

FCPA Update

A Global Anti-Corruption Newsletter



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Challenges and Opportunities in Latin America's Ever-Evolving Anti-Corruption Landscape

Systemic challenges such as a lack of judicial independence, weakened rule of law, and the politicization of enforcement all complicate efforts in Latin America to combat corruption.¹ In Transparency International's latest Corruption Perceptions Index, only Colombia, Costa Rica, and the Dominican Republic improved their score relative to the prior year, reflecting an overall regional increase in perceived public sector corruption. Nevertheless, the fight against corruption persists in the region, with some noteworthy developments thus far in 2024. A number of recent enforcement efforts, newly-enacted laws, and changing administrations highlight further anti-corruption opportunities.

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1. "Corruption Perceptions Index," Transparency Int'l (accessed July 24, 2024), <https://www.transparency.org/en/cpi/2023>.

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In Argentina, for instance, authorities reportedly are nearing the first corporate resolution under the Corporate Criminal Law, enacted in 2018, and the new presidential administration has promised a crackdown on public corruption. Brazil continues to reckon with *Lava Jato*'s fallout following a sustained period of aggressive enforcement and improved interagency cooperation. In Mexico, a historic election period highlighted corruption concerns, but it remains to be seen whether the next administration will shepherd new anti-corruption efforts. Meanwhile, elsewhere in the region: Costa Rica strengthened its laws to meet international anti-corruption and compliance standards; Ecuadorian authorities supported a DOJ prosecution to settle FCPA violations; and Guatemala launched a new anti-corruption commission. In Colombia, Peru, and Venezuela, local prosecutions have focused on corruption involving former public officials.

Argentina

As reported previously, Argentina's anti-corruption enforcement efforts have slowed in recent years.² President Javier Milei, who campaigned colorfully against corruption, spent the last several months championing economic and political reforms, but has not yet introduced new anti-corruption measures. Argentine anti-corruption enforcement has continued to focus mostly on prosecuting high-ranking government officials.³

Legal and Policy Developments

Last month, Milei nominated to the Supreme Court a federal judge, Ariel Lijo, who previously faced accusations of conspiracy, money laundering, and illicit enrichment.⁴ Argentina's anti-money laundering agency raised suspicions about Lijo's "inexplicable increase in assets" and, in 2018, Lijo and his brother were charged with conspiring to perform favors for businessmen – including disrupting judicial proceedings – in exchange for money. However, a judge dismissed the case in 2021 for lack of evidence at the request of Lijo's then-lawyer Mariano Cúneo Libarona, who recently became Argentina's Minister of Justice.⁵

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2. Kara Brockmeyer et al., "The Year 2023 in Review: Steady Enforcement as Laws and Policies Proliferate," at 56–60, FCPA Update, Vol. 15, No. 6 (Jan. 2024), <https://www.debevoise.com/insights/publications/2024/01/fcpa-update-january-2024>.
 3. "Milei's key reforms, 'Ley de Bases' and fiscal package, become law in Argentina," Buenos Aires Times (July 8, 2024), <https://www.batimes.com.ar/news/argentina/mileis-key-reforms-ley-de-bases-and-fiscal-package-become-law-in-argentina.phtml>.
 4. "¿Quién es Ariel Lijo?" ["Who is Ariel Lijo?"], La Asociación Civil por la Igualdad y la Justicia (ACIJ) (May 2024), <https://acij.org.ar/wp-content/uploads/2024/05/Perfil-Ariel-Lijo.pdf>.
 5. "Argentina President Milei promises to quash corruption, then shocks with his Supreme Court pick," NBC News (June 20, 2024), <https://www.nbcnews.com/news/latino/argentina-milei-judge-lijo-ethics-corruption-rcna158255>.

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Earlier this month, Argentina enacted Milei's flagship omnibus bill, the *Ley de Bases*. The bill originally proposed structural changes to the Argentine Anti-Corruption Office ("OA") and the creation of a joint anti-corruption task force supported by the executive, legislative, and judicial branches in order to facilitate information sharing and cooperation. The anti-corruption measures ultimately were not enacted, but the law did introduce sweeping economic reforms, including the privatization of some state enterprises, and granted Milei several emergency powers, the most notable of which is the ability to disband certain federal agencies.⁶

“Much remains to be seen with respect to [Argentine President] Milei's anti-corruption priorities at the midpoint of his administration's first year. In any event, the first criminal resolution under the Corporate Criminal Law is a notable milestone, particularly given Argentina's limited corporate anti-corruption enforcement to date.”

Enforcement Efforts

Since Milei assumed the presidency eight months ago, Argentine authorities have focused their anti-corruption investigations on government officials, including some of Milei's recent political appointees.

