

2023 YEAR IN REVIEW

FCPA Enforcement and Anti-Corruption Developments

Paul, Weiss, Rifkind, Wharton & Garrison LLP

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Executive Summary

This past year was, as in 2022, another active year in FCPA enforcement, with DOJ reaching eight corporate resolutions (including declinations with disgorgement), the SEC reaching nine corporate resolutions, and DOJ bringing charges against ten individuals. While the number of actions remained roughly on pace with 2022, there was a notable decrease in the total amount of fines levied.

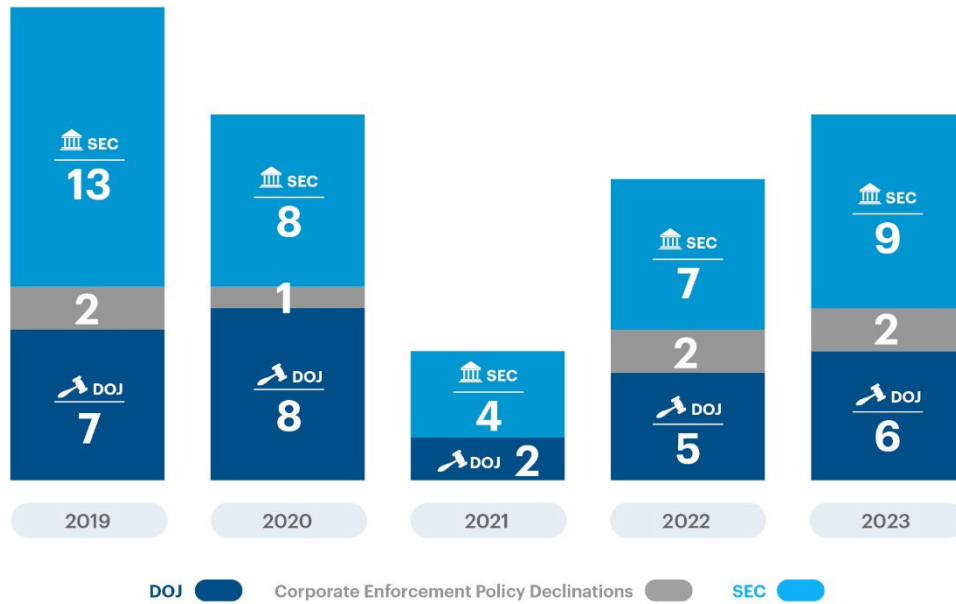
The past year also brought multiple important policy developments that we expect will continue to shape transnational anti-corruption enforcement in coming years. Among these were a pointed focus on corporate offenses implicating national security and a corresponding increase in the resources available to DOJ to pursue such offenses, additional guidance regarding the implementation of corporate compliance programs, and nationwide policies on voluntary self-disclosure of corporate wrongdoing. DOJ also significantly standardized and clarified its expectations for voluntary self-disclosure in connection with corporate mergers and acquisitions. Under DOJ's new Safe Harbor Policy, acquiring companies that voluntarily disclose criminal misconduct within six months of closing a transaction and cooperate with the ensuing investigation will receive the presumption of a declination. DOJ also announced an International Corporate Anti-Bribery Initiative to formalize and increase coordination with law enforcement authorities in foreign jurisdictions, broadening efforts to pursue major global resolutions.

Finally, in the closing weeks of 2023, Congress passed and President Biden signed into law the Foreign Extortion Prevention Act ("FEPA"), instituting criminal penalties for the demand side of foreign bribery. FEPA arms DOJ with a powerful tool to bring charges against foreign officials in corruption cases. Whether 2024 will bring the first charges under the FEPA remains to be seen, but this will be a new enforcement area to watch in the coming year.

In sum, while enforcement remains somewhat below pre-pandemic levels, new authorities and policies announced in 2023 indicate that the administration is engaging in a whole-of-government, multi-agency approach to fighting international corruption. These developments have the potential to energize enforcement, including through enhanced interagency coordination and coordination with foreign authorities, and with a focus on national security. Below, we highlight the year's most significant developments in anti-corruption and FCPA enforcement.

Corporate Enforcement Overview

In 2023, the SEC resolved nine and DOJ resolved eight FCPA corporate enforcement actions, including two DOJ declination letters pursuant to the Corporate Enforcement Policy, both of which required disgorgement.

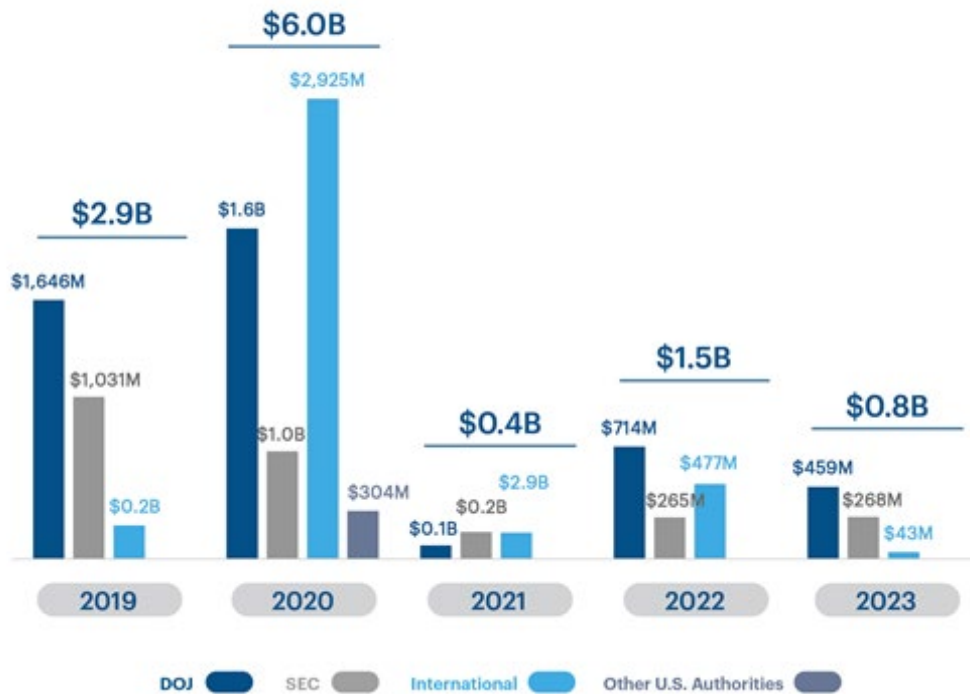


FCPA CORPORATE ENFORCEMENT ACTION RESOLUTIONS, 2019–2023¹

¹ Our tabulation of corporate enforcement action resolutions counts only cases that involve FCPA violations or allegations and does not include cases that may have arisen from a foreign bribery investigation but solely charged or alleged non-FCPA violations, such as money laundering, wire fraud, or domestic bribery. Enforcement actions were counted based on the year they were announced. Resolutions announced on the same day by the same enforcement agency against corporate affiliates were counted as one resolution. In a departure from the methodology used in prior publications of this report, we now classify FCPA-related declinations issued pursuant to the DOJ Corporate Enforcement Policy as enforcement actions. This shift in methodology is reflected in the above chart, as well as in the Enforcement Actions Penalties, Resolutions by Industry and Enforcement Actions by Location charts. The declinations counted for this publication are those publicly posted by DOJ [here](#).

These 17 enforcement actions resulted in approximately \$770 million in fines, penalties, disgorgement, and prejudgment interest, of which approximately \$459 million was assessed by DOJ and approximately \$268 million by the SEC. DOJ and the SEC credited another \$43 million in penalties assessed by foreign authorities in foreign proceedings associated with U.S. enforcement actions.

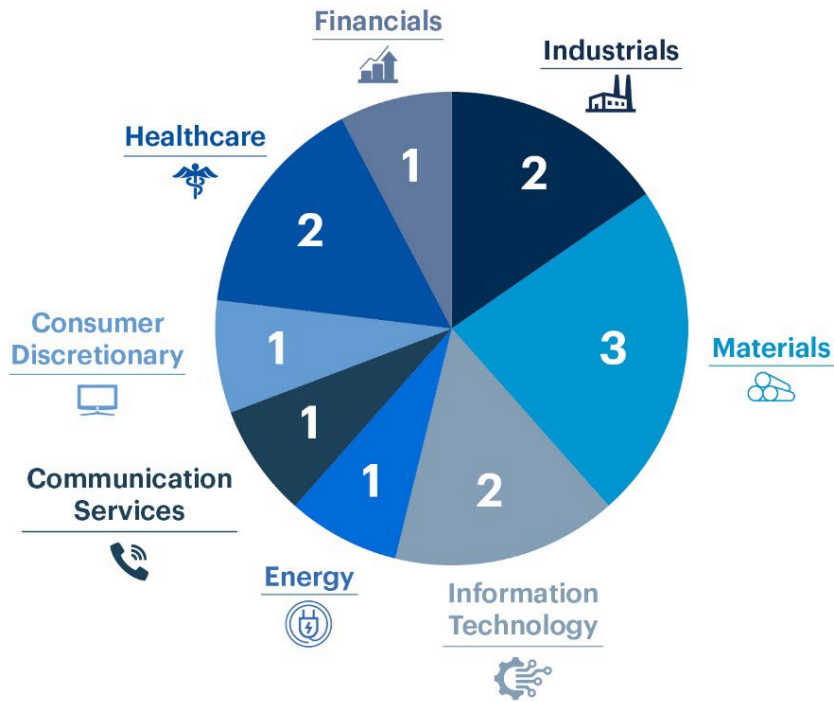
Despite the overall number of resolutions exceeding that of 2022, the total monetary amount of the penalties assessed in connection with the 2023 resolutions declined substantially, falling nearly 50% from \$1.5 billion to \$768 million.



FCPA CORPORATE ENFORCEMENT ACTION PENALTIES, 2019–2023²

² To determine the total penalty amounts, we counted criminal and civil penalties, fines, disgorgement and prejudgment interest payments attributable only to the FCPA charges in a resolution with DOJ or the SEC. Thus, where a resolution included an FCPA penalty in addition to a non-FCPA penalty, only the FCPA penalty was aggregated. Additionally, the total penalty amounts account for offsets, where applicable, between the penalties assessed by DOJ and the SEC, as well as offsets between U.S. and foreign authorities. Penalty amounts for 2022 and 2023 account for the full amount of the offset as announced in the resolution, while prior years accounted only for amounts settled with foreign authorities at the time of drafting. In 2020, “Other U.S. Authorities” included the Board of Governors of the Federal Reserve System and the New York State Department of Financial Services.

As was the case in 2022, the corporate resolutions in 2023 spanned a broad range of industries, with DOJ and the SEC entering into resolutions with companies in eight different sectors.³ This reflects a slightly broader range of industries than in 2022, when only five separate sectors were represented in DOJ or SEC settlements.



2023 FCPA CORPORATE ENFORCEMENT RESOLUTIONS BY INDUSTRY

³ Industries were defined according to the sector classifications set by S&P Global Market Intelligence, pursuant to the Global Industry Classification Standard. See *Global Industry Classification Standard*, S&P Global (2023), <https://www.spglobal.com/marketintelligence/en/documents/gics-mapbook-brochure.pdf>. This graphic reflects only publicly traded companies that entered into resolutions in 2023.

The map below demonstrates the range of countries that have been the locus of conduct deemed to violate the FCPA—including the location of subsidiaries implicated in the government’s allegations, of meetings concerning bribes, and of the bases of operations for third-party intermediaries—based upon the allegations in the 2023 corporate resolutions. As in prior years, China has continued to be an area of focus for FCPA enforcement, with three separate resolutions targeting activities in the country. This trend continues despite the increased challenges of conducting investigations in China.



2023 FCPA CORPORATE ENFORCEMENT ACTIONS BY LOCATION

DOJ Corporate Enforcement

Enforcement Actions Overview

In 2023, DOJ announced enforcement actions against eight companies and related entities (Freepoint, Tysers Insurance, H.W. Wood, Albemarle, Corporacion Financiera Colombiana (“Corficolombiana”), Ericsson, Lifecore Biomedical, Inc., and Corsa Coal Corporation).⁴ Certain of these resolutions are explored in further detail below in *Review of Select Corporate Resolutions*. Freepoint, Tysers, H.W. Wood, and Corficolombiana entered into deferred prosecution agreements; Albemarle entered into a non-prosecution agreement; Ericsson pleaded guilty to previously deferred FCPA charges in connection with a breach of its 2019 deferred prosecution agreement; and Lifecore and Corsa Coal agreed to declinations with disgorgement.

In addition, at least five companies publicly disclosed new or ongoing FCPA-related investigations in their SEC filings in 2023 that had not yet been resolved: Black & Decker, Pfizer, Stryker, Inotiv, and Trafigura.

Compliance Monitors

As we noted in last year’s review, 2022 was the first year in several in which monitors were imposed as a condition of a corporate resolution of FCPA charges.⁵ In 2023, no monitors were imposed pursuant to FCPA resolutions. However, as part of Ericsson’s guilty plea entered after breaching the terms of its 2019 DPA, it agreed to a one-year extension of its independent compliance monitor instituted pursuant to the 2019 DPA.⁶ Of the nine settling companies, only one, Philips, was required to agree to an undertaking to make regular reports to the SEC regarding its ongoing remedial efforts and implementation of its compliance program.

While the imposition of monitorships remains vanishingly rare, DOJ continues to consider whether imposing a monitor is an appropriate condition for companies entering into resolutions with the Criminal Division. On March 1, 2023, then-Assistant Attorney General for the Criminal Division Kenneth A. Polite, Jr. issued a memorandum to all Criminal Division personnel revising prior guidance on the selection of monitors in Criminal Division matters.⁷ While the memorandum did not represent a drastic departure from prior guidance, it made clear that “prosecutors should not apply presumptions for or against monitors” and provided a number of factors prosecutors should assess when deciding whether a monitor is appropriate, including whether the business acted in a manner consistent with the DOJ voluntary self-disclosure policy and the acts or failures to act by compliance personnel that contributed to the underlying misconduct.⁸

SEC Corporate Enforcement

Enforcement Actions Overview

In 2023, the SEC resolved nine FCPA corporate enforcement actions.⁹ This represented a small increase of two in the number of resolutions over last year, but, despite a significant decrease in the total penalties levied by DOJ, the penalty amounts across the SEC resolutions were essentially on par with 2022.¹⁰ Notably, whereas in 2022 over half of the SEC’s resolutions were joint

⁴ *Related Enforcement Actions: 2023*, U.S. Dep’t of Just., <https://www.justice.gov/criminal/criminal-fraud/case/related-enforcement-actions/2023>; *CEP Declinations*, U.S. Dep’t of Just., <https://www.justice.gov/criminal/criminal-fraud/corporate-enforcement-policy/declinations>

⁵ Paul, Weiss, Rifkind, Wharton & Garrison, LLP, *FCPA Enforcement and Anti-Corruption Developments: 2022 Year in Review* at 13 (Mar. 21, 2023), <https://www.paulweiss.com/practices/litigation/anti-corruption-fcpa/publications/fcpa-enforcement-and-anti-corruption-developments-2022-year-in-review?id=46310> [hereinafter “Paul, Weiss FCPA 2022 Year in Review”].

⁶ Press Release, U.S. Dep’t of Just., *Ericsson to Plead Guilty and Pay Over \$206M Following Breach of 2019 FCPA Deferred Prosecution Agreement* (Mar. 2, 2023), <https://www.justice.gov/opa/pr/ericsson-plead-guilty-and-pay-over-206m-following-breach-2019-fcpa-deferred-prosecution> [“DOJ Ericsson Press Release”]

⁷ Kenneth A. Polite Jr., Asst Att’y Gen. of the U.S. Dep’t of Just., *Revised Memorandum on Selection of Monitors in Criminal Division Matters* (Mar. 1, 2023), <https://www.justice.gov/criminal-fraud/file/1100366/download>.

