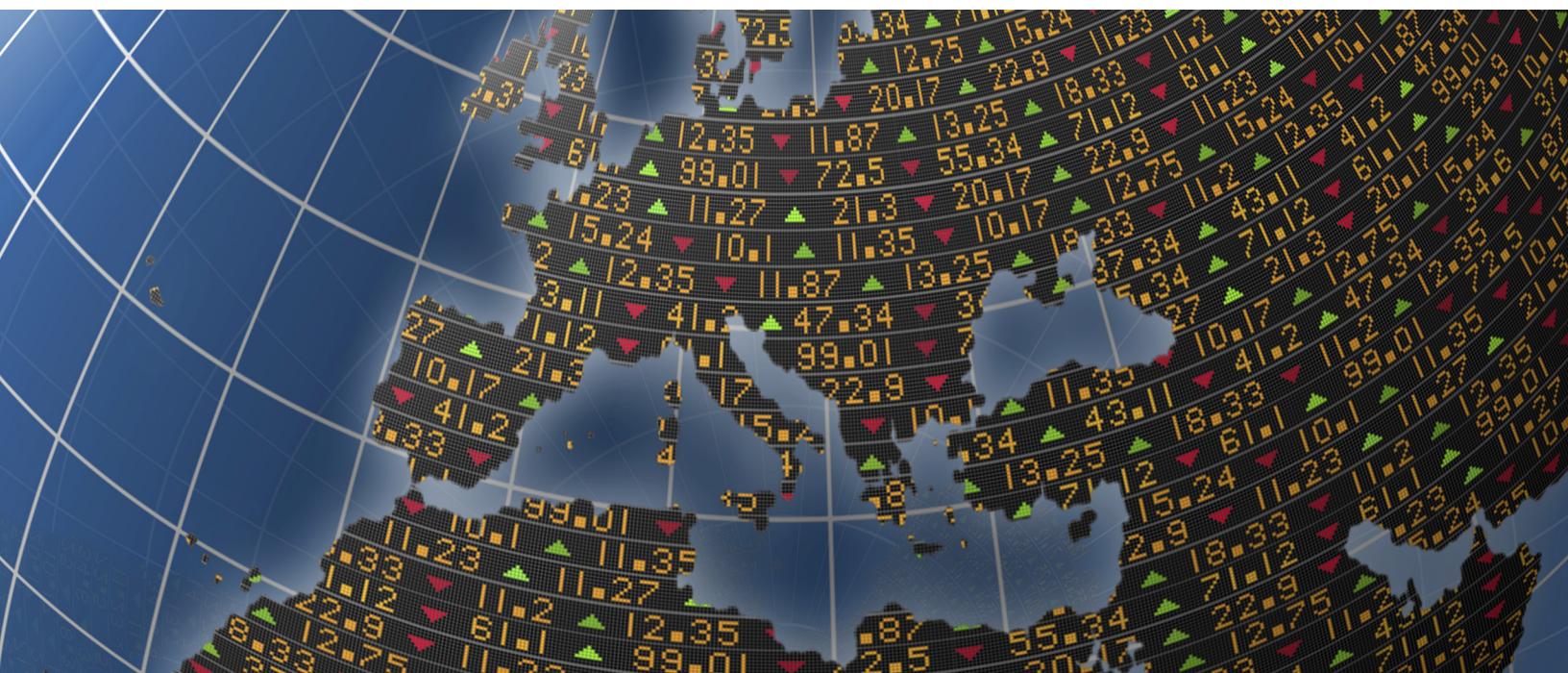


# FCPA Update

A Global Anti-Corruption Newsletter



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## Latin America: Combating Corruption Amidst Constant Change

Alongside economic challenges and political flux, Latin America's recent anti-corruption efforts often have fallen short of politicians' ambitious rhetoric. The fifth Capacity to Combat Corruption Index ("CCC Index"), published in June 2023, reflects related difficulties that the region has faced: only one-third of the fifteen Latin American countries studied earned increased scores relative to 2022.<sup>1</sup> Nevertheless, Latin America has experienced some progress in its fight against corruption in the first half of 2023.

For example, Argentina's Anti-Corruption Office ("OA") has advanced a notable initiative to facilitate corporate integrity, but the limited anti-corruption

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1. "The Capacity to Combat Corruption (CCC) Index: Assessing Latin America's Ability to Detect, Punish, and Prevent Corruption," Americas Society, Council of the Americas, and Control Risks (June 2023), at 2, [https://www.as-coa.org/sites/default/files/imce\\_files/CCC\\_2023\\_Report.pdf](https://www.as-coa.org/sites/default/files/imce_files/CCC_2023_Report.pdf).

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enforcement to date has focused on individuals (often former government officials) and not corporations. In Brazil, enforcement agencies continue undertaking investigations at the national, state, and local levels, but challenges to *Lava Jato*-related leniency agreements threaten to undermine critical anti-corruption progress. While Mexican authorities have bolstered asset forfeiture mechanisms, corporate anti-corruption enforcement has made little progress. Elsewhere, authorities in Guatemala have arrested former anti-corruption prosecutors on charges related to previous investigations, and anti-corruption efforts in Honduras led by the United Nations and key NGOs have stalled. On the other hand, in Chile, the legislature is considering a bill that would broaden criminal liability for economic crimes, and *Lava Jato*-related enforcement actions are well underway in Peru.

Below, we discuss anti-corruption developments in 2023 across Latin America.

**Argentina**

Argentina had several notable anti-corruption advancements last year, including the first corporate collaboration agreement negotiated under the 2018 Corporate Criminal Law (known as Law No. 27,401), though the agreement itself remains undisclosed. Argentina's score on the CCC Index increased marginally, but the nation dropped from sixth to seventh place in the overall rankings of Latin American countries surveyed.<sup>2</sup> Even so, Argentine authorities continue to investigate and prosecute some corruption and related individual misconduct, often involving high-level government officials. These efforts come in advance of presidential elections in October, which have the potential to alter the nation's anti-corruption landscape.

***Legal and Policy Developments***

In March, President Alberto Fernández appointed Verónica Gómez as head of Argentina's OA, a position that had been vacant since January. Gómez has an extensive history of government service, having previously served as a legislator for the City of Buenos Aires and an advisor in the City of Buenos Aires Ombudsman's Office.<sup>3</sup>

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2. CCC Index, *supra* note 1, at 20–21.

3. "El Gobierno designó a Verónica Gómez al frente de la Oficina Anticorrupción" ["The Government appointed Verónica Gómez as head of the Anti-Corruption Office"], Página 12 (Mar. 15, 2023), <https://www.pagina12.com.ar/531576-el-gobierno-designo-a-veronica-gomez-al-frente-de-la-oficina>.