- In February, a Buenos Aires court started hearing simultaneous appeals in the case against former Argentine President Cristina Fernández de Kirchner involving irregular public works contracts awarded during her time as president. The defense is seeking to reverse the conviction, and the prosecution is seeking to double her six-year prison sentence and reverse the acquittal on an additional charge of criminal association.⁷
- Also in February, former President Alberto Fernández was charged by prosecutors for alleged embezzlement and violation of his duties as a public official. Prosecutors demand that Fernández be investigated for alleged irregularities linked to a decree he signed in 2021 ordering all public organizations to obtain insurance contracts from Nación Seguros, an entity belonging to Banco Nación, a state-owned bank. The complainants accuse the

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6. Proyecto de Ley "Ley de Bases y Puntos de Partida Para La Libertad de los Argentinos" ["Bill 'Law of Bases and Starting Points for the Freedom of Argentines'"], <https://www.infoleg.gob.ar/wp-content/uploads/2024/01/LEY-DE-BASES-Y-PUNTOS-DE-PARTIDA-PARA-LA-LIBERTAD-DE-LOS-ARGENTINOS.pdf>; Buenos Aires Times, *supra* note 3.

7. "Court hears duelling appeals in Fernández de Kirchner graft case," Buenos Aires Times (Feb. 26, 2024), <https://www.batimes.com.ar/news/argentina/court-hears-duelling-appeals-in-fernandez-de-kirchner-graft-case.phtml>.

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former president of having favored his friends, who acted as intermediaries in exchange for million-dollar commissions.⁸

- In March, federal prosecutors brought a case against Federico D'Angelo Campos, former head of the Sustainability Guarantee Fund of the National Social Security Administration in connection with irregularities involving insurance contracts. Prosecutors accused D'Angelo Campos of fraud, abuse of authority, violation of the duties of a public official, influence peddling, and embezzlement of public funds. The complaint does not name President Fernández, who cites this development as evidence of his own innocence.⁹
- In April, a citizen filed (as a denuncia) the first complaint regarding corruption within Milei's administration. The complaint alleged irregularities in extending a concession contract between the National Highway Directorate and the state-owned entity, Corredores Viales SA, two entities dependent on Milei's Minister of Economy, Luis Caputo.¹⁰
- In June, an Argentine court scheduled for April 2025 the trial of former public works minister Julio De Vido and 25 other defendants on corruption charges linked to *Lava Jato*.¹¹
- Also in June, a federal prosecutor opened the first criminal case (distinct from the denuncia noted above) involving Milei's administration, alleging corruption by the Ministry of Human Capital, which is led by Sandra Pettovello, a trusted ally of Milei. The investigation seeks to identify any criminal conduct in relation to the ministry's hiring decisions.¹²

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8. Mar Centenera, "El expresidente argentino Alberto Fernández, investigado por corrupción" ["Former Argentine president Alberto Fernández investigated for corruption"], *El País* (Feb. 29, 2024), <https://elpais.com/argentina/2024-02-29/el-expresidente-argentino-alberto-fernandez-investigado-por-corrupcion.html>.
 9. Mar Centenera, "El Gobierno de Milei deja fuera al expresidente Fernández de la denuncia por corrupción en la Seguridad Social" ["Milei's Government leaves out former President Fernández from the complaint for corruption in the Social Security office"], *El País* (Mar. 4, 2024), <https://elpais.com/argentina/2024-03-05/el-gobierno-de-milei-formaliza-una-denuncia-por-corrupcion-en-la-seguridad-social-pero-deja-fuera-al-expresidente-fernandez.html>.
 10. "Primera denuncia por corrupción en la gestión de Javier Milei" ["First complaint for corruption during Javier Milei's administration"], *CBA24N* (Apr. 16, 2024), https://www.cba24n.com.ar/argentina/primera-denuncia-por-corrupcion-en-la-gestion-de-javier-milei--_a661eda2a93b34eb42da3c896.
 11. Hernán Capiello, "El juicio contra De Vido por las denuncias de los sobornos de la constructora Odebrecht ya tiene fecha de inicio" ["The trial against De Vido for allegations of bribery from the construction company Odebrecht already has a start date"], *La Nación* (June 12, 2024), <https://www.lanacion.com.ar/politica/el-juicio-contra-de-vido-por-las-denuncias-de-sobornos-de-la-constructora-odebrecht-ya-tiene-fecha-nid12062024>.
 12. Fiscal argentino abre primera investigación por corrupción en un ministerio de Milei ["Argentine prosecutor opens first investigation for corruption in a Milei ministry"], *La Voz* (June 5, 2024), <https://www.lavoz.com.ar/noticias/agencias/fiscal-argentino-abre-primera-investigacion-por-corrupcion-en-un-ministerio-de-milei>.

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- Most notably, the former local subsidiary of Sweden-based Securitas, Securitas Argentina (now known as Securion and owned by MAS Equity Partners), is reportedly nearing the first-ever criminal resolution under Argentina's Corporate Criminal Law. In 2018, Securitas Argentina reported to prosecutors that it had paid millions in bribes to representatives of public organizations to avoid losing contracts between 2014 and 2018. The "undue benefit" Securitas obtained from its misconduct, which will affect the company's fine, is yet to be calculated. In April, prosecutors brought bribery-related charges against former employees of the subsidiary. Several public officials also have been indicted as part of this case, and more charges are expected.¹³

Looking Ahead

Much remains to be seen with respect to Milei's anti-corruption priorities at the midpoint of his administration's first year. In any event, the first criminal resolution under the Corporate Criminal Law is a notable milestone, particularly given Argentina's limited corporate anti-corruption enforcement to date.