⁸ *Id.*

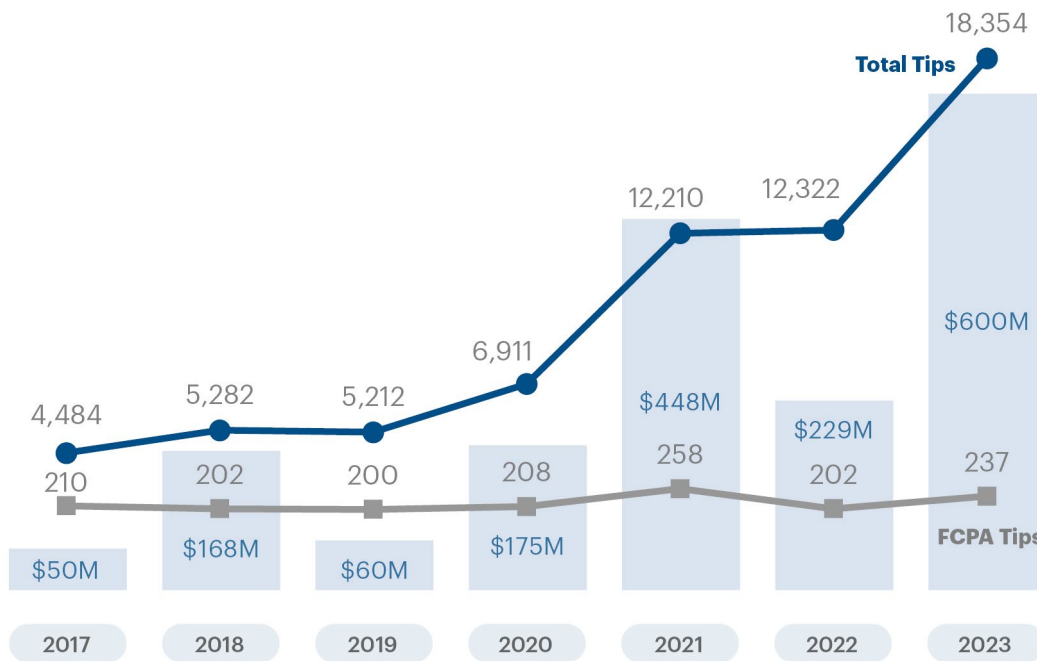
⁹ *SEC Enforcement Actions: FCPA Cases*, U.S. Sec. & Exch. Comm’n, <https://www.sec.gov/enforce/sec-enforcement-actions-fcpa-cases>

¹⁰ See *supra* at 6. SEC penalties were approximately \$265 million in 2022 and approximately \$268 million in 2023.

resolutions to settle charges by DOJ and the SEC, in 2023 only two companies entered into resolutions with both agencies: Albemarle and Corficolombiana.

Whistleblower Activity

While FCPA enforcement remained roughly the same as in the previous year, 2023 was a landmark year for whistleblower activity. The SEC received 18,354 whistleblower tips, the largest number ever received and a nearly 50% increase over the prior record set in 2022.¹¹ This increase in whistleblower activity led to a corresponding increase in whistleblower awards—the SEC issued awards totaling nearly \$600 million in 2023. Creola Kelly, Chief of the Office of the Whistleblower, noted that 2023 saw “three strands of the Whistleblower Program come together... record award amounts, unprecedented public participation, and strong enforcement of whistleblower protections,” leading to the historic results.¹²



SEC WHISTLEBLOWER TIPS AND TOTAL WHISTLEBLOWER AWARDS, FISCAL YEARS 2017–2023

Among the record \$600 million in whistleblower awards in 2023 was a single award of almost \$279 million, the largest in the history of the program, which is reported to have been issued in connection with the Ericsson FCPA case settled in 2019 for \$1.1 billion.¹³ The SEC’s final order, while heavily redacted, notes that two other individuals made claims for awards that were

¹¹ SEC Whistleblower Office Announces Results for FY 2023, U.S. Sec. & Exch. Comm’n (Nov. 14, 2023), <https://www.sec.gov/files/fy23-annual-report.pdf>.

¹² *Id.*

¹³ *Id.*; Mengqui Sun, Record \$279 Million Whistleblower Award Went to a Tipster on Ericsson, WALL ST. J., (May 26, 2023) <https://www.wsj.com/articles/record-279-million-whistleblower-award-went-to-a-tipster-on-ericsson-5af40b98>

denied by the SEC.¹⁴ Both Claimants subsequently filed petitions for review of the SEC's determination in the D.C. Circuit, both of which were voluntarily dismissed by the claimants and the SEC shortly thereafter.¹⁵

Of these 18,354 tips, 237 were FCPA-related. This represented a slight increase in the total number of FCPA-related tips over 2022, but the primary driver behind the increase in total whistleblower activity appears to be tips related to market manipulation, rather than FCPA-related issues.

Review of Select Corporate Resolutions

Rio Tinto

On March 6, 2023, the SEC announced a \$15 million settlement with Rio Tinto plc, a mining and metals company based in Australia and the United Kingdom, for violating the FCPA's accounting provisions in connection with a bribery scheme in Guinea.¹⁶ According to the SEC, in March 2011, Rio Tinto began working with a French investment banker who had a close personal relationship with a Guinean senior government official who had control over whether to allow Rio Tinto to retain its mining rights in the Simandou mountain region.¹⁷ As described in the SEC's order, Rio Tinto conducted only a " cursory background check" on the consultant and no written agreement between Rio Tinto and the consultant was in place for the majority of the consultant's employment.¹⁸ According to the order, with the consultant's influence and offer of money to a Guinean government official, Rio Tinto entered into a settlement with the Guinean government that allowed the company to secure its mining rights.¹⁹ The SEC found that, while the consultant's fees had not been set during the course of negotiations with the Guinean government, Rio Tinto ultimately agreed to pay the consultant \$10.5 million in two installments.²⁰ Following the initial payment, the consultant attempted to make an improper payment of at least \$822,000 to the Guinean senior government official, but the transaction was flagged and blocked by the bank.²¹ In addition, according to the SEC order, Rio Tinto improperly made payments to the consultant using manual payment forms generally limited to payments of up to AUD \$5,000 and followed the irregular practice of making the payments out of a wholly owned subsidiary instead of Rio Tinto plc.²²

Telefonaktiebolaget LM Ericsson

As discussed in our 2021 Year in Review,²³ in October 2021, Telefonaktiebolaget LM Ericsson ("Ericsson"), the Swedish telecommunications company, announced that DOJ prosecutors had determined that the company had violated the terms of the \$1.1 billion DPA reached in 2019 over allegations of bribery in Djibouti, China, Vietnam, Kuwait, and Indonesia. In 2021, DOJ notified the company that it had breached the agreement by failing to provide DOJ certain documents and information related to the settlement and gave Ericsson a chance to respond in writing.²⁴

¹⁴ *Order Determining Whistleblower Award Claims*, U.S. Sec. & Exch. Comm'n (May 5, 2023), <https://www.sec.gov/files/rules/other/2023/34-97438.pdf>.

¹⁵ Mengqui Sun, *Other Tipsters Appeal After SEC Awarded One Whistleblower \$279 Million in Ericsson Case*, WALL ST. J., (June 2, 2023) <https://www.wsj.com/articles/other-tipsters-appeal-after-sec-awarded-one-whistleblower-279-million-in-ericsson-case-c00a9984>.

¹⁶ Press Release, U.S. Sec. & Exch. Comm'n, *SEC Charges Rio Tinto plc with Bribery Controls Failures* (Mar. 6, 2023), <https://www.sec.gov/news/press-release/2023-46>.

¹⁷ *In re: Rio Tinto plc*, Exchange Act Release No. 97049 at 3 (Mar. 6, 2023), <https://www.sec.gov/files/litigation/admin/2023/34-97049.pdf>.

¹⁸ *Id.* at 3-4.

¹⁹ *Id.* at 4.

²⁰ *Id.* at 5.

²¹ *Id.* at 5-6.

²² *Id.* at 5.

²³ Paul, Weiss, Rifkind, Wharton & Garrison, LLP, *FCPA Enforcement and Anti-Corruption Developments: 2021 Year in Review* at 11 (Jan. 19, 2022), <https://www.paulweiss.com/practices/litigation/anti-corruption-fcpa/publications/fcpa-enforcement-and-anti-corruption-developments-2021-year-in-review?id=42168> [hereinafter "Paul, Weiss FCPA 2021 Year in Review"].

²⁴ See Press Release, *Update on Deferred Prosecution Agreement*, Ericsson (Oct. 22, 2021), <https://mb.cision.com/Main/15448/3438066/1484624.pdf>; see also Dylan Tokar, *Ericsson Accused of Breaching Bribery Settlement With Justice Department*, WALL ST. J. (Oct. 22, 2021), <https://www.wsj.com/articles/ericsson-accused-of-breaching-bribery-settlement-with-justice-department-11634911285>.

On March 2, 2023, DOJ announced that Ericsson would plead guilty to the previously deferred charges and pay a fine of over \$206 million.²⁵ According to DOJ, Ericsson breached the DPA by failing to disclose all factual information and evidence related to the Djibouti scheme, the China scheme, and other potential violations, and by failing to report promptly potential FCPA violations stemming from business activities in Iraq.²⁶ According to the Factual Basis for Breach attached to the plea agreement, Ericsson failed to produce key emails among Ericsson executives about the Djibouti and China schemes, which prevented DOJ from bringing charges against certain individuals and taking key investigative steps.²⁷ The company also failed to produce hundreds of documents stored in hard copy and on USB drives that contained information significant to the investigation, even though employees, now-former executives, and prior outside counsel were aware of the records and understood they were responsive as early as 2015.²⁸

Additionally, the Factual Basis for Breach stated that, shortly before the 2019 DPA was executed, Ericsson disclosed generalized information about an internal investigation concerning the company's operations in Iraq, while omitting key details known to the company and counsel at the time.²⁹ After Ericsson learned in 2022 of a potential news report about its activities in Iraq, it made a new disclosure to DOJ regarding possible violations and other "serious misconduct" in Iraq.³⁰ According to press reports, Ericsson's 2019 internal investigation documented extensive bribes, kickbacks, fraud, embezzlement, and circumvention of customs authorities.³¹ According to reports, the internal investigation noted details about Ericsson sending workers into territory controlled by the Islamic State and transportation contracts that likely involved paying cash to militants, which may have ended up in the possession of the Islamic State.³² According to Ericsson, the company ultimately did not "find evidence that employees were directly involved in financing terrorist groups."³³

Koninklijke Philips N.V.

On May 11, 2023, the SEC announced that Koninklijke Philips N.V. ("Philips") had agreed to pay approximately \$62 million to resolve FCPA violations by its subsidiaries in China ("Philips China").³⁴ Philips is a global health technology manufacturer headquartered in the Netherlands and operating in over 100 countries.³⁵ In accordance with the SEC's order, Philips will pay over \$41 million in disgorgement, over \$6 million in prejudgment interest, and \$15 million in civil penalties.³⁶ Philips also agreed to report to the SEC periodically on the status of its ongoing remediation and implementation of compliance measures for a two-year period, focusing on due diligence of third-party consultants and vendors, FCPA training, and testing of relevant controls, including through use of compliance data.³⁷

According to the SEC, Philips China violated the books and records and internal accounting controls provisions of the FCPA by manipulating public tender processes and providing selective discounts, while also failing to implement proper accounting

²⁵ Press Release, U.S. Dep't of Just., *Ericsson to Plead Guilty and Pay Over \$206M Following Breach of 2019 FCPA Deferred Prosecution Agreement* (Mar. 2, 2023), <https://www.justice.gov/opa/pr/ericsson-plead-guilty-and-pay-over-206m-following-breach-2019-fcpa-deferred-prosecution>.

²⁶ *Id.*

²⁷ Plea Agreement: Factual Basis for Breach at A-1-3 to A-1-6, *United States v. Telefonaktiebolaget LM Ericsson*, No. 19-cr-884 (Mar. 20, 2023), <https://www.justice.gov/media/1283646/dl?inline>.

²⁸ *Id.* at A-1-6 to A-1-7.

²⁹ *Id.* at A-1-7.

³⁰ *Id.* at A-1-7 to A-1-8.

³¹ Greg Miller & Louisa Loveluck, *Telecom giant Ericsson continued doing business in areas that fell to ISIS, internal report finds*, WASH. POST (Feb. 27, 2022), <https://www.washingtonpost.com/world/2022/02/27/ericsson-telecom-iraq-isis/>.

³² *Id.*

³³ Dylan Tokar, *Missteps by Ericsson and Its Lawyers Led to New Sanctions Against Company*, WALL ST. J. (Mar. 17, 2023), <https://www.wsj.com/articles/missteps-by-ericsson-and-its-lawyers-led-to-new-sanctions-against-company-a0e70f80>.

³⁴ Press Release, U.S. Sec. & Exch. Comm'n, *Dutch Medical Supplied Philips to Pay More Than \$62 Million to Settle FCPA Charges* (May 11, 2023), <https://www.sec.gov/news/press-release/2023-92> [hereinafter "Philips Press Release"].

³⁵ *In re: Koninklijke Philips N.V.*, Exchange Act Release No. 97479 at 2 (May 11, 2023), <https://www.sec.gov/files/litigation/admin/2023/34-97479.pdf> [hereinafter "Exchange Act Release No. 97479"].

³⁶ *Id.* at 8.

³⁷ *Id.* at 6–7.

mechanisms to ensure proper recording in books and records.³⁸ In particular, the SEC’s order sets out that, between 2014 and 2019, Philips China employees, distributors, and/or sub-dealers obtained the assistance of hospital employees in crafting bids to secure competitive advantages in the public tender and procurement processes through which China’s state-owned hospitals purchase diagnostic imaging equipment.³⁹ Additionally, according to the order, Philips China provided “special price discounts” to its distributors, further risking the distributors’ utilization of the margins to make improper payments to hospital employees.⁴⁰ As we have noted previously, the SEC has pursued cases based on a “risk of bribery” theory of liability, which the SEC repeatedly referenced in the Philips order.⁴¹ Finally, according to the SEC, Philips China’s internal accounting system failed to “provide reasonable assurances” that the discounts were appropriately approved of, managed, and reported.⁴² These internal control deficiencies are all the more notable since, in 2013, the SEC charged Philips for similar conduct engaged in between 1999 and 2007 in Poland.⁴³

The SEC took note of Philips’s cooperation efforts, including its internal investigation and fact-sharing.⁴⁴ The SEC also recognized Philips’s ongoing remediation during the investigation, including improvements to policies and procedures; improving the tone at the top of senior and middle management; increased accountability for management to enforce compliance policies; termination of the responsible Philips China employees; termination of business relationships with the distributors involved in the misconduct; and improvements to internal accounting controls relating to distributors, business practices, and the use of discounts and special pricing.⁴⁵ Following the settlement, Philips issued a press release noting that DOJ had closed a parallel inquiry into the matter.⁴⁶ Philips had previously disclosed the parallel DOJ investigation in its annual reports from 2019 to 2022.⁴⁷

Grupo Aval Acciones y Valores S.A. & Corporacion Financiera Colombiana S.A.

On August 10, 2023, the SEC and DOJ announced that Grupo Aval Acciones y Valores S.A. (“Grupo Aval”), a publicly traded Colombian conglomerate and holding company, and its bank subsidiary, Corporacion Financiera Colombiana S.A. (“Corficolombiana”), had reached settlements to resolve allegations that Corficolombiana paid more than \$23 million in bribes to high-ranking Colombian officials in the executive and legislative branches and at Colombia’s state-owned infrastructure agency to win a contract to build and operate a highway toll road in Colombia.⁴⁸ Corficolombiana entered into a three-year DPA with DOJ, which provided for payment of over \$80 million to resolve parallel investigations by DOJ, the SEC, and Colombian authorities.⁴⁹ As part of the resolution, Corficolombiana agreed to pay a \$40.6 million criminal penalty to DOJ and Grupo Aval agreed to pay \$40 million in disgorgement and prejudgment interest to settle the SEC charges, which included a cease-and-desist

³⁸ *Id.* at 4.

³⁹ *Id.* at 2.

⁴⁰ *Id.* at 4.

⁴¹ Paul, Weiss, Rifkind, Wharton & Garrison, LLP, *FCPA Enforcement and Anti-Corruption Developments: 2019 Year in Review* (Jan. 24, 2020), <https://www.paulweiss.com/practices/litigation/anti-corruption-fcpa/publications/fcpa-enforcement-and-anti-corruption-developments-2019-year-in-review?id=30533>; see Exchange Act Release No. 97479 at 2, 4, 5.