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Under Gómez's leadership, the OA has progressed its Integrity and Transparency Registry for Businesses ("RITE"), an initiative launched last year to improve corporate integrity by allowing companies to voluntarily share their compliance programs with one another. For example, in May, the OA signed a collaboration agreement with the public authority tasked with overseeing the Matanza Riachuelo River basin's billionaire-dollar cleanup, ACUMAR, to promote RITE. ACUMAR will also participate in OA-organized working groups and anti-corruption trainings.<sup>4</sup> Additionally, the Argentine National Food Safety and Quality Service ("SENASA") announced in June that all companies and entities subject to its regulations must register in RITE.<sup>5</sup>

**"Argentina's Anti-Corruption Office ... has advanced a notable initiative to facilitate corporate integrity, but the limited anti-corruption enforcement to date has focused on individuals (often former government officials) and not corporations."**

***Enforcement Efforts***

In March, the Federal Oral Tribunal No. 2 released the full ruling behind the December 2022 conviction of former President and current Vice President Cristina Fernández de Kirchner for fraud against the Public Administration in connection with the *Vialidad* case.<sup>6</sup> Courts also dismissed two corruption-related charges brought against Fernández de Kirchner. In May, a judge also acquitted her of money-laundering charges after finding no evidence of her involvement in the long-running "K money route" case. The prosecution had alleged that businessman Lázaro Báez engaged in money laundering and other misconduct on behalf of Fernández de Kirchner's family.<sup>7</sup> In June, the Federal Criminal Cassation Court

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4. "La Oficina Anticorrupción firmó un convenio de colaboración con ACUMAR" ["The Anti-Corruption Office signed a collaboration agreement with ACUMAR"], Argentina's Anti-Corruption Office (June 1, 2023), <https://www.argentina.gob.ar/noticias/la-oficina-anticorrupcion-firmo-un-convenio-de-colaboracion-con-acumar>.
  5. "El Senasa dispuso la obligatoriedad de inscripción en el RITE" ["Senasa Orders Obligatory Registration in the RITE"], Argentina's Anti-Corruption Office (June 9, 2023), <https://www.argentina.gob.ar/noticias/el-senasa-dispuso-la-obligatoriedad-de-inscripcion-en-el-rite>.
  6. "Fernandez de Kirchner, Cristina Elisabet y otros s/ inf. arts. 173, 174, y 210 del Código Penal" [Fernandez de Kirchner, Elisabet Cristina and Others on Infraction of Articles 173, 174, and 210 of the Penal Code], Poder Judicial de la Nación (March 9, 2023), <https://drive.google.com/file/d/18Aq2Tu28k4JC4hnyPxD3nGBOPtC7910E/view>.
  7. "Judge dismisses 'Ruta K' corruption case against Argentina's Vice-President Cristina Fernández de Kirchner," Buenos Aires Times (May 6, 2023), <https://batimes.com.ar/news/argentina/judges-dismisses-ruta-k-corruption-case-against-argentinas-vice-president-cristina-fernandez-de-kirchner.phtml>; "Argentinian judge dismisses corruption case against VP Kirchner," Al Jazeera (June 5, 2023), <https://www.aljazeera.com/news/2023/6/5/argentinian-judge-dismisses-corruption-case-against-vp-kirchner>.

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dismissed charges of improper use of the presidential air fleet against Fernández de Kirchner on procedural grounds related to judicial partiality.<sup>8</sup>

Other political figures in Argentina have come under scrutiny for alleged involvement in corrupt acts or similar misconduct as well. In May, two former municipal officials, Enrique Sette and Gustavo Petró, were found guilty of illicit association for a corruption scheme in which government officials demanded bribes from landowners in exchange for favorable land rezoning and division.<sup>9</sup>

Leading civil rights groups also have criticized judicial corruption, hostile rhetoric against Supreme Court judges, and delays in judicial appointments as collectively undermining the rule of law.<sup>10</sup> In January, President Fernández announced that he would seek to impeach Supreme Court Justice Juan Carlos Maqueda on alleged irregularities and possible corruption within an insurance network supervised by the Supreme Court and for which Maqueda is primarily responsible.<sup>11</sup> Maqueda failed to appear before Congress on July 6 when formally summoned to answer questions regarding the allegations.<sup>12</sup> Also in January, President Fernández initiated impeachment processes against three other Supreme Court Justices: Carlos Rosenkrantz, Ricardo Lorenzetti, and Horacio Rosatti. In support, President Fernández pointed to leaked text messages between Justice Rosatti's spokesperson, Silvio Robles, and Buenos Aires's Justice and Security Minister, Marcelo D'Alessandro, allegedly demonstrating collusion in certain rulings.<sup>13</sup> Robles and D'Alessandro are scheduled to appear before Congress on August 1 to answer questions regarding the matter.<sup>14</sup>

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8. "Case against Cristina Fernández de Kirchner over misuse of presidential planes quashed," Buenos Aires Times (June 14, 2023), [https://www.batimes.com.ar/news argentina/case-against-cristina-fernandez-de-kirchner-over-misuse-of-presidential-planes-quashed.phtml](https://www.batimes.com.ar/news	argentina/case-against-cristina-fernandez-de-kirchner-over-misuse-of-presidential-planes-quashed.phtml).
  9. "Condenaron a Mariano Bruera y ordenaron investigar a su hermano, el exintendente de La Plata Pablo Bruera" ["Mariano Bruera sentenced and an investigation ordered into his brother, the former mayor of La Plata, Pablo Bruera"], La Nación (May 31, 2023), <https://www.lanacion.com.ar/politica/condenaron-a-mariano-bruera-y-ordenaron-investigar-su-hermano-el-exintendente-de-la-plata-pablo-nid31052023>.
  10. See, e.g., "Americas: Address Poverty, Corruption, Insecurity," Human Rights Watch (Jan. 12, 2023), <https://www.hrw.org/news/2023/01/12/americas-address-poverty-corruption-insecurity>.
  11. "Government summons Congress to debate Supreme Court impeachment," Buenos Aires Times (Jan. 13, 2023), <https://www.batimes.com.ar/news/argentina/government-summons-congress-to-discuss-supreme-court-impeachment.phtml>.
  12. Miguel Jorquerá, "Juicio político: Avance de la acusación contra Maqueda y 'huella' de voz para D'Alessandro" ["Political trial: Advances in the accusation against Maqueda and voice 'recognition' for D'Alessandro"], Página 12 (July 7, 2023), <https://www.pagina12.com.ar/565777-maqueda-en-el-centro-de-la-escena>.
  13. Miguel Goyeneche, "President Alberto Fernández pushing to impeach judges on Argentina's Supreme Court," Argentina Reports (Jan. 13, 2023), <https://argentinareports.com/president-alberto-fernandezpushing-to-impeach-judges-on-argentinas-supreme-court/3178>.
  14. Corte Suprema: El diputado Valdés solicitará ampliar las causales de juicio político, ["Supreme Court: Deputy Valdés will request to expand the grounds for impeachment"], Telám Digital (July 14, 2023), <https://www.telam.com.ar/notas/202307/634048-valdes-corte-suprema.html>.

