

FCPA Update

A Global Anti-Corruption Newsletter



In this issue:

- 2 United States
- 30 United Kingdom
- 38 France
- 43 Germany
- 47 Asia
- 53 Latin America

Click here for an index of
all FCPA Update articles

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The Year 2022 in Review: Normalcy Returns as Regulatory Expectations Rise

In this first issue of 2023, we survey the past year's most significant anti-corruption developments around the world, including in the United States, the United Kingdom, France, Germany, Asia, and Latin America. After a year of transition and flux in 2022, the past twelve months have seen a return to a more historically normal level of enforcement activity, characterized in part by cross-border cooperation and coordination among enforcement authorities. This trend should be viewed alongside the ongoing increase in regulatory expectations, particularly with regard to anti-corruption compliance programs and companies' efforts to identify and voluntarily disclose potential wrongdoing, cooperate with governmental investigations, and promptly remediate issues. At the same time, political turmoil and shifting areas of focus for authorities have called into question the commitment of some countries to combating corruption, leaving in some places the forecast murky for anti-corruption activity this year.

Continued on page 2

United States

In 2022, FCPA enforcement activity returned to more typical levels with ten corporate resolutions: eight enforcement actions and two declinations with disgorgement pursuant to DOJ's Corporate Enforcement Policy. As part of these resolutions, DOJ and the SEC imposed more than \$1.5 billion in disgorgement and penalties, mostly from two large resolutions (ABB and Glencore).

Reflecting on this past year's FCPA enforcement, we observed the following key takeaways:

- **Cases reach broadly across geography and industries, and reflect continued and expanding coordination with non-U.S. authorities.** These cases involved alleged conduct across 18 countries and a broad array of sectors, including aerospace, telecom, tech, mining, construction, and insurance. Nearly half of these resolutions were coordinated with foreign counterparts, including agencies that partnered with the SEC or DOJ for the first time.
- **Combatting corruption remains a top priority, and the pipeline of cases appears steady.** Combatting corruption is a boldly (and recurrently) stated priority of the Biden Administration.¹ Both DOJ and SEC officials report that they are "quite busy in the FCPA space," with steady pipelines of "important, impactful cases."²
- **Significant enforcement activity continues against individuals, both for paying and receiving bribes.** In keeping with DOJ's repeated priority that holding individuals accountable is its "number one goal,"³ last year included charges or guilty pleas announced as to at least 19 individuals. To date, half of the corporate resolutions this year had an individual component as well, which is significantly up from prior years.
- **Through updates to its Corporate Enforcement Policy ("CEP"), DOJ continues seeking to further incentivize self-reporting, cooperation, and remediation, as well as investments in robust corporate compliance programs.** As discussed in a recent client alert,⁴ in January 2023, DOJ announced

Continued on page 3

1. See, e.g., Kenneth A. Polite, Jr., Assistant Attorney General, "Closing Remarks at the 20th International Anti-Corruption Conference" (Dec. 9, 2022), <https://www.justice.gov/opa/speech/assistant-attorney-general-kenneth-polite-jr-delivers-closing-remarks-20th-international>.

2. See, e.g., Dylan Tokar, "More Cases, Policy Changes Are on the Horizon, DOJ's New Fraud Section Chief Says" Wall St. J. (Nov. 30, 2022), <https://www.wsj.com/articles/more-cases-policy-changes-are-on-the-horizon-doj-s-new-fraud-section-chief-says-11669855279>.

3. Kenneth A. Polite, Jr., Assistant Attorney General "Remarks on Revisions to the Criminal Division's Corporate Enforcement Policy" (Jan. 17, 2023), <https://www.justice.gov/opa/speech/assistant-attorney-general-kenneth-polite-jr-delivers-remarks-georgetown-university-law>.

4. See Andrew M. Levine et al., "DOJ Offers New Incentives in Revised Corporate Enforcement Policy," Debevoise Update (Jan. 24, 2023), <https://www.debevoise.com/insights/publications/2023/01/doj-offers-new-incentives-in-revised> ["Jan. 2023 Debevoise Update"].

United States

Continued from page 2

the first significant changes to the CEP since its inception in 2017. In addition to expanding the CEP to all corporate matters in the Criminal Division (rather than just FCPA cases), the revised CEP now offers higher monetary credits to companies that self-disclose (up to 75% off the applicable range) and those that do not (up to 50%) as long as they engage in exemplary cooperation and remediation. The CEP also makes declinations more available, even in the presence of aggravating factors, and provides valuable guidance on how DOJ will treat corporate recidivism.

“DOJ announced the first significant changes to the CEP since its inception in 2017.... [T]he revised CEP now offers higher monetary credits to companies that self-disclose ... [and] makes declinations more available, even in the presence of aggravating factors....”

- **Developments in case law bring wins and losses.** Cases against individuals have continued almost singlehandedly developing FCPA case law. This includes the *Hoskins* saga, which narrowed the scope of agency and conspiracy under the FCPA. In addition, the court in the government’s 1MDB-related case against a former Goldman executive in *Ng* expanded the scope of the FCPA’s internal accounting controls provision.

I. Corporate Enforcement Trends

A. Enforcement Actions

The year saw corporate resolutions with 10 companies and a total of approximately \$1.7 billion in assessed penalties (\$1.54 billion after adjusting for companies’ inability to pay).⁵ Of this total amount, approximately one-third was paid to foreign authorities. In particular, the SEC and DOJ brought four of these actions in parallel; the SEC brought three alone; and DOJ reached resolutions alone in three instances (one enforcement action and two declinations with disgorgement pursuant to the CEP).

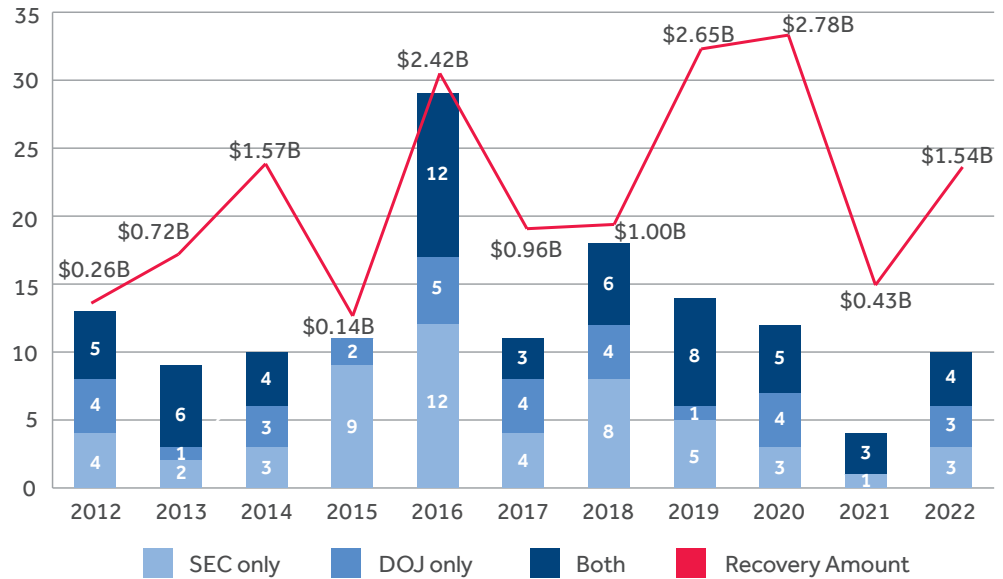
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5. U.S. authorities continue to adjust penalty amounts based on companies’ inability to pay. For example, in 2022, Brazilian airline GOL established that it could not pay the \$157 million in penalties assessed by U.S. authorities, ultimately reducing its penalties to \$41.5 million. See Andrew M. Levine, Bruce E. Yannett, Matthew S. French, and Isabela Garcez, “Brazilian Airline Resolves Foreign Bribery Investigations with Reduced Penalty Based on Ability to Pay,” at 1-6, FCPA Update, Vol. 14, No. 3 (Oct. 2022), <https://www.debevoise.com/insights/publications/2022/10/fcpa-update-october-2022> [“Oct. 2022 FCPA Update”].

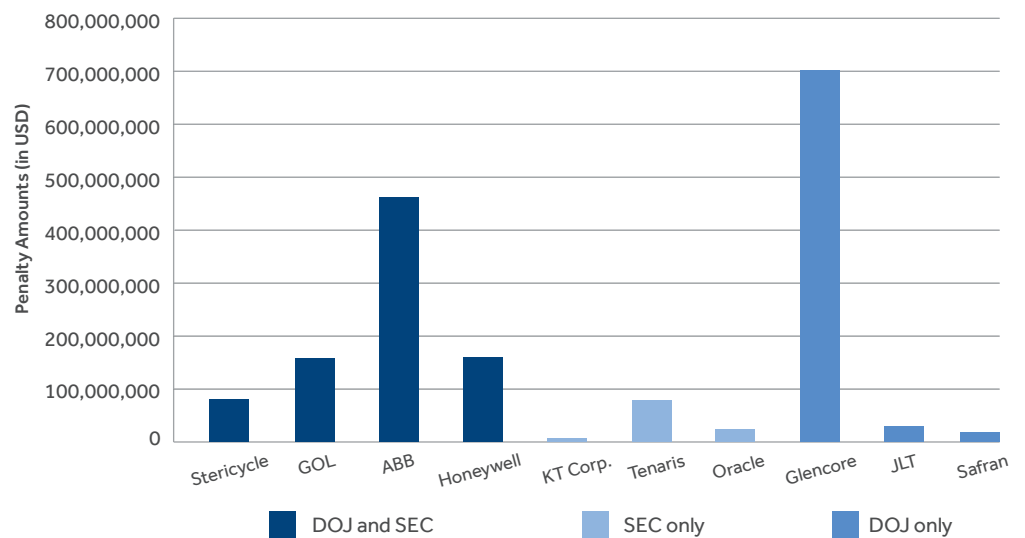
United States

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FCPA Corporate Enforcement Actions



FCPA Penalties Assessed in 2022 Corporate Resolutions



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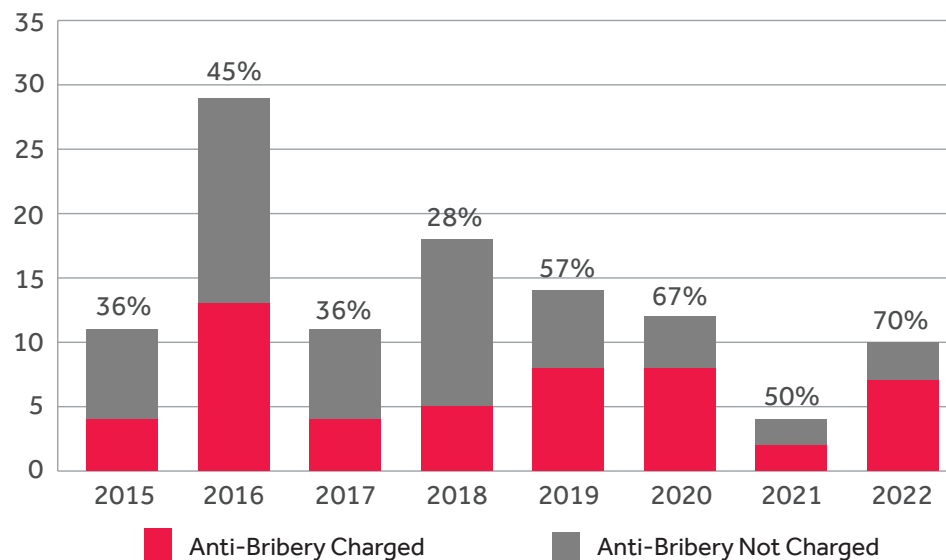
United States

Continued from page 4

Consistent with its usual practice for corporate settlements, the SEC resolved all such actions through cease-and-desist orders rather than civil actions filed in court. DOJ resolved its investigations through four DPAs (one of which included a guilty plea by a subsidiary), one parent guilty plea, and two declinations with disgorgement under the CEP.

The vast majority of this year's corporate cases included bribery charges, as opposed to only violations of the FCPA's accounting provisions. In prior years, only about half of the cases have included bribery charges. Typically, as we have discussed in prior alerts, the government faces higher jurisdictional thresholds where charging bribery violations than violations of the accounting provisions.⁶ Only time will tell whether this signals a more aggressive use of the FCPA's anti-bribery provisions, or just a quirk of the facts of the cases brought this year.

% of FCPA Cases Charging Anti-Bribery Violations



Demonstrating the meaningful impact that significant investments in remediation and compliance programs can have, two of the eight FCPA enforcement actions in 2022 imposed a corporate monitor (Stericycle and Glencore), largely in line with prior years, particularly the five years leading up to 2020. Thus, although the Biden DOJ announced in 2021 that it was rejecting Trump-era guidance suggesting

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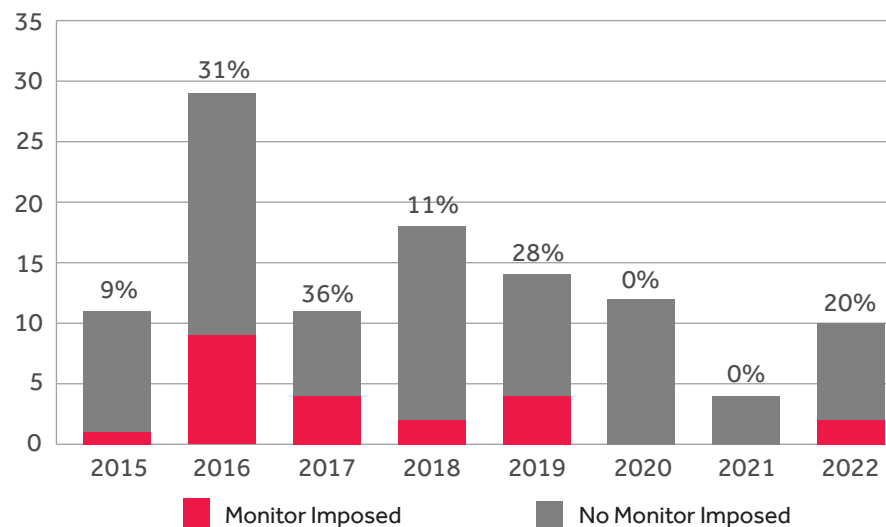
6. See, e.g., Paul R. Berger, Jonathan R. Tuttle, Bruce E. Yannett, Philip Rohlik, and Jil Simon, "Beyond 'Virtual Strict Liability': SEC Brings First FCPA Enforcement Action of 2018," FCPA Update, Vol. 9, No. 8 (Mar. 2018), <https://www.debevoise.com/insights/publications/2018/03/fcpa-update-march-2018>.

United States

Continued from page 5

that monitors would be the exception rather than the rule, decisions to impose monitorships remain highly dependent on the facts of each case, including the remediation undertaken during an investigation.

% of FCPA Cases Imposing Independent Monitorships



Here are our key developments and takeaways from corporate enforcement in 2022:

- **Coordination among multiple enforcement authorities has become the norm.** U.S. authorities publicly thanked foreign counterparts in eleven jurisdictions for assistance in seven of the eight enforcement actions. Brazil remains the top U.S. collaborator, with five of the ten corporate resolutions involving Brazil. Notably, *Lavo Jato*-related settlements continued. Global steel pipe manufacturer and FCPA recidivist Tenaris paid more than \$78 million to settle charges that its Brazilian subsidiary paid bribes to win business from Petrobras.⁷ And global manufacturer Honeywell paid \$160 million to resolve parallel investigations by U.S. and Brazilian authorities involving Petrobras.⁸

Continued on page 7

7. Order, *In re Tenaris S.A.*, Securities Exchange Act Release No. 95030 (June 2, 2022) <https://www.sec.gov/litigation/admin/2022/34-95030.pdf>. It is perhaps noteworthy that DOJ appears to have closed an investigation into Tenaris with a declination, particularly in light of aggressive enforcement rhetoric towards recidivist companies.
8. Deferred Prosecution Agreement, *United States v. UOP, LLC, d/b/a Honeywell UOP*, No. 22-cr-624 (S.D. Tex. Dec. 19, 2022), <https://www.justice.gov/opa/press-release/file/1562351/download> ["Honeywell DPA"]; Order, *In re Honeywell International Inc.*, Securities Exchange Act Release No. 96529 (Dec. 19, 2022), <https://www.sec.gov/litigation/admin/2022/34-96529.pdf>. See also below at 60.

United States

Continued from page 6

In April 2022, DOJ and Brazilian authorities fined Stericycle \$84 million to resolve allegations that it operated a bribery scheme in Argentina, Brazil, and Mexico regarding government contracts for waste management services.⁹

In May 2022, commodity trading and mining firm Glencore paid approximately \$700 million in coordinated resolutions with U.S., UK, and Brazilian authorities for a bribery scheme spanning multiple countries. While Stericycle and Glencore both received credit for any penalties paid to foreign authorities, in Glencore's case this credit did not extend to payments made to Brazilian authorities.¹⁰

In September 2022, Brazilian airline GOL agreed to pay \$41.5 million (reduced due to its inability to pay approximately \$157 million in penalties assessed by DOJ and the SEC) for a scheme to influence Brazilian officials to lower the aviation fuel tax.¹¹

“Use of third parties to mask the nature of payments or the creation of slush funds are standard tactics in corruption schemes.... Companies need to review their third party vetting procedures to ensure they are just as deft and do not allow for third parties to skate through their diligence process with limited explanation or documentation.”

- **All 10 FCPA resolutions involved third parties with government touchpoints.** Using third parties to interact with government officials or to conduct business with government ministries and state-owned entities continues to pose significant corruption risk. In 2022, all 10 resolutions of FCPA cases involved the use of third parties in connection with the alleged bribery schemes – typically consultant intermediaries or subcontractors controlled or associated with foreign officials,¹² or otherwise used to pass payments to them. These third parties included consultants (in three of the

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9. See Kara Brockmeyer, Andrew M. Levine, Christopher M. Carter, Matthew S. French, and Andreas A. Glimenakis, “How Offering Cookies and Chocolates Can Expand Your Business: Stericycle Settles Parallel U.S. and Brazilian Bribery Investigations” at 1-8, FCPA Update, Vol. 13, No. 10 (May 2022), <https://www.debevoise.com/insights/publications/2022/05/fcpa-update-may-2022>.

10. Plea Agreement, *United States v. Glencore International A.G.*, No. 22-cr-297 (S.D.N.Y. May 24, 2022), <https://www.justice.gov/criminal/file/1508266/download> [“Glencore Plea”].

11. See Oct. 2022 FCPA Update.

12. See, e.g., Deferred Prosecution Agreement, *United States v. Gol Linhas Aéreas Inteligentes S.A.*, No. 8:22-cr-00325-PJM (D. Md. Sept. 16, 2022), <https://www.justice.gov/opa/press-release/file/1562361/download>.

United States

Continued from page 7

cases),¹³ distributors and resellers,¹⁴ sham third parties,¹⁵ and, in one case, domestic third parties required by local law.¹⁶

Use of third parties to mask the nature of payments or the creation of slush funds are standard tactics in corruption schemes. But over the years, enforcement authorities have demonstrated a keen eye to peer through such sham arrangements. Companies need to review their third party vetting procedures to ensure they are just as deft and do not allow for third parties to skate through their diligence process with limited explanation or documentation. This is particularly true of consultant third parties, an arrangement that is often abused.

- **Declinations pursuant to the CEP are alive and well.** In last year's Year in Review, we noted that DOJ had not announced a declination with disgorgement in 2021, after several years of declining use of the remedy. The drought ended this year, with two companies receiving such a resolution. Both companies received credit for timely and voluntary self-disclosure, the only two companies to receive voluntary reporting credit in 2022.

UK-based reinsurance provider Jardine Lloyd Thompson ("JLT") received voluntary disclosure credit from DOJ for reporting a scheme by its employees and agents to use bribes paid through a third-party intermediary to obtain contracts with state-owned Ecuadorian surety company, Seguros Sucre. DOJ highlighted JLT's full cooperation and its remediation, which included terminating the executive and the third party involved in the misconduct.¹⁷ Marsh & McLennan had acquired JLT in 2019, several years after the conduct ended.

The second declination under the CEP involved a self-report following an acquisition. French aerospace company Safran received credit for voluntarily disclosing a scheme it discovered through post-acquisition diligence of a subsidiary. The scheme involved certain employees making millions of dollars in payments to the relative of a Chinese government official to secure lucrative contracts for train lavatories.¹⁸

Continued on page 9

13. See Honeywell DPA; Glencore Plea; Declination Letter from the U.S. Dep't of Justice, Criminal Division, Fraud Section to Peter Spivack Re: *Safran S.A.* (Dec. 21, 2022), <https://www.justice.gov/criminal-fraud/file/1559236/download> ["Safran Declination Letter"].

14. See *Order, In re Oracle Corp.*, Securities Exchange Act Release No. 95913 (Sept. 27, 2022) <https://www.sec.gov/litigation/admin/2022/34-95913.pdf> ["Oracle Order"].

15. See, e.g., Deferred Prosecution Agreement, *United States v. Stericycle, Inc.*, No. 22-cr-20156-KMM (S.D. Fla. Apr. 18, 2022), <https://www.justice.gov/opa/press-release/file/1496416/download>.

16. See, e.g., Deferred Prosecution Agreement, *United States v. ABB Ltd.*, No. 1:22-cr-00220-MSN (E. D. Va. Dec. 2, 2022) <https://www.justice.gov/opa/press-release/file/1556131/download>.

17. See Declination Letter from the U.S. Dep't of Justice, Criminal Division, Fraud Section to F. Joseph Warin, Re: *Jardine Lloyd Thompson Group Holdings Ltd.* (Mar. 18, 2022), <https://www.justice.gov/criminal-fraud/file/1486266/download> ["JLT Declination Letter"].