⁴² Exchange Act Release No. 97479 at 6.

⁴³ Philips Press Release.

⁴⁴ Exchange Act Release No. 97479 at 6.

⁴⁵ *Id.*

⁴⁶ Press Release, Philips, *Philips statement on recent settlement with the U.S. Securities and Exchange Commission* (May 13, 2023), <https://www.philips.com/a-w/about/news/archive/standard/news/press/2023/20230513-philips-statement-on-recent-settlement-with-the-u-s-securities-and-exchange-commission.html>.

⁴⁷ *Id.*

⁴⁸ Press Release, U.S. Sec. & Exch. Comm’n, *Colombian Conglomerate Grupo Aval and Its Bank Subsidiary to Pay \$40 Million to Settle FCPA Violations* (Aug. 10, 2023), <https://www.sec.gov/news/press-release/2023-151> [hereinafter “SEC Grupo Aval Press Release”]; Press Release, U.S. Dep’t of Just., *Corficolombiana to Pay \$80M to Resolve Foreign Bribery Investigations* (Aug. 10, 2023), <https://www.justice.gov/opa/pr/corficolombiana-pay-80m-resolve-foreign-bribery-investigations> [hereinafter “DOJ Corficolombiana Press Release”]; Deferred Prosecution Agreement at Attachment A, 3–4, *United States v. Corporacion Financiera Colombiana S.A.*, No. 23-cr-0026 (Aug. 10, 2023), <https://www.justice.gov/media/1311296/dl?inline>.

⁴⁹ DOJ Corficolombiana Press Release.

order finding Grupo Aval had violated the accounting provisions of the FCPA.⁵⁰ Notably, the resolution was the result of the first-ever foreign bribery prosecution coordinated with Colombian authorities.⁵¹

According to DOJ, Corficolombiana conspired with Odebrecht S.A., the Brazilian construction conglomerate, to funnel bribes to Colombian officials in order to win the contract to construct the Ocana-Gamarra Extension roadway.⁵² DOJ found that the scheme involved Corficolombiana causing other companies to enter into fictitious contracts, which would be used to pass along bribes to officials on behalf of Corficolombiana and Odebrecht.⁵³ The related SEC order found that the illicit payments were made with the knowledge, approval, and assistance of Corficolombiana's former president, who had previously been sentenced to nearly 12 years in prison after a 2019 criminal trial in Colombia.⁵⁴ Corficolombiana was alleged to have earned over \$28 million in profits from the infrastructure project it won as a result of the bribes.⁵⁵

DOJ credited the company for its cooperation, which included providing facts obtained through the company's internal investigation in numerous detailed presentations, producing documents DOJ may not have otherwise been able to access, and sharing sworn testimony from Colombian criminal and administrative proceedings of relevant witnesses whom DOJ could not independently interview.⁵⁶ DOJ agreed to credit up to half of the \$40.6 million criminal penalty against amounts the company and a subsidiary paid to Colombia's competition regulator and enforcement agency, Superintendencia de Industria y Comercio, for violations stemming from the same conduct, so long as the company and the subsidiary drop their appeals of the Colombian resolution.⁵⁷ Corficolombiana engaged in remedial measures including a "root cause analysis" of the underlying conduct, an overhaul of its compliance program, enhancements to its third-party intermediary risk management process, establishment of a new disciplinary process and cross-functional ethics committee, testing of its anti-corruption compliance program, and a commitment to review and update the anti-corruption program periodically.⁵⁸

Clear Channel

On September 28, 2023, the SEC announced that Clear Channel Outdoor Holdings Inc. ("CCOH") had agreed to pay over \$26 million to resolve FCPA violations by its former indirect, majority-owned subsidiary in China, Clear Media Limited ("Clear Media").⁵⁹ CCOH is an "out-of-home advertising" company headquartered in Texas, which conducted its business in China through Clear Media.⁶⁰ CCOH exercised control over Clear Media through the participation of two to three executives on Clear Media's Board of Directors, control of a majority of shares, and various management and oversight acts, such as supervising budgets, management, and executive employment and compensation.⁶¹ As discussed in more detail below, the SEC alleged that for about half a decade, Clear Media engaged in corruption and bribery and falsely recorded its illicit payments as "legitimate business expenses in CCOH's consolidated books and records," resulting in roughly \$16.4 million in benefits to CCOH.⁶² The SEC

⁵⁰ *In re: Grupo Aval Acciones Y Valores S.A. and Corporacion Financiera Colombiana S.A.*, Exchange Act Release No. 98103 at 2 (Aug. 10, 2023) <https://www.sec.gov/files/litigation/admin/2023/34-98103.pdf>

⁵¹ *Id.* at 2.

⁵² DOJ Corficolombiana Press Release.

⁵³ *Id.* at 2.

⁵⁴ Exchange Act Release No. 98103 at 2; Adriaan Alsema, *Former executive of Colombia banking giant sentenced to 12 years over Odebrecht bribery* (Apr. 29, 2019), COLOMBIA REPORTS, <https://colombiareports.com/amp/former-executive-of-colombia-banking-giant-sentenced-to-12-years-over-odebrecht-bribery/>.

⁵⁵ DOJ Corficolombiana Press Release.

⁵⁶ *Id.*

⁵⁷ *Id.* at 2–3.

⁵⁸ *Id.* at 3.

⁵⁹ Press Release, U.S. Sec. & Exch. Comm'n, *SEC Charges Clear Channel Outdoor with FCPA Violations Relating to China Subsidiary* (Sept. 28, 2023), <https://www.sec.gov/news/press-release/2023-206>. Following a strategic review while the investigation was ongoing but three years prior to its conclusion, in April 2020 CCOH sold its 50.91% stake in Clear Media pursuant to a voluntary cash offer. See Clear Channel Form 10-K at 61 (Feb. 24, 2022), <https://investor.clearchannel.com/financials/sec-filings/content/0001334978-22-000010/cco-20211231.htm>.

⁶⁰ *In re Clear Channel Outdoor Holdings, Inc.*, Exchange Act Release No. 98615 at 2 (Sept. 28, 2023), <https://www.sec.gov/files/litigation/admin/2023/34-98615.pdf> [hereinafter "Exchange Act Release No. 98615"].

⁶¹ *Id.* at 3–4.

⁶² *Id.* at 2.

order requires, in part, that CCOH pay over \$16 million in disgorgement, roughly \$3.7 million in prejudgment interest, and \$6 million in civil penalties.⁶³

In May 2018, Clear Media's former parent company disclosed that it had advised the SEC and DOJ of an investigation at Clear Media.⁶⁴ In May 2020, Clear Channel publicly disclosed that it had received a grand jury subpoena from the Eastern District of New York, and in February 2022 the company publicly disclosed ongoing discussions of a potential resolution with the SEC and DOJ.⁶⁵ A conclusion of the DOJ investigation has not yet been announced.

According to the SEC order, between 2012 and 2017, Clear Media bribed Chinese government officials using cash, gifts, and entertainment in exchange for contracts to sell advertisement services for billboards, bus shelters, and other outdoor public displays.⁶⁶ The SEC found that these bribes were conveyed directly as well as through cleaning and maintenance entities that served as Clear Media's intermediaries.⁶⁷ Further, according to the order, Clear Media conducted a "'customer development expense' scheme" through which it funneled cash to at least 19 undisclosed consultants "engaged to win advertising business from government and private customers" and generated false invoices and tax records to account for them.⁶⁸ The SEC found that, throughout the relevant time period, CCOH conducted internal audits of Clear Media which revealed risks of corruption, bribery, and lack of compliance with internal audit and accounting controls; yet CCOH failed to remediate or appropriately escalate these concerns, and CCOH's internal audit function even reported that issues were resolved based on false information provided by Clear Media.⁶⁹ In addition, beginning in 2017, Clear Media's executive officer who, according to the SEC, was personally involved in the bribery and corruption schemes, blocked the internal auditors of Clear Media and CCOH from accessing requested records.⁷⁰

The SEC found that, in 2018, "a Clear Media cashier confessed to Chinese authorities that he had participated in a decade-long misappropriation scheme," and Clear Media initiated an investigation that revealed details of corruption dating back to 2007.⁷¹ According to the SEC, the corruption scheme included the following payment amounts: \$10.2 million that three Clear Media employees received from various unauthorized transactions, \$5.2 million in government subsidies that Clear Media received and did not report, and \$9.2 million that Clear Media paid to the 19 undisclosed consultants for "customer development."⁷² CCOH's audits continued revealing red flags and subpar ratings during this time period. In 2020, following corporate changes at CCOH and its strategic review of its interest in Clear Media, CCOH disposed of its majority interest in the Chinese entity.⁷³

The SEC took note of CCOH's cooperation and remedial efforts, including CCOH's willingness to share documents from its own investigation and audits, to facilitate interviews of its foreign subsidiaries' employees, to dispose of its interest in Clear Media (which it had done in April 2020, following a strategic review), and to implement compliance policies, reviews, and increased resources.⁷⁴

⁶³ *Id.* at 11.

⁶⁴ iHeartMedia Form 10-K at 34–35 (May 3, 2018), <https://d18rn0p25nwr6d.cloudfront.net/CIK-0001400891/d3cd2388-8d97-4c0e-a579-2b31431d45b9.pdf>.

⁶⁵ Clear Channel Form 10-Q at 31 (May 6, 2020), <https://investor.clearchannel.com/financials/sec-filings/content/0001334978-20-000007/ccoh10-q2020q1.htm#sD068A276CCE05BD5884B93C7F2DAB5BD>; Clear Channel Form 10-K at 83 (Feb. 24, 2022), <https://investor.clearchannel.com/financials/sec-filings/content/0001334978-22-000010/cco-20211231.htm>.

⁶⁶ Exchange Act Release No. 98615 at 2.

⁶⁷ *Id.* at 4.

⁶⁸ *Id.* at 2, 5.

⁶⁹ *Id.* at 6.

⁷⁰ *Id.* at 7.

⁷¹ *Id.* at 8.

⁷² *Id.*

⁷³ *Id.* at 9–10.

⁷⁴ *Id.* at 11.

Albemarle Corporation

On September 29, 2023, DOJ announced a non-prosecution agreement and \$218 million resolution with Albemarle Corporation, a publicly traded specialty chemicals manufacturing company headquartered in Charlotte, North Carolina.⁷⁵ The resolution consists of a \$98.2 million criminal penalty and \$98.5 million administrative forfeiture, as well as \$103.6 million in disgorgement and prejudgment interest in the SEC's parallel resolution.⁷⁶ DOJ agreed to credit approximately \$81.9 million of the forfeiture against the disgorgement owed to the SEC.⁷⁷

Among other factors, DOJ recognized Albemarle's cooperation with the investigation and its remediation efforts and gave "significant weight" to Albemarle's self-disclosure but found that it was not "reasonably prompt" because the company learned of the allegations approximately 16 months before disclosure to the government.⁷⁸ Notably, the resolution reflects a \$763,453 reduction under DOJ's Compensation Incentives and Clawback Pilot Program, *see infra* at 28–29, for bonuses that the company withheld from responsible employees.⁷⁹ The reduction afforded to Albemarle demonstrates the value of having compensation incentive policies in place and recovering funds paid or owed to wrongdoers.

In connection with the NPA, Albemarle accepted responsibility for violation of the FCPA's anti-bribery provisions. According to the statement of facts, between about 2009 and 2017, Albemarle utilized third-party sales agents and employees of subsidiaries to engage in a conspiracy to pay government officials in Vietnam, Indonesia, and India to win contracts at state-owned oil refineries.⁸⁰ In Vietnam, Albemarle allegedly paid bribes through an intermediary company to an official at state-owned PetroVietnam and refinery officials in order to structure tender requirements favorable to Albemarle and obtain trial tests and contracts.⁸¹ Similarly, Albemarle allegedly paid commissions and fees to intermediaries to be routed to government officials at Indonesia's state-owned oil company Pertamina and India's state-owned IOCL.⁸² The NPA extensively described emails between Albemarle employees and intermediaries discussing strategies and progress on the payment schemes. According to DOJ, Albemarle obtained approximately \$98.5 million in profits from the conduct.⁸³

The parallel SEC order, to which Albemarle consented, charged that Albemarle violated the FCPA's anti-bribery, books and records, and internal accounting controls provisions.⁸⁴ In addition to the facts stated in the DOJ resolution, the SEC found that Albemarle lacked internal accounting controls that could "provide reasonable assurances that payments made to agents in Vietnam, Indonesia, India, China, and the United Arab Emirates were for legitimate services."⁸⁵ Additionally, the SEC stated that Albemarle hired and paid intermediaries despite significant red flags indicating a high probability of bribery.⁸⁶ During its due diligence process in India, for example, an Albemarle regional director alerted a U.S.-based Albemarle sales executive that, based on a call with an Indian intermediary company, it was clear that the intermediary intended to use a portion of its commission to "'handle' [a] Senior India Official, as well as officials 'many levels below.'"⁸⁷ According to the SEC order, the regional director expressed a concern that engaging the intermediary would cause Albemarle to violate the FCPA, but the sales executive

⁷⁵ Press Release, U.S. Dep't of Just., *Albemarle to Pay Over \$218M to Resolve Foreign Corrupt Practices Act Investigation* (Sept. 29, 2023), <https://www.justice.gov/opa/pr/albemarle-pay-over-218m-resolve-foreign-corrupt-practices-act-investigation> [hereinafter "Albemarle DOJ Press Release"].

⁷⁶ *Id.*

⁷⁷ *Id.*

⁷⁸ U.S. Dep't of Just., *Non-Prosecution Agreement re: Albemarle Corp.* (Sept. 28, 2023), <https://www.justice.gov/d9/2023-09/alb-npa-9.28.23-fully-executed.pdf> [hereinafter "Albemarle NPA"].

⁷⁹ Albemarle DOJ Press Release.

⁸⁰ Albemarle NPA at A-5.

⁸¹ *Id.* at A-6 to A-11.

⁸² *Id.* at A-11 to A-16.

⁸³ *Id.* at A-5.

⁸⁴ Press Release, U.S. Sec. & Exch. Comm'n, *Albemarle Corp. to Pay SEC More Than \$103 Million to Settle FCPA Violations* (Sept. 29, 2023), <https://www.sec.gov/news/press-release/2023-209>.

⁸⁵ *Id.*

⁸⁶ *In re: Albemarle Corporation*, Exchange Act Release No. 98622 at 2 (Sept. 29, 2023), <https://www.sec.gov/files/litigation/admin/2023/34-98622.pdf>.

⁸⁷ *Id.* at 5.

nonetheless signed a backdated consulting agreement between Albemarle Netherlands and the intermediary.⁸⁸ Similarly, the SEC found that, in Indonesia, an official at Indonesia's Pertamina reported that a key decisionmaker at the state-owned company was close friends with the president of Albemarle's Indonesia intermediary.⁸⁹ According to the SEC, Albemarle managers understood it would lose the business opportunity to make sales to Pertamina if it did not engage the intermediary.⁹⁰

Freepoint

On December 14, 2023, DOJ announced that it had reached an agreement with Freepoint Commodities LLC, a Stamford, Connecticut-based commodities trading firm, to resolve an investigation into FCPA violations.⁹¹ Under the agreement, Freepoint agreed to pay over \$98 million and entered into a three-year DPA with DOJ. The resolution calls for a \$68 million criminal penalty and \$30.5 million administrative forfeiture.⁹² DOJ agreed to credit up to one-third of the penalty amount against a resolution with Brazilian law enforcement and up to 25% of the forfeiture amount against disgorgement that Freepoint pays to the CFTC in a related matter, discussed below. DOJ alleged that Freepoint and other co-conspirators paid bribes to officials of Brazil's state-owned oil company, Petrobras, in order to receive "confidential information about pricing and bids submitted by Freepoint's competitors."⁹³ DOJ credited Freepoint's cooperation with its investigation and its remedial measures, including conducting a root cause analysis and overhauling its third-party compliance and risk management program.⁹⁴ DOJ also charged three individuals in connection with the same scheme, brothers Glenn and Gary Oztemel, and Eduardo Innecco, as described in more detail below, *infra* at 20.