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**Brazil**

August 2023 marks the ten-year anniversary of Brazil's Anti-Corruption Law, or Clean Companies Act, legislation that fostered years of heightened anti-corruption enforcement both within Brazil and beyond its borders. Despite the cool-down of the law's most notable progeny, including Operation *Lava Jato*, Brazil remains at the forefront of regional anti-corruption enforcement. After relatively robust enforcement in 2022, with eight leniency agreements entered into by Brazil's Comptroller-General's Office ("CGU"), 2023 is off to a steady start, with four new leniency agreements currently under review or in active negotiations by CGU, bringing the total of pending leniency agreements to 21.<sup>15</sup> Additionally, the agency has entered into several summary judgment resolutions.<sup>16</sup> The CGU's former director of leniency agreements, Renato Machado de Souza, has hinted that the agency will expand its focus to corruption outside of Brazil as well.<sup>17</sup>

**Legal and Policy Developments**

In April, CGU launched an online, publicly available calculator that assesses potential fines incurred from violations of the Anti-Corruption Law. Benefits of this new calculator include faster and more precise calculation of fines and the continuous integration of legislative updates.<sup>18</sup>

While CGU has improved the process for quantifying fines, the future of certain previously concluded leniency agreements is uncertain. In March, three political parties filed a lawsuit before Brazil's Federal Supreme Court ("STF"), requesting the suspension of all financial obligations stemming from certain *Lava Jato*-related leniency agreements.<sup>19</sup> In the suit, the political parties question the standing of Brazil's Public Prosecutor's Office ("MPF") to have entered into leniency agreements *without* CGU participation, and further claim that MPF abused its

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15. "Painel Acordos de Leniência" [Leniency Agreement Panel], Controladoria-Geral da União, <https://www.gov.br/cgu/pt-br/assuntos/integridade-privada/acordo-leniencia>.
  16. "Diário Oficial da União" ["Official Gazette"], Imprensa Nacional, <https://www.in.gov.br/consulta/-/buscar/dou?q=%22julgamento+antecipado%22&s=todos&exactDate=personalizado&sortType=0&delta=20&publishFrom=01%2F01%2F2023&publishTo=26%2F07%2F2023&orgPrin=Controladoria-Geral+da+Uni%C3%A3ooh>.
  17. Ana de Liz, "Brazil boosts focus on corruption beyond its borders," Global Investigation Review (Oct. 20, 2022), <https://globalinvestigationsreview.com/news-and-features/investigators-guides/brazil/article/brazil-boosts-focus-corruption-beyond-its-borders>; see "Secretaria de Integridade Privada" ["Secretary of Private Integrity"], Controladoria-Geral da União, <https://www.gov.br/cgu/pt-br/cesso-a-informacao/institucional/quem-e-quem/secretaria-de-integridade-privada#dal>.
  18. "CGU lança calculadora eletrônica para computar multa prevista na Lei Anticorrupção" ["CGU launches electronic calculator to compute fines as provided for under the Anti-Corruption Law], Controladoria-Geral da União (Apr. 12, 2023), <https://www.gov.br/cgu/pt-br/assuntos/noticias/2023/04/cgu-lanca-calculadora-eletronica-para-computar-multa-prevista-na-lei-anticorrupcao>.
  19. "Partidos pedem a suspensão de pagamentos de acordos de leniência da Lava Jato" ["Parties call for suspension of payments under Lava Jato leniency agreements"], Supremo Tribunal Federal (Mar. 30, 2023), <https://portal.stf.jus.br/noticias/verNoticiaDetalhe.asp?idConteudo=504928&ori=1>.

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authority in coercing companies to enter into unfavorable leniency agreements by incarcerating or threatening to arrest their directors. To cure these harms, the political parties request that STF establish criteria to review each non-CGU leniency agreement entered into before August 2020. A judge just issued an interim decision determining that the case has merits to proceed to STF's plenary.<sup>20</sup>

More recently, in June, President Luiz Inácio "Lula" da Silva nominated his former defense lawyer Cristiano Zanin – who represented him in *Lava Jato*-related corruption charges – to STF. His nomination was then confirmed by the Senate. Critics claim that Zanin's appointment represents a conflict of interest that could jeopardize STF's stability and impartiality. Zanin already has stated that he will not recuse himself from every *Lava Jato* case.<sup>21</sup>

Also in June, the previously announced Law No. 14.478/2022, or "Cryptoassets Act," came into effect. The government subsequently issued Decree No. 11.563/2023, which regulates the Act. The Decree establishes the Brazilian Central Bank as the agency in charge of regulating the crypto market and virtual asset providers, with the Brazilian Securities and Exchange Commission ("CVM") remaining the ultimate overseer of all securities and virtual assets in Brazil. The Act also established fraud using virtual assets, securities, or financial assets as a criminal offense, signaling Brazil's readiness to prosecute crypto-related financial misconduct, including corruption.<sup>22</sup>

***Enforcement Efforts***

While CGU reportedly has 21 leniency negotiations underway and has concluded four other negotiations this year without entering into leniency agreements, CGU, the Attorney General's Office, and MPF have not in 2023 yet entered into any leniency agreements. However, anti-corruption and related enforcement efforts persist, including novel enforcement efforts by state- and local-level governments.

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20. "Arguição De Descumprimento De Preceito Fundamental" ["Breach of Fundamental Precept Claim"], Supremo Tribunal Federal (July 26, 2023), <https://portal.stf.jus.br/noticias/verNoticiaDetalhe.asp?idConteudo=511235&ori=1>.

21. Filipe Matoso & Luz Felipe Barbieri, "Em resposta a Moro, Zanin diz que não vai se declarar impedido em processos só por terem 'etiqueta' da Lava Jato" ["In response to Moro, Zanin says he will not consider himself conflicted out of matters just because they have Lava Jato 'label'"], Globo (June 21, 2023), <https://g1.globo.com/politica/noticia/2023/06/21/em-resposta-a-moro-zanin-diz-que-nao-vai-se-declarar-impedido-em-processos-so-por-terem-etiqueta-de-lava-jato.ghtml>.

22. "Decree No. 11.563," Government of Brazil, Official Diary of the Union (June 13, 2023), <https://www.in.gov.br/en/web/dou/-/decreto-n-11.563-de-13-de-junho-de-2023-489700506>.

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- In January, the Alagoas State Prosecutor's Office signed a R\$ 3 million (\$632,000<sup>23</sup>) leniency agreement with Engelux Iluminação e Elétrica for bid rigging in connection with the provision of lighting services in the city of Maceió.<sup>24</sup>
- In January, Americanas, a Brazilian retailer, filed for bankruptcy after disclosing accounting inconsistencies totaling R\$ 20 billion (\$4.18 billion). MPF is investigating alleged insider trading and accounting fraud stemming from these irregularities. CVM also has initiated parallel legal proceedings.<sup>25</sup>

**“In Brazil, enforcement agencies continue undertaking investigations at the national, state, and local levels, but challenges to *Lava Jato*-related leniency agreements threaten to undermine critical anti-corruption progress.”**

- Also in January, CGU imposed a R\$ 1.5 million (\$300,000) fine on Latin Air Support, a Florida-based company, for allegedly proposing to sell 400 million doses of the AstraZeneca COVID-19 vaccine to Brazil's Ministry of Health, despite being aware that it would not be capable of doing so. In addition to the fine, the company and its CEO are banned from government bids in Brazil.<sup>26</sup>
- In February, Minas Gerais State's authorities signed a R\$ 32 million (\$6.7 million) leniency agreement with companies Moinho S.A. and Passos Maia Energética S.A for misconduct involving electric energy purchase contracts signed with Companhia Energética de Minas Gerais (Cemig), a mixed-capital company, between 2011 and 2016.<sup>27</sup>

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23. All references to monetary values are in U.S. dollars, unless otherwise specified.