18. See Safran Declination Letter.

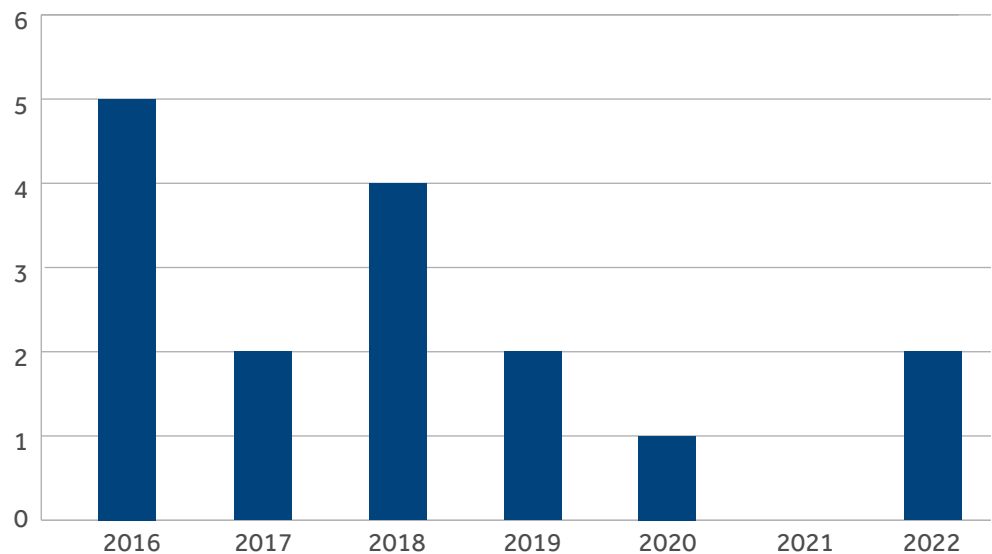
United States

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Notably, both of these schemes involved millions of dollars of alleged bribes, suggesting that DOJ does not reserve declinations for only low value schemes and that any company may be eligible for a declination should it meet DOJ's increasingly rigorous cooperation demands. It may be more telling that both involved declinations for conduct taking place under prior ownership, suggesting that, at least under the prior version of the CEP, the bar to receiving a declination was quite high.

In January 2023, DOJ announced significant changes to the CEP, which should make it easier for companies to qualify for a declination, even amidst aggravating factors such as recidivism or involvement of management.¹⁹ These changes accompanied a handful of other revisions – all targeted at giving DOJ more leeway to reward good behavior from cooperative companies. We expect them to figure prominently in future decisions by companies whether to self-report. However, in the end, how DOJ applies these revisions in practice undoubtedly will have the paramount impact on the self-reporting calculus, and we will be monitoring this closely.

Declinations with Disgorgement Pursuant to DOJ Corporate Enforcement Policy



Continued on page 10

19. See below at 23-25.

United States

Continued from page 9

- **U.S. authorities continue to scrutinize charitable and political contributions and donations, even where not a clear quid pro quo.** Two resolutions this year involved charitable and political giving. South Korean telecom company KT Corporation (“KT Corp.”) paid \$6.3 million to resolve SEC allegations that it used charitable and political donations generated through slush funds comprised of inflated executive bonuses and converted gift cards to bribe foreign officials who had the ability to influence KT Corp.’s business. Although the SEC did not allege a specific quid pro quo, some of the donations were given – through campaign contributions in circumvention of local laws that prohibit political contributions from corporations – to officials who sat on committees regulating the telecommunications industry, and others were given to foundations at the behest of senior government officials. The SEC found that KT Corp. could not effectively justify the payments and had done no diligence on the payment requests.²⁰ In addition, Brazilian airline GOL’s action, noted above, involved a scheme to donate to a foreign political candidate in exchange for support of favorable tax legislation.²¹

“The past year has shown that, even where a company previously resolved an FCPA case, it can overcome the harsher penalties typically imposed on recidivists through early self-disclosure and full cooperation.”

- **Discounts and marketing schemes continue to pose problems, particularly in the technology sector.** Technology company and FCPA recidivist Oracle allegedly used discount schemes and sham marketing reimbursement payments to finance slush funds used to bribe foreign officials in India, Turkey, and the United Arab Emirates in return for business between 2016 and 2019. Oracle employees in those countries were able to abuse the company’s discount policy, which did not require documentation, to create a \$100,000 slush fund by submitting multiple reimbursement requests for sham marketing expenses under a \$5,000 threshold, which required only the lowest level of approval.

Continued on page 11

20. See Kara Brockmeyer, Andrew M. Levine, Philip Rohlik, and Andreas A. Glimenakis, “SEC Brings its First Corporate Anti-Corruption Action of 2022,” FCPA Update, Vol. 13, No. 8 (March 2022), <https://www.debevoise.com/insights/publications/2022/04/fcpa-update-march-2022>.

21. See Oct. 2022 FCPA Update.

United States

Continued from page 10

The employees used the sham marketing reimbursements to pay travel and accommodation expenses for foreign officials. Schemes like this stress the need for companies to have effective documentation requirements in place, even for ostensibly low value discount and marketing expenses. Oracle settled a similar action regarding its use of slush funds in India in 2012.²²

- **Carrots and sticks for FCPA recidivists.** The past year has shown that, even where a company previously resolved an FCPA case, it can overcome the harsher penalties typically imposed on recidivists through early self-disclosure and full cooperation. In December, Acting Principal Deputy Assistant Attorney General Nicole Argentieri clarified that “a history of misconduct will not mean a guilty plea for a company that self-discloses, cooperates, and remediates unless other aggravating factors – aside from recidivism – are present.”²³ A day later, DOJ announced the ABB DPA, in which three-time recidivist ABB managed to avoid both a parent-level guilty plea and a monitorship due in large part to early detection of misconduct, evidence of intent to self-disclose, “extraordinary cooperation,” extensive remediation, and the fact that its earlier FCPA resolutions were more than ten years old.²⁴ DOJ formalized this policy in the revised CEP, as discussed in more detail below. In addition to ABB, two other recidivist companies resolved FCPA cases in 2022: Tenaris and Oracle, both of which settled with the SEC alone.
- **Consequences for noncompliance with non-trial resolutions.** Demonstrating the consequences of noncompliance with a DPA, multinational telecom company Ericsson announced in December 2022 that DOJ extended the company’s 2019 DPA for an additional year “to further embed best in class governance, risk management and compliance frameworks across the organization.”²⁵ And in January, Ericsson announced that it reserved nearly \$220 million for a potential resolution with DOJ relating to the alleged breach of its DPA for failing to make sufficient disclosures about its previous conduct in Iraq.²⁶

Continued on page 12

22. Oracle Order at 2-4.

23. Nicole M. Argentieri, Acting Principal Deputy Assistant Attorney General, “Remarks at the 39th International Conference on the Foreign Corrupt Practices Act” (Dec. 1, 2022) <https://www.justice.gov/opa/speech/acting-principal-deputy-assistant-attorney-general-nicole-m-argentieri-delivers-remarks>.

24. See Kara Brockmeyer, Andrew M. Levine, Andreas A. Glimenakis, and Joseph Ptomey, “Cooperation Mitigates Recidivism: ABB Settles with DOJ and the SEC,” FCPA Update, Vol. 14, No. 5 (Dec. 2022), <https://www.debevoise.com/insights/publications/2022/12/fcpa-update-december-2022>.

25. Press Release, “Ericsson Announces Extension of Compliance Monitorship” (Dec. 14, 2022) <https://www.ericsson.com/en/press-releases/2022/12/ericsson-announces-extension-of-compliance-monitorship>.

26. Gaspard Le Dem, “Ericsson sets \$220 million aside for potential DOJ resolution over breach of DPA,” Global Investigations Review (Jan. 12, 2023), <https://globalinvestigationsreview.com/just-anti-corruption/article/ericsson-sets-220-million-aside-potential-doj-resolution-over-breach-of-dpa>; Press Release, “Ericsson makes provision in fourth quarter of 2022 in relation to potential DPA breach resolution with U.S. Department of Justice” (Jan. 12, 2023), <https://www.ericsson.com/en/press-releases/2023/1/ericsson-makes-provision-in-fourth-quarter-of-2022-in-relation-to-potential-dpa-breach-resolution-with-u.s.-department-of-justice>.

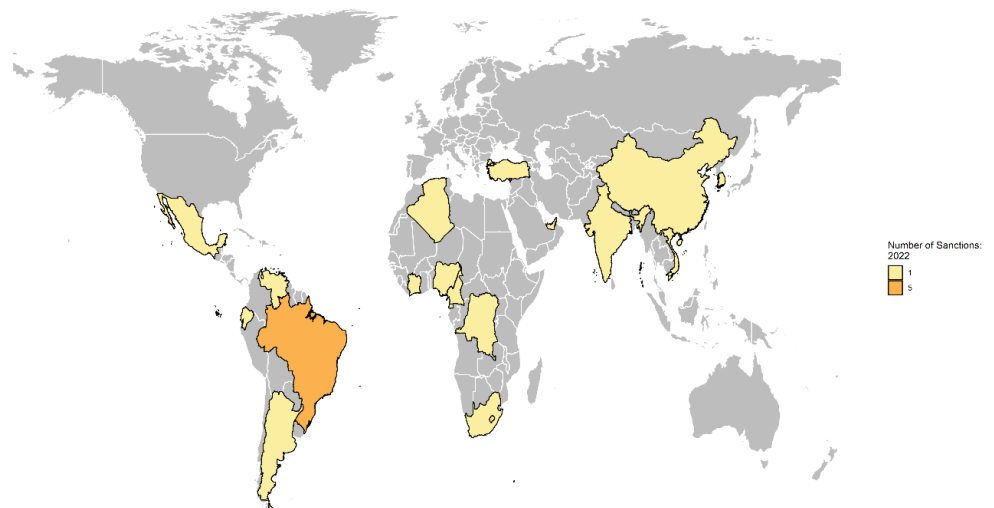
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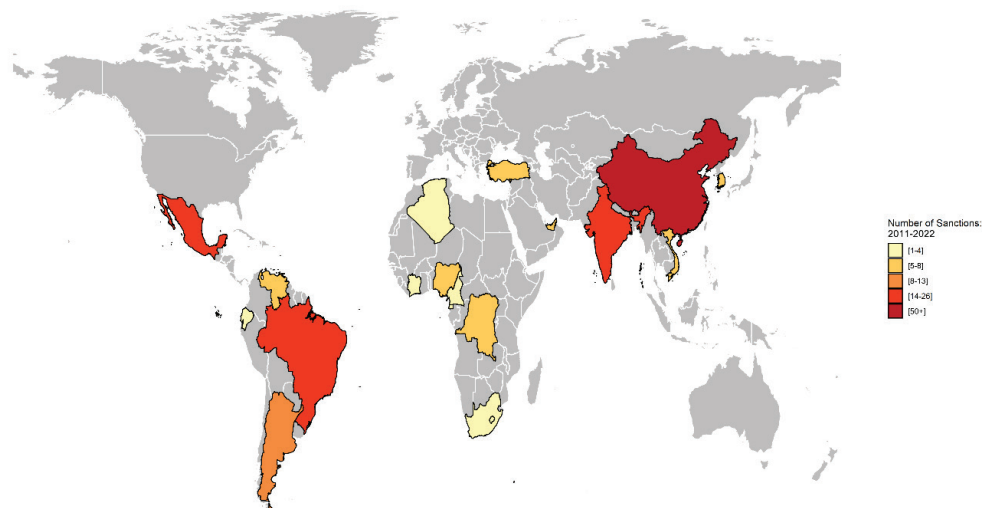
B. Heat Map by Geography

In 2022, U.S. authorities resolved corporate investigations involving alleged underlying conduct in 18 countries. Five of the ten resolutions involved conduct in Brazil. And notably, conduct in China was implicated in only one resolution – Safran’s M&A-related declination with disgorgement – a significant downtick for a jurisdiction that has figured in more than 35 enforcement resolutions since 2015. It is too early to tell if China’s near absence from this year’s heat map is related to several years of Zero-Covid related disruptions and how much is related to recent PRC blocking statutes and other legal obstacles to cooperation.

Corporate Resolutions: 2022 Heat Map



Corporate Resolutions: 2011-2022 Heat Map



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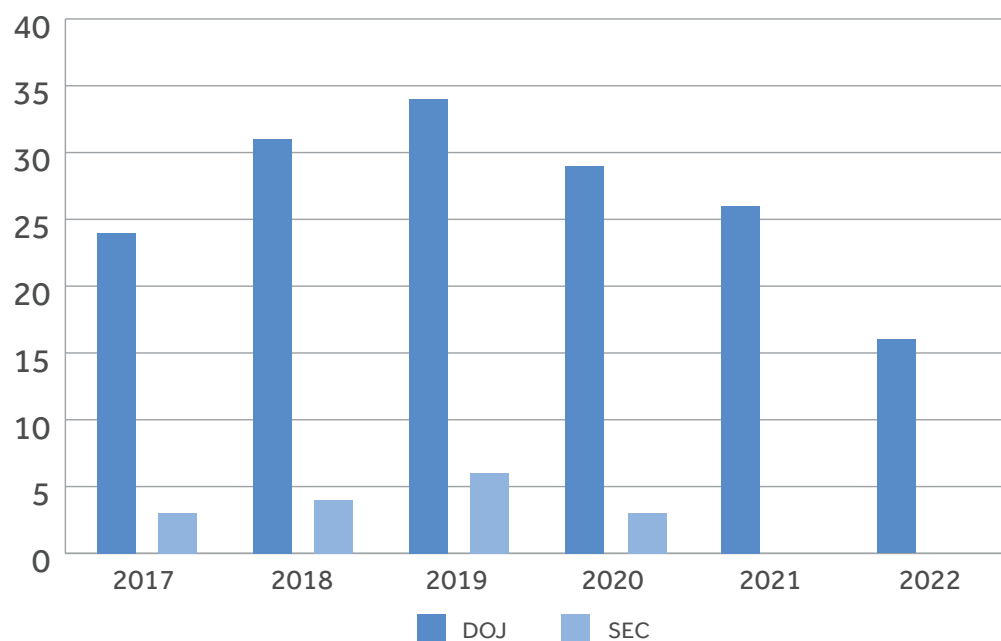
United States

Continued from page 12

II. FCPA Enforcement Against Individuals

DOJ and the SEC announced charges against or guilty pleas of at least 19 individuals in 2022 in connection with FCPA-related matters, including individual charges associated with five of the ten corporate resolutions. DOJ has proclaimed that individual accountability remains its top priority.

Charges Announced Against Individuals in FCPA-Related Actions



A. Individual Enforcement Actions Related to Corporate Resolutions

In 2021, DOJ reinstated the “Yates Memo” requirement that, in order to qualify for any cooperation credit, companies must disclose all relevant facts regarding all persons involved in corporate misconduct.²⁷ In September 2022, Deputy Attorney General Lisa Monaco reiterated the importance of individual accountability, noting that DOJ wants “[p]rosecutors and corporate counsel alike to feel they are ‘on the clock’ to expedite investigations, particularly as to culpable individuals.”²⁸

Continued on page 14

27. See, e.g., Helen V. Cantwell et al., “DOJ Revises Corporate Criminal Enforcement Policies,” Debevoise In Depth (Nov. 1, 2021), <https://www.debevoise.com/insights/publications/2021/11/doj-revises-corporate-criminal-enforcement>.

28. Memo from the Deputy Attorney General (Lisa O. Monaco) of the U.S. Dep’t of Justice, “Further Revisions to Corporate Criminal Enforcement Policies Following Discussions with Corporate Crime Advisory Group” (Sept. 15, 2022), <https://www.justice.gov/dag/page/file/1535286/download> (“Monaco Memo”); see also Kara Brockmeyer et al., “Biden Administration Doubles Down on Corporate Criminal Enforcement,” FCPA Update, Vol. 14, No. 2 (Sept. 2022), <https://www.debevoise.com/insights/publications/2022/09/fcpa-update-september-2022> [“Sept. 2022 FCPA Update”].

United States

Continued from page 13

As we have noted in prior Year-in-Review issues, it can be a challenge for DOJ and the SEC to bring individual charges in FCPA cases. The most culpable individuals are often foreign nationals over whom it may be difficult for the United States to obtain jurisdiction. Perhaps in recognition of that fact, DOJ and the SEC increasingly have looked to foreign jurisdictions to bring individual prosecutions on their own.

In 2022, fully half of the corporate resolutions involved charges against individuals (JLT, Glencore, ABB, KT Corp., and Tenaris), though mostly by other countries. For example, authorities in South Africa brought corruption charges against the high-ranking official at South Africa's state-owned power utility company to whom ABB funneled bribes to obtain confidential information and win lucrative contracts.²⁹

“In September 2022, Deputy Attorney General Lisa Monaco reiterated the importance of individual accountability, noting that DOJ wants ‘[p]rosecutors and corporate counsel alike to feel they are ‘on the clock’ to expedite investigations, particularly as to culpable individuals.’”

Thus far, only two of the 2022 corporate resolutions (JLT and Glencore) involved charging individuals in the United States. But that is not necessarily surprising, given that effective prosecution in another jurisdiction can be grounds for DOJ to forego prosecution. (The 2022 Monaco Memo reiterates the Justice Manual's directive that prosecutors – before forgoing charges – should determine whether there is a significant likelihood of a local authority effectively prosecuting the individual outside the United States, considering, among other things, the other jurisdiction's interest and ability to prosecute and the probable consequences.)

- **Glencore.** Oil trader Anthony Stimler, a UK citizen and resident, pleaded guilty to FCPA and money laundering violations in 2021 for his alleged role in a multiyear bribery scheme involving intermediaries and government officials in multiple countries. He is scheduled to be sentenced in July 2023.³⁰
- **Jardine Lloyd Thompson.** A number of individuals were charged in connection with JLT's declination with disgorgement, including three businessmen charged

Continued on page 15

29. U.S. Dep't of Justice Press Release No. 22-1296, "ABB Agrees to Pay Over \$315 Million to Resolve Coordinated Global Foreign Bribery Case" (Dec. 2, 2022), <https://www.justice.gov/opa/pr/abb-agrees-pay-over-315-million-resolve-coordinated-global-foreign-bribery-case>.

30. *United States v. Anthony Stimler*, No. 21-cr-00471 (S.D.N.Y. 2021).

United States

Continued from page 14

for their roles in a bribery and money laundering scheme to secure business for themselves, an intermediary company, and reinsurance clients (including JLT) from state-owned insurance companies in Ecuador.³¹ Esteban Eduardo Merlo Hidalgo is a dual citizen of the United States and Ecuador who resides in Florida. Christian Patricio Pintado Garcia is a dual citizen of Italy and Ecuador and resides in Costa Rica. Luis Lenin Maldonado Matute is a citizen of Ecuador and also resides in Costa Rica.

Several individuals faced charges years after companies settled FCPA charges related to the same underlying schemes.

- **Vitol oil trader.** Two years after energy commodities trading company Vitol settled its \$135 million FCPA case, DOJ charged a Dutch former Vitol oil trader with conspiracy to commit money laundering in connection with the scheme. DOJ alleged that, from November 2014 to September 2020, the oil trader, Lionel Hanst, laundered bribes from and on behalf of Vitol for the benefit of officials at state-owned oil companies in Ecuador (PetroEcuador), Mexico (PEMEX), and Venezuela (PDVSA). Hanst pleaded guilty and is awaiting sentencing.³²
- **Sargeant Marine and Vitol intermediaries.** DOJ charged two brothers with conspiracy to commit money laundering and to violate the FCPA, alleging that between 2011 and 2019 the two operated sham consulting companies that were used to funnel millions of dollars in bribes to PetroEcuador officials on behalf of Vitol and another company that settled an FCPA action in 2020 (i.e., asphalt company Sargeant Marine). The brothers pleaded guilty and agreed to forfeit approximately \$48 million.³³
- **Odebrecht and Ecuadorian official.** In March 2022, more than six years after Brazilian construction conglomerate Odebrecht's 2016 guilty plea, DOJ indicted Ecuador's former Comptroller General for money laundering, in connection with allegedly abusing his position and accepting at least one bribe from an Ecuadorian businessman relating to securing a contract with Ecuador's state-owned insurance company. The foreign official awaits trial.³⁴ There have been at least 77 individuals charged globally in connection with the Odebrecht bribery case.

Continued on page 16

31. U.S. Dep't of Justice Press Release No. 22-770, "Three Men Charged in Ecuadorian Bribery and Money Laundering Scheme" (July 19, 2022), <https://www.justice.gov/opa/pr/three-men-charged-ecuadorian-bribery-and-money-laundering-scheme>.

32. Information, *United States v. Hanst*, No. 1:22-cr-00075-ENV (E.D.N.Y. Mar. 16, 2022), <https://www.justice.gov/criminal-fraud/file/1520301/download>.

33. Information, *United States v. Pere Ycaza*, No. 1:20-cr-00377-ENV (E.D.N.Y. Oct. 7, 2020), <https://www.justice.gov/criminal-fraud/file/1496896/download>.

34. Indictment, *United States v. Polit Faggioni*, No. 1:22-cr-20114-KMW (S.D. Fla. Mar. 24, 2022), <https://www.justice.gov/criminal-fraud/file/1489111/download>.

United States

Continued from page 15

B. Stand-Alone Enforcement Actions Against Individuals

In addition to the charges related to current or prior corporate resolutions, a number of other individuals were charged with FCPA violations. Some of these relate to the long-running investigations into PDVSA and other Venezuelan officials; others may relate to corporate cases yet to be brought.

