.846/2013" ["New Decree that Regulates the Anti-Corruption Law, Law No. 12.846/2013"], Brazil's Office of the Comptroller General (July 12, 2022), <https://www.gov.br/corregedorias/pt-br/faq/faq-decreto-no-11-129-de-11-de-julho-de-2022>.
 14. "CGU atualiza regras para apuração e responsabilização de empresas" ["CGU Updates Rules on Corporate Oversight and Accountability"], Brazil's Office of the Comptroller General (Aug. 15, 2019), <https://www.cgu.gov.br/noticias/2019/08/cgu-atualiza-regras-para-apuracao-e-responsabilizacao-de-empresas>.

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circumstances; proof that supports the relevant authority's position; and the legal framework supporting the allegation.¹⁵

Relatedly, just days after the Decree took effect, CGU announced Ordinance No. 19/2022, which provides for the option of a negotiated settlement – as opposed to a leniency agreement – for companies that admit to liability in PARs initiated by CGU. While the precise contours of such a settlement remain unknown given the novelty, Ordinance No. 19/2022 provides for the potential of reduced sanctions for companies that resolve a PAR in this manner.¹⁶

Second, Decree 11,129 establishes various factors that may aggravate or mitigate sanctions under Brazil's Anti-Corruption Law. For example, a fine may increase by up to 3% where a company's directors or executives knew of the misconduct. On the other hand, the Decree allows for the reduction of up to 5% of a fine's value where a company can prove it had a satisfactory compliance program in place. The Decree accordingly provides guidance for compliance programs (similar to guidance from U.S. and other authorities), such as requiring: (1) a top-down commitment from company executives, including through the allocation of sufficient compliance resources; (2) periodic risk assessments and subsequent risk management; and (3) adequate due diligence of third parties, sponsorships and donations.¹⁷

Third, Decree 11,129 extensively regulates leniency agreements, which are a staple in Brazil's anti-corruption toolkit. The Decree requires that companies seeking to enter into leniency agreements should: (1) cooperate with the government; (2) have fully ended their involvement in any misconduct; (3) admit liability for misconduct; (4) make efforts to repair the harm caused; and (5) forfeit any benefit received. The Decree also requires leniency agreements to include an element of the conditions of monitorship by CGU, which may be waived with certain less injurious violations, and allows the amendment of leniency agreements if the relevant agency determines that doing so is in the public interest. Of further note, the Decree sets rules for cooperation and joint resolutions between CGU and AGU, and it permits damages paid to other authorities to be credited against penalties imposed under a leniency agreement, where both violations stem from common underlying facts.¹⁸

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15. Decree No. 11,129, Official Gazette (July 12, 2022), <https://www.in.gov.br/en/web/dou/-/decreto-n-11.129-de-11-de-julho-de-2022-414406006>.

16. Normative Ordinance CGU No. 19, Official Gazette (July 25, 2022), <https://in.gov.br/en/web/dou/-/portaria-normativa-cgu-n-19-de-22-de-julho-de-2022-417456562>.

17. Decree No. 11,129, Official Gazette (July 12, 2022), <https://www.in.gov.br/en/web/dou/-/decreto-n-11.129-de-11-de-julho-de-2022-414406006>.

18. *Id.*

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Enforcement Efforts

In addition to resolutions coordinated with U.S. authorities in the Stericycle and Glencore matters (as discussed above), Brazil's CGU, AGU, and MPF have concluded several other actions in the first half of 2022, primarily through leniency agreements:

- In May, MPF announced that Allied Technology signed a leniency agreement with MPF and a civil non-prosecution agreement with the Public Prosecutor's Office of the State of São Paulo in connection with a bribery investigation.¹⁹
- In June, Hypera Pharma – one of Brazil's largest producers of over-the-counter medicines – entered into a leniency agreement with CGU and AGU in connection with illegal contributions to politicians. The agreement included an 18-month compliance program mandate and a fine of R\$ 110 million (roughly \$20 million), which the company's shareholder founder agreed to pay.²⁰
- In July, Brazilian federal law enforcement officers in seven states launched an operation called "Golden Greed" to investigate the alleged use of cryptocurrency to launder money in illegal gold mining and sales.²¹

The immediate future of anti-corruption enforcement in Brazil may hinge in part on the upcoming October 2022 presidential election, which pits incumbent President Bolsonaro against former President Luiz Inácio "Lula" da Silva. Former President Lula, who himself was convicted on bribery charges that were overturned in 2021 by the Brazilian Supreme Court,²² is currently leading in the polls by a significant margin.²³