Brazil

In President Luiz Inacio "Lula" da Silva's second year of his presidential term, court rulings and legislative efforts have continued to unravel *Lava Jato* resolutions and punishments. However, Brazilian regulatory agencies continue to lead the region in investigating and punishing individual and corporate misconduct. Brazil's focus on improving interagency cooperation appears to be succeeding, at least in part, with many of this year's leniency agreements resulting from such coordination.

Legal and Policy Developments

In June, Brazilian lawmakers revived a decades-old effort to limit prosecutors' ability to combat corruption. Brazil's Chamber of Deputies fast-tracked two bills that, if passed, would narrow the availability of plea deals. The first bill, originally introduced during *Lava Jato* in 2016, would ban the use of plea agreements when the relevant defendants are incarcerated, prohibit prosecutors from bringing charges based solely on a cooperating witness's statements, and criminalize the disclosure of statements made in connection with a plea agreement.¹⁴ The second bill would empower third parties to challenge plea deals on the grounds that they were not entered into voluntarily.¹⁵ While it remains to be seen whether these bills will become law, they reflect a larger pattern of local backlash against anti-corruption enforcement.

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13. Ana de Liz, "Argentina inches closer to first corporate criminal resolution," *Global Investigations Rev.* (July 4, 2024), <https://globalinvestigationsreview.com/article/argentina-inches-closer-first-corporate-criminal-resolution>.

14. Projeto de Lei 4372/2016 ["Bill 4372/2016"], <https://www.camara.leg.br/proposicoesWeb/fichadetramitacao/?idProposicao=2077165>.

15. Projeto de Lei 4699/2023 ["Bill 4699/2023"], <https://www.camara.leg.br/proposicoesWeb/fichadetramitacao?idProposicao=2391268>.

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In particular, Brazil's highest court, the Supreme Federal Tribunal ("STF") has continued to undo significant *Lava Jato* anti-corruption resolutions. Most notably, STF Justice José Antonio Dias Toffoli reversed components of leniency agreements previously entered into by Odebrecht (now Novonor), after last year annulling all evidence obtained in proceedings with the Attorney General of the Union ("AGU"). This January, Justice Toffoli suspended all financial obligations imposed on the company by the Federal Prosecution Office ("MPF") based on evidence found in leaked government files. Justice Toffoli found that this evidence indicated that federal prosecutors unlawfully collaborated with the judge in the proceedings against Novonor. And in May, Justice Toffoli cited evidence of collusion in annulling all proceedings against Novonor's former CEO, Marcelo Odebrecht, finding violations of due process.¹⁶

Additionally, in February, Justice Toffoli ordered an investigation into non-governmental organization Transparency International for its role in advising prosecutors on managing fines paid by J&F Investimentos, S.A. as part of a *Lava Jato* leniency agreement with the Comptroller General's Office ("CGU"). This is despite the fact that CGU already investigated Transparency International in 2020 in relation to this role and found no misconduct.¹⁷

Also in February, the STF authorized 11 engineering firms to review and renegotiate their *Lava-Jato* leniency agreements, which collectively amount to at least R\$ 17 billion (USD \$3.4 billion). Justice André Mendonça, who authored the opinion, granted the review to ensure that the agreements complied with a Technical Cooperation Agreement enacted in 2020 (after the agreements were entered into), which systematized the leniency agreement process. The parties are currently expected to reach agreement in August.¹⁸

In May, the STF overturned the 2017 *Lava Jato* conviction of José Dirceu de Oliveira e Silva – former senator, president of the Worker's Party, and chief of staff to President Lula – for corruption and money laundering. In reviewing his conviction after Dirceu's lawyers filed a habeas petition, which the lower court rejected,

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16. Supremo Tribunal Federal, Decisão, Petição 11.972 Distrito Federal (Jan. 31, 2024), <https://www.stf.jus.br/arquivo/cms/noticiaNoticiaStf/anexo/PET11972DECISaOMIN.DIASTOFFOLI.pdf>; Supremo Tribunal Federal, Decisão, Petição 11.972 Distrito Federal (Feb. 8, 2024), <https://www.conjur.com.br/wp-content/uploads/2024/02/decisao-toffoli-jef.pdf>; Supremo Tribunal Federal, Decisão, Petição 12.357 Distrito Federal (May 21, 2024), <https://www.stf.jus.br/arquivo/cms/noticiaNoticiaStf/anexo/PET12357Assinado2.pdf>.
 17. Supremo Tribunal Federal, Decisão, Petição 12.061 Distrito Federal (Feb. 5, 2024), <https://www.stf.jus.br/arquivo/cms/noticiaNoticiaStf/anexo/PET12061.pdf>.
 18. Supremo Tribunal Federal, Arguição de Descumprimento de Preceito Fundamental 1.051 Distrito Federal (July 10, 2024), <https://portal.stf.jus.br/processos/downloadPeca.asp?id=15368494828&ext=.pdf>; "Supremo Convoca audiência de conciliação em ação sobre acordos de leniência na Lava Jato" ("Supreme Court calls conciliation hearing in case regarding leniency agreements in Lava Jato"); Supremo Tribunal Federal (Feb. 16, 2024), <https://portal.stf.jus.br/noticias/verNoticiaDetalhe.asp?idConteudo=527178&ori=1>.