- Two Marshallese nationals that were heads of a New York-based NGO pleaded guilty in 2022 to charges that they conspired to bribe foreign officials of the Marshall Islands to affect the passing of certain legislation that would benefit their business interests. The charges were filed under seal in 2020.³⁵
- Two former Venezuelan prosecutors were charged in connection with allegedly agreeing to receive \$1 million in bribes to not prosecute a corrupt contractor related to corruption at PDVSA subsidiaries.³⁶
- Three Venezuelan businessmen were charged in connection with bribery and money laundering schemes involving senior officials at Venezuelan state-owned and state-controlled energy companies Petropiar and PDVSA.³⁷
- The former Bolivian Minister of Government pleaded guilty to money laundering conspiracy for his role in receiving more than \$500,000 in bribes for helping a Florida-based company secure a contract with Bolivia's defense ministry. The foreign official was sentenced to 70 months in prison and four co-conspirators – the official's chief of staff and bribe-paying U.S. businessmen and intermediaries – each were sentenced for their roles in the scheme.³⁸
- Two former coal company executives were charged for their roles in an alleged bribery scheme involving commission payments to a sales intermediary to secure sales contracts with Egypt's state-owned and state-controlled energy company Al Nasr Company for Coke and Chemicals.³⁹

Continued on page 17

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35. U.S. Dep't of Justice Press Release No. 22-1289, "Former Heads of New York-Based Non-Governmental Organization Plead Guilty to Conspiring to Bribe Elected Officials of the Marshall Islands" (Dec. 1, 2022), <https://www.justice.gov/opa/pr/former-heads-new-york-based-non-governmental-organization-plead-guilty-conspiring-bribe>.
36. U.S. Dep't of Justice Press Release No. 22-200, "Two Former Senior Venezuelan Prosecutors Charged for Receiving Over \$1 Million in Bribes" (Mar. 8, 2022), <https://www.justice.gov/opa/pr/two-former-senior-venezuelan-prosecutors-charged-receiving-over-1-million-bribes>.
37. U.S. Dep't of Justice Press Release No. 22-910, "Venezuelan Businessman Charged in Bribery and Money Laundering Scheme" (Aug. 24, 2022), <https://www.justice.gov/opa/pr/venezuelan-businessman-charged-bribery-and-money-laundering-scheme>; U.S. Dep't of Justice Press Release, "Two Financial Asset Managers Charged in Alleged \$1.2 Billion Venezuelan Money Laundering Scheme" (July 12, 2022), <https://www.justice.gov/usao-sdfl/pr/two-financial-asset-managers-charged-alleged-12-billion-venezuelan-money-laundering>.
38. U.S. Dep't of Justice Press Release No. 23-7, "Former Bolivian Minister of Government Sentenced for Bribery Conspiracy" (Jan. 4, 2023), <https://www.justice.gov/opa/pr/former-bolivian-minister-government-sentenced-bribery-conspiracy>.
39. U.S. Dep't of Justice Press Release No. 22-308, "Former Coal Company Vice President Arrested and Charged with Foreign Bribery, Money Laundering, and Wire Fraud" (Mar. 31, 2022), <https://www.justice.gov/opa/pr/former-coal-company-vice-president-arrested-and-charged-foreign-bribery-money-laundering-and>.

United States

Continued from page 16

C. DOJ Appeals and Trial Updates

Beyond the announced arrests, indictments, and guilty pleas, DOJ litigated cases with mixed results, including appeals of previously-secured convictions:

- **Boncy and Baptiste.** The long-running Haitian bribe case against businessmen Roger Boncy and Joseph Baptiste came to an end last year, when the court dismissed the charges upon DOJ's motion. Boncy and Baptiste were convicted in 2019 for their roles in an alleged scheme to bribe officials in Haiti to approve a port development project for their investment firm. After obtaining a new trial – based on ineffective assistance of counsel at the first trial – they moved to dismiss the indictment, arguing that the U.S. government had destroyed exculpatory audio files. In June 2022, DOJ stated that it had discovered a text message describing a statement by Boncy that certain money would not be used to pay bribes. DOJ subsequently moved to dismiss the charges, acknowledging the “belated disclosure” of the text messages.

“[T]he Second Circuit upheld the trial court’s acquittal of Hoskins on all FCPA counts, thereby ending a decade-long saga for one of the most closely-watched FCPA prosecutions.”

- **Ng.** In April 2022, following a nearly two-month jury trial in the Eastern District of New York, former Goldman Sachs banker Roger Ng was convicted for his role in the scheme to pilfer funds from Malaysia’s sovereign wealth fund, 1Malaysia Development Berhad (“1MDB”). The conviction included conspiracy to circumvent internal accounting controls – the first of such charges against an individual to proceed to trial. The case is currently on appeal.⁴⁰ See below for additional information.
- **Hoskins.** In August 2022, the Second Circuit upheld the trial court’s acquittal of Hoskins on all FCPA counts, thereby ending a decade-long saga for one of the most closely-watched FCPA prosecutions.⁴¹ The Second Circuit reaffirmed

Continued on page 18

40. Bruce E. Yannett, Matthew S. French, Mai-Lee Picard, and Stephanie D. Thomas, “Roger Ng’s Conviction for 1MDB Scheme Tests Scope of FCPA’s Internal Controls Provisions,” FCPA Update, Vol. 13, No. 9 (Apr. 2022), <https://www.debevoise.com/insights/publications/2022/04/fcpa-update-april-2022>.

41. *United States v. Hoskins*, 44 F.4th 140 (2d Cir. 2022). The Second Circuit characterized the “crux” of the appeal as “whether there was an agency relationship between Hoskins and API,” Alstom’s US subsidiary. *Id.* at 149-50. The court held that the common-law meaning of agency applied, explaining that “the three elements necessary to an agency relationship are (1) a manifestation by the principal that the agent will act for him; (2) acceptance by the agent of the undertaking; and (3) an understanding between the parties that the principal will be in control of the undertaking.” *Id.* (citing Restatement (Third) of Agency § 1.01 cmt. C).

United States

Continued from page 17

that traditional principles of principal-agent relationships applied to the FCPA and held that the government failed to establish its assertion of extraterritorial jurisdiction by demonstrating an implied or explicit agency relationship between Hoskins and Alstom. See below for additional information.

- **Inniss.** In October 2022, the Second Circuit upheld the conviction of Donville Inniss, a former member of the Barbados Parliament and Minister of Industry. He was sentenced to two years in prison after being convicted of conspiracy and money laundering charges for taking bribes from the Insurance Corporation of Barbados Limited. (That company secured a declination with disgorgement from DOJ in 2018.) In November 2021, Inniss filed an appeal in the Second Circuit, arguing that his conduct was not technically money laundering. The Second Circuit disagreed, holding that the government did not have to prove Inniss laundered the proceeds of the bribes after receiving them in order to be convicted of money laundering. Inniss is awaiting sentencing.

The past year also brought total or partial resolutions to several FCPA-related trials, some of which were delayed from 2021:

- **Uganda Adoption Cases** In November 2021, former executive director of an international adoption agency, Debra Parris, pleaded guilty to charges brought in 2020 against her and two others for paying bribes to Ugandan government officials in exchange for permitting adoptions of Ugandan and Polish children. In May 2022, Cole was sentenced to three months in prison and fined \$7,500. One of her alleged co-conspirators, Margaret Cole, pleaded guilty shortly before trial in early 2022. The third alleged co-conspirator, Dorah Mirembe, remains at large.⁴²
- **Coburn and Schwartz.** Originally scheduled for 2021, the trial of two former executives at Cognizant Technology Solutions, former president Gordon J. Coburn and former chief legal officer Steven Schwartz, was delayed to 2022. On February 1, 2022, the district court found that Cognizant broadly waived privilege in summarizing the findings of its internal investigation of potential FCPA violations to DOJ.⁴³ The trial is now scheduled for late 2023.

Continued on page 19

42. U.S. Dep't of Justice Press Release No. 22-101, "Former Executive Director of International Adoption Agency Pleads Guilty to Fraudulent Adoption Scheme" (Feb. 4, 2022), <https://www.justice.gov/opa/pr/former-executive-director-international-adoption-agency-pleads-guilty-fraudulent-adoption#:~:text=The%20former%20executive%20director%20of,adoption%20of%20a%20Polish%20child>.

43. Order, *United States v. Coburn*, No. 2:19-cr-00120-KM (D.N.J. Feb 1, 2022); see also Andrew M. Levine, Jane Shvets, and Bruce E. Yannett, "District Court Addresses Issues Arising from Corporate Investigations and Voluntary Cooperation with DOJ," Debevoise Update (Feb. 17, 2022), <https://www.debevoise.com/insights/publications/2022/02/district-court-addresses-issues-arising-from>.

United States

Continued from page 18

- **FIFA.** Trials of several individuals for wire fraud and money laundering charges in connection with the FIFA bribery investigation were scheduled for 2022 in both Swiss and U.S. courts. The Swiss cases focused on fraud, mismanagement, and misappropriation of FIFA funds by high-ranking FIFA officials; the cases brought by DOJ focused on the distribution and sale of media rights, including racketeering, bribery, and money laundering. In the Swiss trial, former FIFA president Sepp Blatter, France football legend Michel Platini, and Qatari football executive and government minister Nasser al-Khelaifi were cleared of corruption charges in July 2022. In the United States, however (though not an FCPA case), Reynaldo Vasquez, former president of the El Salvadoran soccer federation, was sentenced in September 2022 to 16 months' imprisonment. The sentence is one in a long-running investigation into corruption in international soccer led by the U.S. Attorney's Office for the Eastern District of New York. To date, more than 50 individual and corporate defendants have been charged, and the prosecution has resulted in 27 individual guilty pleas, four corporate guilty pleas, and two convictions at trial, among other resolutions.⁴⁴
- **Former Treasurer of Venezuela.** In December 2022, a former National Treasurer of Venezuela and her husband were convicted in connection with 2020 charges alleging that they accepted and laundered over \$100 million in bribes in a currency exchange scheme from their co-conspirator, a Venezuelan billionaire businessman and owner of global news network Globovision.⁴⁵

In 2023, several additional FCPA trials are expected:

- **Polit Faggioni.** Former Comptroller General of Ecuador, Carlos Ramon Polit Faggioni, as noted above, was indicted by DOJ in March 2022 on six counts of money laundering. According to the indictment, between 2010 and 2016, Polit solicited and received over \$10 million in bribes from Odebrecht in exchange for using his political position to benefit Odebrecht's business in Ecuador. Although the bribery scheme took place substantially outside of the United States, Polit allegedly directed a member of the conspiracy to launder certain of the payments through Florida-based companies to be used to purchase and renovate properties

Continued on page 20

44. U.S. Dep't of Justice Press Release, "Former FIFA Official Sentenced to 16 Months in Prison for Accepting Hundreds of Thousands of Dollars in Bribes" (Sept. 29, 2022), <https://www.justice.gov/usao-edny/pr/former-fifa-official-sentenced-16-months-prison-accepting-hundreds-thousands-dollars>; U.S. Dep't of Justice Press Release No. 22-691 "Justice Department Announces Additional Distribution of Approximately \$92 Million to Victims in FIFA Corruption Case" (June 30, 2022), <https://www.justice.gov/opa/pr/justice-department-announces-additional-distribution-approximately-92-million-victims-fifa>.

45. U.S. Dep't of Justice Press Release No. 22-1364, "Former Venezuelan National Treasurer and Husband Convicted in International Bribery Scheme" (Dec. 15, 2022), <https://www.justice.gov/opa/pr/former-venezuelan-national-treasurer-and-husband-convicted-international-bribery-scheme>.

United States

Continued from page 19

in Florida. Polit has pleaded not guilty and currently awaits a May 2023 trial date in the U.S. District Court for the Southern District of Florida.⁴⁶

- **Aguilar.** Former Vitol trader Javier Aguilar of Houston, previously charged with conspiracy to violate the FCPA and money laundering conspiracy, is now facing two new substantive FCPA charges and another count of conspiring to violate the FCPA with a payment of \$600,000 in bribes to Swiss-based energy company Vitol. His trial is expected in 2023 in the U.S. District Court for the Eastern District of New York.

III. FCPA-Related Legal, Policy, and Enforcement Updates

A. Enforcement Policy Updates

In 2022, DOJ announced a number of significant updates to its corporate enforcement policies, setting out new incentives to self-report and cooperate, and new guidance on how prosecutors will treat corporate recidivism.

1. Additional DOJ guidance emphasizing self-disclosure and cooperation and addressing recidivism, monitorships, and individual enforcement

In September 2022, Deputy Attorney General Lisa Monaco announced changes to how DOJ prioritizes and prosecutes corporate crime.⁴⁷ These changes include:

- **Timely corporate cooperation and continued focus on individuals.** The 2022 Monaco Memo says that both prosecutors and defense counsel need to expedite investigations, particularly as to culpable individuals – the top priority for DOJ enforcement. DOJ now expects prosecutors to bring individual charges before or at the same time as related corporate resolutions (or, if not, to present to supervisors a plan and timeline for resolving cases against individuals).
- **Assessing a company's prior enforcement cases.** Following 2021 guidance that prosecutors should consider a company's full criminal, civil, and regulatory history in deciding how best to resolve an investigation, DOJ clarified that prosecutors should give the greatest weight to: (1) recent criminal misconduct in the United States; and (2) past misconduct involving the same personnel or management. "Dated conduct" – criminal actions resolved more than ten years earlier or civil/regulatory actions resolved more than five years earlier – typically will merit less weight.

Continued on page 21

46. U.S. Dep't of Justice Press Release No. 22-298, "Former Comptroller General of Ecuador Indicted for Alleged Bribery and Money Laundering Scheme" (Mar. 29, 2022), <https://www.justice.gov/opa/pr/former-comptroller-general-ecuador-indicted-alleged-bribery-and-money-laundering-scheme>.

47. See Sept. 2022 FCPA Update; Helen V. Cantwell et al., "DOJ Offers Additional Guidance on Corporate Criminal Enforcement," Debevoise in Depth (Sept. 19, 2022), <https://www.debevoise.com/insights/publications/2022/09/doj-offers-additional-guidance-on-corporate>.

United States

Continued from page 20

- **Independent compliance monitors.** In 2021, DOJ reversed the Trump Administration’s guidance to the extent it suggested that “monitors are disfavored or are the exception.” In 2022, DOJ clarified that there is neither a presumption for nor against imposing monitorships and provided a list of ten non-exclusive factors for prosecutors to consider in appointing monitors. Those factors include, among others, whether the misconduct was long-lasting or pervasive and whether the company self-disclosed, implemented an effective compliance program, and adequately remediated.
- **Voluntary self-disclosure is key to securing declinations and avoiding parent-level guilty pleas and monitorships.** Absent aggravating factors, DOJ will not seek guilty pleas from corporations that voluntarily self-disclose, fully cooperate, and timely and appropriately remediate misconduct. Nor will DOJ impose corporate monitors on such companies if they have effective compliance programs that have been implemented and tested at the time of resolution.

“The 2022 Monaco Memo continues to raise the bar for corporate compliance programs and encourages companies to implement: (1) compliance-promoting compensation systems ... and (2) effective policies relating to the use of personal devices and messaging applications.”

- **Higher bar for corporate compliance programs: compliance-promoting compensation and controls on off-channel communications.** The 2022 Monaco Memo continues to raise the bar for corporate compliance programs and encourages companies to implement: (1) compliance-promoting compensation systems with clawback and/or deferred compensation provisions to incentivize compliant behavior; and (2) effective policies relating to the use of personal devices and messaging applications. The SEC has prioritized both in recent months as well.

Regarding compensation arrangements, DOJ will consider whether companies deter employees’ risky or “gray area” behavior by holding current and former employees, executives and directors personally accountable through compensation clawback provisions that pin the expenses of wrongdoing on culpable persons’ wallets. DOJ will also consider whether companies affirmatively incentivize compliance-promoting behavior. Relatedly, the SEC approved in October 2022 a rule requiring public companies to implement

Continued on page 22

United States

Continued from page 21

policies to clawback executives' compensation where errors are found in financial statements⁴⁸ – and has shown leniency to companies that enforce such policies.⁴⁹

Regarding off-channel communications, the proliferation of personal devices and third-party messaging apps can present significant compliance challenges for companies. The 2022 Monaco Memo provided “a general rule” that robust compliance programs should feature effective and enforced policies governing the use of personal devices and third-party messaging platforms, as well as clear employee training on such policies. This is particularly important in the FCPA context where companies operate in foreign jurisdictions where text messaging on personal devices or the use of apps like WeChat, WhatsApp, or Signal are a common medium for business communications. Public companies and broker-dealers are subject to recordkeeping rules intended to ensure transparency and that regulators can access records in line with oversight obligations. In October, 16 Wall Street banks and brokerages agreed to pay approximately \$1.8 billion (in most cases \$200 million each) to resolve investigations brought by the SEC and CFTC relating to the use of electronic messaging apps and failures by firms and their employees to maintain and preserve the communications in line with recordkeeping requirements.⁵⁰

A further enforcement sweep is ongoing, and DOJ has promised to provide additional guidance as enforcement authorities continue their crackdown in this area.

- **Authorities' increasing focus on individual wrongdoers and corporate personnel may slow investigative pace.** DOJ is, as discussed above, doubling down on individual accountability – but there appears to be a conflict brewing. Both DOJ and the SEC have signaled that they want to move investigations faster by asking companies to disclose sooner and to provide the government with access to documents and individuals faster. However, DOJ's recent emphasis on enforcement against individuals, compensation clawbacks, and CEO/CCO certifications dials up individual risk in a way that is likely to slow the process. We will be watching closely to see how the tension is resolved.

Continued on page 23

48. See Lawrence K. Cagney et al., “SEC Adopts Final Clawback Rules,” Debevoise in Depth (Oct. 28, 2022), <https://www.debevoise.com/insights/publications/2022/10/sec-adopts-final-clawback-rules>.

49. For example, the SEC did not impose a civil penalty against McDonald's in its settlement relating to false and misleading statements about the circumstances surrounding its former CEO's termination because the company substantially cooperated and took remedial measures, including clawing back compensation paid to the former CEO pursuant to his separation agreement. U.S. Sec. & Exch. Comm'n Press Release No. 2023-4, “SEC Charges McDonald's Former CEO for Misrepresentations About His Termination” (Jan. 9, 2023), <https://www.sec.gov/news/press-release/2023-4>.

50. See, e.g., U.S. Sec. & Exch. Comm'n Press Release No. 2022-174, “SEC Charges 16 Wall Street Firms with Widespread Recordkeeping Failures” (Sept. 27, 2022), <https://www.sec.gov/news/press-release/2022-174>.

United States

Continued from page 22

- **Data analytics do not need to be fancy, but should be used to inform compliance.** In November 2022, DOJ Fraud Section Chief Glenn Leon stated that he expects companies to enhance their use of data analytics in their corporate compliance programs. Companies do not have to invest in expensive artificial intelligence – it is not about buying “the shiniest tool and spending hundreds of thousands of dollars.” Rather, Leon clarified that DOJ is “asking everyone to think more about data and do more with data because it just makes sense.”⁵¹ Companies should consider what sources of data are available to other parts of the business and whether that data could be useful to compliance personnel.

2. Requirement of CCO certifications in FCPA enforcement actions

In March 2022, AAG Polite announced that, as part of any resolution, DOJ will require CEOs and CCOs to certify that their company’s compliance program is reasonably designed and implemented to detect and prevent future violations of the FCPA (or whatever other law was violated). This requirement has been met with some concern that the heightened risk of personal liability could dissuade qualified compliance officers from filling the positions. DOJ has explained that it is meant to “empower” companies’ compliance functions by ensuring that CCOs have access to “all relevant compliance-related information and can voice any concerns they may have prior to certification.”

The requirement first appeared in Glencore’s May 2022 resolution and has been in each FCPA enforcement action resolved with DOJ via guilty plea or DPA thereafter (GOL, ABB, and Honeywell).⁵²

3. Revisions to DOJ’s Corporate Enforcement and Voluntary Self Disclosure Policy

In January 2023, AAG Kenneth A. Polite, Jr. announced what he called “the first significant changes” to DOJ’s CEP (now called the “Corporate Enforcement and Voluntary Self Disclosure Policy” or “revised CEP”) since its inception in 2017. The revised CEP applies to all corporate criminal matters handled by DOJ’s Criminal Division and significantly increases the potential benefits for both companies that self-disclose and those that do not, as long as they engage in exemplary cooperation and remediation.⁵³

Continued on page 24

51. Max Fillion, “Glenn Leon: data analytics in corporate compliance not about the ‘shiniest tool,’” Global Investigations Review (Dec. 1, 2022), <https://globalinvestigationsreview.com/news-and-features/in-house/2020/article/glenn-leon-data-analytics-in-corporate-compliance-not-about-the-shiniest-tool>.

52. See Kenneth A. Polite Jr., Assistant Attorney General, “Remarks at NYU Law’s Program on Corporate Compliance and Enforcement” (March 25, 2022), <https://www.justice.gov/opa/speech/assistant-attorney-general-kenneth-polite-jr-delivers-remarks-nyu-law-s-program-corporate>.

53. See Jan. 2023 Debevoise Update.

United States

Continued from page 23

As with the prior version, the presumption of a declination remains for companies that have no “aggravating factors” and that voluntarily self-disclose, fully cooperate, timely and appropriately remediate, and disgorge ill-gotten gains resulting from the self-disclosed misconduct. But DOJ has increased the incentives available to companies that may have one or more aggravating factors that would previously have precluded them from obtaining a declination or the larger penalty discounts:

- **Expanded eligibility for declinations with disgorgement.** Prosecutors may now offer declinations even in cases where aggravating factors⁵⁴ are present, as long as the company timely self-discloses, has an effective compliance program that identified the misconduct that led to the self-disclosure, and demonstrates

“DOJ has increased the incentives available to companies that may have one or more aggravating factors that would previously have precluded them from obtaining a declination or the larger penalty discounts.”

“extraordinary” cooperation and remediation. “Extraordinary” is a seemingly high bar – companies begin with zero cooperation credit and can earn their way up to “full” (or “gold standard cooperation”) and then perhaps to “extraordinary.” The difference between “full” and “extraordinary” is one of degree, not kind, and turns on the same core cooperation concepts of “immediacy, consistency, degree, and impact” used to assess individual cooperation.⁵⁵

- **Increased discounts for self-disclosure of up to 75%.** In cases where a criminal resolution is still required (i.e., where companies could not meet the above conditions for a declination), voluntary disclosure, full cooperation, and effective remediation will yield a 50% to 75% discount off the low end of the fine range under the U.S. Sentencing Guidelines, a material increase from the prior maximum discount of 50%.⁵⁶ DOJ also generally will not require a corporate

Continued on page 25

54. Aggravating factors include, for example, involvement of executives in the misconduct, significant profit obtained from the wrongdoing, the pervasiveness or egregiousness of the conduct, or recidivism.