On the same day, the CFTC announced a \$91 million parallel resolution with Freepoint.⁹⁵ The CFTC resolution is another example of that agency's involvement in foreign bribery cases, following its March 6, 2019 advisory encouraging self-reporting and cooperation for Commodity Exchange Act violations involving foreign corrupt practices.⁹⁶

Declinations with Disgorgement

DOJ also published two declination letters in 2023 pursuant to the DOJ Corporate Enforcement Policy, addressed to Lifecore Biomedical, Inc., and Corsa Coal Corporation. In the Lifecore declination letter, dated November 16, DOJ noted that its investigation found that agents of a company acquired by Lifecore had made improper payments to one or more government officials in Mexico in connection with obtaining wastewater discharge permits and fraudulent manifests that falsely stated that the company had properly disposed of wastewater, and that the acquired subsidiary had concealed evidence of the misconduct during acquisition, with Lifecore only uncovering the misconduct during post-acquisition integration. Lifecore agreed to disgorge \$406,505, the remaining amount of costs avoided after Lifecore remediated the acquired company's conduct by building a wastewater treatment plant and paying Mexican regulators the duties its owed. DOJ credited the company's timely voluntary self-disclosure of potential misconduct on the part of a company it had acquired, noting that the company reported "within three months of first discovering the possibility of misconduct and hours after an internal investigation confirmed that misconduct had occurred."⁹⁷ The declination letter also highlighted the company's remediation, including withholding an implicated officer's bonus and compensation.⁹⁸ The letter itself does not make reference to DOJ's M&A Safe Harbor Policy announced in October (nor is it clear that Lifecore discovered and reported the misconduct within the six-month window

⁸⁸ *Id.*

⁸⁹ *Id.* at 7.

⁹⁰ *Id.*

⁹¹ Press Release, U.S. Dep't of Just., *Commodities Trading Company Agrees to Pay Over \$98M to Resolve Foreign Bribery Case* (Dec. 14, 2023), <https://www.justice.gov/opa/pr/commodities-trading-company-agrees-pay-over-98m-resolve-foreign-bribery-case> [hereinafter "DOJ Freepoint Press Release"].

⁹² *Id.*

⁹³ *Id.*

⁹⁴ *Id.*

⁹⁵ Commodity Futures Trading Comm'n, CFTC Orders Freepoint Commodities LLC to Pay \$91 million for Fraudulent Scheme to Misappropriate Material Non-Public Information (Dec. 14, 2023), <https://www.cftc.gov/PressRoom/PressReleases/8834-23>.

⁹⁶ *Id.*

⁹⁷ Letter from the U.S. Department of Justice, Criminal Division re: Lifecore Biomedical, Inc. (f/k/a Landec Corporation) (Nov. 16, 2023), <https://www.justice.gov/media/1325521/dl?inline>.

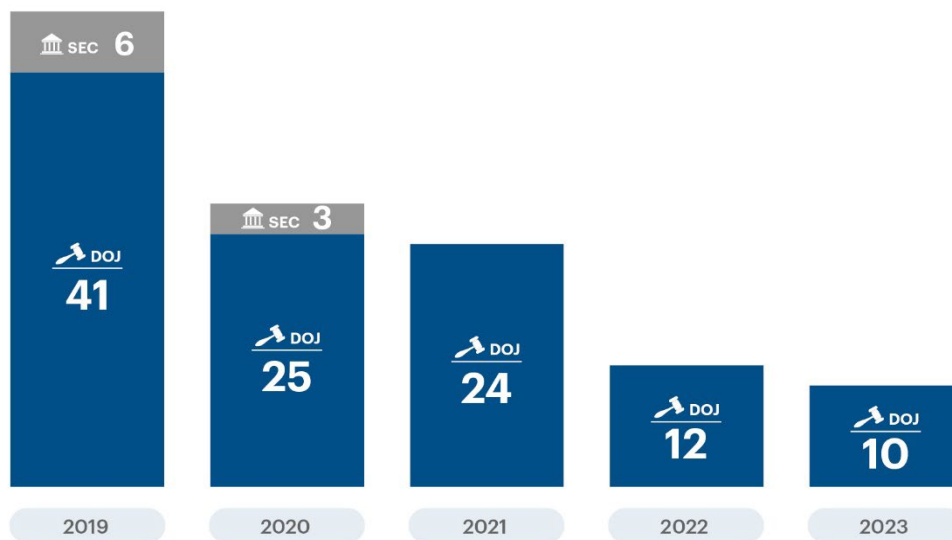
⁹⁸ *Id.* at 2.

provided by the policy), but the end result of declination with disgorgement would have been consistent with the new policy, discussed in more detail below, *infra* at 27–28.

With regard to Corsa Coal, the declination letter stated that DOJ’s investigation found evidence that Corsa employees and agents had made improper payments to Egyptian government officials, including the chairman of Al Nasr (an Egyptian state-owned and -controlled coke company), in order to win coal supply contracts, resulting in approximately \$32.7 million in profits.⁹⁹ However, DOJ required the company to disgorge only \$1.2 million, as paying a greater amount would substantially threaten the continued viability of the company. The letter also noted Corsa Coal’s timely voluntary self-disclosure, full cooperation, and termination of an implicated employee.

Enforcement Actions Against Individuals

2023 was largely consistent with 2022 in terms of FCPA and related anti-corruption enforcement by the Department of Justice against individuals, with new charges filed against ten individuals, although those totals lagged far behind earlier years. In 2023, DOJ also unsealed charges from a previous year in one case, and at least nine individuals were sentenced on corruption-related charges.



FCPA AND ANTI-CORRUPTION ENFORCEMENT ACTIONS AGAINST INDIVIDUALS: 2019–2023¹⁰⁰

Notably, many of these individual actions related to DOJ’s years-long investigation into *Petróleos de Venezuela, S.A.* (“PDVSA”), Venezuela’s state-controlled oil company, which has been deeply embroiled in more than a decade of corruption, depriving the

⁹⁹ Letter from the U.S. Department of Justice, Criminal Division re: Corsa Coal Corporation (Mar. 8, 2023), <https://www.justice.gov/media/1280101/dl?inline>.

¹⁰⁰ An enforcement action is considered an FCPA or anti-corruption enforcement action for the purposes of this chart if it is listed as an FCPA enforcement action by DOJ on its website found [here](#) or by the SEC on its website found [here](#). The figures reflected in this chart for each year therefore reflect both cases that charge violations of the FCPA and cases that charge other violations, such as money laundering, in an anti-corruption context. This reflects a change in methodology from prior publications in which this chart has appeared, which previously reflected only cases in which FCPA violations were charged. An action is counted for a particular year based on the “filed date” listed on the DOJ or SEC website.

Venezuelan people of more than \$42 billion and leading to over 127 corruption investigations in at least 16 countries.¹⁰¹ In 2023, DOJ obtained sentences against individuals in two PDVSA-related bribery cases and it filed an information and secured a plea agreement with a former top lawyer for PDVSA.

Below we summarize the key resolutions and new enforcement actions against individuals from 2023 by category. As in 2022, the SEC did not pursue any civil FCPA charges against individuals in 2023, seemingly reflecting the SEC's prioritization of corporate enforcement activity over holding individual company executives and employees accountable and notwithstanding its public statements to the contrary.

New Charges Filed in 2023

Maikel José Moreno Pérez (1/26/2023)

DOJ filed a four-count indictment against Moreno, "former president of the Venezuelan Supreme Court and current Venezuelan Supreme Court justice," in the Southern District of Florida, alleging conspiracy to commit money laundering, concealment of money laundering, and engaging in transactions in criminally derived property.¹⁰² According to DOJ, between 2014 and 2019, including prior to his 2014 appointment as Supreme Court president, Moreno accepted bribes amounting to more than \$10 million in exchange for his influence on criminal and civil proceedings, including effecting dismissals, authorizing a judicial seizure, and ordering home confinement.¹⁰³ These payments typically came from Venezuelan contractors engaged in contracts with government-owned entities.¹⁰⁴ Moreno, who maintained a personal bank account in Miami, allegedly spent the proceeds around the world, including on homes in Italy, the Dominican Republic, Venezuela, and Miami, as well as on luxury goods and services.¹⁰⁵ In the future, DOJ may also be able to bring criminal charges under the FEPA in circumstances such as these.

Alvaro Ledo Nass (2/24/2023)

On February 24, 2023, DOJ filed a single-count information against former PDVSA executive Alvaro Ledo Nass, in the Southern District of Florida, alleging a conspiracy to commit money laundering.¹⁰⁶ Ledo held various high-ranking positions in PDVSA, including Secretary of the Board of Directors and General Counsel.¹⁰⁷ According to DOJ, between 2012 and 2017, Ledo participated in a scheme in which corruptly obtained loans, granted to PDVSA, were used to exploit Venezuela's fixed foreign currency exchange rate to extract roughly \$550 million in ill-gotten gains.¹⁰⁸ The lucrative bribery and money laundering scheme generated kickbacks for Ledo and his co-conspirators, with Ledo accepting at least \$11.5 million in bribes in exchange for furthering the operation.¹⁰⁹ The funds were laundered through various financial institutions in the U.S., including in the Southern District of Florida, where conspiracy meetings also took place.¹¹⁰ The information listed a violation of the FCPA as one of the specified unlawful activities underlying the money laundering charge.¹¹¹ On March 29, 2023, Ledo entered into a plea agreement, in which he agreed to cooperate fully with DOJ,¹¹² and on June 12, 2023, Ledo was sentenced to three years in

¹⁰¹ Florantonia Singer, *Rampant Corruption in Venezuela's National Oil Company Weighs Down the Economy*, EL PAÍS (Mar. 23, 2023), <https://english.elpais.com/international/2023-03-23/rampant-corruption-in-venezuelas-national-oil-company-weighs-down-the-economy.html>.

¹⁰² Press Release, U.S. Att'y Office S.D. Fla., *Former President of Venezuelan Supreme Court Indicted on Charges of Accepting Bribes to Resolve Court Cases* (Jan. 26, 2023), <https://www.justice.gov/usao-sdfl/pr/former-president-venezuelan-supreme-court-indicted-charges-accepting-bribes-resolve>.

¹⁰³ *Id.*

¹⁰⁴ *Id.*

¹⁰⁵ *Id.*

¹⁰⁶ ECF No. 1, *United States v. Ledo Nass*, No. 23-cr-20089-KMW (S.D. Fla. Feb. 24, 2023), <https://www.justice.gov/media/1288366/dl?inline>.

¹⁰⁷ Factual Proffer, ECF No. 14, *United States v. Nass*, No. 23-cr-20089-KMW (S.D. Fla. Mar. 29, 2023), <https://www.justice.gov/media/1288371/dl?inline>.

¹⁰⁸ *Id.*

¹⁰⁹ *Id.*

¹¹⁰ *Id.*

¹¹¹ ECF No. 1, *United States v. Ledo Nass*, No. 23-cr-20089-KMW (S.D. Fla. Feb. 24, 2023), <https://www.justice.gov/media/1288366/dl?inline>.

¹¹² ECF No. 15, *United States v. Ledo Nass*, No. 23-cr-20089-KMW (S.D. Fla. Mar. 29, 2023), <https://www.justice.gov/media/1288376/dl?inline>.

prison.¹¹³ The sentencing court referred to the corruption scheme as “a cancer that acts like a virus,” yet extended leniency to Ledo for his substantial cooperation, which he began providing “long before he was formally charged.”¹¹⁴

Glenn Oztemel and Eduardo Innecco (2/17/2023) (Indictment), Gary Oztemel (8/29/2023) (Superseding Indictment)

DOJ filed a nine-count superseding indictment against Gary Oztemel, amending the indictment filed against Glenn Oztemel and Eduardo Innecco,¹¹⁵ in the District of Connecticut, alleging, among other charges, conspiracy to violate the FCPA, substantive violations of the FCPA, conspiracy to commit money laundering, and substantive money laundering violations.¹¹⁶ According to the superseding indictment, the defendants, through co-conspirators and various companies, bribed officials associated with Petrobras in exchange for confidential information about Petrobras, which gave three companies, including Gary Oztemel’s company Oil Trade & Transport S.A., an unfair advantage in fuel oil trades with Petrobras, which were used to generate profits used for further bribes.¹¹⁷

Samuel Bankman-Fried (3/28/2023)

DOJ filed a 13-count superseding indictment against Bankman-Fried in the Southern District of New York, adding, among other charges, conspiracy to violate the anti-bribery provisions of the FCPA.¹¹⁸ According to the superseding indictment, as part of the various bribery, money laundering, misappropriation of funds, and other fraudulent schemes he engaged in from 2019 to 2022, Bankman-Fried bribed Chinese government officials with at least \$40 million in cryptocurrency, in an effort to have them unfreeze trading accounts “containing over \$1 billion in cryptocurrency” of Alameda, one of Bankman-Fried’s cryptocurrency companies.¹¹⁹ On June 15, 2023, the district court severed the FCPA charges from the indictment against Bankman-Fried.¹²⁰ On November 2, 2023, Bankman-Fried was convicted of “two counts of wire fraud conspiracy, two counts of wire fraud, and one count of conspiracy to commit money laundering” after a trial.¹²¹ On December 29, 2023, DOJ stated in a letter to the court that it would not pursue the FCPA charges against Bankman-Fried, but planned to advocate that the underlying conduct be considered in connection with his sentencing.¹²² Bankman-Fried’s sentencing is currently scheduled for March 28, 2024.¹²³

Amadou Kane Diallo (indictment: 5/3/2023; superseding indictment: 9/20/2023)

DOJ filed a 21-count superseding indictment against Diallo in the Central District of California, alleging, among other charges, wire fraud, money laundering, and violation of the FCPA.¹²⁴ According to the superseding indictment, from 2015 to at least January 2020, among other corrupt activities, Diallo defrauded at least 11 investors by soliciting their investments in his companies, Virtual Advisors and Liquide, through misrepresentations and false pretenses about how their funds would be used, how much risk was involved in his business ventures, and what return-on-investment they could expect.¹²⁵ Diallo allegedly

¹¹³ Jay Weaver, *Top Lawyer for Venezuela’s State Oil Company Sentenced to 3 Years for Racket Tied to Miami*, MIAMI HERALD (July 6, 2023), <https://www.miamiherald.com/news/local/article276318121.html>.

¹¹⁴ *Id.*

¹¹⁵ ECF No. 1, *United States v. Oztemel*, No. 23-cr-00026-KAD (D. Conn. Feb. 14, 2023), <https://www.justice.gov/media/1275301/dl?inline>.

¹¹⁶ ECF No. 76, *United States v. Oztemel*, No. 23-cr-00026-KAD (D. Conn. Aug. 29, 2023), <https://www.justice.gov/d9/2023-10/us-v-oztemel-superseding-indictment.pdf>.

¹¹⁷ *Id.*

¹¹⁸ ECF No. 115, *United States v. Bankman-Fried*, No. 22-cr-00673-LAK (S.D.N.Y. Mar. 28, 2023), <https://www.justice.gov/criminal-fraud/file/1593626/dl>.

¹¹⁹ *Id.*

¹²⁰ ECF No. 165, *United States v. Bankman-Fried*, No. 22-cr-00673-LAK (S.D.N.Y. June 15, 2023).

¹²¹ Press Release, U.S. Attn’y Office S.D.N.Y., *Statement of U.S. Attorney Damian Williams on the Conviction of Samuel Bankman-Fried* (Nov. 2, 2023), <https://www.justice.gov/usao-sdny/pr/statement-us-attorney-damian-williams-conviction-samuel-bankman-fried>.

¹²² ECF No. 388, *United States v. Bankman-Fried*, No. 22-cr-00673-LAK (S.D.N.Y. Dec. 29, 2023).

¹²³ Jonathan Stempel, *Sam Bankman-Fried Will Not Face a Second Trial*, REUTERS (Dec. 30, 2023), <https://www.reuters.com/legal/sam-bankman-fried-will-not-face-second-trial-us-prosecutors-say-2023-12-29/>.

¹²⁴ Press Release, U.S. Dep’t of Just., *Foreign National Charged for \$1.8M Wire Fraud and Money Laundering Scheme* (June 1, 2023), <https://www.justice.gov/opa/pr/foreign-national-charged-18m-wire-fraud-and-money-laundering-scheme>.