24. “MPAL promove acordo e empresa se compromete a prestar serviços estimados em R\$ 3 milhões sem custos para o município de Maceió” [“MPAL promotes an agreement and the company undertakes to provide services estimated at R \$ 3 million at no cost to the municipality of Maceió”], Ministério Público do Alagoas (January 5, 2023), <https://www.mpal.mp.br/?p=22088>.

25. Fernando Nakagawa, “MPF vai apurar se diretores da Americanas venderam ações antes do anúncio do rombo” [“MPF will investigate whether directors of Americanas sold shares before the breach was announced”], CNN Brasil (Jan. 13, 2023), <https://www.cnnbrasil.com.br/economia/mpf-vai-apurar-se-diretores-da-americanas-venderam-acoes-antes-do-anuncio-do-rombo>; Carolina Pulice & Andre Romani, “Brazilian securities watchdog launches new probes into Americanas accounting fiasco,” Reuters (Mar. 17, 2023), <https://www.reuters.com/world/americas/brazilian-securities-watchdog-launches-new-probes-into-americanas-accounting-2023-03-17>.

26. “CGU v. Latin Air Support,” Controladoria-Geral da União (Jan. 27, 2023), [https://files.lbr.cloud/public/2023-02/SEI\\_00190.109228\\_2021\\_15\\_tarjado.pdf?VersionId=JI8XGtDT60hctLbQruHiMi0KZO5nJfTn](https://files.lbr.cloud/public/2023-02/SEI_00190.109228_2021_15_tarjado.pdf?VersionId=JI8XGtDT60hctLbQruHiMi0KZO5nJfTn).

27. “Governo de MG assina acordos de leniência de R\$ 32,2 milhões com empresas por ilícitos em contratos de energia elétrica” [“Minas Gerais government signs R\$ 32.2 million leniency agreements with companies for illicit electricity contracts”], G1 (February 10, 2023), <https://g1.globo.com/mg/minas-gerais/noticia/2023/02/10/governo-de-mg-assina-acordos-de-leniencia-de-r-322-milhoes-com-empresas-por-ilicitos-em-contratos-de-energia-eletrica.ghtml>.

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- In March, the Federal Police launched operation “Festa no Terreiro” in the Paraíba State to investigate an alleged loss of approximately R\$ 8 million (\$1.6 million) of public funds to a bid-rigging scheme, embezzlement, and money laundering.<sup>28</sup>
- In May, São Paulo’s Office of the Comptroller General entered into a first-of-its-kind foreign bribery settlement with the local subsidiary of Medartis, a Swiss medical device company, making it the first municipal-level Brazilian governmental body to enter into a leniency agreement. The subsidiary allegedly took part in a scheme whereby it bribed doctors of public hospitals to purchase company products. The company agreed to pay over R\$ 10 million (\$2.09 million) to settle breaches of Brazil’s Anti-Corruption Law.<sup>29</sup>
- Also in May, CGU, federal law enforcement, and the Federal Revenue Service launched a joint operation, “Dilúvio,” to investigate alleged money laundering, bid rigging, bribery, and tax evasion by a mayor in the state of Pernambuco.<sup>30</sup>
- In June, federal police launched an operation, “Hefesto,” to investigate alleged bid rigging relating to the purchase of robotics kits by the state of Alagoas. Several individuals under investigation are political allies of Arthur Lira, the current president of Brazil’s House of Representatives.<sup>31</sup>

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28. “Operação que apura prejuízo de R\$ 8 mi em corrupção envolvendo licitações é realizada pela PF na Paraíba” [“Operation that investigates losses of R \$ 8 million in corruption involving bids is carried out by the PF in Paraíba”], G1, (March 02, 2023), <https://g1.globo.com/pb/paraiba/noticia/2023/03/02/operacao-que-apura-prejuizo-de-r-8-mi-em-corrupcao-envolvendo-llicitacoes-e-realizada-pela-pf-na-paraiba.ghtml>.
  29. Secretaria Especial de Comunicação, “Primeiro acordo de leniência firmado pela Prefeitura de São Paulo prevê o ressarcimento de mais de R\$ 10 milhões aos cofres públicos” [“First leniency agreement signed by the City of São Paulo provides for the reimbursement of more than R\$ 10 million to public coffers”], Cidade de São Paulo (May 5, 2023), <https://www.capital.sp.gov.br/noticia/primeiro-acordo-de-lenencia-firmado-pela-prefeitura-de-sao-paulo-preve-o-ressarcimento-de-mais-de-r-10-milhoes-aos-cofres-publicos>.
  30. “OPERAÇÃO DILÚVIO – Receita Federal participa de investigação contra lavagem de dinheiro decorrente dos crimes de fraude em licitação, peculato, corrupção, agiotagem e sonegação fiscal” [“DILÚVIO OPERATION – Federal Revenue [Service] participates in money laundering investigation stemming from bid rigging, embezzlement, corruption, usury, and tax evasion”], Ministry of Finance (May 23, 2023), <https://www.gov.br/receitafederal/pt-br/assuntos/noticias/2023/mayo/operacao-diluvio-receita-federal-participa-de-investigacao-contra-lavagem-de-dinheiro-decorrente-dos-crimes-de-fraude-em-llicitacao-peculato-corrupcao-agiotagem-e-sonegacao-fiscal>.
  31. “PF deflagra operação para combater lavagem de dinheiro e fraude em licitações em Alagoas” [“PF launches operation to combat money laundering and bid rigging in Alagoas”], Ministry of Justice and Public Security (June 1, 2023), <https://www.gov.br/pf/pt-br/assuntos/noticias/2023/05/pf-deflagra-operacao-para-combater-lavagem-de-dinheiro-e-fraude-em-llicitacoes-em-alagoas>.

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Key government officials involved in *Lava Jato*-related enforcement, including past and present anti-corruption prosecutors, also have come under scrutiny as of late. Most recently, Brazil's Electoral Court ("TSE") revoked the mandate of Congressman Deltan Dallagnol, a former federal prosecutor who helped to spearhead *Lava Jato* investigations.<sup>32</sup> TSE found Dallagnol ineligible for public office on account of his departure from MPF amidst fifteen open administrative proceedings against him, which it alleges amounts to circumvention of the Clean Records Act.<sup>33</sup>

**Mexico**

Despite President Andrés Manuel López Obrador's promises to strengthen Mexico's anti-corruption efforts, his administration has yet to initiate significant enforcement. Indeed, Mexico's Capacity to Combat Corruption Index score has declined steadily since 2019 with the country receiving the fourth lowest score in the region in 2023.<sup>34</sup> Notwithstanding these setbacks, Mexico's National Anti-Corruption System ("SNA") has made several recent advancements, demonstrating some institutional desire to combat corruption.