55. For example, ABB received in its 2022 DPA credit for extraordinary cooperation. DOJ cited that the company promptly produced information from its internal investigation; made regular factual presentations; voluntarily made foreign-based employees available for interviews; produced documents located outside the United States without implicating foreign data privacy laws; and translated, organized, and provided voluminous evidence to the government. The line between “extraordinary” and typically cooperative measures is not readily apparent from the public record. DOJ may have given ABB credit for “extraordinary cooperation” in part because ABB attempted to disclose wrongdoing, but did not technically receive disclosure credit because a media report beat them to DOJ.

56. FCPA recidivists can still qualify for a 50% to 75% discount, but this discount will be taken from a higher point the range. That was the case with ABB, which last month paid a penalty reflecting a discount of 25% discount off the mid-point between the middle and high end of the applicable guidelines range to account for its past criminal history).

United States

Continued from page 24

guilty plea for these companies (absent egregious or multiple aggravating circumstances) or a monitorship (if the company demonstrates at the time of resolution that it has implemented and tested an effective compliance program).

- **Increased discounts for cooperation and remediation without self-disclosure from 25% to up to 50%.** Perhaps most notably, even in cases where the company does not voluntarily disclose, full cooperation and effective remediation can still yield a discount of up to 50% off the low end of the Sentencing Guidelines range (doubling the prior discount of up to 25%), if they are not a recidivist. (And even recidivist companies are still eligible for discounts, though those would come from some point higher in the range.) But companies that do not self-disclose do not necessarily avoid guilty pleas or monitorships.

Thus, under the revised CEP, DOJ is offering increased penalty reductions for companies that fully cooperate with DOJ investigations and timely and appropriately remediate misconduct (even if they do not self-disclose). But DOJ reserves its strongest incentives for companies that voluntarily self-disclose, dangling declinations, including potentially for recidivists (who can at least avoid guilty pleas if they self-disclose, despite DOJ disfavoring multiple DPAs or NPAs), and avoidance of monitorships.

B. Developments in Case Law

1. The end of *Hoskins* leaves a narrowed path to prosecuting foreign citizens under the FCPA

The FCPA prosecution of Lawrence Hoskins came to an end after nearly a decade. In August 2022, the Second Circuit held that Hoskins did not have an agency relationship with Alstom Power, Inc. (“API”), absent a showing of control.⁵⁷ The Second Circuit’s two decisions in this case, first narrowing the contours of an FCPA conspiracy (*Hoskins I* in 2018) and now narrowing the definition of agency (*Hoskins II*), will likely limit DOJ’s ability to pursue FCPA charges against foreign nationals.⁵⁸ We have covered this matter extensively in prior FCPA Updates.⁵⁹

In sum, Hoskins is a UK citizen who was previously employed by the UK subsidiary of French power and transportation company, Alstom S.A. As alleged by DOJ, between 2002 and 2009, Alstom’s U.S. subsidiary (API), and certain individuals

Continued on page 26

57. *United States v. Hoskins*, 44 F.4th 140 (2d Cir. 2022) (*Hoskins II*).

58. See Kara Brockmeyer, Andrew M. Levine, Philip Rohlik, and Joseph Ptomey, “End of the *Hoskins* Saga: Implications for the Future,” FCPA Update, Vol. 14, No. 4 (Nov. 2022) <https://www.debevoise.com/insights/publications/2022/11/fcpa-update-november-2022>.

59. See, e.g., Kara Brockmeyer, Andrew M. Levine, Andreas A. Glimenakis, and Katherine R. Seifert, “District Courts Address Significant Aspects of Criminal Liability under the FCPA,” FCPA Update, Vol. 11, No. 8 (Mar. 2020), <https://www.debevoise.com/insights/publications/2020/03/fcpa-update-march-2020>; Kara Brockmeyer, Colby A. Smith, Bruce E. Yannett, Philip Rohlik, Jil Simon, and Anne M. Croslow, “Second Circuit Curbs FCPA Application to Some Foreign Participants in Bribery,” FCPA Update, Vol. 10, No. 1 (Aug. 2018), <https://www.debevoise.com/insights/publications/2018/08/20180830-fcpa-update-august-2018>.

United States

Continued from page 25

including Hoskins and two consultants, participated in a scheme to bribe Indonesian officials to help API land a \$118 million contract to build a power plant.⁶⁰

Initially, the government charged Hoskins with both: (1) conspiring with API and others to violate the FCPA; and (2) violating the FCPA directly as an agent of API. In *Hoskins I*, the Second Circuit held, prior to trial, that a person could not be “guilty as an accomplice or a co-conspirator for an FCPA crime that he or she is incapable of committing as a principal.”⁶¹ Thus, the court ruled that Hoskins could not be charged solely with conspiring to violate the FCPA. The court left open DOJ’s alternative theory of liability: that Hoskins violated the FCPA as an “agent” of a “domestic concern” (i.e., API).

The case proceeded to trial on this theory, and the jury convicted Hoskins. But the district court reversed, holding that the evidence was insufficient to prove that Hoskins was an agent of API. The government appealed, leading to the Circuit’s decision in *Hoskins II* on August 12, 2022. It affirmed the acquittal, holding that rendering significant support services was insufficient to establish agency, absent the common law requirement of control. The Second Circuit reasoned, in part, that “[c]onspicuously missing from the evidence is anything indicating that [API] representatives actually controlled Hoskins’s actions as Hoskins and his counterparts operated under separate, parallel employment structures.”⁶²

2. Conviction of former Goldman banker for 1MDB scheme continues to test scope of FCPA’s internal controls provision

In April 2022, following a seven-week trial in the Eastern District of New York, former Goldman Sachs banker Roger Ng was convicted of: (1) conspiring to launder funds embezzled from Malaysia’s sovereign wealth fund, 1MDB; (2) conspiring to pay bribes to government officials in Malaysia and Abu Dhabi; and (3) conspiring to circumvent Goldman’s internal accounting controls.⁶³ Ng’s case is significant because it appears to be the first time an individual charged with an FCPA internal accounting controls violation took their case to trial.

Continued on page 27

60. *Id.* DOJ settled with Alstom and several of its subsidiaries in 2014. In addition to these entities, DOJ brought charges against several individuals allegedly involved in the scheme, all of whom, with the exception of Hoskins, settled. See Plea Agreement, *United States v. Pierucci*, No. 3:12-cr-238-JBA (July 29, 2013), <https://www.justice.gov/sites/default/files/criminal-fraud/legacy/2013/08/05/de46-pierucci-plea-agreement.pdf>; Plea Agreement, *United States v. Pomponi*, No. 3:12-cr-238-JBA (July 17, 2014), <https://www.justice.gov/sites/default/files/criminal-fraud/legacy/2014/07/23/pomponi-plea-agreement.pdf>; Plea Agreement, *United States v. Rothschild*, No. 3:12-cr-223 (WWE) (Nov. 2, 2012), <https://www.justice.gov/sites/default/files/criminal-fraud/legacy/2013/04/22/rothschild-guilty-plea.pdf>.

61. *United States v. Hoskins*, 902 F.3d 69, 76 (2d Cir. 2018) (Hoskins I).

62. *Hoskins II*, 44 F.4th at 150. Hoskins was, however, also convicted of money laundering, which was not disturbed on appeal.

63. See Memorandum & Order, *United States v. Ng*, No. 18-CR-538 (MKB), 2022 WL 1062704 (E.D.N.Y. Apr. 8, 2022); see also Winston M. Paes, Bruce E. Yannett, Matthew S. French, Mai-Lee Picard, and Stephanie D. Thomas, “Roger Ng’s Conviction for 1MDB Scheme Tests Scope of FCPA’s Internal Controls Provisions,” FCPA Update, Vol. 13, No. 9 (Apr. 2022) <https://www.debevoise.com/insights/publications/2022/04/fcpa-update-april-2022>.

United States

Continued from page 26

According to the government, Ng circumvented Goldman's controls when he obtained authorization for the bond deals from the relevant Goldman financial transaction committees by withholding accurate information about the identities of intermediaries and key players for 1MDB. The government concluded that this information withheld from Goldman "materially changed the economic structure of the deal," and that Ng's conduct violated Goldman's internal policy designed to ensure transactions had proper approval and authorization. The district court agreed, finding that "the plain language of the statute encompasses the conduct in this case" and that "circumvention" of an authorization system includes attempts to "circumvent management's informed authorization for transactions" and does not require the falsification of a book or record.

It remains to be seen what happens on appeal. A victory for DOJ could lead to the government bringing internal controls charges in future cases where individuals violate company policies related to controls over transactions and assets.

3. Fifth Circuit holding in *Jarkesy* takes aim at SEC civil penalties in administrative proceedings

On May 18, 2022, the United States Court of Appeals for the Fifth Circuit vacated a decision by the SEC against George Jarkesy, Jr. and his investment adviser. The court held that it is unconstitutional for the SEC to impose civil monetary penalties in administrative proceedings.

While *Jarkesy* itself does not involve an alleged FCPA violation, its holding may impact the way the SEC uses administrative cease-and-desist proceedings in the FCPA context because most actions against issuers are brought through SEC in-house administrative (rather than district court) proceedings and often involve civil penalties.⁶⁴ The deadline by which to file a petition for writ of certiorari has been extended to February 2023.

C. Other Updates

1. Update on whistleblower reports and awards

Following a record-breaking year for whistleblower activity in FY 2021, the SEC in FY 2022 issued slightly fewer whistleblower awards (103 versus 108), for a much smaller total amount (approximately \$229 million versus \$564 million in FY 2021). Nevertheless, FY 2022 was the SEC's second highest year in terms of both award amounts and the number of individual awards extended. At least one award – a \$37 million award, the largest issued in FY 2022 – was reportedly connected to an

Continued on page 28

64. *Jarkesy v. Sec. & Exch. Comm'n*, 34 F. 4th 446 (5th Cir. 2022).

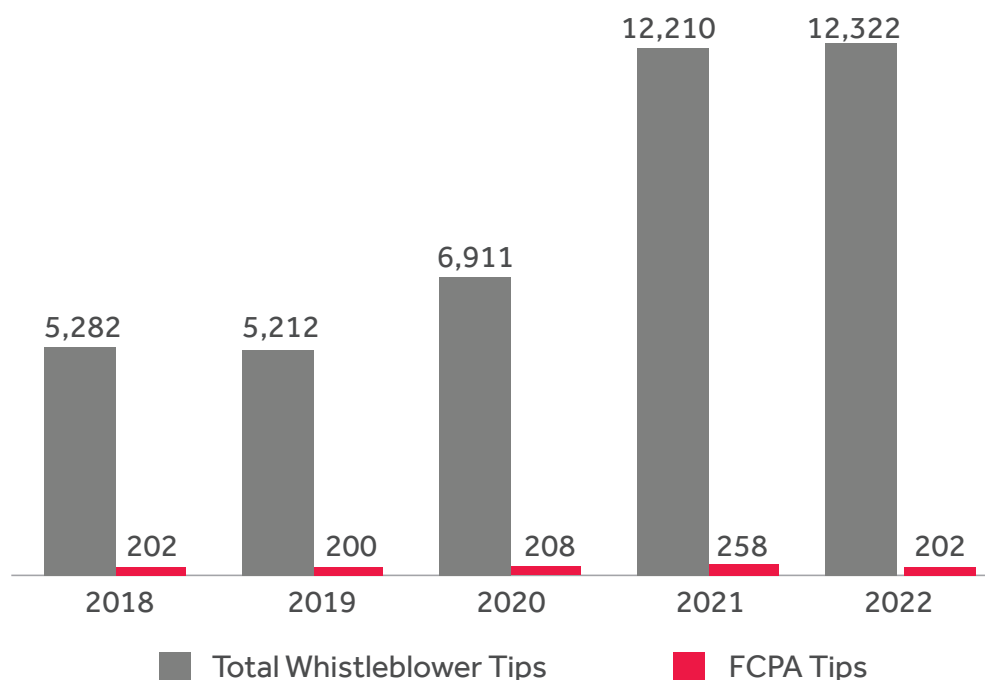
United States

Continued from page 27

FCPA settlement for a large European healthcare company.⁶⁵ According to the SEC, the Whistleblower Program received a record number of tips in 2022, up slightly from the record in FY 2021. Despite the large total uptick in 2021 and 2022, the number of FCPA-related tips has remained largely consistent over the past five years (other than a roughly 25% increase in 2021), as shown in the chart below.⁶⁶

“FY 2022 was the SEC’s second highest year in terms of both [whistleblower] award amounts and the number of individual awards extended.”

SEC Whistleblower Tips (2018-2022)



Continued on page 29

65. Mengqi Sun, “Whistleblower in Healthcare Bribery Case Won the Largest SEC Award This Year,” Wall St. J. (Dec. 19, 2022), <https://www.wsj.com/articles/whistleblower-in-healthcare-bribery-case-won-the-largest-sec-award-this-year-11671498462>. (In accord with its policy, the SEC did not name the company or identify the tipster).

66. SEC Press Release No. 2022-206, “SEC Announces Enforcement Results for FY22” (Nov. 15, 2022), <https://www.sec.gov/news/press-release/2022-206>; see also Kara Brockmeyer et al., “SEC Enforcement Division’s Year-End Results Provide Insight into Record-Breaking Year and Evolving Enforcement Agenda,” FCPA Update, Vol. 14, No. 4 (Nov. 2022), <https://www.debevoise.com/insights/publications/2022/11/fcpa-update-november-2022>.

United States

Continued from page 28

2. FinCEN issued an advisory on kleptocracy and foreign public corruption

On April 14, 2022, the Financial Crimes Enforcement Network (“FinCEN”) released an Advisory on Kleptocracy and Foreign Public Corruption, directing financial institutions to focus their efforts on identifying the proceeds of foreign public corruption. The Advisory focuses on “kleptocrats” – foreign officials who “use[] their position and influence to enrich themselves and their network of corrupt actors” – who launder the proceeds of their corruption through financial institutions.

FinCEN also identified ten red flags implicating potential kleptocracy and foreign public corruption, which can trigger suspicious activity reporting (“SAR”) requirements. The Advisory establishes expectations that covered U.S. financial institutions will ensure their AML programs include risk-based controls to identify and report consumer activity that suggests foreign corruption.⁶⁷

3. FinCEN published a long-anticipated rule implementing beneficial ownership information reporting requirements

On September 30, 2022, FinCEN published its final rule that implements the beneficial ownership information reporting requirements of the Corporate Transparency Act (the “CTA”).⁶⁸ This reporting rule will take effect on January 1, 2024, requiring legal entities created or registered in the United States to report beneficial ownership information into a centralized governmental database.

The creation of a corporate registry signals a landmark change in U.S. corporate law, which international bodies have long criticized for insufficient transparency.

4. U.S. House passed legislation focused on fighting global corruption and kleptocracy

On February 4, 2022, the U.S. House of Representatives passed the America COMPETES Act of 2022,⁶⁹ which contains several significant anti-corruption measures. But its future remains uncertain as the version passed by the Senate contained only one of the four measures: the Global Magnitsky Human Rights Accountability Act, which would reauthorize the President to impose economic sanctions on foreign individuals and entities that engage in corruption or human rights violations.⁷⁰

The bills will need to be aligned before a final vote in both chambers.

Continued on page 30

67. Kara Brockmeyer, Satish Kini, Andrew M. Levine, Robert Dura, and Lily D. Vo, “FinCEN Issues Advisory on Kleptocracy and Foreign Public Corruption,” FCPA Update, Vol. 13, No. 10 (May 2022), <https://www.debevoise.com/insights/publications/2022/05/fcpa-update-may-2022>.

68. 87 Fed. Reg. 59498 (Sept. 30, 2022), <https://www.govinfo.gov/content/pkg/FR-2022-09-30/pdf/2022-21020.pdf>.

69. The America COMPETES Act of 2022, H.R.4521, 117th Cong. (2022), <https://www.congress.gov/bill/117th-congress/house-bill/4521/text>.

70. See United States Innovation and Competition Act of 2021, S.1260, 117th Cong. (2021), <https://www.congress.gov/bill/117th-congress/senate-bill/1260/text>.

United Kingdom

The past year has been a mixed one for the UK's Serious Fraud Office ("SFO"). The SFO was more active in prosecuting fraud than bribery offences in 2022, with only two significant corporate bribery cases being resolved. The agency has had to concentrate its efforts on implementing organisational changes following two independent reviews that strongly criticised the SFO's handling of its disclosure obligations.

For the UK's Financial Conduct Authority ("FCA"), 2022 saw a considerable increase in the number of penalties imposed on firms and individuals (26 compared to just 10 in 2021), although the total amount of those fines fell substantially. Seven of these enforcement cases related to firms' financial crime controls.

I. Enforcement Activity

A. SFO

1. Guilty Pleas

Glencore Energy

In June, Glencore Energy (UK) Ltd ("Glencore") pleaded guilty to five counts of bribing another person and two counts of the corporate offence of failing to prevent bribery under the UK Bribery Act 2010, following an SFO investigation opened in June 2019. Glencore admitted that its agents and employees paid bribes of \$29 million for preferential access to oil, including increased cargoes, valuable grades of oil and favourable delivery dates. These bribes were approved by the company across its operations in Cameroon, Equatorial Guinea, Ivory Coast, Nigeria, and South Sudan.

At a sentencing hearing in November, Glencore was ordered to pay a total of £281 million, comprising a fine of £183 million, a confiscation order of £93.5 million for the profit obtained by the bribery, and the SFO's costs of £4.5 million. This penalty (including a one-third reduction due to Glencore's early guilty plea) is the highest ever ordered in a UK corporate criminal conviction, and the confiscation order is the largest ever for an SFO case. The Court rejected the Nigerian Government's application for compensation, finding that it is for the SFO to decide whether to pursue a compensation order; third parties do not have standing to seek such an order from the court directly. The SFO said that it had not asked the Court to order Glencore to pay compensation in this case because there was no "identifiable and quantifiable loss" to Nigeria caused by the company's bribery. The SFO is continuing its investigation into individuals at Glencore.

Continued on page 31

United Kingdom
Continued from page 30

GPT Special Project Management

In April, GPT Special Project Management Ltd (“GPT”) (now a subsidiary of Airbus SE) pleaded guilty to one count of corruption contrary to section 1 of the Prevention of Corruption Act 1906. The investigation into GPT focused on contracts to supply telecommunications capability to the Saudi Arabian National Guard between 2008 and 2010. The company was ordered to pay a fine of £7.5 million, a confiscation order of £20.6 million, and the SFO’s costs of £2.2 million.

The SFO has also brought charges against three individuals involved. Two of these individuals, including the former Managing Director of GPT, face charges under section 1 of the Prevention of Corruption Act 1906. One individual was too ill to stand trial. The jury in the trial of the other two individuals was discharged in July, with a retrial scheduled for January 2023.

2. DPAs

The SFO did not secure any DPAs in 2022, leaving the total at 12 since DPAs were introduced in the UK in 2014. The SFO had secured two DPAs in 2021. No updates or revisions have been made to the SFO’s guidance on corporate self-reporting and corporate co-operation.

3. Pursuing Individuals

In 2022, the SFO had some success in prosecuting executives who played substantive roles in the unlawful conduct of companies. In total, the SFO secured convictions against five individuals in various fraud-related matters, however, it obtained no bribery-related convictions against any individuals.

4. Ongoing Investigations and Future Priorities

Significantly, no new bribery-related investigations were announced by the SFO in 2022. The SFO stepped up its investigation (announced in May 2021) into suspected fraud, fraudulent trading and money laundering regarding the financing and conduct of the business of companies within the Gupta Family Group (“GFG”) Alliance, including its financing arrangements with Greensill Capital UK Ltd. In April, investigators issued notices at addresses linked with the GFG Alliance to obtain documents including company balance sheets, annual reports and correspondence related to the SFO’s investigation.

The Director of the SFO, Lisa Osofsky, emphasised a few themes during the speeches she gave in 2022. First, she noted the importance of cross-border co-operation in reaching global resolutions. Close collaboration with other enforcement agencies, such as the U.S. Department of Justice, will allow the SFO to continue

Continued on page 32

United Kingdom
Continued from page 31

securing convictions and DPAs for international misconduct, and the SFO will also strengthen those relationships by assisting overseas agencies with their investigations. Secondly, Osofsky said that she aimed to continue to improve the flow and assessment of intelligence into the SFO. Thirdly, Osofsky supported legislative change to the UK's laws concerning corporate criminal liability, stating that a new offence of failure to prevent fraud would improve the agency's ability to prosecute companies.

5. Reviews into SFO Disclosure Failures

The Calvert-Smith Review

In February, the Attorney General commissioned Sir David Calvert-Smith (a former Director of Public Prosecutions and High Court judge) to conduct an independent review addressing the SFO's handling of the Unaoil investigation. This followed the Court of Appeal overturning the conviction of Ziad Akle, a former Unaoil executive, in December 2021. In the *Akle* decision, the Court held that the SFO failed to disclose key documents relating to its interactions with a private investigator (or 'fixer') during the investigation, which ultimately denied Akle a fair trial. Subsequently, the convictions of two other individuals were also overturned due to disclosure failings by the SFO. The SFO had initially secured the convictions of four former Unaoil executives for allegedly making corrupt payments to Iraqi officials to influence the allocation of oil pipeline contracts.

“The SFO was more active in prosecuting fraud than bribery offences in 2022, with only two significant corporate bribery cases being resolved. The agency has had to concentrate its efforts on implementing organisational changes following two independent reviews that strongly criticised the SFO's handling of its disclosure obligations.”

The Calvert-Smith Review was published in July. It identified a number of issues with the SFO's culture, practices and resourcing. These included systematically poor record-keeping within the senior SFO team and a lack of trust between the case team and senior management. Inadequate casework assurance caused fundamental issues in case strategy and progress, which led to general disclosure failings. This was impacted by insufficient resourcing, which the report highlighted as a major issue for disclosure. The review also found that there were misunderstandings about case priorities and how to deal with third-parties, as the case team had understood that communication with the fixer had been approved by the SFO Director.