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19. "Ministérios públicos firmam acordos com empresa que ofereceu vantagem indevida a servidores públicos" ["Authorities Finalize Agreements with Company that Offered Bribes to Public Employees"], Brazil's Public Federal Ministry (May 4, 2022), <http://www.mpf.mp.br/sp/sala-de-imprensa/noticias-sp/ministerios-publicos-firmam-acordos-com-empresa-que-ofereceu-vantagem-indevida-a-servidores-publicos>.
 20. "Hypera bate máxima após acordo de leniência com CGU e AGU" ["Hypera Stocks Hit Record Highs After Leniency Agreement with CGU and AGU"], Estadão E-Investidor (June 6, 2022), <https://investidor.estadao.com.br/ultimas/hypera-maxima-acordo-leniencia-cgu-agu>.
 21. "Quadrilha cria criptomoeda para 'lavar' ouro de garimpo ilegal" ["Gang Creates Cryptocoin to Launder Gold from Illegal Mine"], Cruzeiro do Sul (July 8, 2022), <https://www.jornalcruzeiro.com.br/geral/brasil/2022/07/696735-quadrilha-cria-criptomoeda-para-lavar-ouro-de-garimpo-ilegal.html>.
 22. Regiane Oliveira, "STF anula condenações da Lava Jato contra Lula e deixa seu caminho livre para 2022" ["SFT Annuls Lula's Lava Jato Convictions and Clears His Path to 2022"], El País (Apr. 15, 2021), <https://brasil.elpais.com/brasil/2021-04-15/stf-anula-condenacoes-da-lava-jato-contralula-e-deixa-seu-caminho-livre-para-2022.html>.
 23. Chase Harrison, "Poll Tracker: Brazil's 2022 Presidential Election," AS/COA (updated July 14, 2022), <https://www.as-coa.org/articles/poll-tracker-brazils-2022-presidential-election>.

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Mexico

Like Brazil, Mexico's score on the CCC Index also decreased in 2022, continuing its decline since 2019.²⁴ Although Mexican President Andrés Manuel López Obrador was elected in 2018 after campaigning on a strong anti-corruption message, his administration has been criticized for failing to fulfill the potential of Mexico's National Anti-Corruption System ("SNA") and enact anti-corruption reform more generally.²⁵

“Although Mexican President Andrés Manuel López Obrador was elected in 2018 after campaigning on a strong anti-corruption message, his administration has been criticized for failing to fulfill the potential of Mexico's National Anti-Corruption System ... and enact anti-corruption reform more generally.”

Legal and Policy Developments

In January, President López Obrador's administration publicly raised the possibility of removing the SNA's Executive Secretariat, a key leadership body within the SNA.²⁶ And, in April, the administration closed an important anti-narcotics unit that was trained by and collaborated with U.S. officials.²⁷ The unit played an influential role in combating drug cartels, a significant source of corruption in Mexico.²⁸

Encouragingly, in May, U.S. and Mexican officials convened a Strategic Dialogue on Illicit Finance, wherein they agreed to establish a working group focused on anti-money laundering efforts and targeting the financial networks of criminal organizations, echoing the U.S. administration's broader anti-corruption strategy.²⁹

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24. CCC Index, *supra* note 1, at 31.

25. Ana de Liz, "Observers in Mexico lament neglect of national anti-corruption system," Global Investigations Review (July 5, 2022), <https://globalinvestigationsreview.com/article/observers-in-mexico-lament-neglect-of-national-anti-corruption-system>.

26. "López Obrador moves to eliminate key component of anti-corruption system," Mexico News Daily (Jan. 28, 2022), <https://mexiconewsdaily.com/news/amlo-anti-corruption-mechanism>.

27. "Mexican president confirms closure of counter-narcotics unit working with U.S.," Reuters (Apr. 21, 2022), <https://www.reuters.com/world/americas/mexican-president-confirms-closure-counter-narcotics-unit-working-with-us-2022-04-21>.

28. Drazen Jorgic, "Mexico shuts elite investigations unit in blow to U.S. drugs cooperation," Reuters (Apr. 19, 2022), <https://www.reuters.com/world/americas/exclusive-mexico-shuts-elite-investigations-unit-blow-us-drugs-cooperation-2022-04-19>.

29. U.S. Department of the Treasury, "Readout: At Strategic Dialogue on Illicit Finance, United States and Mexico Agree to Work on Anti-Corruption, Revitalize Illicit Finance Cooperation," (May 13, 2022), <https://home.treasury.gov/news/press-releases/jy0781>.

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And despite proposals to wind down SNA's Executive Secretariat, Roberto Moreno Herrera assumed leadership of the body as its newly elected Technical Secretary in June and has pledged to augment tangibly the SNA's anti-corruption efforts.³⁰

Enforcement Efforts

Amidst the potential weakening of anti-corruption institutions in Mexico, anti-money laundering enforcement remains comparatively robust. In July, the Attorney General of the Republic (*Fiscalía General de la República* or "FGR") opened an investigation into Alejandro Moreno, the current leader of the Institutional Revolutionary Party (*Partido Revolucionario Institucional*, or "PRI"), for money laundering and other financial crimes.³¹ Just weeks later, FGR announced an investigation into former President Enrique Peña Nieto – also of Moreno's party, PRI – for money laundering.³² And earlier this year, the head of Mexico's Financial Intelligence Unit (*Unidad de Inteligencia Financiera* or "UIF") signed an institutional agreement with FGR to strengthen the fight against money laundering and corruption.³³

While anti-corruption enforcement in Mexico remains more limited, it is noteworthy that DOJ recognized Mexican authorities for their assistance in the Stericycle investigation (discussed above), suggesting that Mexican prosecutors are strengthening relationships with enforcement agencies in the United States and other countries.³⁴