***Legal and Policy Developments***

Under its new Technical Secretary, Roberto Moreno Herrera, Mexico's SNA has implemented new anti-corruption policies and strategies since the start of the year.<sup>35</sup> In April, the SNA's Executive Secretariat introduced an Anti-Corruption Learning Platform ("PAA") with training tools for both the public and private sectors.<sup>36</sup>

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32. Elisa Clavery & Luiz Felipe Barbierie, "Após decisão do TSE, Mesa da Câmara tem que declarar perda de mandato de Dallagnol; veja próximos passos" ["After the TSE decision, the Chamber Board must announce Dallagnol's loss of mandate; see next steps"], G1 (May 17, 2023), <https://g1.globo.com/politica/noticia/2023/05/17/apos-decisao-do-tse-mesa-da-camara-tem-que-declarar-perda-de-mandato-de-dallagnol-veja-proximos-passos.ghtml>.

33. "TSE cassa mandato de Deltan Dallagnol" ["TSE revokes Deltan Dallagnol's mandate"], Migalhas (May 17, 2023), <https://www.migalhas.com.br/quentes/386628/tse-cassa-mandato-de-deltan-dallagnol>.

34. CCC Index, *supra* note 1, at 30–31.

35. "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.sna.org.mx/2022/06/27/designan-a-roberto-moreno-herrera-como-nuevo-secretario-tecnico-de-la-sesna>.

36. "Presenta SESNA Plataforma de Aprendizaje Anticorrupción del Sistema Nacional Anticorrupción (PAA)" ["SESNA Presents the Anti-Corruption Learning Platform of the National Anti-Corruption System (PAA)"], SNA Informa (May 16, 2023), <https://www.sesna.gob.mx/2023/05/16/presenta-sesna-plataforma-de-aprendizaje-anticorrupcion-del-sistema-nacional-anticorrupcion-paa>.

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Earlier in the year, the SNA's Executive Secretariat signed a collaboration agreement with the Pan American Development Foundation to develop anti-corruption policies that focus on human rights.<sup>37</sup> SNA's Coordinating Committee also recently approved a new digital platform for information-sharing between federal and state anti-corruption enforcers to help synchronize investigations.<sup>38</sup>

**“While Mexican authorities have bolstered asset forfeiture mechanisms, corporate anti-corruption enforcement has made little progress.”**

However, concerns about the future of anti-corruption enforcement in Mexico remain, as President López Obrador's administration has threatened to weaken crucial Mexican government institutions. Last year, President López Obrador sought to abolish the SNA's Executive Secretariat, and his criticisms of SNA persist.<sup>39</sup> In April, President López Obrador supported a proposal to dissolve the Institute for Information Access and Transparency (“INAI”), an independent agency that serves as a check against government corruption.<sup>40</sup> The INAI's functions have been paused indefinitely by the ruling party, whose representatives in the Mexican Senate have prevented the appointment of two commissioners to the agency.<sup>41</sup>

President López Obrador's criticism of Mexican institutions has extended to the country's judiciary as well. After Mexico's Supreme Court struck down reforms

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37. “Firma de Convenio de Colaboración entre la Fundación Panamericana para el Desarrollo y la Secretaría Ejecutiva del Sistema Nacional Anticorrupción” [“Signing of the Collaboration Agreement between the Pan American Development Foundation and the Executive Secretariat of the National Anti-Corruption System”], SNA Informa (Feb. 15, 2023), <https://www.sesna.gob.mx/2023/02/15/firma-de-convenio-de-colaboracion-entre-la-fundacion-panamericana-para-el-desarrollo-y-la-secretaria-ejecutiva-del-sistema-nacional-anticorrucion>.
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39. Dalila Escobar, “‘No me quiero reír a carcajadas’: AMLO critica el Sistema Nacional Anticorrupción” [“I don't want to laugh out loud”: AMLO criticizes the National Anti-Corruption System”], Proceso (Jan. 25, 2023), <https://www.proceso.com.mx/nacional/2023/1/25/no-me-quiero-reir-carcajadas-amlo-critica-el-sistema-nacional-anticorrucion-300972.html>.
40. “Mexico's Lopez Obrador backs plan to shutter transparency office,” Al Jazeera (Apr. 29, 2023), <https://www.aljazeera.com/news/2023/4/29/mexicos-lopez-obrador-backs-plan-to-shutter-transparency-office>.
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backed by President López Obrador, he questioned its integrity and impartiality, prompting the International Bar Association and other civil society groups to raise concerns about threats to judicial independence.<sup>42</sup> Relatedly, efforts to compensate victims of corruption have not yielded tangible results, with the Supreme Court finding no obligation to grant such victims standing as parties in anti-corruption proceedings.<sup>43</sup>

***Enforcement Efforts***

While anti-corruption enforcement remains relatively sparse in Mexico, the Attorney General of the Republic (“FGR”) has boosted the efforts of its Specialized Unit for Asset Forfeiture as of late, with 196 actions brought between 2019 and May 2023. This reflects a 317% increase from the 47 filed between 2015 and 2018.<sup>44</sup> At the recent 2023 edition of the Latin Lawyer and GIR Live: Anti-Corruption & Investigations Mexico conference, María Elisa Vera Madrigal, a director general at the FGR’s Specialized Prosecutor’s Office for Combatting Corruption, noted the office’s growing team of 60 diverse prosecutors, who handle around 800 investigations per year and to date have secured seven convictions, including three guilty pleas. Despite the office’s growth since its 2019 founding, Vera Madrigal expressed concerns about its caseload and limited mandate.<sup>45</sup>

Additionally, recent enforcement actions against former government officials have captured public attention. In April, FGR arrested Jesús Oscar Navarro Gárate, the former Director of Administration and Finance of the Mexican Food Security Agency, and nine others on charges related to the alleged embezzlement of over \$142 million Mexican pesos (\$8.27 million). In May, following an investigation by Mexico’s Chief Audit Office, prosecutors issued a warrant for Arturo Fuentes Vélez, the former Secretary of Treasury of the state of Chihuahua, for alleged corruption. If convicted, he faces up to twelve years in prison.<sup>46</sup>

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42. “Mexico: The IBA expresses concern over President Obrador’s interference with judicial independence,” International Bar Association (Apr. 16, 2023), <https://www.ibanet.org/Mexico-The-IBA-expresses-concern-over-President-Obradors-interference-with-judicial-independence>.
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46. David Vela, “Corrupción en Segalmex: Fiscalía detiene a exdirector de Administración y Finanzas” [“Corruption in Segalmex: Prosecutor’s Office detains former Director of Administration and Finance”], El Financiero (Apr. 26, 2023), <https://www.elfinanciero.com.mx/nacional/2023/04/26/corrupcion-en-segalmex-fiscalia-detiene-a-exdirector-de-administracion-y-finanzas>; Fernando Reyes, “Giran orden de aprehensión contra exsecretario de Hacienda de la administración de Corral” [“Arrest warrant issued against former Secretary of the Treasury of the Corral administration”], El Heraldo (May 9, 2023), <https://www.elheraldochihuahua.com.mx/local/chihuahua/giran-orden-de-aprehension-contra-exsecretario-de-hacienda-arturo-f.v.-por-corrupcion-10037106.html>.