Continued on page 33

United Kingdom
Continued from page 32

The report concluded that six events leading to the Court of Appeal's decision involved fault on the part of the SFO. Its recommendations included improving record-keeping and communication around the provenance of information, strengthening compliance with case assurance processes and disclosure obligations, and developing a route by which case staff can raise concerns about cases.

The Government's response to the report noted that both the Attorney General and the SFO accepted the recommendations resulting from the Calvert-Smith Review. The SFO indicated that implementing the recommendations was a "pressing priority" for the SFO. In November, the Attorney General's office issued an update stating that the SFO was making significant progress in improving its record-keeping, case assurance and resourcing, and that the SFO had already implemented specific measures to ensure the effective delivery of nine of the 11 recommendations. A further update is expected in February 2023.

The Altman Review

In February, the Attorney General also commissioned Brian Altman KC to conduct a review addressing the SFO's investigation into Serco Geografix ("Serco"), which concluded with a DPA in 2019, and the subsequent *R v Woods and Marshall* trial. Serco was engaged in the manufacture and supply of electronic equipment used to monitor curfew conditions imposed on people accused or convicted of criminal offences. Two of Serco's executives were charged with fraud in December 2019 in relation to representations made to the Ministry of Justice between 2011 and 2013.

The trial collapsed in April 2021, with the SFO offering no evidence after an investigation lasting over seven years. Together with other omissions, the catalyst was the SFO's failure to disclose a key government internal report that included references to "backdated management fees", which was an essential part of the defence case.

The Altman Review's findings, which were published in July, concluded that:

- Staffing and resources for the case were insufficient, with a high turnover of staff;
- Certain SFO staff were inexperienced and also lacked support on such a large and complex case;
- Document reviewers were under considerable time pressure and the internal guidance they received was too detailed and unclear; and
- The SFO's IT systems were unreliable and failed to adapt to the impact of the Covid-19 pandemic on working practices.

Continued on page 34

United Kingdom
Continued from page 33

The recommendations included increased remuneration for disclosure reviewers, reconsidering the staffing and resourcing of case teams, introducing standardised methodologies for disclosure, and improving training for SFO personnel.

In July, the SFO's response accepted all of the recommendations made in the report. In November, an SFO update indicated that it had delivered 10 out of the 18 recommendations and was on track to implement the remaining recommendations by April 2023.

B. FCA

In 2022, the FCA imposed financial penalties on 26 firms and individuals, totalling £215 million. Although the number of enforcement outcomes was much higher than the 10 cases resolved in 2021, the total amount of fines fell short of the previous year's £568 million. A substantial proportion of the penalties (seven cases totalling £143 million) related to firms' anti-bribery, corruption and money laundering controls. Three of the most significant FCA enforcement cases from last year are outlined below.

1. JLT Specialty

In June, the FCA fined JLT Specialty Limited ("JLT") £8 million for inadequate anti-bribery and corruption controls when dealing with overseas introducers who helped JLT win and retain business. JLT provided insurance broking, risk management and insurance claims services to corporate clients. The FCA found that:

- JLT did not incorporate additional safeguards or approvals when it placed business in the London reinsurance market which originated from overseas introducers who were engaged by another JLT Group entity. Instead, JLT relied heavily on the other JLT Group entity to approve and monitor its relationships with the introducers;
- These control failings gave risk to an unacceptable risk that a share of the commission that JLT made from placing this business, part of which was paid to the introducers, could be used to pay bribes to persons connected with the insured clients and/or public officials; and
- This bribery and corruption risk materialised in one case where a Panama-based introducer paid over \$3 million in bribes to a state-owned insurance company to help secure business for JLT. The scheme included significant upfront payments, inflated commissions, and substantial hospitality expenditure to government officials and the introducer (as well as their family members). A number of individuals from the introducer, the client and JLT's Colombian affiliate were convicted in the U.S. of conspiracy to launder money in relation to this scheme.

Continued on page 35

United Kingdom

Continued from page 34

2. Julius Baer International

In November, the FCA published an £18 million penalty against Julius Baer International Limited (“JBI”). From 2010 to 2014, JBI facilitated finder’s fee arrangements between its Swiss affiliate and an employee of various Yukos Group companies on the understanding that if those fees were paid to him, he would ensure that another individual placed large sums with Julius Baer from which the bank could generate significant revenues. In total, Julius Baer paid approximately \$3 million in commission at rates far exceeding its standard rates for introducers. To generate that money, Julius Baer charged the Yukos Group companies unusually high levels of commission for executing large foreign exchange transactions.

The FCA found that:

- JBI demonstrated a lack of integrity by ignoring bribery and corruption red flags that were raised internally (including to a Board member who nevertheless approved the arrangements);
- JBI failed to ensure that it had adequate policies and procedures to manage the risks posed by its use of finders, which meant that there was a serious risk of it facilitating and/or itself engaging in financial crime; and
- JBI took an unacceptable amount of time to notify the FCA of the concerns it had identified (over 18 months).

3. Santander UK

In December, the FCA fined Santander UK plc (“Santander”) £107 million for failing to manage adequately the money laundering risks presented by its small business customers between 2012 and 2017. In particular, the FCA criticised Santander for end-to-end weaknesses in its anti-money laundering (“AML”) control framework, including:

- Its AML functions being divided between different teams that did not share information;
- Failing to ensure that it obtained enough information to understand new customers’ businesses at the onboarding stage;
- Not having an effective framework for ongoing customer monitoring;
- Significant delays in investigating transaction monitoring alerts; and
- Unclear and slow processes for closing customer accounts.

Continued on page 36

United Kingdom
Continued from page 35

II. Legislative Developments

1. Economic Crime (Transparency and Enforcement) Act

In March, the new Economic Crime Act 2022 strengthened the UK's AML and sanctions regimes, particularly by making it easier for law enforcement authorities to identify and seize property obtained through illicit funds. The legislation aims to uncover foreign ownership of UK property by requiring any overseas legal entity that purchases (or already owns) UK real estate to provide details about itself and its individual beneficial owners on a publicly-available register maintained by Companies House. UK companies are already subject to similar disclosure obligations.

In addition, the Act makes civil breaches of financial sanctions laws subject to strict liability, so that the UK's sanctions enforcement agency will not need to demonstrate knowledge or suspicion of a sanctions breach.

“In March, the new Economic Crime Act 2022 strengthened the UK's AML and sanctions regimes, particularly by making it easier for law enforcement authorities to identify and seize property obtained through illicit funds.”

2. Economic Crime and Corporate Transparency Bill

The Economic Crime and Corporate Transparency Bill, which builds on the Economic Crime Act, is expected to be enacted in spring 2023. In its current draft form, the Bill will include provisions to:

- Allow the SFO to compel persons to provide information and answer questions before the SFO formally commences an investigation into the relevant matter. At the moment, the SFO only has this pre-investigation power when assessing bribery and corruption issues.
- Require the directors and beneficial owners of UK and overseas companies that are registered with Companies House to ensure that their identities are verified through a specified procedure;
- Enable Companies House to query filings, request additional information and reject documents, where previously it has been a passive custodian of documentation; and
- Include cryptoassets in the confiscation and civil recovery regimes for law enforcement to freeze and seize the proceeds of criminal conduct.

Continued on page 37

United Kingdom
Continued from page 36

Notably, on January 25, 2023, the Government indicated that it intends to expand the Bill to include a new ‘failure to prevent’ corporate criminal offence (corporate offences of failure to prevent bribery and the facilitation of tax evasion have been in force since 2011 and 2017, respectively). This new offence is likely to encompass fraud (including false accounting) and perhaps also money laundering. However, its scope and how it will operate have not been explained and will be subject to extensive debate in Parliament. There may also be some reform of the law regarding the attribution of an individual’s conduct to their corporate employer. Once the Bill is enacted, companies will have a period of time (likely to be around one year) to update and enhance their policies and procedures before the new law becomes effective.

3. Reform of corporate criminal liability

In June, the Law Commission published its long-awaited final report on options for reforming the UK’s corporate criminal liability laws. This was not as far-reaching as some commentators had expected. The Commission proposed that the existing identification doctrine (i.e. only the mental state of individuals representing the “directing mind and will” of a company can be attributed to it) be retained or modified, rather than adopting another model such as the U.S. *respondeat superior* doctrine. The Commission also proposed a new offence of failure to prevent fraud by an associated person, rather than a much broader offence of failure to prevent economic crime (including money laundering). As noted above, the Economic Crime and Corporate Transparency Bill may eventually incorporate this proposed new offence in some form.

Continued on page 38

France

In 2022, France made certain changes to its Blocking Statute and enacted a new law addressing whistleblower protection. Additionally, a number of corruption and tax fraud investigations have been resolved through CJIPs (French-style deferred prosecution agreements).

I. Legislative Developments

A. Reform of the French Blocking Statute

On February 18 and March 16, 2022, the French government made some changes to the so-called “French Blocking Statute” of 1968.¹ The changes do not modify the broad logic of the statute, but they clarify companies’ obligations to report requests for information or documents by foreign authorities. They also provide for enhanced assistance by French authorities.

The French Blocking Statute prohibits the disclosure of information that would harm the sovereignty, security, or essential economic interests of France or contravene public policy, unless the disclosure is accomplished under an existing treaty. It also prohibits any person from requesting, searching for, or disclosing commercial information for use in foreign judicial or administrative proceedings. A breach of those prohibitions is punishable by up to six months’ imprisonment and/or an 18,000 euro fine (90,000 euros for legal entities).

Since April 1, 2022, companies receiving foreign requests for documents or information potentially covered by the Blocking Statute have to report “without delay” to a French government body known as “SISSE” (Strategic Information and Economic Security Service). They will then have to submit a set of predefined information to the SISSE “as quickly as possible.” French authorities will then have one month to give their opinion as to whether the requested information is covered by the Blocking Statute. Companies shall then be able to produce such opinion to the foreign authorities. On March 16, 2022, the SISSE published a guide to help companies determine what information may fall within the scope of the Blocking Statute.

This reform is intended to help French companies better respond to foreign requests for sensitive information potentially covered by the Blocking Statute. It remains to be seen whether companies will be keen to actually report to French authorities and how foreign authorities will treat French authorities’ above-mentioned opinions.

Continued on page 39

1. See Debevoise & Plimpton LLP, “French Blocking Statutes: Small Changes, Big Expectations” (Mar. 21, 2022), <https://www.debevoise.com/insights/publications/2022/03/french-blocking-statute>.

France

Continued from page 38

B. New Law on Whistleblower Protection

On March 21, 2022, France enacted a new law on whistleblower protection, which entered into force on September 1, 2022.² This new law implements the EU Whistleblowing Directive of 2019,³ going beyond its minimum requirements, and improves the whistleblower protection regime already in place in France since the Sapin II Law of December 16, 2016.⁴

The new law modifies the definition of whistleblowers provided by the Sapin II Law. The updated definition⁵ still encompasses a wide range of crimes, threats and violations, but it now clarifies that whistleblowers cannot receive “direct financial compensation” and that whistleblowers must have had “personal knowledge” of the information not obtained in the context of professional activities. Importantly, the protection does not apply to information and documents covered by national defense secrets, medical secrets, attorney-client privilege, and the secrecy of police/judicial investigations.

One of the most salient changes has to do with the reporting process: whistleblowers are no longer compelled to report within their organization first; rather, they may now choose to report directly to French authorities. Whistleblowers may even make a public disclosure in some situations. While internal reporting now becomes optional for whistleblowers, companies with 50 or more employees in France still must put in place procedures for internal reporting and for follow-up. Interestingly, the new law now provides for the possibility that such procedures be shared by companies within a group.

While the Sapin II Law already offered a certain level of protection, the new law improves whistleblowers’ protection against a number of retaliation measures. The new law further provides for wider exemptions from criminal and civil liability. Whistleblowers may also receive provisional payments for expected legal costs when challenging retaliation measures in court and, when facing abusive court proceedings, they may now be granted a civil fine of up to 60,000 euros (in addition to any damages).

Continued on page 40

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2. Laws No 2022-400 and 2022-401 of March 21, 2022, <https://www.legifrance.gouv.fr/jorf/id/JORFTEXT000045388740>, <https://www.legifrance.gouv.fr/jorf/id/JORFTEXT000045388745>.
 3. Directive (EU) 2019/1937 of the European Parliament and of the Council of October 23, 2019 on the protection of persons who report breaches of Union law, <https://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX:32019L1937&from=en>.
 4. 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>.
 5. The new law defines a whistleblower as “a natural person who reports or discloses, without direct financial compensation and in good faith, information concerning a crime, an offence, a threat or harm to the general interest, a violation or an attempt to conceal a violation of an international commitment duly ratified or approved by France, of a unilateral act of an international organization taken on the basis of such a commitment, or of the laws and regulations of the European Union. When the information was not obtained in the context of professional activities [...], the whistleblower must have had personal knowledge of it.”

France

Continued from page 39

These protections now apply not only to whistleblowers but also to natural persons and non-profit legal entities assisting whistleblowers in their reporting process (the so-called “facilitators”). They also apply to natural persons connected with whistleblowers who may face retaliation measures in a work-related context.

This new law may increase the number of reports made to authorities without businesses being even aware of them in the first place, which in turn may impact the French corporate enforcement landscape. At this stage, the lesson for companies is mainly to make sure that their reporting procedures are up-to-date and correctly applied. Maintaining good reporting channels and follow-up procedures may encourage whistleblowers to use internal reporting channels, instead of going straight to the authorities.

“France made certain changes to its Blocking Statute and enacted a new law addressing whistleblower protection. Additionally, a number of corruption and tax fraud investigations have been resolved through ... French-style deferred prosecution agreements.”

II. Enforcement Activity

In 2022, the bulk of enforcement in international corruption cases involved CJIPs. Since 2016, 11 corruption cases have been concluded through CJIPs, of which three were approved in 2022.

- **Doris Group.** In June 2022, French oil and gas engineering company Doris Group SA agreed to pay over 3.4 million euros to settle charges of corruption of foreign public officials in Angola. The PNF’s investigation started in 2019, following reports from the U.S. Department of Justice. The PNF took into account as mitigating factors the company’s establishment of a compliance program and the new management’s “very active cooperation” during the investigation and the negotiation of the settlement.
- **Idemia France.** In June 2022, French tech company Idemia France agreed to pay over 7.9 million euros to settle charges of corruption of foreign public officials in Bangladesh. The PNF’s investigation started in 2017, following a report from the UK National Crime Agency. Here again, the PNF took into account as mitigating factors the existence of corrective measures and the management’s “very active cooperation” during the investigation and the negotiation of the settlement.

Continued on page 41

France

Continued from page 40

- **Airbus.** In November 2022, Airbus SE agreed to pay over 15.8 million euros to settle with the PNF regarding charges of corruption. These corruption charges related to contracts concluded mainly between 2006 and 2011 for the sale of commercial aircraft, helicopters, and satellites in Libya and Kazakhstan. This settlement follows a first CJIP, approved in January 2020, in which Airbus had agreed to pay over 2 billion euros.⁶

In addition, four CJIPs involving charges of tax fraud were approved in 2022:⁷

- **Atalian.** In January 2022, French company La Financière Atalian agreed to pay 15 million euros to settle charges of laundering of fictitious or inaccurate accounting records with the Paris Public Prosecutor's Office. Prosecutors took into account as mitigating factors the company's cooperation during the investigation and its commitment to improve its governance rules. For the first time in a tax-related CJIP, the company also agreed to a review of its anti-corruption compliance program, to be monitored by the French Anticorruption Agency (AFA) for a 24-month period.
- **McDonald's.** In May 2022, three McDonald's entities agreed to pay 508 million euros to settle charges of tax fraud with the PNF. This criminal settlement came in addition to an administrative settlement with the French tax authorities that included an amount of 737 million euros. 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.⁸
- **Crédit Suisse.** In October 2022, Crédit Suisse agreed to pay 123 million euros to settle PNF charges of aggravated tax fraud laundering and illicit solicitation of banking services in France, along with damages of 115 million euros to be paid to the French treasury. The PNF took into account as an aggravating factor the extent of the alleged violations and their habitual nature. Mitigating factors included the bank's cooperation during the investigation, the existence of corrective measures, and the compensation paid to the French tax authorities.

Continued on page 42

6. See Debevoise & Plimpton LLP, "Airbus Reaches Record Breaking Global Settlement" (Feb. 28, 2020), <https://www.debevoise.com/insights/publications/2020/02/fcpa-update-february-2020>.

7. A total of nine tax-related CJIPs have been concluded since 2016.

8. See Debevoise & Plimpton LLP, "Hungry French Authorities Settle McDonald's Tax Evasion Case For 1.2 Billion Euros" (July 29, 2022), <https://www.debevoise.com/insights/publications/2022/08/fcpa-update-july-2022>.

France

Continued from page 41

- **Unilabs.** In December 2022, French medical diagnostic company Unilabs France agreed to pay over 13.8 million euros to settle tax fraud charges with the PNF. The company had made a voluntary disclosure to the PNF, after proceedings had been initiated by the French tax authorities. This was considered as a mitigating factor by the PNF, along with the company's "active cooperation" before the investigation and during the negotiation phase.

Continued on page 43

Germany

I. Legislative Developments

A. Corporate Criminal Liability

After the 2021 general elections, it became clear that the new coalition government would no longer pursue the enactment of a Corporate Sanctions Act that was designed to replace the existing regime of administrative liability for corporate misconduct with corporate criminal liability. Instead, the government envisioned a revision of the current corporate sanctions system, the improvement of legal certainty with regard to compliance duties, and the introduction of a precise legal framework for internal investigations. As of the publication of this issue, however, no such revisions have been introduced.

B. Draft Whistleblower Protection Act

Germany is late with its implementation of the EU Whistleblower Directive 2019/1937. In December, the draft Whistleblower Protection Act (*Hinweisgeberschutzgesetz*), which transposes the EU Directive, passed the *Bundestag* and now awaits the final approval of the *Bundesrat*, the second chamber in Parliament. Such final approval is expected in February at the earliest. The law will enter into force three months after its publication in the Federal Law Gazette.

Once the law is enacted, companies that generally have more than 50 employees will be obligated to establish internal reporting channels (although certain companies in the financial industry are under the obligation to set up whistleblowing systems regardless of the number of employees). Corporate groups can implement a centralized reporting office at the group level. Companies outside the financial sector and employing up to 249 employees benefit from a grace period until December 17, 2023. An external reporting office will be set up centrally at the Federal Office of Justice. The operations of that office should not interfere with already existing whistleblowing-related responsibilities of the Federal Financial Supervisory Authority or the Federal Cartel Office. Starting in 2025, both internal and external reporting channels must offer the possibility of anonymous reporting and subsequent anonymous communication with the whistleblower.

Whistleblowers, a broadly defined term primarily relating to employees, may report information about misconduct obtained in connection with their professional activities. Reportable misconduct includes breaches of: *first*, certain EU laws, such as those relating to money laundering or competition; *second*, national criminal law;

Germany

Continued from page 43

and *third*, certain national administrative offences to the extent that the relevant provision serves to protect life, limb, or health, or to protect the rights of employees or their representative bodies. While the whistleblower can choose freely between internal or external reporting channels, public disclosure is permitted only within narrow limits. Companies can incentivize internal reporting.

Internal and external reporting offices will review incoming reports, including anonymous reports, and take appropriate follow-up action, including investigations. All reporting offices must keep confidential the identity of the whistleblower, the suspect, and other persons named in the report. Disclosure is permitted only in exceptional circumstances, such as at the request of the prosecution in criminal proceedings.

The whistleblower is protected if they had sufficient reason to believe, at the time of the report, that the information reported or disclosed was true. In the event of an intentional or grossly negligent false report, the whistleblower is liable for the resulting damage incurred; in addition, criminal liability is possible.

The whistleblower's protection extends to a wide range of reprisals, including protection against dismissals, disciplinary measures, or discrimination. A violation of the prohibition of reprisals may result in administrative fines of up to EUR 100k and both pecuniary and non-pecuniary damages. Any reprisal is presumed illegal and the company has the burden of proof to show that its action was justified based on the report. Violations of other core duties under the Act, such as the duty to operate an internal reporting channel, may result in administrative fines.

II. Judicial Decisions

A. Whistleblower Protection and Data Subject Access

In a recent case, the Federal Court of Justice (February 22, 2022; VI ZR 14/21) considered the relationship of whistleblower protection and data subject access rights under the EU General Data Protection Regulation (GDPR) in the context of a landlord-tenant dispute on the following facts. A tenant in a multi-apartment house reported to the landlord bad odors and vermin coming from another tenant's apartment to the corridor of the house. As the landlord did not share the information about the identity of the whistleblower, the accused tenant sued the landlord in court to request the information on the basis of his GDPR access rights.

The court weighed the conflicting interests involved, including the interest of a wrongfully accused to pursue claims for injunctive relief or damages, the whistleblower's interest in protection against retaliation, and the interest of the operator of a whistleblowing system in a functioning system that protects the whistleblower and prevents abuse.

Continued on page 45

Germany

Continued from page 44

The court did not accept the landlord's argument that a disclosure of the whistleblower's identity is *per se* prohibited because it would not only place the reporting person at risk for retaliation, but also render the reporting system useless. Instead, the court required the landlord to balance the reporting person's and the suspect's interests assuming that wrong information tips in favor of disclosure of the whistleblower identity. The court opined that whistleblowers seeking protection from retaliation should report anonymously.

Once the Whistleblower Protection Act is enacted, this analysis may change for whistleblowers in its scope, such as employees, as the balancing of interests under the GDPR will then also have to consider the enhanced whistleblower protections under the new law.

“Once [Germany’s Whistleblower Protection Act] is enacted, companies that generally have more than 50 employees will be obligated to establish internal reporting channels.... Starting in 2025, both internal and external reporting channels must offer the possibility of anonymous reporting....”