¹²⁵ First Superseding Indictment, ECF No. 29, *United States v. Diallo*, No. 23-cr-00054-JWH (C.D. Cal. Sept. 20, 2023), <https://www.justice.gov/d9/2023-09/sa-23-cr-00054-jwh-fsi-diallo-filed.pdf>.

acquired roughly \$1,878,729 in ill-gotten funds and used most of them for luxury purchases and pursuits.¹²⁶ According to the indictment, Diallo also violated the FCPA by attempting to obtain a grant of land in Senegal by corruptly offering gifts and campaign assistance to at least two Senegalese government officials.¹²⁷

Javier Alejandro Aguilar Morales (8/3/2023)

DOJ filed a five-count indictment against Aguilar in the Southern District of Texas, alleging, among other counts, conspiracy to violate the FCPA, substantive violations of the FCPA, and money laundering.¹²⁸ Aguilar was an oil and commodities trader at Vitol Inc. (“Vitol”), a U.S.-based company which, along with its affiliates, “formed one of the largest oil distributors and energy commodities traders in the world.”¹²⁹ According to the indictment, between August 2017 and July 2020, Aguilar and his co-conspirators engaged in a bribery and money laundering scheme to funnel corrupt payments to two procurement managers at PEMEX Procurement International, Inc.—a U.S. wholly owned subsidiary of Mexico’s state-owned oil company, Petróleos Mexicanos (“PEMEX”)—in order to obtain PEMEX and PEMEX Procurement International, Inc. contracts for Vitol.¹³⁰ Utilizing intermediary shell companies and sham contracts, Aguilar and his co-conspirators managed to steer bribes amounting to \$371,446 and \$255,895 to the procurement managers, Gonzalo Guzman Manzanilla and Carlos Espinosa Barba, respectively.¹³¹

Prior to the S.D. Tex. case, Aguilar was charged in the Eastern District of New York in a separate case on July 10, 2020.¹³² A superseding indictment, filed on December 22, 2022, includes the bribery and money laundering scheme with PEMEX and PEMEX Procurement International, Inc., as well as a similar scheme that Aguilar allegedly helped orchestrate for Vitol with Ecuador’s state-owned oil company, Petroecuador.¹³³ On December 3, 2020, Vitol entered a DPA in the E.D.N.Y., in which it agreed to pay \$135 million, in connection with a DOJ criminal information charging it with conspiracy to violate the FCPA for bribery schemes involving government officials in Brazil, Ecuador, and Mexico.¹³⁴ On June 1, 2023, the E.D.N.Y. court dismissed the Mexico-related charges against Aguilar on venue grounds, leading prosecutors to file similar charges in the Southern District of Texas.¹³⁵ Trial of Aguilar on the Ecuador-related FCPA and money laundering charges in E.D.N.Y. began on January 5, 2024.

Carl Alan Zaglin, Aldo Nestor Marchena, and Fransisco Roberto Cosenza Centeno (filed 11/28/2023, unsealed 12/20/2023)

DOJ filed a five-count indictment against Zaglin, Marchena, and Cosenza in the Southern District of Florida, alleging, among other charges, conspiracy to violate the FCPA for Zaglin and Marchena, and a substantive violation of the FCPA for Zaglin.¹³⁶

Zaglin was the CEO and majority owner of what the indictment described as “Georgia Company 1,” which “owned and operated a factory in Honduras that manufactured law enforcement uniforms and accessories.”¹³⁷ Cosenza was Executive Director of the Comité Técnico del Fideicomiso para la Administración del Fondo de Protección y Seguridad Poblacional (“TASA”), the governmental agency in Honduras which “procur[ed] uniforms and other goods for the Honduran National Police.”¹³⁸ According to the indictment, from around March 2015 through around November 2019, Zaglin arranged for Marchena to bribe Honduran

¹²⁶ *Id.*

¹²⁷ *Id.*

¹²⁸ ECF No. 1, *United States v. Aguilar Morales*, No. 23-cr-00335 (S.D. Tex. Aug. 3, 2023), <https://www.justice.gov/criminal-fraud/file/1592496/download>.

¹²⁹ *Id.*

¹³⁰ *Id.*

¹³¹ *Id.*

¹³² ECF No. 1, *United States v. Aguilar*, No. 20-cr-00390-ENV (E.D.N.Y. July 10, 2020), <https://www.justice.gov/media/1114901/dl?inline>.

¹³³ ECF No. 120, *United States v. Aguilar*, No. 20-cr-00390-ENV (E.D.N.Y. Dec. 22, 2022), <https://www.justice.gov/media/1263791/dl?inline>.

¹³⁴ Press Release, U.S. Dep’t of Just., *Vitol Inc. Agrees to Pay Over \$135 Million to Resolve Foreign Bribery Case* (Dec. 3, 2020), <https://www.justice.gov/opa/pr/vitol-inc-agrees-pay-over-135-million-resolve-foreign-bribery-case>.

¹³⁵ Stewart Bishop, *Tossed In NY, Ex-Vitol Trader Hit With FCPA Claims In Texas*, LAW360 (Aug. 4, 2023), <https://www.law360.com/articles/1707773/tossed-in-ny-ex-vitol-trader-hit-with-fcpa-claims-in-texas>.

¹³⁶ Press Release, U.S. Dep’t of Just., *Three Men Charged in International Bribery and Money Laundering Scheme* (Dec. 22, 2023), <https://www.justice.gov/opa/pr/three-men-charged-international-bribery-and-money-laundering-scheme> [hereinafter “Zaglin, Marchena, and Cosenza DOJ Press Release”].

¹³⁷ Indictment, ECF No. 3, *United States v. Zaglin*, No. 23-cr-20454-BB (S.D. Fla. Nov. 28, 2023), <https://www.justice.gov/media/1330111/dl?inline>.

¹³⁸ *Id.*

government officials, including Consenza, in order to secure contracts worth over \$10 million for U.S. companies,¹³⁹ including TASA contracts for Georgia Company 1 for the sale of uniforms to the Honduran National Police.¹⁴⁰ With the help and collaboration of other individuals identified in the indictment, the defendants allegedly perpetuated and concealed their scheme by, in part, funneling over \$166,000 in bribes¹⁴¹ through front companies in the U.S. and Belize and bank accounts opened in Florida in the name of front companies, as well as through the use of sham contracts and invoices.¹⁴²

Charges from Prior Years Unsealed in 2023

Luis Álvarez Villamar (information filed May 19, 2021; unsealed March 21, 2023)

On March 21, 2023, DOJ unsealed an information, dating from 2021, that charged Álvarez with conspiracy to commit money laundering.¹⁴³ According to DOJ, Álvarez accepted roughly \$3,155,671 in bribes from Jorge Cherez Miño, an Ecuadorian fund manager.¹⁴⁴ Álvarez, an employee of what the information called the “Ecuadorian Entity,” a “clearinghouse and custodian” for the investments made by Ecuador’s police pension fund, Instituto de Seguridad Social de la Policia Nacional, accepted the bribes in exchange for giving Cherez’s companies custody over the investments, which in turn generated additional corrupt payments.¹⁴⁵ Álvarez entered into a plea agreement with DOJ on July 7, 2021,¹⁴⁶ and, on December 16, 2021, was sentenced to 26 months’ imprisonment.¹⁴⁷

Sentencings in 2023

Arturo Carlos Murillo Prijic (sentenced January 4, 2023)

Murillo, former Bolivian Minister of Government, was sentenced to 70 months in prison for conspiring to launder bribes, worth at least \$532,000, which a Florida company paid him in exchange for helping it obtain a \$5.6 million contract with the Bolivian Ministry of Defense to provide it with equipment.¹⁴⁸

Jose Luis De Jongh Atencio (sentenced January 25, 2023)

De Jongh Atencio, a former procurement manager of Citgo, a Houston-based subsidiary of PDVSA, was sentenced to four years in prison¹⁴⁹ for conspiracy to commit money laundering.¹⁵⁰ As set out in the plea agreement, De Jongh, who worked in Citgo’s Special Projects group in charge of “procur[ing] goods and services on behalf of PDVSA,” accepted over \$7 million in bribes from two individuals who controlled U.S. companies, in exchange for assisting them in obtaining contracts with Citgo and PDVSA through inside information, improper bidding advantages, and other forms of assistance.¹⁵¹ Along with other co-conspirators, De Jongh and the businessmen laundered the illicit funds through Swiss, Panamanian, and Texan accounts.¹⁵²

¹³⁹ Zaglin, Marchena, and Consenza DOJ Press Release.

¹⁴⁰ Indictment, ECF No. 3, *United States v. Zaglin*, No. 23-cr-20454-BB (S.D. Fla. Nov. 28, 2023), <https://www.justice.gov/media/1330111/dl?inline>.

¹⁴¹ Zaglin, Marchena, and Consenza DOJ Press Release.

¹⁴² Indictment, ECF No. 3, *United States v. Zaglin*, No. 23-cr-20454-BB (S.D. Fla. Nov. 28, 2023), <https://www.justice.gov/media/1330111/dl?inline>.

¹⁴³ ECF No. 1, *United States v. Villamar*, No. 21-cr-20308-KMW (S.D. Fla. May 19, 2021), <https://www.justice.gov/media/1159171/dl?inline>.

¹⁴⁴ Factual Proffer in Support of Guilty Plea, ECF No. 11, *United States v. Villamar*, No. 21-cr-20308-KMW (S.D. Fla. May 19, 2021),

<https://www.justice.gov/media/1159181/dl?inline>.

¹⁴⁵ *Id.*; Max Fillion, *Ecuadorian Pension Bribery Scheme Participant Gets 26 Months in Prison*, GLOBAL INVESTIGATIONS REVIEW (Mar. 28, 2023),

<https://globalinvestigationsreview.com/just-anti-corruption/article/ecuadorian-pension-bribery-scheme-participant-gets-26-months-in-prison>.

¹⁴⁶ ECF No. 12, *United States v. Villamar*, No. 21-cr-20308-KMW (S.D. Fla. July 7, 2021), <https://www.justice.gov/media/1159176/dl?inline>.

¹⁴⁷ *Ecuadorian Pension Bribery Scheme Participant Gets 26 Months in Prison*, GLOBAL INVESTIGATIONS REVIEW (Mar. 28, 2023),

<https://globalinvestigationsreview.com/just-anti-corruption/article/ecuadorian-pension-bribery-scheme-participant-gets-26-months-in-prison>.

¹⁴⁸ Press Release, U.S. Dep’t of Just., *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>.

¹⁴⁹ ECF No. 157, *United States v. De Jongh-Atencio*, No. 20-cr-00305 (S.D. Tex. Jan. 26, 2023).

¹⁵⁰ Press Release, U.S. Dep’t of Just., *Former Venezuelan Official Pleads Guilty in Connection with International Bribery and Money Laundering Scheme* (Mar. 23, 2023), <https://www.justice.gov/opa/pr/former-venezuelan-official-pleads-guilty-connection-international-bribery-and-money>.

¹⁵¹ ECF No. 35, *United States v. De Jongh-Atencio*, No. 20-cr-00305 (S.D. Tex. Dec. 16, 2020), <https://www.justice.gov/media/1135611/dl?inline>.

¹⁵² *Id.*

Roberto Enrique Rincón Fernández (sentenced January 25, 2023)

Rincón Fernández, an owner of U.S.-based energy companies that supplied services and equipment to PDVSA and its affiliates,¹⁵³ was sentenced to 18 months in prison for conspiracy to violate the FCPA, substantive violations of the FCPA, and making false statements on a federal income tax return.¹⁵⁴ Rincón paid bribes to numerous PDVSA officials—at times, by wiring payments to bank accounts in the U.S., including in the Southern District of Texas, and abroad—to secure advantages for lucrative energy contracts his companies were bidding for.¹⁵⁵ Rincón also failed to report “over \$6 million in foreign dividend income he received from a Venezuelan corporation he owned” on his 2010 federal tax return.¹⁵⁶ Other individuals involved with Rincón’s corrupt scheme have been convicted and sentenced for related crimes, including business partner and co-conspirator Abraham Jose Shiera Bastidas,¹⁵⁷ co-conspirator Juan Jose Hernandez Comerma,¹⁵⁸ and former PDVSA procurement officer Alfonso Eliezer Gravina Munoz, who accepted bribes from them.¹⁵⁹

Saman Ahsani (sentenced January 30, 2023)

Ahsani, former COO of Unaoil, a Monaco-based company in the energy sector,¹⁶⁰ was sentenced to one-year-and-one-day in prison, and a \$1.5 million forfeiture money judgment was entered against him, for conspiring to violate the FCPA, to commit money laundering, and to obstruct justice.¹⁶¹ According to DOJ, between 1999 and 2016, Ahsani, along with others, paid millions of dollars in bribes to “government officials in Algeria, Angola, Azerbaijan, the Democratic Republic of Congo, Iran, Iraq, Kazakhstan, Libya and Syria,”¹⁶² in order to obtain oil and gas contracts for Unaoil and, according to prosecutors, for “27 multinational oil and gas companies,” including some in the U.S.¹⁶³ Ahsani pleaded guilty to conspiracy to violate the FCPA on October 30, 2019, along with his brother and CEO of Unaoil, Cyrus Ahsani;¹⁶⁴ according to news reports, their conduct in the massive bribery and money laundering scheme had “spawned a string of corruption probes globally and put UK and US authorities on a collision course over who would take down the kingpins.”¹⁶⁵ At Ahsani’s sentencing hearing, prosecutors noted how Ahsani’s far-reaching corruption contributed to destabilization in multiple countries, yet they also recognized his deep remorse and yearslong cooperation, referring to him as “an open book” who has “done the right thing in an extraordinary and exemplary way.”¹⁶⁶

¹⁵³ ECF No. 48, *United States v. Rincon-Fernandez*, No. 15-cr-00654 (S.D. Tex. Mar. 22, 2016).

¹⁵⁴ ECF No. 313, *United States v. Rincon-Fernandez*, No. 15-cr-00654 (S.D. Tex. Jan. 26, 2023).

¹⁵⁵ ECF No. 48, *United States v. Rincon-Fernandez*, No. 15-cr-00654 (S.D. Tex. Mar. 22, 2016).

¹⁵⁶ Press Release, U.S. Dep’t of Just., *Businessman Pleads Guilty to Foreign Bribery and Tax Charges in Connection with Venezuela Bribery Scheme* (June 16, 2016), <https://www.justice.gov/opa/pr/businessman-pleads-guilty-foreign-bribery-and-tax-charges-connection-venezuela-bribery-scheme>.

¹⁵⁷ Press Release, U.S. Dep’t of Just., *Miami Businessman Pleads Guilty to Foreign Bribery and Fraud Charges in Connection with Venezuela Bribery Scheme* (Mar. 23, 2016), <https://www.justice.gov/opa/pr/miami-businessman-pleads-guilty-foreign-bribery-and-fraud-charges-connection-venezuela>; ECF No. 282, *United States v. Shiera-Bastidas*, No. 15-cr-00654 (S.D. Tex. Oct. 17, 2022).

¹⁵⁸ Press Release, U.S. Dep’t of Just., *Florida Businessman Sentenced to 48 Months in Prison for Role in Venezuela Bribery Scheme* (Jan 8, 2020), <https://www.justice.gov/opa/pr/florida-businessman-sentenced-48-months-prison-role-venezuela-bribery-scheme>.

¹⁵⁹ Press Release, U.S. Dep’t of Just., *Texas Businessman Sentenced to 70 Months in Prison for Role in Venezuela Bribery Scheme and Obstruction of Justice* (Feb. 29, 2020), <https://www.justice.gov/opa/pr/texas-businessman-sentenced-70-months-prison-role-venezuela-bribery-scheme-and-obstruction>.

¹⁶⁰ Press Release, U.S. Dep’t of Just., *Oil Executives Plead Guilty for Roles in Bribery Scheme Involving Foreign Officials* (Oct. 30, 2019), <https://www.justice.gov/opa/pr/oil-executives-plead-guilty-roles-bribery-scheme-involving-foreign-officials> [hereinafter “Ahsani DOJ Press Release”].