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Notably, after Genaro García Luna, Mexico's former Secretary of Public Security, was convicted in the Eastern District of New York in February for accepting bribes from a Mexican drug cartel, President López Obrador expressed hope that García Luna would implicate the two former presidents under whom he had served. Mexican authorities since have initiated their own actions against García Luna, and, in May, FGR obtained arrest warrants for him and his alleged accomplices.<sup>47</sup>

NGOs in Mexico also have played an increasingly important role in investigating potential instances of corruption. For example, an investigation by Mexicans Against Corruption and Impunity revealed suspicious payments made by General Luis Cresencio Sandoval, the Mexican Secretary of Defense, in his purchase of a luxury apartment from a supplier of the Secretary of National Defense.<sup>48</sup>

However, some critics in Mexico argue that anti-corruption laws are enforced only against government adversaries, noting that no proceedings have been initiated against Ignacio Ovalle, the head of the government food security agency SEGALMEX, for his alleged involvement in the embezzlement of hundreds of millions of dollars of agency funds. President López Obrador has publicly defended Ovalle as having been unaware of the corruption.<sup>49</sup>

Looking ahead, Mexico's presidential elections next year may be a critical inflection point. President López Obrador's verbal attacks against the opposition's front-runner, Senator Xochitl Galvez, accusing her of corruption has catapulted the senator's popularity unexpectedly.<sup>50</sup> Meanwhile, the ruling party's frontrunner, former Mexico City mayor Claudia Sheinbaum, is a long-time supporter of President López Obrador and previously took a strong stance against corruption, denouncing former government officials for alleged bribery and other misconduct.<sup>51</sup>

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47. "Ex-Mexican Secretary of Public Security Genaro García Luna Convicted of Engaging in a Continuing Criminal Enterprise and Taking Millions in Cash Bribes from the Sinaloa Cartel," U.S. Department of Justice (Feb. 21, 2023), <https://www.justice.gov/usao-edny/pr/ex-mexican-secretary-public-security-genaro-garcia-luna-convicted-engaging-continuing>; Ismael Rosas, "Mexico's president hopes convicted former security chief will turn informer," NBC News (Feb. 23, 2023), <https://www.nbcnews.com/news/latino/mexicos-president-hopes-convicted-former-security-chief-will-turn-info-rcna71951>; "Comunicado FGR 258/23" ["Communication FGR 258/23"], FGR Informa (May 22, 2023), [https://fgr.org.mx/en/FGR/Nacional/\\_rid/61/\\_mod/story?p=1&ord=desc&f=0&categoria=Nacional&suri=http%3A%2F%2Fwww.FGR.swb%23fgr\\_Boletin%3A8496](https://fgr.org.mx/en/FGR/Nacional/_rid/61/_mod/story?p=1&ord=desc&f=0&categoria=Nacional&suri=http%3A%2F%2Fwww.FGR.swb%23fgr_Boletin%3A8496).
48. Verónica Ayala, "Cresencio Sandoval prometió pagar \$81 mil al mes... ¡durante 20 años!" ["Cresencio Sandoval promised to pay \$81,000 a month... for 20 years!"], Mexicanos Contra la Corrupción y la Impunidad (May 19, 2023), <https://contralacorrupcion.mx/fijan-precio-al-departamento-del-general-con-avaluo-desigual>.
49. Dalia Escobar, "AMLO exculpa a Ignacio Ovalle por fraude en Segalmex y dice que fue engañado" ["Andrés Manuel López Obrador exonerates Ignacio Ovalle of Segalmex fraud and states he was duped"], Revista Proceso (June 29, 2023), <https://www.proceso.com.mx/nacional/2023/6/29/amlo-exculpa-ignacio-ovalle-por-fraude-en-segalmex-dice-que-fue-enganado-309712.html>.
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51. "Mexico City mayor denounces 'frivolity and corruption' of her predecessors," Mexico News (Dec. 9, 2021), <https://mexiconewsdaily.com/news/mexico-city-mayor-denounces-frivolity-corruption>.

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However, her close ties with President López Obrador suggest that she may follow a similar course of anti-corruption enforcement if elected.

**Other Latin American Developments**

Below are other recent updates from across the region:

- **Chile:** In June, President Gabriel Boric partially vetoed a bill – approved by the National Congress in May – that sought to broaden criminal liability for economic and environmental crimes. The bill would have expanded the scope of potential criminal liability to a wider group of individuals and organizations, including public institutions, universities, political parties, and religious figures. It also proposed to establish new penalties for economic crimes, including the seizure of illicit profits attained through criminal activity and the elimination of penalty reductions for prior good conduct.<sup>52</sup> In exercising a veto, President Boric seeks to include previously omitted criminal offenses related to money laundering, adjust the ability to confiscate assets of criminally liable entities, and revise inconsistencies in the Stock Market Law and bankruptcy crimes.<sup>53</sup>
- **Colombia:** In March, Colombia's Constitutional Court found several articles of the nation's anti-corruption law to be unconstitutional. The articles had modified whistleblower protection programs and created new methods to assess fines for financial crimes. Because of the Court's ruling, the articles will not go into effect.<sup>54</sup> More recently, in June, allegations emerged of irregular campaign finance activities involving President Gustavo Petro after a series of voice messages between members of his administration leaked. The messages, which have sparked an investigation by Colombian authorities, suggest that President Petro's campaign may have raised funds from groups connected to drug trafficking.<sup>55</sup>

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52. "Delitos económicos y atentados contra el medio ambiente contarán con nueva ley y sanciones" ["Economic crimes and attacks against the environment will have a new law and sanctions"], Cámara de Diputadas y Diputados (May 15, 2023), <https://www.camara.cl/cms/destacado/2023/05/15/delitos-economicos-y-atentados-contra-el-medio-ambiente-contaran-con-nueva-ley-y-sanciones>.

53. Claudia Rivas A., "Boric ingresa veto al proyecto que sanciona con mayor rigor los delitos económicos" ["Boric vetoes proposal that more rigorously sanctions economic crimes"], Diario Financiero (June 14, 2023), <https://www.df.cl/economia-y-politica/congreso/boric-ingresa-veto-al-proyecto-que-sanciona-con-mayor-rigor-los-delitos>.

54. Sentencia C-080 de 2023 ["Judgment C-080 of 2023"], Corte Constitucional (Mar. 23, 2023), <https://www.corteconstitucional.gov.co/relatoria/2023/C-080-23.htm>

55. Inigo Alexander, "Wiretapping scandal thrusts Colombian government into crisis," Al Jazeera (June 7, 2023), <https://www.aljazeera.com/news/2023/6/7/wiretapping-scandal-thrusts-colombian-government-into-crisis>.