B. Termination for Cause in Internal Investigations

The Federal Labor Court (May 5, 2022; 2 AZR 482/21) recently considered the employment law requirement to issue a notice of termination for cause within two weeks after the employer becomes aware of a termination ground in the context of a complex internal investigation. Upon suspicion of a wrongful disclosure of classified documents, the management of a defense company formed a compliance team within the compliance department and tasked the team to investigate the alleged disclosure with the assistance of outside counsel. After eleven months of investigating the conduct of 89 individuals, outside counsel prepared a preliminary report of its findings for the management. Based on the findings, the company's management terminated an employee for cause within the statutory period of two weeks. The employee challenged the termination as belated, arguing that the head of the compliance department already knew about the cause for termination well before the termination notice was issued.

Continued on page 46

Germany

Continued from page 45

The highest court held that only the knowledge of a person with power to terminate and understanding of all factual and legal issues triggers the termination period; possible prior knowledge by the head of compliance, who had no termination power, cannot be attributed to the company. An exception would apply only if the information flow to the management was withheld in bad faith. Here, the court determined that the establishment of a compliance team to investigate the suspicions and the interruption of the investigation in order to prepare a report for the management demonstrates that the organization was acting in good faith.

C. Compliance Duties of Management

Court decisions detailing the compliance duties of management are rare. In 2013, the Munich Land Court rendered the landmark *Neubürger* decision that awarded Siemens AG damages against one of its former board members for not ensuring that the company had an efficient compliance system and not taking any measures to investigate and put an end to serious compliance breaches despite repeated indications brought to his attention.

In March 2022, the Higher Regional Court Nuremberg (March 30, 2022; 12 U 1520/19) reconfirmed those principles. According to the court, management violates its duties of care in a corporation if it fails to establish and maintain a Compliance Management System that prevents the violation of laws by the company or its employees. The ultimate responsibility for the system remains always with the management and cannot be delegated in full. The required compliance monitoring includes random and surprise checks, and enhanced monitoring is required if there have been prior incidents. Furthermore, if the company engages in risky activities, there may be a need for a second pair of eyes to exercise control. Finally, management has to investigate any indications of employee misconduct without undue delay.

Continued on page 47

Asia

As noted above, Asia has appeared less prominently in the “heat map” of U.S. FCPA enforcement actions in recent years. This relative absence contrasts with a steady pipeline of cases from other parts of the world (e.g., Brazil’s Operation Car Wash). It is also likely related to the fact that many Asian jurisdictions maintained strict Covid-19 controls until 2022, and in China’s case until the very end of 2022. That said, domestic anti-corruption initiatives continued in China and Vietnam, with former heads of government also being imprisoned, in Malaysia, and pardoned, in South Korea.

China (Mainland)

Xi Jinping, the general secretary of the Chinese Communist Party (CCP), secured a third term in power and the anti-corruption drive he launched a decade ago shows no signs of slowing. At a meeting of the new Politburo in December 2022, Xi Jinping said the country had achieved an “overwhelming victory” in its battle against corruption but emphasized that the work was “far from over.”¹ Evidence of the continuing campaign can be seen in the number of senior officials (“tigers”) subject to discipline: in 2022, 32 senior officials faced disciplinary actions,² compared to 18 in 2020 and 25 in 2021.

Legislative Update: Data Protection and Blocking Statutes

As noted in our January 2022 issue, in recent years China has included provisions in data security laws, including the Personal Information Protection Act, that prohibit the transfer of data from China to foreign judicial or law enforcement authorities except through government-to-government channels (e.g., MLATs). In 2022, various authorities in China issued regulations partially clarifying rules relating to non-judicial transfers of data outside of China, but the practical scope of the blocking statute was not clarified.

Enforcement Trends: Focus on the Semiconductor and Financial Sectors

The most notable investigations of 2022 involved the semiconductor sector, including the primary minister responsible for the sector. In July 2022, the CCP’s disciplinary body, the Central Commission for Discipline Inspection (“CCDI”), announced that the Minister of Industry and Information Technology had been

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1. See Yin Jian, “本网评论-以彻底自我革命精神打好反腐败斗争攻坚战持久战 (Commentary - Fight the Hard and Lasting Battle of Anti-Corruption with the Spirit of Complete Self-Revolution),” CCDI (Dec. 22, 2022), https://www.ccdi.gov.cn/toutiaon/202212/t20221222_237574.html.
 2. See “32 Senior Officials Under Investigation in 2022,” XinhuaNet (Jan. 5, 2023), <https://english.news.cn/20230105/9a47d72af6bb4ffa86e686de9e9aef5a/c.html>.

Asia

Continued from page 47

put under investigation, making him the most senior sitting cabinet official to be ensnared in a disciplinary probe in the past four years. In December 2022, CCDI announced the former Minister would be demoted and would retire, but also that he would avoid prosecution.³ According to CCDI, the former Minister's violations involved accepting banquet invitations that might have affected his official duties and accepting large amounts of money.

Executives in China's state-run chip investment funds were also targets of investigation, in particular entities and individuals connected with the National Integrated Circuit Industry Investment Fund (the "Fund"). The Fund is known in China's semiconductor industry as the "Big Fund," and has been a key part of China's drive to build a domestic integrated circuit industry. In July, the former head of investment firm Sino IC Capital, the sole management entity for the Fund, was placed under investigation. Shortly thereafter, CCDI announced the investigation of the current head of the Fund. In September, a senior vice president at the Fund, was placed under investigation for alleged "serious violations of discipline and law."⁴ In addition to the Fund, the former chairman of China's top semiconductor manufacturer, the Tsinghua Unigroup, was also placed under investigation.⁵

The anti-corruption campaign continued last year's focus on the financial sector.⁶ Since the beginning of 2022, nearly 30 senior officials in the financial system have been terminated,⁷ with CCDI accusing them of wielding regulatory power for personal gain as well as decrying the revolving door relationship between business and government.⁸ Officials placed under investigation included the vice governor of the People's Bank of China (PBOC, China's central bank),⁹ and the former president of China Development Bank Securities.¹⁰ In June 2022, a former securities regulator was sentenced to death with a two-year reprieve for bribery and insider trading. In the same month, the PBOC reported eight cases of disciplinary violations, including

Continued on page 49

3. See CCDI announcement as to Xiao Yaqing (in Chinese), https://www.ccdi.gov.cn/scdcn/202212/t20221222_237622.html.
4. See generally Che Pan, "China puts another semiconductor fund executive under probe, Caixin reports," South China Morning Post (Sept. 17, 2022); see also CCDI announcement as to Ren Kai (in Chinese), https://www.ccdi.gov.cn/scdcn/zyyj/zjsc/202209/t20220916_218514.html;
5. Zhang Erchi, Yu Ning, and Han Wei, "Former Unigroup Chief Falls Under Investigation," Caixin Global (July 26, 2022), <https://www.caixinglobal.com/2022-07-26/former-unigroup-chief-falls-under-investigation-101917711.html>.
6. See Debevoise & Plimpton LLP, "The Year 2021 in Review: Anti-Corruption Enforcement in a Time of Transition," FCPA Update, Vol. 13, No. 6 at 46 (Jan. 2022), <https://www.debevoise.com/insights/publications/2022/02/fcpa-update-january-2022>.
7. See "China Beefs Up Anti-Corruption Work in Financial Units," Global Times (June 18, 2022), <https://www.globaltimes.cn/page/202206/1268400.shtml>.
8. See Guan Xiaopu and Han Yadong, "深度关注-深挖政商旋转门背后腐败 (Focus: Digging Deeper into the Corruption behind the 'Revolving Door' of Politics and Business)," CCDI (May 30, 2022), https://www.qjsjw.gov.cn/html/main/2022/szt_0530/28143.html.
9. See CCDI announcement as to Fan Yifei (in Chinese), https://www.ccdi.gov.cn/toutiao/202211/t20221105_228925.html.
10. See CCDI announcement as to Hou Shaoze (in Chinese), https://www.ccdi.gov.cn/scdcn/zyyj/zjsc/202209/t20220916_218447.html.

Asia

Continued from page 48

one involving the former director of China Banknote Printing and Minting Corporation.¹¹ In April 2022, nearly 17 officials, including the president of China Merchants Bank were investigated or punished for violations of political discipline.¹²

Corporate Anti-Corruption Enforcement: Policing Vendors and Employees

During the past decade, China's anti-corruption campaign was primarily a top-down undertaking, with direction coming from the highest levels of the state and CCP. In 2022, companies – both private and SOEs – became more involved in policing themselves. With the encouragement of CCDI, Chinese e-commerce and internet giants have actively investigated wrongdoing in their own ranks. For example, Tencent Holdings announced that it had sacked more than 100 workers for bribery and embezzlement last year, while also announcing that it had conducted over 70 investigations and reported more than 10 suspects to the police. The company also blacklisted 23 companies found to have bribed its employees.¹³ Similarly, food delivery app Meituan reported 47 employees and 60 external partners to the police over suspected bribes and embezzlement.¹⁴

“[D]omestic anti-corruption initiatives continued in China and Vietnam, with former heads of government also being imprisoned, in Malaysia, and pardoned, in South Korea.”

Chinese SOEs have also been implementing blacklists for vendors involved in bribing their employees. In April 2022, China's State-owned Assets Supervision and Administration Commission (“SASAC”), the majority shareholder of most of China's largest SOEs, encouraged its companies to develop blacklist systems for suppliers that engage in corruption-related conduct.¹⁵ For example, in March 2022,

Continued on page 50

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11. See “人民银行、外汇局系统查处8起违反中央八项规定精神典型问题 (The People's Bank of China and the Foreign Exchange Bureau Investigated and Dealt with 8 Typical Cases of Violating the Eight Provisions),” ChinaNet (June 1, 2022), <http://finance.china.com.cn/news/20220601/5818375.shtml>.
 12. See An Zhuo, “一日3位银行高管落马、年内14位被查，金融反腐持续推进 (3 Bank Executives Fell in a Day, 14 Investigated in a Year: Financial Anti-Corruption Continues),” Yicai (Apr. 23, 2022), <https://m.yicai.com/news/101390475.html>.
 13. See Anti-Corruption Annual Announcement published by Tencent (in Chinese), <https://mp.weixin.qq.com/s/Mn7PrMn02mPyGdy1oiRPKA>.
 14. See Anti-Corruption Annual Announcement published by Meituan (in Chinese), <https://mp.weixin.qq.com/s/NphetnOXkKkObumHhSCEYQ>.
 15. See Zhou Lei, “央企探索共享供应商黑名单 (Central Enterprises Explore Sharing Supplier Blacklist),” ChinaEconomicNet (Apr. 27, 2022), http://www.ce.cn/cysc/yq/dt/202204/27/t20220427_37534633.shtml.

Asia

Continued from page 49

China Southern Airlines Group announced that it had blacklisted 26 suppliers for bribing its employees.¹⁶ Dongfeng Motor Corporation, a state-owned automobile manufacturer, was also reported to have introduced a blacklist for suppliers engaged in corrupt conduct.¹⁷

Internal Controls: SOEs Instructed to Adopt Compliance Programs

In 2022, SASAC also released guidance requiring its companies to appoint chief compliance officers and develop internal controls covering key areas such as anti-monopoly, anti-bribery, ecological protection, production safety, labor and employment, tax management, and data protection.¹⁸ These guidelines likely will be replicated by local and provincial governments, which own the vast majority of China's SOEs.

China (Hong Kong SAR)

Unlike the Mainland, Hong Kong consistently ranks as a low-risk jurisdiction with respect to corruption. The region's Independent Commission Against Corruption polices both public and commercial bribery. In the first half of 2022, it received a total of 897 corruption complaints (excluding election complaints), representing a decrease of 18% when compared with 1,093 complaints received in the same period in the prior year. Approximately 62% of the 897 complaints related to the private sector, and 30% concerned the government sector. During the same period, it referred 101 individuals to prosecution, and recommended that 70 be disciplined. The most notable case in 2022 involved two individuals charged with accepting and offering bribes totaling HK\$3.8 million in relation to the construction of a third runway at Hong Kong International Airport. An additional 28 individuals were arrested in connection with the case. Suspected bribes included cash and luxury watches, which were seized at the homes and offices of the persons arrested. At the beginning of the year, the ICAC also launched an investigation targeting property management and building maintenance companies, arresting 49 persons for corruptly securing building maintenance contracts. The contracts at issue were worth over HK\$500 million and in some cases, the bribes exceeded HK\$1 million.

Continued on page 51

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16. See “南航集团:深化以案促治 将行贿供应商纳入黑名单(China Southern Airline: Deepen to Promote the Blacklist of Bribery-related Suppliers),” CCDI (Mar. 14, 2022), https://www.ccdi.gov.cn/yaowenn/202203/t20220309_176722.html.
 17. See Sun Can, “黑名单让行贿人得不偿失(Blacklisting Makes Bribe-givers Lose More Than What They Gain),” CCDI (Mar. 14, 2022), https://www.ccdi.gov.cn/pln/202207/t20220707_203519.html.
 18. See “国务院国资委政策法规局负责人就《中央企业合规管理办法》答记者问(transcript of press conference regarding the guidance),” CCDI (Sept. 19, 2022), <http://www.sasac.gov.cn/n2588030/c26039888/content.html>.

Asia

Continued from page 50

Vietnam

Like his counterpart to the north, Vietnam's General Secretary of the Communist Party, Nguyen Phu Trong, is currently serving a rare third term and has overseen an aggressive anti-corruption campaign known as the "blazing furnace." During the spring and summer of 2022, dozens of high-ranking officials (including the Minister of Health) were placed under investigation for alleged price gouging in connection with Covid tests, and a second group of officials are under investigation for taking kickbacks in connection with repatriation flights during the epidemic.¹⁹ The investigation reached the highest levels of the government at the beginning of 2023, with the removal of two deputy prime ministers, including Vu Duc Dam, who had led the country's fight against Covid-19.²⁰ The former prime minister, and Vietnam's president, Nguyen Xuan Phuc, then resigned, taking political responsibility for the actions of his former subordinates.²¹

Like China's anti-corruption campaign, Vietnam's "blazing furnace" against corruption shows little sign of easing, with local tycoons also being arrested on corruption charges in 2023.²² Vietnam's economy grew at 8.2% in 2022,²³ and its improving (if still poor) reputation with regard to corruption has undoubtedly helped Vietnam in attracting investment as part of the supply chain diversification from China resulting from U.S.-China tensions and China's zero-Covid policy. That said, like in China, a negative consequence of the anti-corruption campaign is bureaucratic paralysis arising from fear of investigation, a paralysis that could delay infrastructure and other projects needed for Vietnam's continued growth.²⁴

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19. Richard S. Erlich, "Covid corruption rears its ugliest head in Vietnam," Asia Times (July 26, 2022), <https://asiatimes.com/2022/07/covid-corruption-rears-its-ugliest-head-in-vietnam/>.
 20. Khanh Vu, "Vietnam removes two deputy PMs amid anti-corruption drive," Reuters (Jan. 5, 2023), <https://www.reuters.com/world/asia-pacific/vietnam-removes-two-deputy-pms-amid-anti-corruption-drive-2023-01-05/>.
 21. Luke Hunt, "Vietnam's Anti-Corruption Drive Claims President," Voice of America (Jan. 18, 2023), <https://www.voanews.com/a/vietnam-s-anti-corruption-drive-claims-president/6923255.html>.
 22. "Vietnam arrests real estate tycoon over suspected financial fraud," Reuters (Oct. 8, 2022), <https://www.reuters.com/world/asia-pacific/vietnam-arrests-real-estate-tycoon-over-financial-frauds-2022-10-08/>.
 23. Khanh Vu, "Vietnam 2022 GDP growth quickens to 8.02%, fastest since 1997," Reuters (Dec. 29, 2022), [https://www.reuters.com/markets/asia/vietnam-2022-gdp-growth-quickens-802-vs-258-expansion-2021-2022-12-29/#:~:text=Vietnam%202022%20GDP%20growth%20quickens%20to%208.02%25%2C%20fastest%20since%201997,-By%20Khanh%20Vu&text=HANOI%2C%20Dec%2029%20\(Reuters\),headwinds%20from%20a%20global%20slowdown](https://www.reuters.com/markets/asia/vietnam-2022-gdp-growth-quickens-802-vs-258-expansion-2021-2022-12-29/#:~:text=Vietnam%202022%20GDP%20growth%20quickens%20to%208.02%25%2C%20fastest%20since%201997,-By%20Khanh%20Vu&text=HANOI%2C%20Dec%2029%20(Reuters),headwinds%20from%20a%20global%20slowdown).
 24. See Michael Tatarski, "The Unintended Consequence of Vietnam's Anti-Corruption Drive," Asia Society Magazine (Nov. 2022), <https://asiasociety.org/magazine/article/unintended-consequence-vietnams-anti-corruption-drive>.

Asia

Continued from page 51

Malaysia and South Korea

With the resignation of President Nguyen Xuan Phuc, Vietnam joined a growing club of Asian countries taking action against former heads of state or heads of government. In August 2022, former Malaysian Prime Minister Najib Razak began serving a twelve-year prison sentence after exhausting his appeals from his July 2020 conviction related to the 1MDB scandal.²⁵

In South Korea, on the other hand, in December 2022, President Yoon Suk-yeol pardoned former president Lee Myung-bak, who had served almost four years of a seventeen-year sentence for corruption.²⁶ This followed the August pardon given to Lee Jae-yong, the heir to the Samsung conglomerate, who was convicted of bribing former president Park Geun-hye.²⁷ Notably, the president who issued both pardons had been South Korea's leading anti-corruption prosecutor prior to his election.

Continued on page 53

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- 25. Richard C. Paddock, "Najib Razak, Malaysia's Former Prime Minister, Is Headed to Prison," New York Times (Aug. 23, 2022), <https://www.nytimes.com/2022/08/23/world/asia/najib-razak-malaysia-1mdb-prison.html>.
 - 26. Song Jung-a, "South Korea's former president Lee Myung-bak to be pardoned," Financial Times (Dec. 27, 2022), <https://www.ft.com/content/2c25012b-0188-4aae-bff0-8529fed9926d>.
 - 27. Kim Tong-Hyung, "South Korea to pardon Samsung heir, other convicted tycoons to boost 'business activity,'" Los Angeles Times (Aug. 12, 2022), <https://www.latimes.com/world-nation/story/2022-08-12/south-korea-pardon-samsung-heir-corruption-scandal>.

Latin America

In 2022, countries in Latin America grappled with significant political upheaval and skyrocketing inflation, among other challenges. Nevertheless, at least in certain respects, the region's anti-corruption efforts picked up some momentum. Indeed, nine of the fifteen Latin American countries surveyed in the latest Capacity to Combat Corruption Index (the "CCC Index") earned increased scores.¹

Notwithstanding relevant legislative and policy developments, anti-corruption enforcement in Argentina and Mexico have remained more limited, in part due to political realities, economic difficulties, and the pandemic's lingering impact. Brazil continues leading the region in anti-corruption enforcement, though only time will tell how the recent reelection of President Luis Inácio Lula da Silva ("Lula") impacts Brazil's anti-corruption journey.

More broadly, the fight against corruption has persisted elsewhere in the region, with notable initiatives in Colombia, the Dominican Republic, Honduras, and Peru. Even so, countries across Latin America struggle with corruption and graft at the highest levels, prompting concerns about the durability of certain democratic institutions.

I. Argentina

Argentina experienced setbacks in legislation designed to reform the judiciary, but continues advancing several programs intended to increase transparency in the government and business sectors. Although investigations into alleged corruption by high-ranking government officials continue, Argentina's score in the 2022 CCC Index again decreased, as it has every year since the initial release.²

A. Legal and Policy Developments

In the last year of his term, President Alberto Fernandez has continued attempting to reform the judiciary, a stated objective that has proven politically divisive. The administration presents this initiative as seeking to limit political influence on judges, while the political opposition claims that the proposed reforms would have the opposite effect. An example is the administration's bill that would expand the number of Supreme Court justices from five to fifteen, which the opposition characterizes as attacking the judiciary's independence. Although approved by the

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1. "The 2022 Capacity to Combat Corruption Index," Control Risks (June 2021), <https://www.controlrisks.com/campaigns/the-capacity-to-combat-corruption-index>.
 2. *Id.*

Latin America

Continued from page 53

Senate (where the administration has a majority), the bill still needs approval from the House of Representatives.³

The government also is considering amendments to Argentina's Public Ethics Law that would create a National System of Integrity and Public Ethics. On October 31, 2022, Argentina's Anti-Corruption Office ("OA") held a conference on such amendments, focusing on the OA's prevention of corruption, regulation of the judiciary, and inclusion of human rights and environmentalism in the legal concept of "integrity."⁴

At the end of January 2022, the OECD Council opened accession discussions with Argentina. Argentina ratified its interest and agreed to adopt minor reforms improving governance, transparency, and regulatory practices, but explained it could not materially liberalize its political economy given the current financial predicament.⁵

Additionally, Argentina recently implemented various programs related to anti-corruption and transparency:

- **MAPPAP:** In April 2022, the OA approved the System for Monitoring Government Officials' Private and Public 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"). MAPPAP collects information from recent and current high-ranking government officials and monitors compliance with relevant ethics laws. This system took effect on September 20, 2022, and the OA published the first data on its website on October 26, 2022.⁶

Continued on page 55

3. "IDEA rechazo la ampliación de la Corte Suprema que impulsa el Gobierno" ["IDEA rejected the expansion of the Supreme Court promoted by the Government"], Perfil (June 5, 2022), <https://www.perfil.com/noticias/actualidad/idea-rechazo-la-ampliacion-del-corte-suprema-que-impulsa-el-gobierno.shtml>; Martin Angulo, "A tres años del gobierno de Alberto Fernandez: las reformas judiciales que no logro aprobar" ["The last three years of Alberto Fernandez's government: the judicial reforms that failed to be approved"], infobae (Dec. 18, 2022), <https://www.infobae.com/politica/2022/12/18/a-tres-anos-del-gobierno-de-alberto-fernandez-las-reformas-judiciales-que-no-logro-aprobar>.
4. "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>; "Jornada de análisis del proyecto de ley de Integridad y Ética Pública elaborado por la OA" ["Day of Analysis of the Project of the Law of Integrity and Public Ethics Elaborated by the OA"], Office of Anticorruption (Nov. 1, 2022), <https://www.argentina.gob.ar/noticias/jornada-de-analisis-del-proyecto-de-ley-de-integridad-y-etica-publica-elaborado-por-la-oa>.
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6. "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-demonitoreo-de-actividades-privadas-y-publicas-anteriores-y>; "La Oficina Anticorrupción publicó el primer dataset con la información de las Declaraciones Juradas de actividades anteriores y posteriores a la función pública del MAPPAP" Oficina Anticorrupción (Oct. 26, 2022), <https://www.argentina.gob.ar/noticias/la-oficina-anticorrupcion-publico-el-primer-dataset-con-la-informacion-de-las-declaraciones>.