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- 30. "Designa Órgano de Gobierno De La Sesna a Roberto Moreno Herrera Como Nuevo Secretario Técnico" ["SESNA's Governing Body Appoints Roberto Moreno Herrera as New Technical Secretary"], Sistema Nacional Anticorrupción (June 27, 2022), <https://www.sna.org.mx/2022/06/27/designan-a-roberto-moreno-herrera-como-nuevo-secretario-tecnico-de-la-sesna>; Ariadna Ortega, "El reto es que se conozca la utilidad del Sistema Nacional Anticorrupción," *Expansión Política* (July 26, 2022), <https://politica.expansion.mx/mexico/2022/07/26/el-reto-es-que-se-conozca-la-utilidad-del-sistema-nacional-anticorrupcion>.
 - 31. "Gobierno anunció investigación de FGR contra Alito Moreno, pero después borró información" ["Government Announced FGR Investigation Against Alito Moreno, but Later Deleted Information"], *Infobae* (July 8, 2022), <https://www.infobae.com/america/mexico/2022/07/09/fgr-ya-investiga-a-alito-moreno-por-lavado-de-dinero-fraude-fiscal-y-trafico-de-influencias>.
 - 32. Mary Beth Sheridan and Gabriela Martínez, "Mexico announces corruption probe into ex-president Peña Nieto," *The Washington Post* (July 7, 2022), <https://www.washingtonpost.com/world/2022/07/07/mexico-pena-nieto-corruption>.
 - 33. "The Attorney General's Office and the Financial Intelligence Unit signed a collaboration agreement," *Paudal* (Jan. 19, 2022), <https://www.paudal.com/2022/01/19/the-attorney-generals-office-and-the-financial-intelligence-unit-signed-a-collaboration-agreement>.
 - 34. Kara Brockmeyer, Andrew M. Levine, et al., "How Offering Cookies and Chocolates Can Expand Your Business: Stericycle Settles Parallel U.S. and Brazilian Bribery Investigations," *FCPA Update*, Vol. 13, No. 10 (May 2022), <https://www.debevoise.com/insights/publications/2022/05/fcpa-update-may-2022>.

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Argentina

According to the CCC Index, Argentina saw the most significant decline of all Latin American countries in its anti-corruption capacity last year.³⁵ Primary reasons for this decline include the decreasing independence and efficiency of anti-corruption agencies.³⁶ Nevertheless, Argentine authorities continue to investigate some allegations of corruption, frequently involving high-profile politicians. And, in February, Argentina was invited to begin the OECD accession process, which could encourage strengthening of its anti-corruption legislation and related enforcement, though serious economic and other challenges may make that less likely in the near term.³⁷

Legal and Policy Developments

A sweeping judicial reform package comprising key anti-corruption measures remains stalled in Congress despite efforts by President Alberto Fernández and his administration to advance the legislation.³⁸ A principal aim of the package is to depoliticize the judiciary and subsequently limit judicial interference in corruption investigations. Other recent legislative proposals yet to be enacted include amendments to Argentina's Public Ethics Law, with the aim of creating a National System of Integrity and Public Ethics and other mechanisms designed to increase transparency.³⁹

Despite delays in the legislative process, Argentina recently has implemented a number of new anti-corruption control mechanisms. In April, Argentina's Anti-Corruption Office (*Oficina Anticorrupción* or "OA") approved the System for Monitoring Government Officials' Private Activities Both Before and After Public Employment (*Sistema de Monitoreo de Actividades Privadas y Públicas Anteriores y Posteriores al Ejercicio de la Función Pública*, or "MAPPAP").⁴⁰ MAPPAP

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35. CCC Index *supra* note 1, at 18.

36. *Id.*; "CPI 2021 for the Americas: a Region in Crisis," Transparency International (Jan. 25, 2022), <https://www.transparency.org/en/news/cpi-2021-americas-a-region-in-crisis>.

37. "OECD: A Long Road Ahead for Argentina, Brazil and Peru," Americas Quarterly (Feb. 2, 2022), <https://www.americasquarterly.org/article/oecd-still-a-long-road-ahead-for-argentina-brazil-and-peru/>.

38. Federico Rivas Molina and Enric González, "Alberto Fernández emprende una polémica reforma para despolitizar la Justicia argentina" ["Alberto Fernández Undertakes a Controversial Reform to Depoliticize Argentina's Justice System"], *El País* (Mar. 6, 2020), <https://elpais.com/internacional/2020-03-07/alberto-fernandez-emprende-una-polemica-reforma-para-despolitizar-la-justicia-argentina.html>; CCC Index, *supra* note 1, at 18.

39. "La OA envió a la Presidencia de la Nación el proyecto de Ley de Integridad y Ética Pública" ["The OA Sent to the Presidency of the Nation the Draft of the Integrity and Public Ethics Law"], Argentina's Anti-Corruption Office (June 28, 2022), <https://www.argentina.gob.ar/noticias/la-oa-envio-la-presidencia-de-la-nacion-el-proyecto-de-ley-de-integridad-y-etica-publica>.