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the STF found that Dirceu committed the crimes earlier in time than previously was established. The STF concluded that the statute of limitations had expired and therefore invalidated the conviction.¹⁹

Nevertheless, President Lula, currently serving as the G20 President, has set fighting corruption by “reform[ing] global governance” as one of the group’s main priorities for 2024. As part of this effort, Brazilian officials have played important roles in the G20 Anti-Corruption Working Group and signed memoranda of understanding to partner with African nations to combat corruption.²⁰

“In [Brazilian] President Luiz Inacio “Lula” da Silva’s second year of his presidential term, court rulings and legislative efforts have continued to unravel Lava Jato resolutions and punishments. However, Brazilian regulatory agencies continue to lead the region in investigating and punishing individual and corporate misconduct.”

Last, in the spirit of further interagency cooperation, CGU and AGU signed a memorandum of understanding in March to strengthen information sharing. According to the memorandum, administrative proceedings initiated by CGU will serve as the basis for AGU’s legal actions to recover damages, and information from those legal actions will support CGU’s sanctions and disciplinary procedures.²¹

Enforcement Efforts

Although these various challenges to Brazil’s anti-corruption past persist, authorities are pressing ahead with additional anti-corruption enforcement. CGU, AGU, and MPF have announced various investigations, entered into settlements, and imposed significant fines to punish corporate misconduct in the first half of 2024.

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19. “2ª Turma do STF extingue pena de José Dirceu por corrupção em processo da Lava Jato” [“2nd Panel of the STF extinguishes José Dirceu’s sentence for corruption in Lava Jato case”], g1 (May 21, 2024), <https://g1.globo.com/politica/noticia/2024/05/21/2a-turma-do-stf-extingue-pena-de-jose-dirceu-por-corrupcao-em-processo-da-lava-jato.ghtml>.
 20. Brockmeyer et al., *supra* note 2 at 63; “G20 Brasil 2024,” Edelman Global Advisory, (Feb, 29, 2024), https://www.edelminglobaladvisory.com/sites/g/files/aatuss676/files/2024-02/EGA_Brazil_G20_Presidency_29Feb2024.pdf; “Brasil fortalece laços e ações anticorrupção com países africanos,” (“Brazil strengthens connections and anticorruption actions with African countries”), Agencia Gov (Feb. 18, 2024), <https://agenciagov.etc.com.br/noticias/202402/brasil-fortalece-lacos-e-aco-es-anticorrupcao-com-paises-africanos>.
 21. “CGU e AGU celebram acordo para aprimorar combate à corrupção e recuperação de ativos” [“CGU and AGU enter agreement to improve the fight against corruption and asset recovery”], Controladoria-Geral da União (Mar. 21, 2024), <https://www.gov.br/cgu/pt-br/assuntos/noticias/2024/03/cgu-e-agu-celebram-acordo-para-aprimorar-combate-a-corrupcao-e-recuperacao-de-ativos>.

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- In February, Singapore-based marine engineering operator Seatrium announced a R\$ 671 million (USD \$123 million) settlement agreement with CGU and AGU in connection with corruption allegations stemming from *Lava Jato* investigations. However, a formal leniency agreement is yet to be signed.²²
- In May, CGU entered into a R\$ 2 million (USD \$401,000) agreement with Toronto-based chemical producer Chemtrade to settle an investigation into allegations that Chemtrade's Brazilian subsidiary participated in a scheme to sell data obtained from Brazil's import control computer system in violation of Brazil's Anti-Corruption Law.²³
- In May, CGU sanctioned four subsidiaries of Danish shipping company AP Moller-Maersk Group for paying "undue monthly benefits" to Petrobras's former Director of Supply in exchange for information and contracts. The subsidiaries are barred from obtaining public contracts in Brazil until they complete a two-year rehabilitation process and repay the Brazilian government for its financial losses from the misconduct.²⁴
- Also in May, CGU announced sanctions and fines totaling over R\$ 190 million (USD \$35 million) against five companies for committing acts against the public administration in violation of Brazil's Anti-Corruption Law, resulting from investigations conducted as part of "Operation Spy." The most significant of these was an Administrative Accountability Proceeding (also known as a "PAR") against Brazilian meat processor JBS/SA for bribing a federal tax auditor of the Ministry of Agriculture, Livestock, and Food Supply ("MAPA"). This resulted in a fine of R\$ 170 million (USD \$31 million) and MAPA's publication of the decision instituting the PAR, which is not typical.²⁵