¹⁶¹ Order Imposing Money Judgment, ECF No. 126, *United States v. Ahsani*, No. 19-cr-00147 (S.D. Tex. Jan. 30, 2023), https://files.lbr.cloud/public/2023-01/Saman%20Ahsani%20money%20judgment_1.pdf?VersionId=jFmMeNWdxM2eCfNvGY3icSYFm5VtbqH.

¹⁶² Ahsani DOJ Press Release.

¹⁶³ ECF No. 132, *United States v. Ahsani*, No. 19-cr-00147 (S.D. Tex. Feb. 20, 2023).

¹⁶⁴ Ahsani DOJ Press Release.

¹⁶⁵ Kadhim Shubber et al., *Global fixer of corrupt energy deals sentenced to year in US prison*, FIN. TIMES (Jan. 30, 2023), <https://www.ft.com/content/6911fab3-ec10-4bcf-a2c7-a772f5f8ad37>.

¹⁶⁶ *Id.*

Gina Zhou (a/k/a Chaoting Zhou, a/k/a Angel Zhou) (sentenced February 16, 2023) and Cary Yan (a/k/a/ Hong Hui Yan, a/k/a Chen Hong) (sentenced May 16, 2023)

Yan, former President and Chairman of a UN-affiliated New York-based non-governmental organization, the World Organization of Governance and Competitiveness (“WOGC”),¹⁶⁷ which he established in 2016,¹⁶⁸ was sentenced to 42 months in prison for conspiracy to violate the FCPA.¹⁶⁹ The WOGC’s stated mission was to improve governance and enhance competitiveness in developing countries.¹⁷⁰ Zhou, Yan’s assistant in the WOGC and co-defendant, was sentenced to approximately 31 months in prison for the same conduct.¹⁷¹ Yan and Zhou engaged in a scheme to pay tens of thousands of dollars to officials of the Republic of the Marshall Islands (“RMI”), in exchange for their supporting a bill to create a semi-autonomous region in the Islands, called the Rongelap Atoll Special Administrative Region (“RASAR”).¹⁷² According to the indictment, Yan and Zhou sought to create the RASAR in order to benefit the WOGC, in part by attracting investors who could “participate in economic and social development” in the region, by proposing that taxation be lowered or eliminated there, and by operating businesses through the WOGC there.¹⁷³ Upon the bill’s failure, Yan and Zhou unsuccessfully attempted to oust the RMI president who had opposed it, but after the subsequent presidential elections, they continued bribing legislators to support a resolution endorsing the RASAR, ultimately leading to the resolution’s passage in March 2020.¹⁷⁴ Of note, the WOGC’s business form and its “special consultative status” with the United Nations Department of Economic and Social Affairs¹⁷⁵ did not shield Zhou and Yan from FCPA prosecution.¹⁷⁶ DOJ has broadly interpreted the business purpose test of the FCPA to be “met where the purpose of the payment or offer is to assist in obtaining and retaining business.”¹⁷⁷

Roger Ng (a/k/a Ng Chong Hwa) (sentenced March 9, 2023)

Ng, a former managing director at Goldman Sachs, was sentenced to ten years in prison for conspiring to violate the FCPA and to launder money by misappropriating over \$2.7 billion from 1Malaysia Development Berhad (“1MDB”), Malaysia’s state-owned investment and development fund, through a scheme involving more than \$1 billion in bribe payments to 12 government officials in Malaysia and the United Arab Emirates in exchange for lucrative contracts, including bond deals with 1MDB.¹⁷⁸ On March 24, 2023, Ng was also ordered to forfeit \$35.1 million.¹⁷⁹

¹⁶⁷ *Efforts to Create Rongelap Atoll Special Zone: Unanswered Questions Remain*, GEORGETOWN UNIV. CTR. FOR AUSTRAL., N.Z. & PAC. STUD. (Sept. 9, 2022), <https://canzps.georgetown.edu/2022/09/09/efforts-to-create-rongelap-atoll-special-zone-unanswered-questions-remain/>.

¹⁶⁸ Indictment, ECF No. 2, *United States v. Yan*, No. 20-cr-00402-NRB (Aug. 10, 2020).

¹⁶⁹ ECF No. 42, *United States v. Yan*, No. 20-cr-00402-NRB (May 15, 2023).

¹⁷⁰ *World Organization of Governance & Competitiveness Launched During the Opening of 71st UNGA*, BUSINESSWIRE (Sept. 26, 2016), <https://www.businesswire.com/news/home/20160926005521/en/World-Organization-of-Governance-Competitiveness-Launched-During-the-Opening-of-71st-UNGA>.

¹⁷¹ Press Release, U.S. Att’y Office S.D.N.Y., *Defendant Sentenced To 42 Months In Prison For Conspiring To Bribe High-Level Officials Of The Republic Of The Marshall Islands* (May 16, 2023), <https://www.justice.gov/usao-sdny/pr/defendant-sentenced-42-months-prison-conspiring-bribe-high-level-officials-republic>.

¹⁷² Press Release, U.S. Dep’t of Just., *Former Head of Non-Governmental Organization Sentenced for Bribing Officials of Republic of Marshall Islands* (May 15, 2023), <https://www.justice.gov/opa/pr/former-head-non-governmental-organization-sentenced-bribing-officials-republic-marshall>.

¹⁷³ ECF No. 2, *United States v. Yan*, No. 20-cr-00402-NRB (Aug. 10, 2020).

¹⁷⁴ Press Release, U.S. Att’y Office S.D.N.Y., *Defendant Sentenced To 42 Months In Prison For Conspiring To Bribe High-Level Officials Of The Republic Of The Marshall Islands* (May 16, 2023), <https://www.justice.gov/usao-sdny/pr/defendant-sentenced-42-months-prison-conspiring-bribe-high-level-officials-republic>.

¹⁷⁵ Indictment, ECF No. 2, *United States v. Yan*, No. 20-cr-00402-NRB (Aug. 10, 2020).

¹⁷⁶ See Denis Demblowski, *ANALYSIS: No FCPA Liability Shield for NGO Principals*, BLOOMBERG LAW ANALYSIS (Sept. 26, 2022), <https://news.bloomberglaw.com/bloomberglaw-law-analysis/analysis-no-fcpa-liability-shield-for-ngo-principals>; Indictment, ECF No. 2, *United States v. Yan*, No. 20-cr-00402-NRB (Aug. 10, 2020).

¹⁷⁷ U.S. Dep’t of Just., *Opinion Procedure Release No. 22-1* (Jan. 21, 2022), <https://www.justice.gov/criminal/criminal-fraud/page/file/1466596/dl?inline>.

¹⁷⁸ Press Release, U.S. Dep’t of Just., *Former Goldman Sachs Investment Banker Sentenced in \$2.7B Bribery and Money Laundering Scheme* (Mar. 9, 2023), <https://www.justice.gov/opa/pr/former-goldman-sachs-investment-banker-sentenced-27b-bribery-and-money-laundering-scheme>.

¹⁷⁹ Memorandum and Order, ECF No. 247, *United States v. Hwa*, No. 18-cr-00538-MKB (Mar. 24, 2023), <https://www.law360.com/articles/1590031/attachments/0>.

Claudia Patricia Díaz Guillen and Adrian José Velásquez (sentenced April 19, 2023)

After conviction at trial on money laundering offenses, Díaz, the former National Treasurer of Venezuela, and her husband Velásquez, a billionaire and owner of the news network Globovision, were each sentenced to 15 years in prison.¹⁸⁰ Díaz and Velásquez accepted and laundered bribes exceeding \$136 million from a Venezuelan billionaire, co-conspirator Raúl Gorriñ Belisario, in exchange for granting him Venezuelan treasury bonds at a favorable exchange.¹⁸¹ Díaz and Guillen used the funds to make luxury purchases “and to fund a high-end fashion line started by Díaz and Velásquez in South Florida.”¹⁸²

Policy Pronouncements Affecting Anti-Corruption Enforcement

In 2023, DOJ announced several significant policy developments that we expect will shape anti-corruption enforcement in the years to come. These pronouncements align with the White House’s focus on corruption, which it has described as “an existential threat to prosperity, security, and democracy – for Americans and for people around the world.”¹⁸³ For the first time, the White House has emphasized a high-level, whole-of-government approach to fighting corruption, highlighting the work of numerous federal agencies.¹⁸⁴ Among other efforts, the administration has increased interagency coordination between the FBI and the State Department to deploy five regional anti-corruption advisors around the world; established a dedicated anti-corruption center at the U.S. Agency for International Development; prepared to begin enforcement of new requirements for many U.S. and foreign companies to report information about their beneficial owners to the Treasury Department; announced visa restrictions for foreign persons involved in corruption; and engaged in various diplomatic and multilateral coordination efforts.¹⁸⁵ As discussed below, DOJ’s 2023 policy focus followed similar themes: expanding international coordination, increasing scrutiny on the intersection of corruption and national security, and revising enforcement policies to ensure clear expectations and predictability.

DOJ International Corporate Anti-Bribery Initiative

On November 29, 2023, Acting Assistant Attorney General for the Criminal Division Nicole M. Argentieri announced the launch of a new International Corporate Anti-Bribery initiative (“ICAB”).¹⁸⁶ Argentieri explained that DOJ “cannot succeed in combating corruption on our own” because those engaged in bribery “move across international borders, as do the illicit proceeds of their crimes.”¹⁸⁷ Noting that DOJ already plays a leading role in developing international anti-corruption standards, Argentieri emphasized that international cooperation “amplifies the deterrent value of corporate prosecutions – companies and their employees should understand that now, more than ever before, law enforcement partners around the world are working together to tackle complex financial crime.”¹⁸⁸

With these goals in mind, DOJ’s ICAB initiative will be led by three experienced prosecutors and aim “to build relationships with counterparts around the world to facilitate cooperation and information sharing.”¹⁸⁹ The initiative formalizes a trend in the past several years of increased enforcement cooperation between DOJ and its international counterparts, resulting in blockbuster fines and also bringing finality to disparate investigations. This year, for example, as detailed above, DOJ entered into a

¹⁸⁰ Press Release, U.S. Dep’t of Just., *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>.

¹⁸¹ *Id.*

¹⁸² *Id.*

¹⁸³ The White House, *Fact Sheet: U.S. Leadership in the Fight Against Global Corruption* (Dec. 11, 2023), <https://www.whitehouse.gov/briefing-room/statements-releases/2023/12/11/fact-sheet-u-s-leadership-in-the-fight-against-global-corruption/>.

¹⁸⁴ *Id.*

¹⁸⁵ *Id.*

¹⁸⁶ U.S. Dep’t of Just., *Acting Assistant Attorney General Nicole M. Argentieri Delivers Keynote Address at the 40th International Conference on the Foreign Corrupt Practices Act* (Nov. 29, 2023), <https://www.justice.gov/opa/speech/acting-assistant-attorney-general-nicole-m-argentieri-delivers-keynote-address-40th> (hereinafter “Argentieri Remarks”).

¹⁸⁷ *Id.*

¹⁸⁸ *Id.*

¹⁸⁹ *Id.*

\$40.6 million resolution with Grupo Aval and Corficolombiana, in coordination with the SEC, which imposed \$40 million in disgorgement and prejudgment interest, and Colombian authorities. DOJ agreed to credit up to half of the \$40.6 million penalty against amounts the company was expected to pay to Colombian authorities.

Argentieri's announcement indicated that DOJ will increase the sophistication of its coordination efforts, working with internal data experts to develop analytics-based investigative leads in foreign jurisdictions.¹⁹⁰ The initiative will also serve a diplomatic function, leveraging DOJ "prosecutors' particular experience, expertise, and language skills" to "build relationships" that "facilitate cooperation and information sharing."¹⁹¹ While more detail remains to be seen on how the ICAB initiative will work in practice, the announcement signals that multi-jurisdictional enforcement will continue to intensify. As Argentieri succinctly put it, the ICAB initiative is "yet another reason companies considering whether or not to disclose misconduct should take note – call us before we, or our foreign partners, call you."¹⁹²

Focus on National Security

Related to DOJ's increased international coordination efforts, the Department is increasingly focused on the intersection of national security and criminal enforcement, including foreign bribery enforcement. In an era of evolving sanctions and increased capability for transnational crime, Deputy Attorney General Lisa Monaco characterized "the rapid expansion of national security-related corporate crime" as "the biggest shift in corporate criminal enforcement that I've seen during my time in government."¹⁹³ Monaco emphasized that "[n]ational security compliance risks are widespread" and "should be at the top of every company's compliance risk chart."¹⁹⁴ In a May 2023 speech, Principal Associate Deputy Attorney General Marshall Miller similarly observed that "corporate crime presents a significant and growing threat to our national security — a threat increasingly at the heart of our approach to corporate crime at the Department of Justice."¹⁹⁵

National security intersects with corporate crime in a diverse set of circumstances: money laundering, cyber- and crypto-enabled crime, sanctions and export control evasion, and even payments to terrorist groups.¹⁹⁶ Indeed, according to DOJ, roughly two-thirds of its major corporate criminal resolutions between October 2022 and May 2023 implicated national security, and therefore DOJ plans to surge resources and add two dozen prosecutors to address this cluster of related enforcement areas.¹⁹⁷ Accordingly, DOJ recommends that companies invest "significant additional compliance resources" to prevent violations related to cybercrime, crypto-laundering, sanctions evasion, export control circumvention, and technology theft.¹⁹⁸

National Standard for Voluntary Self-Disclosure Credit

As DAG Lisa Monaco expressed in her September 2022 announcement of changes to DOJ's corporate criminal enforcement policies (the "Monaco Memo"), while several DOJ components already had policies governing the circumstances in which voluntary self-disclosure of corporate wrongdoing could yield a more favorable resolution, DOJ's "policies and procedures should be sufficiently transparent such that the benefits of voluntary self-disclosure are clear and predictable."¹⁹⁹ In furtherance of this

¹⁹⁰ See *id.*

¹⁹¹ *Id.*

¹⁹² *Id.*

¹⁹³ U.S. Dep't of Just., *Deputy Attorney General Lisa O. Monaco Announces New Safe Harbor Policy for Voluntary Self-Disclosures Made in Connection with Mergers and Acquisitions* (Oct. 4, 2023), <https://www.justice.gov/opa/speech/deputy-attorney-general-lisa-o-monaco-announces-new-safe-harbor-policy-voluntary-self>.

¹⁹⁴ *Id.*

¹⁹⁵ U.S. Dep't of Just., *Principal Associate Deputy Attorney General Marshall Miller Delivers Remarks at the Ethics and Compliance Initiative IMPACT Conference* (May 3, 2023), <https://www.justice.gov/opa/speech/principal-associate-deputy-attorney-general-marshall-miller-delivers-remarks-ethics-and>.

¹⁹⁶ See *id.*

¹⁹⁷ See *id.*

¹⁹⁸ *Id.*

¹⁹⁹ Lisa O. Monaco, Deputy Att'y Gen. of the U.S. Dep't of Just., *Memorandum on Further Revisions to Corporate Criminal Enforcement Policies Following Discussions with Corporate Crime Advisory Group* at 7 (Sept. 15, 2022), <https://www.justice.gov/opa/speech/file/1535301/download> [hereinafter "Monaco Memo"].

goal, on February 22, 2023, DOJ announced new national standards for voluntary self-disclosure credit.²⁰⁰ The policy applies to all United States Attorneys' Offices and mirrors the Criminal Division's policy applicable to its Fraud Section, including the FCPA Unit.²⁰¹ To obtain credit for voluntary self-disclosure and achieve a more favorable resolution than if the government independently learned of the misconduct, the disclosure of wrongdoing must be:²⁰²

- **Voluntary:** Truly voluntary, and not made under an existing resolution, contract, or DOJ resolution.
- **Timely:** Prior to the government's learning of the issue or an imminent investigation, and reasonably prompt after the company learns of the issue.
- **Full:** Inclusive of all relevant facts known to the company at the time of the disclosure. DOJ expects that companies will move expeditiously to preserve, collect, and produce relevant documents.