40. "La OA Aprobó el Sistema de Monitoreo de Actividades Privadas y Públicas Anteriores y Posteriores al Ejercicio de la Función Pública: MAPPAP" ["The OA Approved the System for Monitoring Private and Public Activities Before and After the Exercise of Public Function: MAPPAP"], Argentina's Anti-Corruption Office (Apr. 25, 2022), <https://www.argentina.gob.ar/noticias/la-oa-aprobo-el-sistema-de-monitoreo-de-actividades-privadas-y-publicas-anteriores-y>.

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collates and verifies compliance with ethics regulations for individuals who enter into and leave high-ranking positions in the executive branch, seeking to mitigate the risk of corporate capture on public decision-making as a result of movement between the private sector and the government. And, in May, OA approved the Integrity and Transparency Registry for Businesses (*Registro de Integridad y Transparencia para Empresas y Entidades*, or “RITE”), an initiative aiming to improve corporate integrity by allowing companies to share voluntarily their compliance programs with one another.⁴¹

“[I]n February, Argentina was invited to begin the OECD accession process, which could encourage strengthening of its anti-corruption legislation and related enforcement, though serious economic and other challenges may make that less likely in the near term.”

Enforcement Efforts

This year, the *Cuadernos* (“Notebooks”) and *Vialidad* (“Road Works”) investigations – in which former President and current Vice President Cristina Fernández de Kirchner and her allies are accused of corrupt acts and related misconduct – have progressed, though their outcomes remain uncertain.⁴²

- **Cuadernos:** In February, in a divided ruling, Argentina’s top criminal court rejected Vice President Fernández de Kirchner’s challenge to her indictment for funneling money from a highway project to a company linked to a family friend.⁴³ However, in April, a federal judge acquitted Vice President Fernández de Kirchner and over 100 businessmen and former government officials for “cartelisation of public works” allegations stemming from the same case.⁴⁴

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41. “La OA aprobó los formularios del Registro de Integridad y Transparencia de Empresas y Entidades” [“The OA Approved the Forms of the Registry of Integrity and Transparency of Companies and Entities”], Argentina’s Anti-Corruption Office (May 11, 2022), <https://www.argentina.gob.ar/noticias/la-oa-aprobo-los-formularios-del-registro-de-integridad-y-transparencia-de-empresas-y>.
 42. Kara Brockmeyer, Andrew J. Ceresney, Mark Johnson, Andrew M. Levine, et al., “The Year 2021 in Review: Anti-Corruption Enforcement in a Time of Transition” at 55–58, FCPA Update, Vol. 13, No. 6 (Feb. 2022), <https://www.debevoise.com/insights/publications/2022/02/fcpa-update-january-2022>.
 43. Débora Rey, “Argentina’s Leader Goes to Court to Back Vice President,” Associated Press (Feb. 15, 2022), <https://apnews.com/article/business-caribbean-buenos-aires-argentina-mauricio-macri-965f2d0710903963477017d77f8aa6e5>; see also Kara Brockmeyer, Andrew J. Ceresney, Mark Johnson, Andrew M. Levine, et al., *supra* note 42.
 44. “Cristina Fernández de Kirchner, Over 100 Businessmen Acquitted in Branch of ‘Cuadernos’ Case,” Buenos Aires Times (May 4, 2022), <https://batimes.com.ar/news/argentina/cristina-fernandez-de-kirchner-over-100-businessmen-acquitted-in-branch-of-cuadernos-case.phtml>.

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Notwithstanding this acquittal, in June, another federal court reactivated a long-dormant *Cuadernos*-related investigation into allegations of illicit association, through which Vice President Fernández de Kirchner is suspected of collecting bribes from businessmen associated with the construction of public works.⁴⁵

- **Vialidad:** In May and June, the Argentine Supreme Court rejected Vice President Fernández de Kirchner's motions for annulment in the *Vialidad* case. The plea stage of the *Vialidad* case began on July 11, and prosecutors have requested a sentence of between five and sixteen years. Former Minister of Federal Planning Julio De Vido and former Secretary of Public Works José López, among others, are accused in the same trial. A verdict is expected before the end of the year, which could influence the upcoming 2023 presidential elections.⁴⁶

Vice President Fernández de Kirchner is not the only prominent Argentine political figure subject to corruption probes in 2022. Former Military Commander César Milani's trial for alleged illicit enrichment began in July, after he was unable to justify the origin of the money used for his 2010 purchase of a house in Buenos Aires.⁴⁷ And, in July, the OA denounced former President Mauricio Macri for allegedly concealing his involvement in bribery and money laundering schemes. The OA claims that former President Macri hid millions of pesos of investment in a trust in July 2013, just 24 days after he granted tax exemptions to benefit a real estate development in which he held property at a negligible price.⁴⁸

Other Latin American Developments

Other countries in Latin America have made progress with legislative and constitutional reforms targeting corruption, while others have faced setbacks. Below are some other recent updates from across the region:

- **Chile:** On July 4, Chile's constitutional assembly presented a proposed new national constitution to President Gabriel Boric.⁴⁹ Notably, Article 170

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45. Mar Centenera, "La Corte Suprema Argentina Deja el Camino Libre para Juzgar a Cristina Kirchner en una Causa por Corrupción" ["Argentina's Supreme Court Clears the Way for Cristina Kirchner to be Tried in Corruption Case"], *El País* (June 21, 2022), <https://elpais.com/argentina/2022-06-21/la-corte-suprema-argentina-deja-libre-el-camino-para-juzgar-a-cristina-kirchner-en-una-causa-por-corrupcion.html>; see also Kara Brockmeyer, Andrew J. Ceresney, Mark Johnson, Andrew M. Levine, et al., *supra* note 42.