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22. "Seatrium in \$134 million settlement over Brazil's Operation Car Wash," Seatrade Maritime News (Feb. 26, 2024), <https://www.seatrade-maritime.com/shipyards/seatrium-134-million-settlement-over-brazils-operation-car-wash>.
 23. "Empresa é multada em R\$ 2 milhões por comercializar dados do Siscomex" ["Company fined R\$ 2 million for selling Siscomex data"], Controladoria-Geral da União (May 24, 2024), <https://www.gov.br/mdic/pt-br/assuntos/noticias/2024/maio/empresa-e-multada-em-r-2-milhoes-por-comercializar-dados-do-siscomex>.
 24. "CGU condena empresas de grupo estrangeiro que pagaram propina a ex-diretor da Petrobras" ["CGU condemns foreign conglomerates that paid bribes to former Petrobras diretor"], Controladoria-Geral da União (May 8, 2024), <https://www.gov.br/cgu/pt-br/assuntos/noticias/2024/05/cgu-condena-empresas-de-grupo-estrangeiro-que-pagaram-propina-a-ex-diretor-da-petrobras>.
 25. "CGU sanciona diversas empresas por infrações previstas na Lei Anticorrupção e indefere pedidos de reconsideração" ["CGU sanctions companies for violations of the Anti-Corruption Law and rejects requests for reconsideration"], Controladoria-Geral da União (May 23, 2024), <https://www.gov.br/cgu/pt-br/assuntos/noticias/2024/05/cgu-sanciona-diversas-empresas-por-infracoes-previstas-na-lei-anticorrupcao>.

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- In June, CGU and AGU entered into a R\$ 152 million (USD \$29 million) leniency agreement with three subsidiaries of Norway's Viken Shipping. The agreement resolves allegations that the three companies made payments to a third party that then used the funds to bribe an executive at Rotterdam-based Transpetro International, Brazil's largest oil and gas transporter.²⁶
- Also in June, CGU instituted PARs and imposed a R\$ 9 million fine (USD \$1.6 million) on the group of companies CEM Administração e Participações S/A for violating the Anti-Corruption Law by fraudulently diverting money obtained under a Brazilian law providing funds for art and culture. The investigation found that the companies instead had used those funds for their own interests.²⁷
- In July, CGU and AGU entered into a R\$ 6.16 (USD \$1.13 million) leniency agreement with U.S.-based business intelligence software provider MicroStrategy Inc. Notably, MicroStrategy voluntarily reported that it discovered through an internal investigation that its subsidiary, MicroStrategy Brasil, had failed to adhere to local procurement laws during the sale of its products and services to Brazilian government clients from 2014 to 2018.²⁸

Looking Ahead

In the wake of the tenth anniversary of Brazil's Anti-Corruption Law, considerable anti-corruption enforcement by Brazilian regulatory agencies continues. Notwithstanding various material setbacks, as described above, Brazil has continued in the second year of Lula's current term to lead the region in anti-corruption enforcement.

Mexico

In recent years, Mexico has seen more limited anti-corruption enforcement. Although outgoing President Andrés Manuel López Obrador campaigned on a robust anti-corruption platform, his administration did not advance Mexico's fight against corruption to the degree that many had hoped. However, the historic election of Claudia Sheinbaum – who campaigned on promises of transparency in government and strong actions against corruption – provides another opportunity for Mexico to bolster its anti-corruption enforcement, though related expectations appear relatively muted at this time.

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26. "CGU e AGU assinam acordo de leniência com empresas norueguesas" [CGU and AGU sign leniency agreement with Norwegian companies"], Controladoria-Geral da União (June 13, 2024), <https://www.gov.br/cgu/pt-br/assuntos/noticias/2024/06/cgu-e-agu-assinam-acordo-de-leniencia-com-empresas-norueguesas>.

27. "CGU multa empresas em mais de R\$ 9 milhões por infrações à Lei Anticorrupção" ["CGU fines companies more than R\$ 9 million for violations of the Anti-Corruption Law"], Controladoria-Geral da União (June 21, 2024), <https://www.gov.br/cgu/pt-br/assuntos/noticias/2024/06/cgu-multa-empresas-em-mais-de-r-9-milhoes-por-infracoes-a-lei-anticorrupcao>.

28. "CGU e AGU assinam acordo de leniência com a empresa MicroStrategy Brasil" ["CGU and AGU signs leniency agreement with MicroStrategy Brasil"], Controladoria-Geral da União (Apr. 7, 2024), <https://www.gov.br/cgu/pt-br/assuntos/noticias/2024/07/cgu-e-agu-assinam-acordo-de-leniencia-com-a-empresa-microstrategy-brasil>.