Absent aggravating factors, DOJ will not seek a guilty plea where a company voluntarily self-discloses, fully cooperates, and timely and appropriately remediates the criminal conduct.²⁰³ Even with the presence of an aggravating factor warranting a guilty plea—such as a grave threat to public interests, deeply pervasive misconduct, or involvement of current executives—DOJ will recommend a 50% to 75% fine reduction and not require the appointment of a corporate monitor if the company has demonstrated an effective compliance program.²⁰⁴

Safe Harbor Policy for M&A Voluntary Self-Disclosures

As part of the effort to provide clarity and predictability to voluntary self-disclosure, on October 4, 2023, DOJ announced new standards applicable to companies in the context of mergers and acquisitions. Acquiring companies often take on the compliance and financial risks of target companies, and sometimes a merger can bring significant legal liabilities. In the FCPA context, DOJ previously offered guidance on due diligence, self-disclosure, and remediation of misconduct discovered in mergers and acquisitions, recognizing that the potential benefits of such transactions were in tension with the risk of successor FCPA liability.²⁰⁵ To encourage disclosure of misconduct discovered during an acquisition, DAG Monaco announced a new Mergers and Acquisitions Safe Harbor Policy that significantly clarifies expectations and applies Department-wide to corporate enforcement well beyond the FCPA. DAG Monaco explained, "Going forward, acquiring companies that promptly and voluntarily disclose criminal misconduct within the Safe Harbor period, and that cooperate with the ensuing investigation, and engage in requisite, timely and appropriate remediation, restitution, and disgorgement . . . will receive the presumption of a declination."²⁰⁶

The policy will apply Department-wide and, to ensure predictability, the benefit will be available to acquiring companies that disclose wrongdoing within six months of closing a deal.²⁰⁷ From the date of closing, companies will have one year to remediate the misconduct fully, subject to a reasonableness analysis that takes into account unique features of certain transactions. While the complexity of a transaction may result in a longer deadline, discovery of a national security risk warrants faster disclosure.²⁰⁸

²⁰⁰ U.S. Dep't of Just., *United States Attorneys' Offices Voluntary Self-Disclosure Policy* (Feb. 22, 2023), https://www.justice.gov/d9/2023-07/usao_voluntary_self-disclosure_policy_0.pdf [hereinafter "DOJ Voluntary Self-Disclosure Policy"].

²⁰¹ U.S. Dep't of Just., *9-47.120 – Criminal Division Corporate Enforcement and Voluntary Self-Disclosure Policy* (Jan. 17, 2023), <https://www.justice.gov/media/1268756/dl?inline>.

²⁰² DOJ Voluntary Self-Disclosure Policy at 3–4.

²⁰³ *Id.* at 4.

²⁰⁴ *Id.* at 3–4.

²⁰⁵ See U.S. Dep't of Just. and U.S. Sec. & Exch. Comm'n, *A Resource Guide to the U.S. Foreign Corrupt Practices Act: Second Edition* at 29–35 (July 2020), <https://www.justice.gov/criminal-fraud/file/1292051/download>; U.S. Dep't of Just., *Opinion Procedure Release No. 08-02* (June 13, 2008), <https://www.justice.gov/sites/default/files/criminal-fraud/legacy/2010/04/11/0802.pdf>.

²⁰⁶ U.S. Dep't of Just., Deputy Attorney General Lisa O. Monaco Announces New Safe Harbor Policy for Voluntary Self-Disclosures Made in Connection with Mergers and Acquisitions (Oct. 4, 2023), <https://www.justice.gov/opa/speech/deputy-attorney-general-lisa-o-monaco-announces-new-safe-harbor-policy-voluntary-self>.

²⁰⁷ *See id.*

²⁰⁸ *See id.*

As with the general voluntary self-disclosure policy, the M&A Safe Harbor “does not apply to misconduct that was otherwise required to be disclosed or already public or known to the Department.”²⁰⁹

Revisions to DOJ’s Evaluation of Corporate Compliance Programs

As we reported last year, U.S. authorities are increasingly focused on the design and performance of corporate compliance programs.²¹⁰ In the September 2022 Monaco Memo, DOJ emphasized individual accountability, incentivization of voluntary self-disclosure of wrongdoing, and a culture of corporate compliance.²¹¹ In furtherance of these policies, the Monaco Memo announced that DOJ would develop new compliance standards related to (i) whether a company has effective policies on the use of personal devices and third-party applications that ensure access to and preservation of corporate communications and (ii) whether a compliance program includes compensation and personnel policies that incentivize compliance and disincentivize non-compliance.²¹²

Accordingly, in March 2023, DOJ revised its guidance entitled Evaluation of Corporate Compliance Programs (“ECCP”) to implement new considerations for prosecutors in these areas.²¹³ With respect to personal devices and third-party applications, DOJ prosecutors will look to whether company policies are “tailored to the corporation’s risk profile and specific business needs” to ensure that “to the greatest extent possible, business-related electronic data and communications are accessible and amenable to preservation by the company.”²¹⁴ Preservation of communication data is critical to DOJ investigations, and thus companies must communicate these policies to employees effectively and enforce them on a regular and consistent basis.²¹⁵ The ECCP outlines several questions that prosecutors will ask—and companies should ask themselves—to determine whether communication policies effectively preserve data in practice.²¹⁶ At a high level, these questions address the technical design of electronic communication channels, the company’s policies and procedures for electronic communications, and risk management tools to ensure data security and appropriate enforcement.²¹⁷

With respect to incentives for compliance and disincentives for violations, DOJ maintains that “design and implementation of compensation schemes play an important role in fostering a compliance culture.”²¹⁸ Compensation systems can include, for example, deferral or escrow of compensation tied to compliance, contractual provisions allowing clawback of compensation from employees who engaged in wrongdoing, and rewards or bonuses for demonstrated commitment to compliance.²¹⁹ In connection with this guidance, DOJ announced a Compensation Incentives and Clawbacks Pilot Program.²²⁰ Under the three-year initiative, “when entering into criminal resolutions, companies will be required to implement compliance-related criteria in their compensation and bonus system and to report to [DOJ] about such implementation during the term of such resolutions.”²²¹ The program offers an opportunity for companies to obtain fine reductions in the amount of compensation recovered from employees who engage in wrongdoing.²²² However, this new initiative may pose practical challenges. Implementation of compensation-based incentives and discipline may require additional data collection and monitoring of employees. And enforcement of clawbacks could create litigation risk with employees who are subject to discipline and dispute the result.

²⁰⁹ *Id.*

²¹⁰ Paul, Weiss 2022 FCPA Year in Review, at 23–25.

²¹¹ See Monaco Memo.

²¹² *Id.* at 9–11.

²¹³ U.S. Dep’t of Justice, *Evaluation of Corporate Compliance Programs* at 12–14, 17–18 (updated Mar. 2023), <https://www.justice.gov/criminal-fraud/page/file/937501/download>.

²¹⁴ *Id.* at 17.

²¹⁵ *Id.*

²¹⁶ *Id.* at 17–18.

²¹⁷ *Id.*

²¹⁸ *Id.* at 12.

²¹⁹ See *id.* at 12–13.

²²⁰ U.S. Dep’t of Just., *The Criminal Division’s Pilot Program Regarding Compensation Incentives and Clawbacks* at 1 (Mar. 3, 2023), <https://www.justice.gov/criminal-fraud/file/1571941/download>.

²²¹ *Id.*

²²² *Id.*

Additionally, clawbacks and compensation incentives may not be practical in certain foreign jurisdictions, depending on local labor law, collective bargaining arrangements, and similar regulatory considerations.

Legal Developments Affecting Enforcement Tools

Enactment of Foreign Extortion Prevention Act

As we have recently discussed in a separate client memorandum,²²³ on December 14, 2023, Congress filled a longstanding gap in U.S. anti-corruption enforcement by targeting the demand side of bribery with the passage of the Foreign Extortion Prevention Act (“FEPA”) with bipartisan support as part of the National Defense Authorization Act for Fiscal Year 2024. On December 22, 2023, President Biden signed the bill into law.

FEPA establishes criminal liability for foreign officials who “corruptly demand, seek, receive, accept, or agree to receive or accept, directly or indirectly, anything of value” from any person while in the territory of the United States for from a U.S. issuer or a domestic concern in exchange for an improper business advantage.²²⁴ Notably, FEPA’s definition of “foreign official” is broader than that of the FCPA because it encompasses not only those individuals acting in an official governmental capacity, but also those acting in an unofficial capacity.²²⁵ In addition, FEPA expands the definition to include “any senior foreign political figure,” which encompasses certain current or former senior foreign officials (whether elected or not), politicians, executives of government-owned commercial enterprises and their family members, close associates, and businesses.²²⁶

In addition to expanding U.S. anti-corruption law enforcement to the demand side, the passage of FEPA reflects the government’s emphasis on addressing corporate crime through the lens of national security, empowering DOJ to focus in particular on foreign officials in countries that the U.S. government perceives to pose national security threats. The extent to which FEPA significantly increases DOJ’s anti-corruption efforts remains to be seen, including because aggressive FEPA prosecutions could lead to diplomatic conflicts with the nations whose foreign officials are subject to prosecution. The interplay between FEPA enforcement and FCPA enforcement will require close attention as DOJ articulates its expectations of companies that voluntarily self-disclose and/or cooperate with respect to implicated “foreign officials.” With FEPA enacted as a complement to the FCPA, the U.S. will join a host of strategic allies in a growing multilateral effort to criminalize demand-side foreign bribery as well as the supply-side.²²⁷

***United States v. Rafoi*, 60 F.4th 982 (5th Cir. 2023)**

In a win for DOJ’s extraterritorial enforcement efforts, the Fifth Circuit reversed a district court’s dismissal of FCPA and money laundering charges against foreign nationals for lack of subject-matter jurisdiction. In *Rafoi*, DOJ charged Daisy Teresa Rafoi Bleuler, a Swiss national, and Paulo Jorge Da Costa Casquero Murta, a dual Swiss-Portuguese national, in connection with an alleged bribery and money laundering scheme in which U.S.-based businesses paid Venezuelan officials for priority payment of invoices and other favorable treatment from Venezuela’s state-owned oil company, PDVSA. *Id.* at 991. Defendant Rafoi was not alleged to have acted within the United States and thus was arguably outside the set of persons covered by the FCPA. Defendant Murta, on the other hand, allegedly traveled to Miami to meet with co-conspirators in furtherance of the scheme. The defendants filed motions to dismiss for lack of subject-matter jurisdiction, which the district court granted on the grounds that the FCPA and money laundering statute did not apply extraterritorially to the defendants and that there was no direct or

²²³ Paul, Weiss, Rifkind, Wharton & Garrison, LLP, *Congress Passes Foreign Extortion Prevention Act, Expanding Federal Criminal Liability to Foreign Officials* (Dec. 22, 2023), <https://www.paulweiss.com/practices/litigation/anti-corruption-fcpa/publications/congress-passes-foreign-extortion-prevention-act-expanding-federal-criminal-liability-to-foreign-officials?id=49594>.

²²⁴ H.R. 2670, 118th Cong. (1st Sess. 2023), § 5101(2), <https://www.congress.gov/bill/118th-congress/house-bill/2670/text>.

²²⁵ *See id.* § 5101(1).

²²⁶ *See id.* (citing 31 C.F.R. § 1010.605).

²²⁷ The United Kingdom, France, and Germany each criminalize demand-side bribery. *See* Transparency Int’l U.S., *Foreign Extortion Prevention Act Factsheet* (Jun. 12, 2023), <https://us.transparency.org/resource/foreign-extortion-prevention-act-factsheet/>.

undisputed evidence of an agency relationship in the United States or that the defendants engaged in the alleged misconduct while in the United States. *Rafoi*, 60 F.4th at 992.

The Fifth Circuit reversed, applying a lenient standard at the motion to dismiss stage. *Id.* at 992 (noting that, to invoke federal criminal subject matter jurisdiction, an indictment only needs to charge an offense in language similar to the criminal statute). The Circuit held that “whether a statute reaches extraterritorial acts is not a challenge to the district court’s subject-matter jurisdiction,” but rather is a merits issue to be litigated. *Id.* at 992–93 (citation omitted). Thus, the Fifth Circuit held that, “because extraterritoriality concerns the merits of the case, not the court’s power to hear it,” the district court erred by resolving the issue as a jurisdictional matter. Moreover, the Circuit found that there was potential FCPA liability for Murta and Rafoi because the indictment sufficiently alleged they were agents of a domestic concern, and additionally for Murta because he allegedly met co-conspirators in the United States. *Id.* at 993. As to domestic concern FCPA liability, the Circuit found that the indictment alleged that both defendants were agents of U.S. companies, fulfilling the notice function of an indictment. *Id.* at 993–94. The Circuit held that whether there was sufficient evidence to substantiate the allegations was an issue for trial and that lack of evidentiary detail does not render an indictment insufficient as a matter of law. *Id.* at 994.

As to Murta’s potential liability for acts within the United States, the indictment’s charge that Murta met once with co-conspirators in Miami was sufficient. *Id.* at 994–95. Contrary to Murta’s argument the indictment violated his due process rights, the Circuit found that (i) there was an adequate jurisdictional nexus with the U.S. because DOJ alleged that Murta knew that proceeds of the scheme would pass through the U.S. and cause harm to U.S. interests, and (ii) Murta had fair warning that an international bribery scheme was conduct subject to criminal prosecution because of widespread international condemnation of bribery. *Id.* at 995.

Additionally, while the government argued that the defendants were subject to secondary FCPA liability based on the substantive offenses of co-conspirators, the Circuit declined to rule on the issue because the district court had not. *Id.* at 995. The Circuit reasoned that the district court should have the first opportunity to address secondary FCPA liability.²²⁸ The Circuit’s reservation of the issue is in some tension with the long-running *Hoskins* case in the Second Circuit. In *Hoskins*, the Second Circuit ruled that persons who are outside the FCPA’s scope as principals cannot be charged under theories of conspiracy and accessory liability. See *United States v. Hoskins*, 902 F.3d 69, 83–84 (2d Cir. 2018). The *Hoskins* ruling and the potential for a Fifth Circuit decision on secondary liability under the FCPA could create a circuit split on the issue. Cf. *United States v. Firtash*, 392 F. Supp. 3d 872, 889 (N.D. Ill. 2019) (holding that the Seventh Circuit does not have a similar limitation on FCPA conspiracy and accessory charges). The ultimate resolution of whether the government can charge secondary FCPA liability could have significant implications for the government’s ability to reach non-U.S. persons with little to no physical presence in U.S. territory.

Foreign Jurisdictions Investigating, Prosecuting, and Regulating Corruption

Throughout 2023, foreign authorities continued to make both enforcement and public policy strides in combating corruption. In the enforcement sphere, many countries announced significant investigations and prosecutions against both private and public actors. In addition to anti-bribery laws, many jurisdictions leveraged other legal tools to fight corruption, such as whistleblower statutes, private actions, environmental statutes, and anti-money laundering laws. In the policy sphere, 2023 saw countries announce heightened interest in certain areas of enforcement and also implement legislation to provide law enforcement new tools to investigate and prosecute corruption.

What follows is a selection of notable developments.

²²⁸ The district court later dismissed the indictment against Murta based on prosecutors’ delays in violation of the Speedy Trial Act. On January 5, 2024, the Fifth Circuit affirmed the dismissal, but remanded the case because the district court had not adequately analyzed the statutory factors, 18 U.S.C. § 3162(a)(2), in determining to dismiss with prejudice. See *United States v. Murta*, No. 23-20276, 2024 WL 64764, at *6–7 (5th Cir. Jan. 5, 2024).