46. *Id.*

47. Lucía Salinas, "Sospechas de Corrupción: Sólo Quedan el 0,0014% de los Millonarios Fondos de Santa Cruz que Recibió Néstor Kirchner por las Regalías Petroleras" ["Suspicious of Corruption: Only 0.0014% of the Millions of Santa Cruz Funds that Néstor Kirchner Received for Oil Royalties Remain"], *Clarín* (July 6, 2022), https://www.clarin.com/politica/solo-quedan-0-0014-millonarios-fondos-santa-cruz-recibio-nessor-kirchner-regalias-petroleras_0_jVucbDoMpO.html.

48. Irina Mauser, "La OA Denunció a Mauricio Macri por Maniobras para Ocultar Posibles Coimas y Lavado de Dinero" ["The OA Denounced Mauricio Macri for Maneuvers to Conceal Possible Kickbacks and Money Laundering"], *Página 12* (July 2, 2022), <https://www.pagina12.com.ar/433843-la-oa-denuncio-a-mauricio-macri-por-maniobras-para-ocultar-p>.

49. Catherine Osborn, "Chile Unveils its Proposed New Constitution," *Foreign Policy* (July 8, 2022), <https://foreignpolicy.com/2022/07/08/chile-new-constitution-rewrite-boric-protests-pinochet-dictatorship-referendum>.

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asserts that corruption is “contrary to the common good and undermines the democratic system” and establishes that it is the duty of the Chilean state to adopt measures to investigate, prosecute, and ultimately eradicate corruption. Article 171 then sets out the state’s guarantee of protection and confidentiality for whistleblowers, while Article 172 prohibits those who have been convicted of corruption-related offenses from serving in public positions.⁵⁰ A nationwide vote on September 4 will allow Chileans to decide whether to adopt the new constitution.⁵¹

- **Colombia:** On June 19, 2022, Gustavo Petro was elected in a close runoff race as Colombia’s first leftist president. While Petro has historically been a strong voice against corruption, he has found himself at the center of a number of corruption scandals in recent years.⁵² In 2018, a video emerged purporting to show then-Senator Petro receiving and storing stacks of money in his bag, which he defended as standard business activity. More recently, during the lead-up to the elections, President Petro controversially suggested to his Twitter followers that they engage in a cash-for-vote scheme for his benefit.⁵³
- **El Salvador:** In January, the Salvadoran Attorney General’s Office opened an internal investigation into seven current and former prosecutors who oversaw “Operation Cathedral,” a large-scale investigation into alleged corruption involving the siphoning of pandemic relief and public funds to the campaign coffers of government officials.⁵⁴ Critics argue this move is an attempt to cover up corruption in President Nayib Bukele’s administration and consolidate its power, especially after he suspended important freedoms in a state of emergency declared in March.⁵⁵

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50. Propuesta Constitución Política de la República de Chile [Proposed Political Constitution of the Republic of Chile], Art. 170, (July 4, 2022), <https://www.chileconvencion.cl/wp-content/uploads/2022/07/Texto-Definitivo-CPR-2022-Tapas.pdf>.
 51. Catherine Osborn, “Chile Unveils its Proposed New Constitution,” Foreign Policy (July 8, 2022), <https://foreignpolicy.com/2022/07/08/chile-new-constitution-rewrite-boric-protests-pinochet-dictatorship-referendum>.
 52. Julie Turkewitz, “Gustavo Petro Wins the Election, Becoming Colombia’s First Leftist Leader,” N.Y. Times (June 19, 2022), <https://www.nytimes.com/2022/06/19/world/americas/gustavo-petro-colombia-presidential-election.html>.
 53. “Las 5 Polémicas de Gustavo Petro, Presidente Electo de Colombia” [“The 5 Controversies of Gustavo Petro, President-elect of Colombia”], CNN Español (June 19, 2022), <https://cnnespanol.cnn.com/2022/06/19/polemicas-gustavo-petro-elecciones-colombia-orix>.
 54. Gabriela Cáceres, “Fiscalía allana oficinas de fiscales que realizaron la investigación Catedral” [“Prosecutor’s Office Raids Offices of Prosecutors Who Conducted Cathedral Investigation”], El Faro (Jan. 19, 2022), https://elfaro.net/es/202201/el_salvador/25931/Fiscal%C3%ADa-allana-oficinas-de-fiscales-que-realizaron-la-investigaci%C3%B3n-Catedral.htm.
 55. El Faro Editorial Board, “Corruption Cannot Hide Behind Sovereignty Claims,” El Faro (July 26, 2022), <https://elfaro.net/en/202207/opinion/26292/Corruption-Cannot-Hide-Behind-Sovereignty-Claims>.