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Legal and Policy Developments

At the Latin Lawyer and GIR Live: Anti-Corruption & Investigations Mexico conference in June, María Elisa Vera Madrigal, a legal director at the Specialized Prosecutor's Office for Combatting Corruption (a branch of the Attorney General's Office) discussed certain anti-corruption achievements and future goals. In particular, she noted the prospect of a new statute in Mexico that would incentivize voluntary reporting to authorities regarding bribery schemes. This includes the possibility of offering non-trial resolutions, such as non-prosecution agreements, to entities that report information about corruption schemes. As Madrigal explained, Mexico's current bribery statute does not provide the possibility of a lesser penalty or different form of resolution for a cooperating person or company, though prosecutors have the discretion to decline prosecution altogether.²⁹

“Although [Mexico’s] President-elect Sheinbaum is expected to mirror in many respects her predecessor’s policies, the presidential change nonetheless provides a fresh opportunity to consider increased efforts to combat corruption.”

On the campaign trail, President-elect Sheinbaum proposed the creation of a Federal Anti-Corruption Agency that would be attached to the Executive's office. Such an agency would investigate, prosecute, and sanction public officials involved in corruption.³⁰

Enforcement Efforts

Notwithstanding limited anti-corruption advancement during López Obrador's administration generally, we have seen several notable actions during the final months of his term.

- In May, Mexico's Federal Commission of Electricity (“CFE”) won an arbitration brought by a Texas energy company, Whitewater, which CFE accused of obtaining contracts through corruption. CFE had awarded Whitewater several multi-million-dollar contracts, and Whitewater initiated this arbitration

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29. Ana de Liz, “Mexican enforcement official wants more incentives for bribery tips and self-reports,” *Global Investigations Rev.* (June 13, 2024), <https://globalinvestigationsreview.com/article/mexican-enforcement-official-wants-more-incentives-bribery-tips-and-self-reports>.

30. Zedryk Raziell, “Sheinbaum propone crear una Agencia Federal Anticorrupción para investigar a funcionarios y contratistas” [“Sheinbaum proposes creating a Federal Anti-Corruption Agency to investigate officials and contractors”], *El País* (Apr. 1, 2024), <https://elpais.com/mexico/elecciones-mexicanas/2024-04-01/sheinbaum-propone-crear-una-agencia-federal-anticorrupcion-para-investigar-a-funcionarios-y-contratistas.html>.

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seeking millions in unpaid invoices. After reports surfaced questioning how and why Whitewater won the contracts, CFE announced that Whitewater was under investigation for corruption and that it would bring civil and criminal claims against the company. The London Court of International Arbitration delivered a unanimous award that ordered Whitewater to pay damages, fees, and costs to CFE. Additionally, CFE has filed an action against two of its former officials for improperly awarding contracts to Whitewater.³¹

- In June, federal officials issued a report on the resolution of a corruption probe focused on the Institute for Social Security and Services for State Workers (“ISSSTE”). The report detailed an embezzlement and bribery scheme involving active and former ISSSTE workers, lawyers, and the Federal Labor Board. The inquest resulted in sanctions against public servants and contractors as well as the recovery of \$1.8 billion Mexican pesos (approximately USD \$97 million).³²
- Also in June, the Mexican Financial Intelligence Unit (“UIF”) reportedly commenced an investigation into several individuals associated with an anti-corruption NGO. The NGO – which previously published a report alleging a scheme involving the Mexican food safety regulator and one of López Obrador’s sons – characterized the UIF’s investigation as political persecution.³³
- In July, the Mexican health and sanitary risk regulator (“COFEPRIS”) announced it had discovered through an internal review evidence of favoritism toward a company hired by COFEPRIS for bioequivalence testing of generic drugs. The company, which has not yet been publicly identified, allegedly enjoyed substandard scrutiny while other companies dealt with “unjustified overregulation.”³⁴

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31. Tom Jones, “Mexican utility wins gas supply arbitration,” *Latin Lawyer* (June 17, 2024), <https://latinlawyer.com/article/mexican-utility-wins-gas-supply-arbitration>.
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Looking Ahead

Although President-elect Sheinbaum is expected to mirror in many respects her predecessor's policies, the presidential change nonetheless provides a fresh opportunity to consider increased efforts to combat corruption. For at least a few months, eyes will be on López Obrador's legislative agenda as the ruling party in September takes a controlling position in the lower house of Mexico's Congress. Then, following Sheinbaum's inauguration in October, the focus will turn to how she approaches certain pivotal matters addressed throughout the campaign.

Other Latin American Developments

Below are other recent updates from across the region:

- **Colombia:** In February, the Presidential Transparency Secretariat filed criminal charges against a director and a deputy director of the National Disaster Risk Management Unit ("UNGRD") alleging irregularities in the acquisition of 40 water tanker trucks intended to supply potable water to remote communities. The Secretariat reported that UNGRD had paid \$46.8 billion Colombian pesos (approximately USD \$12 million) for the vehicles, with alleged overcharges exceeding \$20 billion Colombian pesos (around USD \$5 million). Both officials have since resigned and requested immunity in exchange for cooperation with the prosecutors.³⁵
- **Costa Rica:** In February, Costa Rica enacted a whistleblower protection law that protects from any workplace retaliation individuals who report potential acts of corruption in both the public and private sectors.³⁶ The new law was enacted as part of Costa Rica's 2021 accession to the OECD, the organization's first Central American member state. This law, and others enacted last year, are modeled on recommendations by the OECD's Working Group on Bribery in International Business Transactions, which address ways to strengthen national anti-corruption and compliance frameworks.³⁷