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- **Dominican Republic:** Dominican authorities continue their investigations into former President Danilo Medina and other former government officials and political candidates. In March, nineteen people were arrested, including the former Finance and Public Works Ministers, the former Chief of Staff, and the former Comptroller General, on charges including embezzlement, bribery, falsifying public documents, and illicit campaign financing.<sup>56</sup>

**“[I]n Chile, the legislature is considering a bill that would broaden criminal liability for economic crimes, and *Lava Jato*-related enforcement actions are well underway in Peru.”**

- **Ecuador:** In May, Ecuador's Attorney General's Office announced the arrest of Xavier Vera, the former Minister of Energy and Mines, as part of a bribery investigation. The arrest is reportedly connected in part to the former minister's appointment of various officials to the state-owned oil company, Petroecuador.<sup>57</sup> In a separate investigation, in March, an Ecuadorian judge approved charges brought by prosecutors against 37 individuals, including a former president, in connection with an alleged bribery scheme to attain a contract with a Chinese engineering company to build a \$2.5 billion hydroelectric dam.<sup>58</sup>
- **El Salvador:** In June, President Nayib Bukele delivered a speech marking his fourth year in office, in which he pledged to wage war against corruption and white-collar criminals. Led by Attorney General of the Republic Rodolfo Delgado, this has resulted in the seizure of 156 assets, including ill-gotten properties, of former President Alfredo Cristiani.<sup>59</sup>

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56. Martin Adames Alcantara, “Dominican Police Arrest 19 in High-Profile Corruption Case,” AP (Mar. 20, 2023), <https://apnews.com/article/dominican-republic-government-corruption-arrested-3426f9bbba84f80495c341441388671>.

57. “Detuvieron en Ecuador al ex ministro de Energía Xavier Vera por un caso de cohecho” [“Former Energy Minister Xavier Vera arrested in Ecuador for a bribery case”], Infobae (May 15, 2023), <https://www.infobae.com/america/america-latina/2023/05/15/detuvieron-en-ecuador-al-ex-ministro-de-energia-xavier-vera-por-un-caso-de-cohecho>.

58. “Caso Sinohydro: Fiscalía procesa a 37 personas, incluido el exvicepresidente de la República, Lenín M., por presunto cohecho” [“Sinohydro Case: Prosecutor’s Office prosecutes 37 people, including the former Vice President of the Republic, Lenín M., for alleged bribery”], Fiscalía General del Estado (Mar. 5, 2023), <https://www.fiscalia.gob.ec/caso-sinohydro-fiscalia-procesa-a-37-personas-incluido-el-exvicepresidente-de-la-republica-lenin-m-por-presunto-cohecho/>.

59. Alina Ramos Martin, “Anti-Corruption Campaign Underway in El Salvador,” Prensa Latina (June 3, 2023), <https://www.plenglish.com/news/2023/06/03/anti-corruption-campaign-underway-in-el-salvador>.

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- **Guatemala:** Once an anti-corruption success story, Guatemala has struggled in this regard since the mandate for its UN-backed anti-corruption mission, led by Ivan Velasquez, did not renew in 2019. In January, Guatemala's top anti-corruption prosecutor, Rafael Curruchiche, announced actions against Velasquez for alleged misconduct stemming from Velasquez's investigation into corruption allegations involving Odebrecht. Critics say the charges against Velasquez reflect Guatemala's attempt to retaliate against investigators of high-level corruption.<sup>60</sup> In May, Guatemalan authorities also arrested Stuardo Campos, the country's prosecutor for crimes against migrants and a former anti-corruption prosecutor, for alleged abuse of authority.<sup>61</sup> Meanwhile, the country prepares for presidential elections later this year, mired by candidate disqualification and public distrust.<sup>62</sup>
- **Honduras:** In June, Gabriela Castellanos, director of the nonprofit group National Anti-Corruption Council, fled Honduras with her family following the CNA's publication of a report accusing President Xiomara Castro's administration of nepotism.<sup>63</sup> In July, United Nations experts arrived in Honduras to investigate the International Commission Against Corruption and Impunity in Honduras (the country's international anti-corruption mission), which has been plagued with delays in its establishment and functioning.<sup>64</sup>
- **Panama:** In July, a Panamanian court convicted former President Ricardo Martinelli of money laundering and sentenced him to over ten years in prison for his misuse of public funds to purchase shares in a media company.<sup>65</sup> Martinelli, the sons of whom DOJ convicted of bribery and money laundering last year,<sup>66</sup> also awaits a verdict on separate *Lava Jato*-related charges.

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60. Jody Garcia, "Colombia Defends Minister Who Led Guatemala Corruption Inquiry as Row Deepens," The Guardian (Jan. 18, 2023), <https://www.theguardian.com/world/2023/jan/18/colombia-guatemala-row-minister-un-corruption-inquiry>.
61. Sonia Perez D., "Guatemala Arrests Former Anti-Corruption Prosecutor," AP (May 26, 2023), <https://apnews.com/article/guatemala-prosecutor-arrest-8483fd260c8c3417167ac0787c702e83>.
62. Eyder Peralta, "Controversy and Apathy Mar Guatemala's Upcoming Presidential Election," NPR (June 21, 2023), <https://www.npr.org/2023/06/21/1183408420/controversy-and-apathy-mar-guatemalas-upcoming-presidential-election>.
63. Marlon Gonzalez, "Leader of Honduran Anti-Corruption Group Leaves Country Under Threats," ABC News (June 19, 2023), <https://abcnews.go.com/International/wireStory/leader-honduran-anti-corruption-group-leaves-country-threats-100204434>.
64. Anna-Catherine Brigida, "UN experts arrive in Honduras to explore anti-corruption mission installation," Reuters (July 9, 2023), <https://www.reuters.com/world/americas/un-experts-arrive-honduras-explore-anti-corruption-mission-installation-2023-07-09>.
65. Vanessa Buschschlüter, "Ricardo Martinelli: Panama's ex-leader guilty of money laundering," BBC (July 18, 2023), <https://www.bbc.com/news/world-latin-america-66236404>.
66. U.S. Department of Justice, "Panamanian Intermediaries Each Sentenced to 36 Months for International Bribery and Money Laundering Scheme," (May 20, 2022), <https://www.justice.gov/usao-edny/pr/panamanian-intermediaries-each-sentenced-36-months-international-bribery-and-money>.

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- **Peru:** In February, Peru's top prosecutor formalized a criminal investigation into former president Pedro Castillo. The prosecution accuses Castillo of misconduct dating back to July 2021, including influence peddling, organized crime, collusion, and the attempt to illegally dissolve Congress. In parallel, the Attorney General's Office launched investigations into two former ministers appointed by Castillo, alleging their participation in bribery schemes involving the state-owned oil company, Petroperu. In April, former president Alejandro Toledo was arrested and extradited on allegations that he had received \$35 million in bribes from Odebrecht. In May, Peruvian law enforcement officials raided the offices of Baker McKenzie's member firm in Peru, Estudio Echecopar, in connection with *Lava Jato*-related investigations. Only a week prior to the raid, prosecutors investigating *Lava Jato*-related misconduct requested that former Peruvian president Pedro Pablo Kuczynski be sentenced to 35 years in prison for allegedly accepting \$12 million in bribes from Odebrecht.<sup>67</sup>

### Conclusion

The fight against corruption in Latin America continues to evolve as the region navigates economic upheaval, institutional challenges, and backsliding democracies. Further developments this year will help inform the region's anti-corruption future. The agendas of recently elected leaders in nations like Brazil, Chile, and Colombia continue to unfold, as the region awaits significant presidential elections in Argentina, Ecuador, Guatemala, and Mexico.