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- **Guatemala:** In February, a former confidante accused Guatemalan President Alejandro Giammattei of negotiating bribes from construction companies to finance his 2019 electoral campaign.⁵⁶ The accusation surfaced during court proceedings initiated by the Special Prosecutor's Office against Impunity (*Fiscal especial contra la impunidad* or "FECI") that related to the alleged delivery to President Giammattei's home of a rolled-up carpet stuffed with cash and over \$16 million found in suitcases in another official's home.⁵⁷ U.S. authorities have taken note of Guatemalan Attorney General María Consuelo Porras's apparent abuse of office to engage in politically motivated prosecutions and in May designated her as an individual involved in corruption under the Department of State, Foreign Operations, and Related Programs Appropriations Act.⁵⁸
- **Honduras:** President Xiomara Castro won a landslide election in November 2021 and took office in January. A large part of her campaign focused on anti-corruption efforts, a marked contrast from the outgoing administration, which reduced sentences for corruption convictions and was tied to numerous corruption scandals of its own.⁵⁹ Former President Juan Orlando Hernandez himself was extradited to the United States on drug trafficking conspiracy charges in April.⁶⁰ Under President Castro's new administration, Honduran lawmakers passed the "official secrets law" in March to regulate which public documents can be classified on national security grounds, seeking to promote transparency in the government.⁶¹

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56. José Luis Sanz, "Testigo acusa a Giammattei de financiar su campaña con sobornos de constructoras" ["Witness Accuses Giammattei of Financing his Campaign with Bribes from Construction Companies"], *El Faro* (Feb. 14, 2022), <https://www.elfaro.net/es/202202/centroamerica/25996/%E2%80%8B%E2%80%8BTestigo-acusa-a-Giammattei-de-financiar-su-campa%C3%B1a-con-sobornos-de-constructoras.htm>.
 57. Andrew M. Levine, Matthew S. French, Nestor D. Almeida, and Lorena Rodriguez, "Latin American Anti-Corruption Enforcement: Focus on the Northern Triangle and Beyond," *FCPA Update*, Vol. 13, No. 4 (Nov. 2021), <https://www.debevoise.com/insights/publications/2021/11/fcpa-update-november-2021>.
 58. U.S. Department of State, "Designation of Attorney General Maria Consuelo Porras Argueta de Porres for Involvement in Significant Corruption and Consideration of Additional Designations" (May 16, 2022), <https://www.state.gov/designation-of-attorney-general-maria-consuelo-porras-argueta-de-porres-for-involvement-in-significant-corruption-and-consideration-of-additional-designations>; Ana María Méndez Dardón and Julia Aikman Cifuentes, "Guatemala's Attorney General Elections: Judicial Independence and Democracy at a Crossroads," (Apr. 18, 2022), Washington Office on Latin America, <https://www.wola.org/analysis/guatemala-attorney-general-elections-judicial-independence-democracy-crossroads>; "Guatemala: Attorney General Arbitrarily Fires Prosecutors," Human Rights Watch (July 14, 2022), <https://www.hrw.org/news/2022/07/14/guatemala-attorney-general-arbitrarily-fires-prosecutors>.
 59. Anna-Cat Brigida, "Can a new government dig Honduras out of its hole?" *Al Jazeera* (Dec. 7, 2021), <https://www.aljazeera.com/news/2021/12/7/can-a-new-government-dig-honduras-out-of-its-hole>; Andrew M. Levine, Matthew S. French, Nestor D. Almeida, and Lorena Rodriguez, "Latin American Anti-Corruption Enforcement: Focus on the Northern Triangle and Beyond," *FCPA Update*, Vol. 13, No. 4 (Nov. 2021), <https://www.debevoise.com/insights/publications/2021/11/fcpa-update-november-2021>.
 60. U.S. Department of Justice, "Juan Orlando Hernández, Former President of Honduras, Indicted on Drug-Trafficking and Firearms Charges, Extradited to the United States from Honduras" (Apr. 21, 2022), <https://www.justice.gov/opa/pr/juan-orlando-hernandez-former-president-honduras-indicted-drug-trafficking>.
 61. "Honduras repeals 'secrets law' in fight against corruption," *Reuters* (Mar. 2, 2022) <https://www.reuters.com/world/americas/honduras-repeals-secrets-law-fight-against-corruption-2022-03-03>.

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- **Peru:** Peru was invited in January 2022 to start its OECD accession process, through which it will have to make improvements in five key areas, including combating corruption.⁶² Perhaps relatedly, the Peruvian government continued furthering its anti-corruption efforts. On June 28, Spain and Belgium moved forward with the extradition to Peru of former Peruvian Supreme Court Justice César Hinostroza, who fled Peru in 2018 after leaked recordings reflected his involvement in a web of judicial corruption.⁶³ This scandal, known as the *Cuellos Blancos del Puerto* (White Collars of the Port) case, has led the National Justice Board (*Junta Nacional de Justicia* or “JNJ”) to remove public officials in the course

“As Latin America grapples with difficult institutional challenges, political uncertainty, and economic turbulence, anti-corruption enforcement and the region’s related narrative continue to evolve.”