Latin America

Continued from page 54

- **RITE:** In May 2022, the OA approved the Integrity and Transparency Registry for Businesses (*Registro de Integridad y Transparencia para Empresas y Entidades* or “RITE”), which launched on December 28, 2022. RITE seeks to promote transparency and integrity by enabling companies voluntarily to share information regarding their compliance programs. The OA recently announced a second phase of this registry that extends voluntary disclosures to ESG and other areas.⁷

“Argentina experienced setbacks in legislation designed to reform the judiciary, but continues advancing several programs intended to increase transparency in the government and business sectors.”

B. Enforcement Efforts

Last year saw the signing of the first collaboration agreement under Argentina’s 2018 Corporate Criminal Law (“Law 27.401”) and the resolution of trials involving Vice President Cristina Fernández de Kirchner (“Fernández de Kirchner”) and other public officials. In particular:

- **Law 27.401:** Perhaps most significantly, in September 2022, a yet unnamed company signed the first known collaboration agreement under Law 27.401. The company’s identity remains confidential while the court evaluates the company’s disclosures. Prosecutors noted that the company self-reported after an internal investigation revealed corrupt acts linked to Argentina’s public sector.⁸
- **Cuadernos:** In April, Fernández de Kirchner was acquitted in a case alleging “cartelization of public works.” However, she still faces trial in the main case alleging illicit association in a separate bribery scheme.⁹

Continued on page 56

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7. “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-presentacion-del-rite-en-evento-para-audidores> [“Presentación del RITE en evento para auditores”], Oficina Anticorrupcion (Dec. 2, 2022), <https://www.argentina.gob.ar/noticias/presentacion-del-rite-en-evento-para-audidores>; Comenzó a funcionar el RITE, el registro de integridad impulsado por la OA [“RITE, the Registry of Integrity drive by the OA, is launched”], RITE (Dec. 28, 2022), <https://www.rite.gob.ar/novedades/comenzo-a-funcionar-el-rite-el-registro-de-integridad-impulsado-por-la-oa-TPD0S>.
 8. Ana de Liz, “Lawyers wary as Argentina closes in on first corporate criminal resolution” *Global Investigations Rev.* (Nov. 7, 2022), <https://globalinvestigationsreview.com/article/lawyers-wary-argentina-closes-in-first-corporate-criminal-resolution>.
 9. “Cristina Fernández de Kircher, 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-cuadernoscase.phtml>.

Latin America

Continued from page 55

- **Vialidad:** On December 6, as a result of this investigation, Fernández de Kirchner was sentenced to six years' imprisonment and permanently barred from serving in public office. The case alleged misconduct by Fernández de Kirchner and others in connection with public roads constructed in Santa Cruz between 2003 and 2015. The trial was denounced jointly by the Presidents of Mexico, Colombia, and Bolivia as "unjustifiable judicial persecution."¹⁰ Before the verdict, Fernandez de Kirchner issued a document outlining twenty lies underlying the case, comparing it to a "firing squad, judicial mafia." She has appealed, staying enforcement of the verdict. Also, Fernández de Kirchner announced she would not run for office in 2023, which very well may impact the upcoming elections.¹¹
- **Milani and Macri Trials:** César Milani, a former military commander, was accused of illicitly receiving funds to finance his purchase of a house in Buenos Aires in 2010, which he denies. Prosecutors are seeking three years' imprisonment, a \$200-million fine, and forfeiture of the house. Additionally, in July, the OA denounced former President Mauricio Macri, alleging that, in July 2013, he hid millions of pesos in a trust account and granted tax exemptions to a real estate development in which he purchased property at a below-market rate.¹²

C. Looking Ahead

Argentina has taken some steps to bolster its anti-corruption efforts, including deploying programs designed to reduce corruption and increase transparency. The judiciary has also increased somewhat its enforcement of corruption-related crimes, including Fernandez de Kirchner's conviction. However, other legislative and enforcement initiatives have failed to materialize or have been criticized heavily amidst high political polarization. We will continue to monitor Argentina's OECD accession process, the potential impact of the first collaboration agreement under Law 27.401, and the upcoming election.

Continued on page 57

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10. "Left-wing leaders in Latin America show support for CFK," Buenos Aires Times (Aug. 25, 2022), <https://batimes.com.ar/news/latin-america/alberto-gets-left-wing-leaders-in-latin-america-to-show-support-for-cfk.phtml>.
 11. "'Las 20 mentiras de la Causa Vialidad,' el documento que difundió Cristina Kirchner tras sus últimas palabras en el caso" ["The 20 Lies of the Vialidad Case: the Document that Christin Kircher Released during her Last Words in the Case"], Infobae (Nov. 29, 2022), <https://www.infobae.com/politica/2022/11/29/las-20-mentiras-de-la-causa-vialidad-el-documento-que-difundio-cristina-kirchner-tras-sus-ultimas-palabras-en-el-caso>; "Condenaron a Cristina Kirchner a 6 años de prisión por corrupción: los detalles y las repercusiones" ["They Condemned Christina Kirchner to Six Years in Prison for Corruption: The Details and the Repercussions"], Cronista, <https://www.cronista.com/economia-politica/juicio-a-cristina-kirchner-en-vivo-el-minuto-a-minuto-de-la-sentencia-por-la-causa-vialidad> [last accessed Jan. 17, 2023]; Korina Portizker, "Causa Vialidad: una condena de relevancia institucional que marcó el año judicial" ["Vialidad Case: a Condemnation of the Institutional Relevancy that Marks the Judicial Year"], Telam (Dec. 27, 2022), <https://www.telam.com.ar/notas/202212/615110-politica-juicio-obra-publica-2022-anuario.html>.
 12. "Juicio contra Milani: la fiscal pidió tres años de cárcel, 200 mil dólares y una casa" ["Judgment against Milani: the Federal Government Sought Three Years in Prison, 200 Million Dollars, and a House"], Perfil (Aug. 29, 2022), <https://www.perfil.com/noticias/politica/juicio-contra-milani-el-curioso-pedido-de-condena-de-la-fiscal.phtml>; 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>.

Latin America

Continued from page 56

II. Brazil

Brazil's anti-corruption initiatives have continued to progress through the refinement and expansion of tools and mechanisms to investigate and fight corruption. Additionally, the OECD Council and Brazil began discussing the country's accession, though the parties reportedly are not aligned on the OECD's core priority of governance. Areas of concern include the fight against transnational corruption and government interference in related enforcement.¹³ Additionally, Lula's return to power raises questions about the future of Brazil's fight against corruption.

A. Legal and Policy Developments

In July, the Brazilian executive branch promulgated Anti-Corruption Decree No. 11,129 (the "Decree"), which modified the regulation of Brazil's 2013 Anti-Corruption Law and revoked Anti-Corruption Decree No. 8,420/2015. While similar in structure to its predecessor, the Decree implemented important changes, including: (1) systematizing the processes for preliminary investigations and administrative liability proceedings ("*processo administrativo de responsabilização*" or "PARs"); (2) detailing the steps necessary for leniency agreements ("*acordos de leniência*"); and (3) outlining the guidelines for calculating sanctions and fines.¹⁴

In August, CGU issued Normative Ordinance 19/2022, which allows companies under investigation to request early judgment on the merits of a PAR rather than resolve via leniency agreements in exchange for admitting strict liability for investigated misconduct. Unlike leniency agreements, this process does not require the investigated party to initiate cooperation. However, companies that choose early judgment proceedings will not receive the same benefits as from leniency agreements, which may reduce the fine by up to two-thirds and eliminate the prohibition against entering into public contracts. Still, under this process, CGU may reduce the fine imposed by up to 4.5% depending on when the company requests early judgment and may mitigate sanctions precluding entry into public contracts.¹⁵

Also, in August, Brazil's Federal Supreme Court (*Supremo Tribunal Federal*, or "STF") ruled that the Improbability Law, Law No. 8,429/1992 as amended by Law No. 14,230/2021 – which established sanctions on government officials who commit acts

Continued on page 58

13. "The OECD and Brazil: A mutually beneficial relationship" (2022), Organization for Economic Co-operation and Development, <https://www.oecd.org/latin-america/countries/brazil/>; "Roadmap for the OECD Accession Process of Brazil," Organization for Economic Co-operation and Development 4. 12 (June 10, 2022), Roadmap-OECD-Accession-Process-brazil-EN.

14. Decree No. 11,129/2022, Official Gazette (July 12, 2022), <https://www.in.gov.br/en/web/dou/-/decreto-n-11.129-de-11-de-julho-de-2022-414406006>; see Andrew M. Levine, Matthew S. French & Nestor D. Almeida, "Latin America in Flux: Recent Anti-Corruption Developments," FCPA Update, Vol. 13, No. 12 (Jul. 2022), <https://www.debevoise.com/insights/publications/2021/07/fcpa-update-july-2021>.

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

Latin America

Continued from page 57

against public administration – will not apply retroactively to misconduct suits with final convictions.¹⁶ STF ruled that the changes provided for in Law No. 14,230/2021, which increased the Improbability Law's statute of limitations for misconduct suits from five to eight years, will apply only to administrative misconduct suits filed on or after the amendments took effect on October 26, 2021.¹⁷

In December, CGU and AGU published two Normative Ordinances. One provides guidelines for reducing fines under leniency agreements (No. 36/2022), and the other establishes the process for preliminary investigations by state officials, known as Special Investigative Actions (No. 18/2022).¹⁸

Brazil also continues to pursue its five-year anti-corruption plan, which has been led by the Inter-ministerial Committee to Combat Corruption (*Comitê Interministerial de Combate à Corrupção*, or the "CICC") since December 2020. The plan outlines actions aimed at improving the internal mechanisms of Brazilian agencies and law enforcement to detect, prevent, and punish corruption. In May, the CICC reported progress on 67 of the 153 actions already contemplated in the plan and approved two additional initiatives: (1) to improve the National Financial System's information systems and customer databases; and (2) to study the transparency of the appointment process for certain commission positions.¹⁹

As a supplement to its anti-corruption arsenal, Brazil also has continued enhancing relevant anti-money-laundering tools. For example, in May, Brazil's National Agency of Supplementary Health (*Agência Nacional de Saúde Suplementar*) published Normative Resolution No. 429/2022, which requires healthcare operators to report suspicious transactions directly to Brazil's financial intelligence unit (*Conselho de Controle de Atividades Financeiras*) and to retain copies of payments of claims or other transactions exceeding R\$ 10,000.²⁰

Continued on page 59

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16. STF Press Release, "STF decide que mudanças na lei de improbidade não retroagem para condenações definitivas," ["STF decides that changes to the improbity law do not retroactively apply to final convictions"] (Aug. 18, 2022), <https://portal.stf.jus.br/noticias/verNoticiaDetalhe.asp?idConteudo=492606&ori=1>.
 17. "STF Decide que Alterações da Lei de Improbidade Administrativa não são Retroativas," ["STF Decides that Changes to the Administrative Misconduct Law are not Retroactive"], Ministério Público do Rio Grande do Sul (Aug. 19, 2022), <https://www.mprs.mp.br/noticias/55072>.
 18. Normative Ordinance No. 36, Official Gazette (Dec. 7, 2022), <https://www.in.gov.br/web/dou/-/portaria-normativa-interministerial-n-36-de-7-de-dezembro-de-2022-449321104>; Normative Ordinance No. 18, Official Gazette (Dec. 8, 2022), <https://www.lex.com.br/instrucao-normativa-cgu-scc-no-18-de-8-de-dezembro-de-2022>.
 19. CGU, Plano AntiCorrupcao, Diagnosticos e Acoes do Governo Federal (Brasilia, Dec. 2020), at <https://www.gov.br/cgu/pt-br/anticorruptcao/plano-anticorruptcao.pdf>; "CICC Discute Andamento do Plano Anticorruptcao do Governo Federal," ["CICC Discusses the Progress of the Federal Government's Anti-Corruption Plan"], Gov.br (June 6, 2022), <https://www.gov.br/cgu/pt-br/assuntos/noticias/2022/06/cicc-discute-andamento-do-plano-anticorruptcao-do-governo-federal>.
 20. Normative Resolution No. 429/2022, Official Gazette (May 2, 2022), <https://www.in.gov.br/en/web/dou/-/resolucao-normativa-rn-n-529-de-2-de-maio-de-2022-397547537>.

Latin America

Continued from page 58

And, in December, the Brazilian government published Law No. 14,478, (the “Cryptoassets Act”), which legalizes payment in crypto currencies and establishes regulation of virtual service providers. This Act creates a new category of crime, “fraud involving virtual assets,” and requires virtual service providers to obtain authorization to operate from federal agencies.²¹

B. Enforcement Efforts

In 2022, CGU and AGU both reached significant leniency agreements – five of which involved resolutions coordinated with U.S. and other authorities – with:

- **Stericycle Group**, in April, imposing sanctions of R\$ 109.7 million (USD \$21 million) for breaches of Brazil’s Anti-Corruption Law and Improbability Law, in a resolution coordinated with U.S. authorities;²²
- **Hypera S.A.**, in May, resolving investigations related to illegal contributions to politicians and agreeing to an 18-month compliance program mandate and the payment of an R\$ 110.9 million fine (USD \$21.6 million);²³

“[T]he OECD Council and Brazil began discussing the country’s accession, though the parties reportedly are not aligned on the OECD’s core priority of governance. Areas of concern include the fight against transnational corruption and government interference in related enforcement.”

- **Gol Linhas Aéreas Inteligentes S.A.**, in September, imposing sanctions of R\$ 14.3 million (USD \$2.8 million) in coordination with U.S. authorities to settle bribery investigations and requiring improvements to Gol’s governance and integrity programs;²⁴

Continued on page 60

21. Law No. 14,478, Official Gazette (Dec. 21, 2022), http://www.planalto.gov.br/ccivil_03/_ato2019-2022/2022/lei/L14478.htm.

22. Press Release, “CGU e AGU celebram acordo de leniência de R\$ 109 milhões com empresas por ilícitos na coleta de lixo hospitalar em unidades de saúde,” [“CGU and AGU celebrate a leniency agreement of R\$ 109 million with companies for illicit collection of hospital waste in health units”], (April 20, 2022), <https://www.gov.br/agu/pt-br/comunicacao/noticias/cgu-e-agu-celebram-acordo-de-leniencia-de-r-109-milhoes-com-empresas-por-ilicitos-na-coleta-de-lixo-hospitalar-em-unidades-de-saude>.

23. Press Release, CGU e AGU celebram acordo de leniência de R\$ 110 milhões com empresas relacionadas ao grupo Hypera S.A., [“CGU and AGU sign a BRL 110 million leniency agreement with companies related to the Hypera AS group”], (May 31, 2022), <https://www.gov.br/agu/pt-br/comunicacao/noticias/cgu-e-agu-celebram-acordo-de-leniencia-de-r-110-milhoes-com-empresas-relacionadas-ao-grupo-hypera-s-a>.

24. Press Release, “CGU e AGU celebram acordo de leniência de R\$ 14 milhões com a empresa Gol Linhas Aéreas Inteligentes S.A.,” [“CGU and AGU celebrate a leniency agreement of R\$ million with compan Gol Gol Linhas Aéreas Inteligentes S.A.”], (Sept. 15, 2022), <https://www.gov.br/cgu/pt-br/assuntos/noticias/2022-periodo-eleitoral/cgu-e-agu-celebram-acordo-de-leniencia-de-r-14-milhoes-com-a-empresa-gol-linhas-aereas-inteligentes-s-a>.

Latin America

Continued from page 59

- **BRF S.A.**, in December, concluding the Federal Police's investigations of a corruption scheme involving the country's largest slaughterhouses and the Ministry of Agriculture (Operations *Carne Fraca* and *Trapaça*) and requiring payment of R\$ 584 million (USD \$112.1 million);²⁵
- **Resource Tecnologia e Informática Ltda.**, in December, imposing a fine of R\$ 14.6 million (USD \$2.8 million) for breaches of Brazil's Anti-Corruption Law and allowing the company to credit an R\$ 11.7 million penalty paid to the National Treasury for the same conduct;²⁶
- **Mar Holding Participações S.A. and Operadora e Agencia de Viagens TUR Ltda.**, in December, to resolve bribery investigations by imposing R\$ 74.4 million (USD \$14.3 million) in sanctions and requiring both companies to improve their compliance programs;²⁷
- **Honeywell UOP**, in December, as part of a coordinated resolution involving Brazilian and U.S. authorities to conclude bribery investigations, requiring the company to pay R\$ 638 million (USD \$120.9 million), R\$ 456.3 million of which will be allocated to Petrobras, and commit to enhancing its compliance program;²⁸ and
- **Keppel Offshore & Marine**, in December, to resolve matters with AGU and CGU following earlier resolutions with Brazil's Federal Public Ministry (*Ministerio Público Federal* or "MPF") and with U.S. and Singaporean authorities, including payment of additional fines and damages of R\$343.6 million (USD \$65 million), after credits from earlier payments against a total fine and damages of R\$ 1.2 billion (USD \$236 million).²⁹

Continued on page 61

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25. Press Release, "CGU e AGU celebram acordo de leniência no valor de R\$ 583 milhões com empresa de processamento de alimentos," ["CGU and AGU celebrate leniency agreement in the amount of R\$ 583 million with food processing company"] (Dec. 28, 2022), <https://www.gov.br/cgu/pt-br/assuntos/noticias/2022/12/cgu-e-agu-celebram-acordo-de-leniencia-no-valor-de-r-583-milhoes-com-empresa-de-processamento-de-alimentos>.
26. Press Release, "AGU e CGU celebram acordo de leniência de R\$ 14,5 milhões com empresa de tecnologia," ["AGU and CGU celebrates leniency agreement of R\$ million with technology company,"] (Dec. 28, 2022), <https://www.gov.br/agu/pt-br/comunicacao/noticias/agu-e-cgu-celebram-acordo-de-leniencia-de-r-14-5-milhoes-com-empresa-de-tecnologia>.
27. Press Release, "AGU e CGU celebram acordo de leniência de R\$ 74,3 milhoes com empresas de setor de turismo," ["AGU and CGU celebrate leniency agreement of R\$ 74.3 million with companies in the tourism sector"] (Dec. 28, 2022), <https://www.gov.br/agu/pt-br/comunicacao/noticias/agu-e-cgu-celebram-acordo-de-leniencia-de-r-74-3-milhoes-com-empresas-do-setor-de-turismo>.
28. Press Release, "CGU e AGU assinam acordo de leniência com o UOP LLC," ["CGU and AGU sign a leniency agreement with UOP LLC,"] (Dec. 19, 2022), <https://www.gov.br/cgu/pt-br/assuntos/noticias/2022/12/cgu-e-agu-assinam-acordo-de-leniencia-com-a-uop-llc>.
29. Press Release, "CGU e AGU assinam acordo de leniência com a Keppel Offshore & Marine," ["CGU and AGU sign leniency agreement with Keppel Offshore & Marine,"] (Dec. 19, 2022), <https://www.gov.br/cgu/pt-br/assuntos/noticias/2022/12/cgu-e-agu-assinam-acordo-de-leniencia-com-a-keppel-offshore-marine>.

Latin America

Continued from page 60

Additionally, in September, CGU imposed a R\$ 60 million fine (USD \$11.4 million) on Medprin following a PAR relating to attempted bribes in 2018 of Brazilian officials visiting the company's offices in China and also required the company to publish its wrongdoings.³⁰

In November, for the first time ever, CGU and AGU rescinded a 2017 leniency agreement with UTC Participações, because the company missed scheduled payments. In December, UTC petitioned for reconsideration, and the agencies agreed to pause further action while deliberating.³¹

Also in November, the Minas Gerais's government signed a leniency agreement with OEC S.A and Novonor (previously Odebrecht S.A.), valued at R\$ 202.4 million. This is the third and largest leniency agreement reached between a construction company and the government of Minas Gerais relating to fraudulent bids in *Lava Jato*.³²

In May, MPF signed two significant leniency agreements: one with Allied Technology, in connection with a bribery investigation³³ and one with Glencore, as part of a resolution coordinated with U.S. authorities in connection with *Lava Jato*.³⁴ Glencore's agreement requires the company to pay directly to Petrobras USD \$39.6 million in damages and fines. More broadly, Petrobras announced in November that, to date, it and its subsidiaries have recovered over R\$ 6.7 billion from leniency agreements resulting from years of enforcement relating to *Lava Jato*.³⁵

Continued on page 62

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30. Opinion No. 00274/2022/CONJUR-CGU/CGU/AGU, CGU & AGU (Sept. 15, 2022), https://repositorio.cgu.gov.br/bitstream/1/68865/6/Parecer_CONJUR_00274_2022_Medprin%20Regenerative%20Medical%20Technologies.pdf.
 31. Decision No. 323, Official Gazette (Nov. 21, 2022), <https://www.in.gov.br/en/web/dou/-/decisao-n-323-de-21-de-novembro-de-2022-449722593>; Decision No. 340, Official Gazette (Dec. 7, 2022), <https://www.in.gov.br/en/web/dou/-/decisao-n-340-de-7-de-dezembro-de-2022-449722687>.
 32. "Governo de Minas Assina Acordo de Leniência com Antiga Odebrecht para Devolução de R\$ 202,4 Milhões aos Cofres Públicos," ["Government of Minas Signs Leniency Agreement with Old Odebrecht for the Return of \$R 202.4 Million to the Public Coiffers"], Agencias Minas (Nov. 23, 2022), <https://www.agenciasminas.mg.gov.br/noticia/governo-de-minas-assina-acordo-de-leniencia-com-antiga-odebrecht-para-devolucao-de-r-202-4-milhoes-aos-cofres-publicos>.
 33. Press Release, "Ministérios Públicos Firmam Acordos com Empresa que Ofereceu Vantagem Indevida a Servidores Públicos," ["Authorities Finalize Agreements with Company that Offered Bribes to Public Employees"] (May 4, 2022), www.mpf.mp.br/sp/sala-deimprensa/noticias-sp/ministerios-publicos-firmam-acordos-com-empresa-que-ofereceu-vantagem-indevida-a-servidores-publicos.
 34. Press Release, "Ministério Público Federal assina acordo de leniência com trading company no âmbito da Operação Lava Jato," ["The Federal Public Ministry signs leniency agreement with trading company under Operation Lava Jato"], (May 24, 2022), <https://www.mpf.mp.br/pr/sala-de-imprensa/noticias-pr/ministerio-publico-federal-assina-acordo-de-leniencia-com-trading-company-no-ambito-da-operacao-lava-jato>.
 35. Petróleo Brasileiro S.A. - Petrobras, Petrobras on Leniency Agreements (Form 6-K) (Nov. 1, 2022), https://www.sec.gov/Archives/edgar/data/1119639/000129281422004230/pbr20221101_6k.htm; Receita Federal Press Release, "Operação Lava Jato: Receita Federal participa de nova cerimônia para devolução de valores à Petrobras," ["Operation Lava Jato: Federal Revenue Service participates in a new ceremony to return Money to Petrobras"] (Apr. 11, 2022), <https://www.gov.br/receitafederal/pt-br/assuntos/noticias/2016/novembro/operacao-lava-jato-receita-federal-participa-de-nova-cerimonia-para-devolucao-de-valores-a-petrobras>.