In parallel, U.S. anti-corruption enforcement in the region, both against companies and individuals, remains prominent. DOJ has prosecuted several former officials from Latin America in recent months,<sup>68</sup> and senior DOJ officials continue to warn companies that failing to cooperate and self-report could lead to criminal liability.<sup>69</sup>

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67. Kylie Madry, "Peru's top prosecutor opens corruption probe of ex-President Castillo," Reuters (Feb. 21, 2023), <https://www.reuters.com/world/americas/perus-top-prosecutor-opens-corruption-probe-ex-president-castillo-2023-02-21>; Dan Collyns, "Peru: former president Alejandro Toledo arrives to face corruption charges," The Guardian (Apr. 23, 2023), <https://www.theguardian.com/world/2023/apr/23/peru-former-president-alejandro-toledo-arrives-to-face-corruption-charges>; "Lava Jato: allanan empresas vinculadas a proceso contra Susana Villarán" ["Lava Jato: companies linked to the Susana Villarán case are raided"], El Peruano (May 23, 2023), <http://www.elperuano.pe/noticia/213433-lava-jato-allanan-empresas-vinculadas-a-proceso-contra-susana-villaran>; "Pedro Pablo Kuczynski: por qué la Fiscalía solicita 35 años de prisión para expresidente" ["Pedro Pablo Kuczynski: why the Prosecutor's Office is seeking 35 years in prison for former president"], Andina (May 15, 2023), <https://andina.pe/agencia/noticia/pedro-pablo-kuczynski-que-fiscalia-solicita-35-anos-prision-para-expresidente-939887.aspx>.
  68. See, e.g., U.S. Department of Justice, "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>; U.S. Department of Justice, "Former Venezuelan National Treasurer and Her Husband Sentenced in Money Laundering and International Bribery Scheme" (Apr. 19, 2023), <https://www.justice.gov/opa/pr/former-venezuelan-national-treasurer-and-her-husband-sentenced-money-laundering-and>.
  69. "Assistant Attorney General Kenneth A. Polite, Jr. Delivers Remarks on Revisions to the Criminal Division's Corporate Enforcement Policy," Office of Public Affairs of the U.S. Department of Justice (Jan. 17, 2023), <https://www.justice.gov/opa/speech/assistant-attorney-general-kenneth-polite-jr-delivers-remarks-georgetown-university-law>.

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Latin America's changing anti-corruption landscape underscores a number of important reminders:

- Companies must account for the possibility of more robust anti-corruption enforcement both by U.S. and other national governments throughout the region, as well as by municipal government entities, in addition to NGOs that conduct their own investigations.
- Companies should continue to monitor and test the effectiveness of their anti-corruption compliance programs, enhancing the associated controls as relevant risks and regulatory expectations continue to change. Companies also must empower their legal and compliance teams to identify, investigate, and remediate misconduct in order to ensure compliance and mitigate legal and reputational risks.

**“Companies must account for the possibility of more robust anti-corruption enforcement by both U.S. and other national governments throughout the region, as well as by municipal government entities ....”**

- Last, given the unpredictability in politics and judicial systems in Latin America, companies should monitor carefully critical legislative, political, and enforcement-related developments across the region and tailor their approaches to compliance accordingly.

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## UK Government Proposes Major Expansion of Corporate Criminal Liability

In June, the UK government announced a groundbreaking proposal to reform the identification doctrine – the principle used to hold a company liable for criminal offences committed by individuals who represent its “directing mind and will.”<sup>1</sup>

For a wide range of offences, including bribery, money laundering, sanctions, fraud, and false accounting, the actions of a “*senior manager... acting within the actual or apparent scope of their authority*” will be attributable to his or her employer. The draft wording was added to the Economic Crime and Corporate Transparency Bill which, as part of the government’s focus on overhauling UK economic crime legislation, already includes a new “failure to prevent fraud” corporate offence.<sup>2</sup> Most recently, a new “failure to prevent money laundering” offence has also been added.

The “directing mind and will” of a company has generally been interpreted as comprising its most senior officers and executives, i.e., those at or close to board level. The current position has been criticised in recent years following a number of high-profile cases, such as the failed prosecution of Barclays for conspiracy to commit fraud, in which the Serious Fraud Office (“SFO”) was unable to establish that even top-level executives such as the chief executive represented the bank’s directing mind and will in the circumstances of that case.

### Who Is a “Senior Manager”?

Under the new proposal, any “senior manager” will be considered a company’s directing mind and will. A senior manager is defined as:

“...an individual who plays a significant role in –

- (a) *the making of decisions about how the whole or a substantial part of the activities of the body corporate or (as the case may be) partnership are to be managed or organised, or*
- (b) *the actual managing or organising of the whole or a substantial part of those activities.”*

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  2. Karolos Seeger, Aisling Cowell, & Andrew Lee, “UK Introduces New ‘Failure to Prevent Fraud’ Corporate Offense,” FCPA Update, Vol. 14, No. 10 (May 2023), <https://www.debevoise.com/insights/publications/2023/05/fcpa-update-may-2023>.

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This definition raises a range of possibilities as to who might qualify as a senior manager: the UK government's announcement makes it clear that the focus of the assessment will be on the decision-making power of the individual in question, rather than simply their job title. The stated aim of these reforms is to "reduce the ability for corporations to use complex management structures to conceal who decision makers are and therefore level the playing field for businesses of all sizes."

**How Will the Definition Be Interpreted?**

We do not yet know whether the government will issue some guidance on these provisions or leave them to the courts to determine. As it stands, there is no further information on what constitutes a "significant role" or what the threshold is for assessing what represents a "substantial part" of the company's business. Interestingly, the definition of a senior manager is almost identical to the one used in the existing Corporate Manslaughter and Corporate Homicide Act 2007 (the "2007 Act"), where the Ministry of Justice and the Crown Prosecution Service ("CPS") have published guidance that may be useful in analysing who could be classified as a senior manager under the proposed identification doctrine reforms.

The Ministry of Justice guidance on the 2007 Act states that the nature and scale of a company's activities must be considered, and senior management roles include both operational management and responsibility for central functions (for example in finance or strategy). In a national business, regional managers may be captured, while in an international organisation, the managers of different operational divisions may be considered senior managers. Similarly, the CPS guidance explains that "*decisions as to who constitutes the senior management of an organisation will often be fact-specific and it may be necessary to consider factors such as the size of the organisation, the number of tiers of management, the diversity of the organisation's activities and individual job descriptions.*"

Both sets of guidance emphasise that this definition of "senior manager" is not role-specific, but rather focuses on the activities that the individual carries out on a daily basis as part of their work. This provides a flexible approach that can be adapted to firms in different industries and of different sizes and structures, ensuring that the responsibility lies with those making decisions about the business, rather than those who may hold senior positions in name but who are less involved in reality in the key decision-making of the organisation.

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Major Expansion of  
Corporate Criminal Liability**  
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**What Impact Will This Have?**

This is the most significant change to the law of corporate criminal liability since the directing mind and will principle was established in a House of Lords decision over 50 years ago. Its logical consequence, once enacted, will be to make corporate prosecutions for economic crimes (such as the substantive bribery offences in the Bribery Act 2010) considerably easier than is currently the case. The SFO has been campaigning for such reform for a number of years, and this may finally be the ‘gamechanger’ it has been looking for.

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