of their probe and implement other reforms.⁶⁴ Moreover, former President Ollanta Humala’s trial for the alleged receipt of illegal campaign financing from Brazilian construction company Odebrecht began this February.⁶⁵ And the trial of former presidential candidate and Congresswoman Keiko Fujimori for money laundering and related charges is set to begin as soon as this year.⁶⁶

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62. “OECD: A Long Road Ahead for Argentina, Brazil and Peru,” *Americas Quarterly* (Feb. 2, 2022), <https://www.americasquarterly.org/article/oecd-still-a-long-road-ahead-for-argentina-brazil-and-peru>.
63. “César Hinostroza: España cedió a Perú para que pida a Bélgica la entrega del exjuez de la Corte Suprema” [“César Hinostroza: Spain Yielded to Peru to Ask Belgium to Hand Over the Former Supreme Court Judge”], *La República* (July 8, 2022), <https://larepublica.pe/politica/actualidad/2022/07/08/cesar-hinostroza-espana-cedio-a-peru-para-que-pida-a-belgica-la-entrega-del-exjuez-de-la-corte-suprema>.
64. CCC Index, *supra* note 1, at 14; Harold Quispe, “Cuellos Blancos: los jueces y fiscales supremos destituidos el 2021” [“White Collars: Supreme Judges and Prosecutors Removed in 2021”], *La República* (Jan. 1, 2022), <https://larepublica.pe/politica/2021/12/31/caso-cuellos-blancos-conoce-quienes-son-los-fiscales-y-jueces-supremos-destituidos-por-la-junta-nacional-de-justicia-cnm-walter-rios>.
65. CCC Index, *supra* note 1, at 14; “First Peruvian ex-president on trial for Odebrecht scandal,” *AP News* (Feb. 21, 2022), <https://apnews.com/article/peru-money-laundering-south-america-ollanta-humala-nadine-heredia-4b4dc55ddda0ac5688493fcd173bf1e5>.
66. Oscar Medina, “Peru Prosecutor Says Keiko Fujimori Trial May Begin by Year End,” *Bloomberg* (Feb. 6, 2022), <https://www.bloomberg.com/news/articles/2022-02-06/peru-prosecutor-says-keiko-fujimori-trial-may-begin-by-year-end>.

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Conclusion

As Latin America grapples with difficult institutional challenges, political uncertainty, and economic turbulence, anti-corruption enforcement and the region's related narrative continue to evolve. In the case of newly implemented policies like Brazil's Decree No. 11,129 or anti-corruption bodies like Mexico's SNA that are weathering shifting political tides, it remains to be seen how these developments will manifest. But in a year that has brought – and will continue to bring – new leadership in the region, changing approaches to combating corruption (and related challenges) seem inevitable. And continued U.S. anti-corruption enforcement in the region likewise remains unquestionable.

As the region's anti-corruption landscape changes, companies should remain abreast of key legislative, political, and enforcement-related developments, so as to tailor their approaches to compliance and risk accordingly. The long-reaching arm of U.S. enforcement and the continuing trend of transnational cooperation in Latin America suggest that the global fight against corruption remains a priority and should remain at the forefront of corporate compliance.

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Hungry French Authorities Settle McDonald's Tax Evasion Case For 1.2 Billion Euros

On June 16, 2022, a court in Paris approved a EUR 508 million French-style deferred prosecution agreement (“CJIP”) between the French National Financial Prosecutor’s Office (“PNF”) and three McDonald’s entities to settle charges of tax fraud.¹ This criminal settlement comes in addition to a EUR 737 million settlement with the French tax authorities.² While this is not the first tax-related CJIP, it signals once again French authorities’ willingness to ramp up their enforcement against corporate tax fraud.

Background on the CJIP. Since it first became available in 2016, the CJIP mechanism has offered corporate entities accused of tax fraud, corruption, and other related corporate crimes the possibility to negotiate an outcome without an admission of guilt or a criminal conviction. The company must agree to pay a fine proportionate to the benefit derived from the misconduct, up to 30% of its average annual turnover over the past three years. The company may also be required to compensate the victims and/or agree to implement an enhanced compliance program. A CJIP may only be finalized with a judge’s approval, following a public hearing. The judge’s role is to verify that the statutory requirements for a CJIP have been met. The company does not have to acknowledge any guilt, and the judge’s approval order does not have the effect of a conviction.

The McDonald’s case. In 2016, both the French tax authorities and the PNF began investigating McDonald’s following suspicions of tax evasion raised by an employee representative committee. The authorities suspected the fast-food giant of having artificially lowered its profits in France between 2009 and 2020 by inflating the royalties paid to the European parent company in Luxembourg. According to French authorities, this amounted to an abusive practice of transfer pricing between the French subsidiary and other entities of the group.

On May 30, 2022, McDonald’s and the French tax authority reached a EUR 737 million settlement, covering the amount of evaded taxes, late payment interest, and tax penalties for the 2009-2020 period. That settlement put an end to the administrative proceeding between McDonald’s and the French tax administration.

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1. CJIP between the PNF and McDonald’s France, McDonald’s System of France LLC et McD Luxembourg Real Estate S.A.R.L. (May 31, 2022), http://www.justice.gouv.fr/art_pix/CJIP_TJ_paris_macdo_20220531.pdf. Approval order (June 16, 2022), http://www.justice.gouv.fr/art_pix/Ordonnance_validation_CJIP_tjparis_macdo_20220616.pdf.
 2. PNF press release (June 16, 2022), http://www.justice.gouv.fr/art_pix/CP_CJIP_mcdonalds_20220616.pdf.