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- **Ecuador:** In April, the Attorney General's office charged 14 individuals – including judges, former officials, lawyers, and police officers – in connection with a public corruption probe into bribes paid for favors including the release of inmates.³⁸ Also, Ecuadorian authorities assisted the U.S. DOJ in its investigation of Gunvor S.A., part of the commodities trading firm Gunvor Group. In March, Gunvor S.A. pled guilty in the Eastern District of New York to a count of conspiracy to violate the FCPA involving bribery of officials of the Ecuadorian Ministry of Hydrocarbons and Petroecuador, the state-owned oil company. Of the \$661 million penalty imposed by the DOJ resolution, \$93 million will be credited against fines paid to Ecuadorian authorities in resolving their own investigation, which has yielded local bribery prosecutions of Petroecuador officials and Gunvor employees.³⁹
- **Guatemala:** Following the 2023 election of President Bernardo Arévalo – who campaigned on an anti-corruption platform – the new administration created in February the National Commission Against Corruption. The commission is intended to lay the groundwork for an anti-corruption agenda that seeks both immediate action and broader legislative reforms, notwithstanding challenges from the Attorney General. Among the early initiatives, the commission created a joint task force of several ministries to identify irregular public works contracts. The commission also announced that it will help draft a new whistleblower protection law with the goal of obtaining congressional approval by year's end.⁴⁰
- **Peru:** After the political unrest of 2022 and 2023, another wave of corruption accusations levied against Peruvian public officials has emerged. In April, prosecutors accused President Dina Boluarte of illicit enrichment following an investigation into her possession of luxury watches and jewelry that she had not disclosed in an asset declaration.⁴¹ The scandal, which has been termed "Rolexgate," resulted in a constitutional complaint by prosecutors accusing

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Boluarte of accepting a bribe.⁴² In May, the Peruvian justice oversight board formally dismissed the Attorney General, who previously was suspended over alleged interference in an investigation of her sister and of removal of a prosecutor without adequate justification.⁴³

- **Venezuela:** In April, Venezuela announced the arrest of its former oil minister, Tareck El Aissami, who was allegedly involved in a scheme to steal funds from the national oil company, Petróleos de Venezuela, S.A. (“PDVSA”). El Aissami, who had resigned abruptly and disappeared from public life in March 2023, is alleged to have conspired with PDVSA executives and members of Venezuela’s cryptocurrency regulator. He is being charged with treason and misappropriation of public funds.⁴⁴

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Draft EU Anti-Corruption Directive Makes Progress

In her 2022 State of the Union Speech, European Commission President Ursula von der Leyen had announced her intention to update the European Union's anti-corruption legislative framework.¹ On May 3, 2023, the Commission presented its proposal for a directive on combating corruption (the "Proposed Directive").² The Proposed Directive is the cornerstone of the Commission's anti-corruption package, which also comprises a joint communication on the fight against corruption, setting out a blueprint for further action, including the establishment of an EU network against corruption, and a proposal for a new EU sanction regime for corruption.

The Proposed Directive is meant to help anti-corruption efforts by ensuring a common high standard of legislation across all Member States. It will replace two former EU laws: the 2003 Council Framework dealing with corruption in the private sector and the 1997 EU Convention on the fight against corruption involving EU officials or officials of EU Member States. It will also amend the 2017 directive on the fight against fraud to the Union's financial interests by means of criminal law.

The Proposed Directive sets minimum standards for the sanctioning of corruption offenses and includes preventive measures and rules for more effective investigation and prosecution. For the first time, this Proposed Directive deals with both the public and private sectors in one piece of legislation.

On June 14, 2024, the Council of the European Union (the "Council" – the EU body representing the Member States' governments) agreed on a new draft version of the Proposed Directive.³ On that basis, the Council will now enter into negotiations with the European Parliament.

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2. Proposal for a Directive of the European Parliament and of the Council on combating corruption, replacing Council Framework Decision 2003/568/JHA and the Convention on the fight against corruption involving officials of the European Communities or officials of Member States of the European Union and amending Directive (EU) 2017/1371 of the European Parliament and of the Council, <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=COM%3A2023%3A234%3AFIN>.
3. Council of the European Union, Directive on combatting corruption (general approach), <https://data.consilium.europa.eu/doc/document/ST-10247-2024-INIT/en/pdf>.

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Key takeaways

Among the notable provisions of the Proposed Directive are:

- *Harmonized Definitions.* In practice, variations in the definitions of offenses or legal concepts can complicate cross-border investigations. Under the Proposed Directive, all EU Member States will have to criminalize the same acts, defined in the same manner. The Directive includes harmonized definitions for the following offenses: bribery in the public and private sectors, misappropriation, trading in influence, abuse of functions, obstruction of justice and enrichment from corruption offenses. The draft also includes definitions for key concepts, such as property, public official, breach of duty, or legal person.
- *Corporate Liability.* Along with individuals, companies will also face criminal liability for any corruption offenses when committed for the benefit of the company by an individual who has a leading position within the company. Importantly, companies may also be held liable where the lack of supervision or control by the company has made possible the commission of the offense.