Latin America

Continued from page 61

Notably, last year, MPF dismissed its Permanent Advisory Committee for Leniency Agreements and Collaboration Awards (*Comissão Permanente de Assessoramento para Acordos de Leniência e Colaboração Premiada*), announcing that the committee's mission was fulfilled.³⁶ MPF's Special Action Groups Combating Organized Crime ("GAECOS") continue collaborating with other authorities on complex corruption investigations.³⁷

Individual enforcement against public officials also has persisted in Brazil. In what has become known as the *MEC Scandal*, then-minister of Education Milton Ribeiro was removed from office in March – as a result of leaked audio recordings suggesting cabinet officials accepted bribes – and subsequently arrested in June. The recordings also suggested now-former President Jair Bolsonaro's involvement in the scheme, and MPF has announced that Bolsonaro may have interfered with the investigations.³⁸

“While recent enforcement in Brazil reflects ongoing efforts to combat corruption, the future contours of such enforcement remain unclear, especially with President Lula’s election after his prior implication in *Lava Jato* (which he repeatedly denies).”

In October, then-governor of the State of Alagoas and candidate for reelection, Paulo Suruagy do Amaral Dantas, was precautionarily removed from office by judicial order. The decision stems from MPF's Operation *Edema*, which is investigating allegations that, since 2019, Dantas and other executives have used ghost servers to divert money from Alagoas's Legislative Assembly.³⁹

Continued on page 63

36. Ordinance 5CCR/MPF No. 6, MPF (Aug. 24, 2022), http://bibliotecadigital.mpf.mp.br/bdmpf/bitstream/handle/11549/244343/PT_5CCR%20_2022_6.pdf?sequence=1&isAllowed=y_.

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38. “Entenda o escândalo que levou à demissão de Milton Ribeiro,” [“Understand the scandal that led to Milton Ribeiro's resignation”], Viú (March 28, 2022), <https://www.portalviu.com.br/brasil/entenda-o-escandalo-que-levou-a-demissao-de-milton-ribeiro>; Paul Salati, “Escândalo do MEC: veja a cronologia do caso que levou a prisão de Milton Ribeiro e ao pedido de investigação contra Bolsonaro,” [“MEC Scandal: see the chronology of the case that led to the arrest of Milton Ribeiro and the request for an investigation against Bolsonaro”] (June 25, 2022), <https://g1.globo.com/politica/noticia/2022/06/25/escandalo-do-mec-veja-a-cronologia-do-caso-que-levou-a-prisao-de-milton-ribeiro-e-ao-pedido-de-investigacao-contr-bolsonaro.ghtml>.

39. Press Release, “Corte Especial do STJ Ratifica Afastamento do Governador de Alagoas Até o Fim do Mandato,” [“Special STJ Court Ratifies the Removal of the Governor of Alagoas Until the End of his Term”] (Oct. 13, 2022), <https://www.mpf.mp.br/pgr/noticias-pgr/corte-especial-do-stj-ratifica-afastamento-do-governador-de-alagoas-ate-o-fim-do-mandato>.

Latin America

Continued from page 62

Finally, also in October, the Federal Police and CGU carried out Operation *Arconte*, targeting various public officials and business executives in Maranhão who were allegedly involved in a conspiracy to embezzle R\$ 9.45 million of COVID-19 funds.⁴⁰

C. Looking Ahead

While recent enforcement in Brazil reflects ongoing efforts to combat corruption, the future contours of such enforcement remain unclear, especially with President Lula's election after his prior implication in *Lava Jato* (which he repeatedly denies). Lula has vowed to punish anyone guilty of corruption. However, just days after his election, some companies incriminated in *Lava Jato* requested revisions to their leniency agreements and required restitution.⁴¹ Additionally, with Lula's support, the President of the Federal Audit Court (*Tribunal de Contas da União*) proposed allowing construction companies to execute public infrastructure projects rather than pay penalties outstanding under *Lava Jato* leniency agreements.⁴² The legislature also reduced the time someone involved in political parties or campaigns must wait before accepting a position at a state-owned company. An anticipated increase in Workers' Party appointments and their role in long-term credit markets resulted in a sharp decline in Ibovespa's stock index.⁴³ In the meantime, several future prosecutorial and judicial appointments loom large.

Notwithstanding these developments, some reasons remain to expect further anti-corruption advancement. Lula has chosen veterans in Brazil's fight against corruption to lead CGU. He appointed Vinicius Marques de Carvalho, a former President of the Administrative Council for Economic Defense, as CGU's new Minister, and Ricardo Wagner de Araújo, the former Executive Secretary of the Public Ethics Commission and lifelong CGU employee, as CGU's new

Continued on page 64

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40. Press Release, "CGU e Polícia Federal combatem desvios da saúde em Caixas (MA)," ["CGU and the Federal Police fight health deviations in Caixas (MA)"] (Oct. 31, 2022), <https://www.gov.br/cgu/pt-br/assuntos/noticias/2022/10/cgu-e-policia-federal-combatem-desvios-da-saude-em-caixas-ma>.
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 43. "Ações da Petrobras têm maior queda desde 1989, após aprovação na Lei das Estatais," ["Petrobras stocks have the largest fall since 1989, after the approval of the Law of State-Owned Companies"], *Correio do Povo* (Dec. 14, 2022), <https://www.correiodopovo.com.br/not%C3%ADcias/economia/a%C3%A7%C3%B5es-da-petrobras-t%C3%AAm-maior-queda-desde-1989-ap%C3%B3s-aprova%C3%A7%C3%A3o-na-lei-das-estatais-1.936601>.

Latin America

Continued from page 63

Chief of Staff.⁴⁴ Indeed, at a conference before the election, CGU's Renato Machado de Souza, director of leniency agreements, predicted that the "presidential elections [would not] set back the progress that has been made over the past decade, because . . . the Brazilian society has changed and anti-corruption is now considered a priority."⁴⁵ At the same time, he noted CGU's increased focus on addressing bribery involving Brazilian companies or officials outside of Brazil, albeit not at the expense of combating domestic corruption.⁴⁶

III. Mexico

In Mexico, anti-corruption rhetoric from President Andrés Manuel López Obrador has not translated into increased capacity to combat corruption. Recent surveys show a lack of progress, particularly relative to other countries in the region. The 2022 CCC Index ranked Mexico twelfth out of fifteen countries in Latin America continuing a downward trend.⁴⁷ Similarly, Mexico saw minimal anti-corruption and related enforcement in 2022, as issues like combatting inflation and recovering from the pandemic have persisted.

A. Legal and Policy Developments

Mexico experienced both progress and setbacks in its anti-corruption legislative and policy efforts in 2022. In January, the head of Mexico's Financial Intelligence Unit signed an institutional agreement with the Attorney General's Office strengthening the fight against corruption.⁴⁸

That same month, however, President López Obrador announced his intent to abolish the National Anti-Corruption System's Executive Secretariat ("SNA"), a key leadership body within the SNA.⁴⁹ Notwithstanding this announcement, in June, Roberto Moreno Herrera vowed to strengthen the agency when he assumed

Continued on page 65

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44. Ciara Nugent, "How Lula Won the Most Crucial Election in Brazil for Decades," *Time* (Nov. 2, 2022), <https://time.com/6226269/how-lula-won-brazil-election>, "Brazil's Lula vows to punish corruption if elected in October," *Reuters* (Aug. 25, 2022), <https://www.reuters.com/world/americas/brazils-lula-says-will-create-measures-against-corruption-if-elected-2022-08-25/>; "Vinicius de Carvalho assume como ministro da CGU e faz defesa enfática da transparência e do acesso à informação," ["Vinicius de Carvalho takes over as CGU Minister and makes an emphatic defense of transparency and access to information"] (Jan. 4, 2023), <https://www.gov.br/cgu/pt-br/assuntos/noticias/2023/01/vinicius-de-carvalho-assume-como-ministro-da-cgu-e-faz-defesa-enfatica-da-transparencia-e-do-acesso-a-informacao>.
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 47. "The 2022 Capacity to Combat Corruption Index," *AS/COA* (June 22, 2022), <https://www.as-coa.org/articles/2022-capacity-combat-corruption-index>.
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 49. "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>.

Latin America

Continued from page 64

leadership as its new Technical Secretary.⁵⁰ Since then, twenty-five anti-corruption policies have been approved across various states in the country. In fact, the SNA earned first place in the 2022 Transparency Innovation Contest for the creation of the Digital Anti-Corruption Market, a public online suite of tools aimed at curbing corruption.⁵¹

The past year also saw additional anti-corruption initiatives by the SNA. In March, the Implementation Program of the National Anti-Corruption Policy took effect, consisting of 64 strategies and 140 measurable actions for public institutions to implement.⁵² In May, the Federal Commission for the Protection against Sanitary Risks (*Comision Federal para la Proteccion Contra Riesgos Sanitarios*) and the Ministry of Public Function presented the National Strategy of Good Governance in the Federal Sanitary System based on a zero-tolerance policy for administrative corruption.⁵³

However, in April, President Lopez Obrador confirmed that a longstanding anti-narcotics unit had been disbanded the prior year, ending a decade's long bilateral cooperation with the United States on the fight against narco trafficking and organized crime, major sources of corruption for the country.⁵⁴ More encouragingly, in May, U.S. and Mexican officials convened the Strategic Dialogue on Illicit Finance, vowing to establish a working group on anti-corruption.⁵⁵ This commitment was reiterated at the second meeting of the U.S.-Mexico High-Level Security Dialogue in October.⁵⁶

Continued on page 66

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50. "Designa Órgano de Gobierno de la Sesna a Roberto Moreno Herrera como Nuevo Secretario Técnico" ["Sesna Government Body Designates Roberto Moreno as New Technical Secretary"], SNA Informa (June 27, 2022), <https://www.sesna.gob.mx/2022/06/27/designa-organo-de-gobierno-de-la-sesna-a-roberto-moreno-herrera-como-nuevo-secretario-tecnico>.
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 53. "SFP y Cofepris anuncian estrategia nacional para combatir corrupción y promover integridad" ["SFP and Cofepris Announce National Strategy to Combat Corruption and Promote Integrity"], SNA Informa (May 23, 2022), <https://www.sna.org.mx/2022/05/23/sfp-y-cofepris-anuncian-estrategia-nacional-para-combatir-corrupcion-y-promover-integridad>.
 54. Drazen, Jorgic, "Exclusive: Mexico shuts elite investigations unit in blow to U.S. drugs cooperation," Reuters (Apr. 29, 2022), <https://www.reuters.com/world/americas/exclusive-mexico-shuts-elite-investigations-unit-blow-us-drugs-cooperation-2022-04-19>.
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 56. Press Release, White House, Fact Sheet: Second Meeting of the U.S.-Mexico High-Level Security Dialogue (Oct. 13, 2022) <https://www.whitehouse.gov/briefing-room/statements-releases/2022/10/13/fact-sheet-second-meeting-of-the-u-s-mexico-high-level-security-dialogue>.

Latin America

Continued from page 65

Also, in April, President López Obrador proposed a constitutional amendment to reform the country's electoral authority.⁵⁷ The proposal, currently under review in Congress, calls for: (1) replacing the National Electoral Institute ("INE"), which oversees elections, with a new national electoral authority comprised of members directly selected by the public; (2) cutting public financing of political parties; and (3) significantly downsizing Congress. President López Obrador, who is barred constitutionally from running for reelection in 2024, says these reforms are necessary to strengthen democracy, but others in the country suggest he is acting to ensure his political party can control future elections. In November, thousands protested in the streets of Mexico City in defense of INE.⁵⁸

“Mexico saw minimal anti-corruption and related enforcement in 2022, as issues like combatting inflation and recovering from the pandemic have persisted.”

B. Enforcement Efforts

Although recent anti-corruption enforcement in Mexico seemingly has not prioritized actions against companies or their employees, a number of matters against public officials continue to generate headlines. In July, Mexico's Attorney General opened investigations against both Alejandro Moreno, the current leader of the Institutional Revolutionary Party (*Partido Revolucionario Institucional*, or "PRI"), and former President Enrique Peña Nieto.⁵⁹ According to the Financial Intelligence Unit (*Unidad de Inteligencia Financiera*), Moreno is accused of money laundering, tax evasion, embezzlement, and abuse of authority after it was discovered that he owns at least twenty-three homes. Peña Nieto is accused of participating in a scheme of

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57. "Presidente presenta iniciativa de reforma electoral; incluye creación del INEC y reducción de gasto a partidos políticos" ["President Presents Electoral Reform Initiative; Includes Creation of the INEC and Reduction of Political Party Spending"], AMLO (Apr. 28, 2022), <https://lopezobrador.org.mx/2022/04/28/presidente-presenta-iniciativa-de-reforma-electoral-incluye-creacion-del-inec-y-reduccion-de-gasto-a-partidos-politicos>.
58. Fabiola Sanchez, "Tens of Thousands March Against Mexico President's Proposed Overhaul of Electoral Authority," PBS (Nov. 13, 2022), <https://www.pbs.org/newshour/world/tens-of-thousands-march-against-mexico-presidents-proposed-overhaul-of-electoral-authority>.
59. "Gobierno anunció investigación de FGR contra Alito Moreno, pero después borró información" ["Government Announced GFR Investigation against Alito Moreno, but Erased Information Afterwards"], 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/>; <https://www.washingtonpost.com/world/2022/07/07/mexico-pena-nieto-corruption>.

Latin America

Continued from page 66

international transfers that allowed him to receive 26 million pesos (approximately \$1 million USD) in Spain.⁶⁰ Thus far, neither investigation has yielded criminal charges.

As discussed above, in April, Stericycle, Inc. agreed to pay over \$84 million to resolve parallel civil and criminal charges brought by U.S. and Brazilian authorities related to alleged bribery of foreign officials in Argentina, Brazil, and Mexico.⁶¹ The investigation highlighted U.S.-Mexico cooperation on cross-border anti-corruption enforcement efforts, with U.S. authorities expressly acknowledging assistance by Mexican authorities.⁶²

Notably, Genaro García Luna, the head of Mexico's equivalent to the FBI under former President Felipe Calderón, is currently on trial in the Eastern District of New York on charges stemming from allegations he accepted millions of dollars in bribes from Mexican drug cartels. In Mexico, President López Obrador welcomed the trial and regularly has delivered news about it to Mexican citizens on his morning press conferences, suggesting the trial will shed light on corruption in the Calderón administration.⁶³

IV. Other Latin American Developments

Below are some additional anti-corruption updates from Latin America over the past year:

- **Chile:** In July 2022, Chile's constitutional assembly proposed a new national constitution. It included an assertion that corruption is "contrary to the common good and undermines the democratic systems," and it would have established the state's duty to adopt measures to investigate, prosecute, and eradicate corruption. Although thirty-eight percent of voters rejected this proposal in September, President Gabriel Boric promised a second draft that would achieve reforms and garner more support.⁶⁴

Continued on page 68

60. Jacobo Garcia, "Escándalos, corrupción y la irrelevancia política: el PRI que se extingue" ["Scandal, Corruption and Political Irrelevance: the PRI that Extinguishes Itself"], *El País* (July 10, 2022), <https://elpais.com/mexico/2022-07-10/escandalos-corrupcion-y-la-irrelevancia-politica-el-pri-que-se-extingue.html>.

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Latin America

Continued from page 67

- **Colombia:** In January 2022, former President Ivan Duque signed the Law on Transparency, Prevention, and Fight Against Corruption ("*Ley de Transparencia, Prevencion, y Lucha Contra la Corrupcion*"). It is a wide-ranging anti-corruption bill aimed at addressing the role of private companies in facilitating and combating corruption.⁶⁵ Over the summer, Colombia elected Gustavo Petro as president, and, soon after, he was accused by the opposition of corruptly seeking to secure the election of an allied comptroller general.⁶⁶ President Petro has proposed anti-corruption reforms such as whistleblowing protection legislation, greater oversight for all public contracting, and the creation of an anti-corruption prosecutor's office.⁶⁷
- **Dominican Republic:** The Dominican Republic ranked fifth out of fifteen countries surveyed in the 2022 CCC Index and saw the greatest improvement in its score. This continues a two-year upward trajectory that reflects President Abinader's anti-corruption push since assuming office.⁶⁸ Last year, his administration passed a bill to return assets stolen from the state and assets with illicit origins, and it implemented reforms to increase transparency in public contracts.⁶⁹ Furthermore, high-profile anti-corruption investigations like Operation Coral and Operation Antipulpo continue to progress. These involve allegations of embezzlement, tax evasion, and other financial crimes, largely against individuals with ties to the former administration including the former president's brother, Alexis Medina. Medina is currently awaiting trial under house arrest.⁷⁰

Continued on page 69

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65. "Presidente Duque sanciona Ley de Transparencia, que levanta el velo corporativo para luchar contra la corrupción" ["President Duque Approves Transparency Law, which Lifts the Corporate Veil to Fight Corruption"], <https://www.worldcomplianceassociation.com/3544/noticia-presidente-duque-sanciona-ley-de-transparencia-que-levanta-el-velo-corporativo-para-luchar-contra-la-corrupcion.html>.
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70. "The 2022 Capacity to Combat Corruption Index," Control Risks, https://www.controlrisks.com/campaigns/the-capacity-to-combat-corruption-index?utm_referrer=https://www.google.com [last visited Jan. 19, 2022]; "A US\$757.9M hole in Dominican Republic Octopus case," Dominican Today (Dec. 6, 2021) <https://dominantoday.com/dr/uncategorized/2021/12/06/a-us757-9m-hole-in-dominican-republic-octopus-case>; Cristian Cabrera, "Trasladan de Najayo a sus casas a Alexis Medina y Fernando Rosa" ["Alexis Medina and Fernando Rosa Move their Houses"], Diario Libre (Sept. 2, 2022), <https://www.diariolibre.com/actualidad/justicia/2022/09/02/trasladan-de-najayo-a-implicados-en-caso-antipulpo/2041708>.

Latin America

Continued from page 68

- **El Salvador:** In March, President Nayib Bukele declared an ongoing state of emergency, and the Legislative Assembly passed a reform that limits access to information regarding public spending and contracts. This is reminiscent of the 2020 Access to Public Information Law, which reduced public spending information available during the pandemic and resulted in reported irregularities in two-thirds of pandemic-related expenditures.⁷¹
- **Honduras:** After a landslide victory in November 2021 with a campaign focused on anti-corruption, President Xiomara Castro has taken steps toward creating an anti-corruption commission with United Nations support.⁷² Additionally, in September, the former first lady, Rosa Elena Bonilla de Lobo, was sentenced to 14 years' imprisonment for fraud and embezzlement of over \$480,000 dollars.⁷³

“[T]he fight against corruption has persisted elsewhere in the region, with notable initiatives in Colombia, the Dominican Republic, Honduras, and Peru. Even so, countries across Latin America struggle with corruption and graft at the highest levels....”

- **Peru:** Anti-corruption efforts in Peru continue to make some headway, as alleged financial crimes committed by the highest echelons of political power remain widespread.
 - o In August, the Executive Branch promulgated Law 31565, The Law of Prevention and Mitigation of Conflicts of Interest in the Entrance and Exit of Public Service Personnel (*Ley de Prevención y Mitigación del Conflicto de Intereses en el Acceso y Salida de Personal del Servicio Público*). It seeks to regulate and reduce the risk of “policy capture” by individuals who rotate between government and private-sector positions and may influence transactions benefiting future or past employers.⁷⁴

Continued on page 70

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Latin America

Continued from page 69

- o After surviving an impeachment vote in May and being charged with crimes against the public in October, President Pedro Castillo was ousted, detained, and formally accused of rebellion and conspiracy on December 7, after attempting to dissolve Congress to avoid an impeachment trial.⁷⁵ Vice President Dina Boluarte was sworn in the next day, but Castillo's imprisonment has incited increasingly violent and deadly protests. Boularte, who is Peru's sixth president in the last five years, announced that her "first task is to fight corruption, in all forms" and asked her newly appointed cabinet to take an anti-corruption pledge.⁷⁶
- o Former president Humala and his wife have been on trial since February on charges stemming from *Lava Jato*,⁷⁷ and former presidential candidate and Congresswoman Keiko Fujimori awaits trial for charges of money laundering, organized crime, obstruction of justice, and making false declarations.⁷⁸

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