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The following day, McDonald's entered into a CJIP with the PNF to settle a criminal tax fraud proceeding. McDonald's agreed to pay a public interest fine of EUR 508 million, which was the maximum provided for by the law. The PNF took into account aggravating factors (the duration of the breaches and the amount of evaded taxes), but no mitigating factors at all.³ However, when approving the CJIP, the Paris court took into account McDonald's cooperation during the negotiation. It appears that cooperation therefore may be taken into account by the PNF when deciding to negotiate a CJIP and by the court when approving a CJIP; but it may at the same time be ignored by the PNF when negotiating the amount of the fine.

Outlook. Over twenty CJIPs have been reached and approved since the Sapin II Law came into force in 2016. CJIPs have been used to settle important corruption cases (e.g., Airbus for EUR 2.1 billion) and tax fraud cases (e.g., Google for EUR 500 million). They have also been used to resolve relatively smaller cases. For instance, on July 7, 2022, the PNF announced two CJIPs of EUR 7.9 million and EUR 3.4 million to settle charges of corruption of foreign officials.⁴ However, CJIPs are still used in only a minority of white collar matters.

In July 2021, a French National Assembly Committee highlighted the limits of the CJIP mechanism in their evaluation report on the Sapin II Law.⁵ The report noted that CJIPs were an effective tool to resolve cases of financial misconduct and that expanding its scope to additional corporate crimes and to individuals should be considered. It also made various recommendations to make CJIP resolutions more appealing. For instance, companies currently have no guarantee that a CJIP resolution will be offered if they self-report and fully cooperate, nor that the information they provide prior to any CJIP discussions will not be used in court if settlement talks fail. The Committee report recommended revisiting these important questions, either in new guidelines or in a future bill.

In October 2021, a new bill drawing on the recommendations of the evaluation report, was introduced. It now remains to be seen if the newly-appointed French government and French National Assembly will move to discuss it. However, an important report on the state of the French justice system issued on July 8, 2022

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3. This is only the second CJIP imposing the maximum fine provided for by the law, with only aggravating factors being considered. The first was the HSBC Private Bank CJIP of October 30, 2017, available at https://www.agence-francaise-anticorruption.gouv.fr/files/2018-10/CJIP_English_version.pdf.
4. PNF press release (July 7, 2022), <https://www.tribunal-de-paris.justice.fr/sites/default/files/2022-07/CP%20CJIP%20IDEMIA.pdf>; PNF press release (July 7, 2022) available at: <https://www.tribunal-de-paris.justice.fr/sites/default/files/2022-07/CP%20CJIP%20DORIS.pdf>.
5. See Debevoise & Plimpton LLP, *France Moves to Boost Its White Collar Enforcement* (July 13, 2021), <https://www.debevoise.com/insights/publications/2021/07/france-moves-to-boost-its-white-collar-enforcement>.

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did not address the question of updating or expanding such pre-trial settlement mechanisms.⁶ This report is widely expected to shape a future bill to reform vast aspects of the French justice system, and thus the lack of any reference to the CJIP mechanism is surprising.

Even without the improvements recommended by the Committee evaluation report, however, companies may still be willing to enter into CJIPs when pre-trial resolutions appear to be in their best interest. Companies will likely take into account the recent trend of French court decisions expanding the conditions for corporate criminal liability and imposing tougher sanctions in financial crime cases.

From the perspective of the French authorities, we would expect that encouraging companies to consider pre-trial settlement will become even more pressing once the new French whistleblower law takes effect. As of September 1, 2022, whistleblowers will be able to report various crimes, threats or violations directly to authorities, without going to the businesses first.⁷ This may result in a flood of whistleblower complaints that will strain French corporate enforcement resources.

The increase in potential enforcement holds especially true in the context of tax fraud. Since 2017, an individual reporting useful information to tax authorities (the so-called “tax informant”) may receive a bounty of up to EUR 1 million or up to 15% of the duties recovered, which is not the case for “regular” whistleblowers. In addition, French tax authorities are now obliged to refer most tax fraud cases to French prosecutors.⁸ Corporations should therefore anticipate more tax fraud criminal investigations and prosecutions than before. Whether CJIPs will be more widely employed by prosecutors and corporate defendants, however, remains to be seen.

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6. *Rapport du Comité des États généraux de la justice* (Oct. 2021 – Apr. 2022), http://www.justice.gouv.fr/_telechargement/Rapport_EGJ_20220516.pdf.
 7. See Debevoise & Plimpton LLP, *France Beefs Up Whistleblower Protections* (Mar. 23, 2022), <https://www.debevoise.com/insights/publications/2022/03/france-beefs-up-whistleblower-protections>.
 8. See Debevoise & Plimpton LLP, *France Boosts Tax Fraud Prosecution* (Oct. 30, 2018), <https://www.debevoise.com/insights/publications/2018/10/france-boosts-tax-fraud-prosecution>.

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