Liability for lack of supervision or control has also been introduced in the recent EU Directive on the criminalization of EU sanction violations of April 24, 2024.⁴ This concept will be new for some Member States like France, but it has some parallels with the position under English law, under which companies may be liable for bribery committed by their “senior managers” or (unless they implemented adequate procedures to prevent bribery) a failure to prevent bribery by other employees and third parties acting on the company’s behalf.

- *Standardized Penalties for Individuals and Companies.* Under the Proposed Directive, Member States should put in place effective, proportionate and dissuasive criminal penalties for corruption-related offenses. The Council’s position reduced the maximum penalties proposed by the Commission for individuals. For companies, proposed penalties range from at least 3% to 5% of their total worldwide turnover or at least €24 or €40 million, depending on the offense.
- *Aggravating and Mitigating Circumstances.* The Proposed Directive provides for aggravating and mitigating circumstances in the event of an offense, such as the offender obtaining a substantial benefit or the offense causing substantial damage or, conversely, the offender cooperating with the authorities, implementing effective internal controls or taking remedial measures.

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4. Directive (EU) 2024/1226 of the European Parliament and of the Council of 24 April 2024 on the definition of criminal offences and penalties for the violation of Union restrictive measures and amending Directive (EU) 2018/1673, https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=OJ:L_202401226.

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- *Broad Jurisdiction.* The Proposed Directive of the Commission established broad jurisdiction for Member States, as it would apply if: (i) the offense is committed in whole or in part in the territory of a Member State; (ii) the offender is a national of or has his or her habitual residence in a Member State; or (iii) the offense is committed for the benefit of a legal person established in the territory of a Member State. This would appear to be comparable to some of the extraterritorial features of the U.S. FCPA, the UK Bribery Act and French criminal laws. In its recent draft, the Council, however, limited Member State jurisdiction to cases where the offense was committed in whole or in part within its territory or by one of its nationals. It nevertheless proposed the possibility for Member States to extend jurisdiction to other cases, but only after informing the Commission.

“The Proposed Directive sets minimum standards for the sanctioning of corruption offenses and includes preventive measures and rules for more effective investigation and prosecution. For the first time, this Proposed Directive deals with both the public and private sectors in one piece of legislation.”

- *Effective Enforcement.* The Proposed Directive lays down a number of requirements aimed at increasing the efficiency of investigations and prosecutions. These include the option of waiving privileges or immunities as part of a fair procedure, the introduction of a minimum limitation period (which the Council has considerably reduced) or the possibility of using, in some cases, the same investigative tools as for organized crimes and other serious forms of crimes. Moreover, national officials and law enforcement members are expected to receive anti-corruption training. The Proposed Directive, however, does not provide for deferred prosecution agreement mechanisms, like the ones that are, for instance, already available in France and the United Kingdom in matters of corruption.
- *Preventive Measures.* The preventive aspect of the Proposed Directive is emphasized in its explanatory memorandum.⁵ Member States are expected to build systems to prevent corruption, raise public awareness on corruption issues and ensure adequate levels of transparency and accountability. In practice, it includes appropriate access to information of public interest, the introduction of transparency measures with regard to conflicts of interest in the public sector and the assets of public officials.

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5. Proposal for a Directive of the European Parliament and of the Council on combating corruption, replacing Council Framework Decision 2003/568/JHA and the Convention on the fight against corruption involving officials of the European Communities or officials of Member States of the European Union and amending Directive (EU) 2017/1371 of the European Parliament and of the Council, Explanatory Memorandum, <https://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX%3A52023PC0234>.

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- *Independent Anti-Corruption Bodies.* Member States also have to put in place one or several independent bodies or units to *prevent* and *repress* corruption. The Council stressed that these bodies need to be able to operate without undue interference and must be equipped with an adequate number of qualified staff and financial resources.

Next Steps

The Council will now enter into negotiations with the European Parliament, which had adopted its own position in February 2024, in order to agree on a final legislative text.⁶ The reconfiguration of the European Parliament after the elections in June 2024 could bring some new nuances to the draft. Once the Directive is adopted, Member States will be required to transpose the Directive within a maximum of, under the Council's position, 36 months, instead of the 18-month time framework initially provided by the Commission.

While implementation into national law may prove challenging for several Member States, some others have already implemented anti-corruption frameworks that meet some or most of the Proposed Directive's requirements. France, for instance, already has anti-corruption criminal provisions in place and has implemented strong preventive measures under the supervision of the French Anti-Corruption Agency.

The Proposed Directive is expected to increase enforcement actions, as Member States will have to implement tools to tackle corruption more efficiently. As European jurisdictions will be able to impose hefty financial penalties for failure to prevent corruption offenses under this new legislation, businesses may wish to prepare by reviewing and maintaining robust anticorruption compliance programs and to keep monitoring EU developments.

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