Africa

In **South Africa**, on November 21, 2023, a court “struck” a corruption case against former Eskom chief executive officer Matshela Koko “off the roll” due to its finding of unreasonable delay.²²⁹ Koko was arrested in October 2022 in connection with the high-profile corruption case at Eskom, South Africa’s power utility, one of the many corruption cases that was the focus of the Zondo Commission.²³⁰ Relatedly, on April 21, 2023, South Africa’s asset forfeiture unit, obtained an order restraining R583.8 million (approximately US \$32 million) in assets from employees of Asea Brown Boveri, a former contractor of Eskom.²³¹

In **Namibia**, the highly anticipated “Fishrot” trial began in December 2023, only to be adjourned until March 2024 while the court rules on a recusal motion by the defense.²³² The Fishrot scandal, which has consumed Namibia since 2019, involves allegations that Namibian politicians and businesspeople colluded to divert fishing permits to Samherji, an Icelandic fishing company, in exchange for kickbacks.²³³

In **Mozambique**, Credit Suisse reached an out-of-court settlement over the \$1.5 billion “tuna bond” scandal. While the settlement was based on a civil lawsuit in London, the case dates back a decade to allegedly corrupt deals between Mozambican companies and Prinvest, a shipbuilder alleged to have paid bribes to Mozambican government officials.²³⁴

Asia

In **China**, the government continued its anti-corruption efforts. Local media reported that, in the first half of 2023, China handled over 36,000 corruption cases.²³⁵ China’s National Health Commission also began a “crackdown” on corruption in China’s health sector, vowing to combat “profiteering,” kickbacks, and medical insurance fraud.²³⁶ On December 29, 2023, China amended its Criminal Law to impose harsher penalties on both those who give bribes and entities that receive them.²³⁷ In January, a Hong Kong court acquitted a former Dolce & Gabbana executive accused of accepting kickbacks in exchange for directing business to a Chinese company.²³⁸

In **Japan**, authorities continued investigating and prosecuting corruption stemming from the 2020 Tokyo Olympics. In February 2023, prosecutors announced an indictment against Japanese advertising giant Dentsu and five other companies.²³⁹ Prosecutors have also charged several executives from prominent Japanese companies with bribery surrounding sponsorship, manufacturing, and advertising contracts, among others, in connection with the Tokyo Olympics, including Haruyuki Takahashi, a

²²⁹ Emsie Ferreira, *Case against Koko and Eskom co-accused removed from roll*, The Mail & Guardian (Nov. 21, 2023), <https://mg.co.za/news/2023-11-21-case-against-koko-and-eskom-co-accused-removed-from-roll/>.

²³⁰ See Paul, Weiss 2022 FCPA Year in Review at 28.

²³¹ Press Release, South African Government News, Asset Forfeiture Unit granted R583 million restraint order (Apr. 21, 2023), <https://www.sanews.gov.za/south-africa/asset-forfeiture-unit-granted-r583-million-restraint-order>.

²³² Emil Xamro Seibeb, *Fishrot Defence Lawyers Call For Recusal Of Judge Moses Chinhengo*, Namibian Broadcasting Corporation (Dec. 2023), <https://www.nbcnews.na/node/103773>.

²³³ Johannes Dell, *Fishrot: The corruption scandal entwining Namibia and Iceland*, BBC (Feb. 26, 2023), <https://www.bbc.com/news/world-africa-64526018>.

²³⁴ Noele Illien and Kirsten Ridley, *Credit Suisse, Mozambique secure out-of-court ‘tuna bond’ settlement*, Reuters (Oct. 1, 2023), <https://www.reuters.com/business/finance/credit-suisse-mozambique-reach-out-of-court-tuna-bond-settlement-2023-10-01/>.

²³⁵ Esra Tekin, *China records over 36,000 corruption-related cases in 1st half of 2023*, AA Broadcasting System (Aug. 28, 2023), <https://www.aa.com.tr/en/asia-pacific/china-records-over-36-000-corruption-related-cases-in-1st-half-of-2023/2977912>.

²³⁶ Simone McCarthy, *China is launching an ‘unprecedented’ crackdown on corruption in its health industry as economic woes pile up*, CNN (Aug. 25, 2023), <https://www.cnn.com/2023/08/24/china/china-healthcare-corruption-crackdown-intl-hnk/index.html>.

²³⁷ Helen Hwang & Eric Carlson, *China amends criminal law related to bribery and corruption*, The FCPA Blog (Jan. 16, 2024), <https://fcpcbog.com/2024/01/16/china-amends-criminal-law-related-to-bribery-and-corruption/>.

²³⁸ Brian Wong, *Hong Kong judge acquits former Dolce & Gabbana president of corruption over alleged kickbacks worth HK\$1.7 million*, South China Morning Post (Jan. 30, 2023), <https://www.scmp.com/news/hong-kong/law-and-crime/article/3208510/hong-kong-judge-acquits-former-dolce-gabbana-president-corruption-over-alleged-kickbacks-worth-hk17>.

²³⁹ Ben Dooley & Hisako Ueno, *Japan Accuses Ad Giant Dentsu of Rigging Bids for Tokyo Olympics*, The New York Times (Feb. 28, 2023), <https://www.nytimes.com/2023/02/28/business/japan-olympics-dentsu.html>; Stephen Wade & Yuri Kageyama, *Tokyo Olympics sullied by bid-rigging, bribery trials more than 2 years after the Games closed*, The Associated Press (Dec. 5, 2023), <https://apnews.com/article/tokyo-olympics-dentsu-bid-rigging-ioc-01e43ca5aced60fc842c2c02b6375527>.

former Dentsu executive and member of the Tokyo Olympics organizing committee.²⁴⁰ Japan is also leading a new G7 task force aimed at furthering anti-corruption initiatives in Ukraine.²⁴¹

In **India**, in March, the government filed a case against BAE Systems plc and Rolls-Royce Holdings charging “criminal conspiracy” regarding the procurement and manufacturing of 123 jet trainers. The charges were announced after an investigation by India’s Central Bureau of Investigation.²⁴²

In **Malaysia**, former Prime Minister Muhyiddin Yassin was acquitted of corruption charges in August 2023. The government alleged that Yassin had abused his power to obtain 232.5 million ringgit (\$50 million) in bribes in exchange for contracts.²⁴³ However, Yassin still faces money laundering charges in connection with these allegations.²⁴⁴

Europe

In **France**, in January 2023, the National Financial Prosecutor’s office (“PNF”) updated its guidelines on the implementation of corporate settlements. These guidelines seek to clarify certain provisions of the original 2019 guidelines, including the process for negotiation and the method for calculating fines for companies with consolidated financial records.²⁴⁵

In June 2023, the PNF reached settlements with the British and French subsidiaries of the Technip group, an international oil and gas conglomerate, related to bribes allegedly paid in African countries.²⁴⁶ Together, the settlements called for nearly €210 million in payments.²⁴⁷ In October, the European Court of Human Rights, Europe’s highest court, affirmed French convictions from 2016 of French energy company Total and Swiss commodities trading company Vitol for their roles in a bribery scheme in Iraq between 2000 and 2003.²⁴⁸ In November, France’s highest court upheld a conviction against multinational investment bank UBS for money laundering but canceled the €1.8 billion fine levied against the bank, referring the case back to the Paris Court of Appeal.²⁴⁹

In the **Netherlands**, the Dutch Public Prosecution Service (*Openbaar Ministerie* or “OM”) announced that it had asked a Dutch court to impose fines against Dutch medical company DRC and two of its employees for allegedly bribing a World Bank consultant.²⁵⁰ In October, in conjunction with DOJ’s NPA with Albemarle Corporation,²⁵¹ discussed above, OM dismissed its criminal case against the U.S. company.²⁵²

²⁴⁰ *Id.*

²⁴¹ Anna Bianca Roach, G7 announces anti-corruption taskforce for Ukraine, Global Investigations Review (Jul. 7, 2023), <https://globalinvestigationsreview.com/just-anti-corruption/article/g7-announces-anti-corruption-taskforce-ukraine>.

²⁴² Krishn Kaushik, India files graft case against BAE Systems, Rolls-Royce, Reuters (May 29, 2023), <https://www.reuters.com/business/aerospace-defense/indias-investigation-agency-files-graft-case-against-bae-systems-rolls-royce-2023-05-29/>.

²⁴³ Eileen Ng, Former Malaysian Prime Minister Muhyiddin Yassin acquitted of four graft charges, The Associated Press (Aug. 15, 2023), <https://apnews.com/article/malaysia-corruption-former-prime-minister-muhyiddin-8bffff4e4fed2172a239427eb027dd9e>.

²⁴⁴ *Id.*

²⁴⁵ Ministère de la Justice, *Guidelines on the Implementation of the Judicial Public Interest Agreement* (CJIP) (Jan. 16, 2023), https://www.tribunal-de-paris.justice.fr/sites/default/files/2023-03/Guidelines%20on%20the%20implementation%20of%20the%20CJIP_PNF_January%2016%202023%20VD.pdf.

²⁴⁶ Ministère de la Justice, *Convention Judiciaire d’Intérêt Public entre Le Procureur de la République Financier et Technip Energies France*, <https://www.tribunal-de-paris.justice.fr/sites/default/files/2023-07/CJIPTechnip220623.pdf>.

²⁴⁷ *Id.*

²⁴⁸ European Court of Human Rights, *Affaire Total S.A. et Vitol S.A. c. France* (Oct. 12, 2023), <https://hudoc.echr.coe.int/fre#%7B%22itemid%22%3A%22001-228028%22%7D>.

²⁴⁹ Press Release, UBS, *French Supreme Court refers UBS legacy matter to Appeals Court* (Nov. 15, 2023), <https://www.ubs.com/global/en/media/display-page-ndp/en-20231115-tramontana.html?caasID=CAAS-ActivityStream>.

²⁵⁰ Press Release, Openbaar Ministerie, *Geldboetes en transacties vanwege buitenlandse omkoping* (Feb. 16, 2023), <https://www.om.nl/actueel/nieuws/2023/02/15/gelboetes-en-transacties-vanwege-buitenlandse-omkoping>.

²⁵¹ *See supra* at 16–17.

²⁵² Press Release, Openbaar Ministerie, *Openbaar Ministerie sluit onderzoek naar Albemarle* (May 10, 2023), <https://www.om.nl/actueel/nieuws/2023/10/05/openbaar-ministerie-sluit-onderzoek-naar-albemarle>.

In April 2023, **Norway's** National Authority for Investigation and Prosecution of Economic and Environmental Crime indicted the former president of the International Biathlon Union on charges of aggravated corruption, alleging that he accepted bribes from Russia from 2009 through 2018, potentially in connection with Russia's state-sponsored doping program.²⁵³ The Norwegian prosecutors conducted the high-level international sports corruption investigation jointly with Austrian authorities, with assistance from Czech, Liechtenstein, and Canadian authorities.²⁵⁴

In March 2023, **Spain** enacted a new whistleblowing statute, originally introduced in 2019. The law requires internal whistleblower reporting mechanisms for companies with more than 50 employees, establishes an independent agency to respond to reports (*Autoridad Independiente de Protección del Informante*), and provides other protections for whistleblowers.²⁵⁵

In **Switzerland**, in June 2023, the Office of the Attorney General of Switzerland ("OAG") indicted commodities trading company Trafigura Beheer BV, part of the Trafigura Group, for allegedly bribing an Angolan public official for ship chartering and oil bunkering contracts.²⁵⁶

With respect to high-profile individual prosecutions, the OAG indicted a former employee of Geneva trading company Gunvor on bribery allegations relating to the Republic of the Congo's petroleum market²⁵⁷ and brought charges against the daughter of the former President of the Republic of Uzbekistan and others for accepting bribes.²⁵⁸ In addition, the well-publicized 2021 conviction of Beny Steinmetz, a French-Israeli businessman who was sentenced to five years in prison and fined \$56.5 million for bribing foreign public officials in Guinea,²⁵⁹ was affirmed by a Swiss appeals court.²⁶⁰

In the **United Kingdom**, in October 2023, the Economic Crime and Corporate Transparency Act 2023 became law, transforming criminal liability for corporations in addition to creating wide-ranging reforms with respect to economic crimes and corporate fraud and increasing the Serious Fraud Office's ("SFO") ability to compel evidence.²⁶¹ The Act attributes criminal liability to corporations or partnerships for certain listed offenses—including bribery offenses defined under the Bribery Act 2010—if committed by a "senior manager."²⁶² This expands the U.K.'s "identification doctrine" for corporate criminal liability, which generally holds corporations criminally liable for the actions of an employee only if that individual constituted the "directing mind and will" of the corporate entity.²⁶³

²⁵³ Press Release, Økokrim, *Former president of the IBU (International Bathlon Union) indicted on charges of aggravated corruption* (Apr. 17, 2023), <https://www.okokrim.no/former-president-of-the-ibu-international-biathlon-union-indicted-on-charges-of-aggravated-corruption.6592891-549344.html>; Sean Ingle, *Hunting trips, sex and a BMW: former biathlon chief charged with corruption*, THE GUARDIAN (Apr. 17, 2023), <https://www.theguardian.com/sport/2023/apr/17/former-head-of-international-biathlon-union-charged-with-gross-corruption>.

²⁵⁴ *Id.*

²⁵⁵ Boletín Oficial del Estado, Ley 2/2023, de 20 de febrero, reguladora de la protección de las personas que informan sobre infracciones normativas y de lucha contra la corrupción (Feb. 21, 2023), <https://www.boe.es/buscar/act.php?id=BOE-A-2023-4513>.

²⁵⁶ Press Release, Bundesanwaltschaft, *Trafigura Beheer BV and three individuals referred to the Federal Criminal Court* (Dec. 6, 2023), <https://www.bundesanwaltschaft.ch/mpc/en/home/medien/archiv-medienmitteilungen/news-seite.msg-id-99242.html>.

²⁵⁷ Press Release, Bundesanwaltschaft, *Indictment filed against former Gunvor employee* (Sep. 26, 2023), <https://www.bundesanwaltschaft.ch/mpc/en/home/medien/archiv-medienmitteilungen/news-seite.msg-id-97875.html>.

²⁵⁸ Press Release, Bundesanwaltschaft, *Uzbekistan: Gulnara Karimova and the former director of a telecommunications company indicted in the Federal Criminal Court* (Sep. 28, 2023), <https://www.bundesanwaltschaft.ch/mpc/en/home/medien/archiv-medienmitteilungen/news-seite.msg-id-97944.html>.

²⁵⁹ Paul, Weiss FCPA 2021 Year in Review, at 29.

²⁶⁰ Emma Farge & Clara Denina, *Swiss court upholds corruption ruling against mining magnate Steinmetz*, Reuters (Apr. 4, 2023), <https://www.reuters.com/business/swiss-court-upholds-corruption-ruling-against-mining-magnate-steinmetz-2023-04-04/>.

²⁶¹ UK Public General Acts, Economic Crime and Corporate Transparency Act 2023 (Oct. 26, 2023), <https://www.legislation.gov.uk/ukpga/2023/56/enacted>.

²⁶² *Id.*

²⁶³ See, e.g., *Serious Fraud Office v Barclays PLC and Barclays Bank PLC*, [2018] EWHC 3055 (QB); *Tesco Supermarkets Ltd v Natras*, [1972] AC 153.

Prior to the Act's passage, U.K. prosecutors remained active with respect to corruption and bribery prosecutions of individuals. The SFO charged the former CEO and CFO of London Mining Plc with conspiring to make bribes in Sierra Leone.²⁶⁴ And the National Crime Agency brought charges against a former Nigerian oil minister for accepting bribes for preferential treatment²⁶⁵ and against the former chief of staff to the President of Madagascar for bribery allegations surrounding stone mining company Gemfields.²⁶⁶

Rounding out the year, in December 2023, a U.K. court approved a £615 million DPA between Entain, an international sports betting and gambling company based in the U.K., and the Crown Prosecution Service, resolving a bribery probe of a Turkish subsidiary of Entain.²⁶⁷ The DPA is reportedly the second largest corporate criminal settlement ever reached in the U.K.²⁶⁸

The **European Commission** issued a proposal for a directive of the European Parliament and of the Council to combat corruption in May 2023.²⁶⁹ The proposal seeks to establish minimum rules with respect to defining criminal offenses and sanctions in the area of corruption, to introduce measures intended to better prevent and fight corruption, and to enhance the level of sanctions for both corporate entities and individuals.²⁷⁰ For example, it aims to harmonize the definition of crimes prosecuted as corruption such that they include not only bribery but also misappropriation, trading in influence, and abuse of functions, as well as obstruction of justice and illicit enrichment if related to corruption offenses.²⁷¹ The proposal follows up on the commitment made by European Commission President von der Leyen in her 2022 State of the Union address.²⁷²

Oceania

In **Australia**, on June 22, 2023, the government proposed a new "failure to prevent" foreign bribery offense.²⁷³ This is Australia's third attempt to legislate such an offense, which would, among other things, eliminate the requirement to prove that a defendant had a particular business advantage in mind when paying a bribe.²⁷⁴ It would also expand the definition of "foreign official" to include candidates for public office and broaden the offense to include payments made to obtain a "personal advantage" instead of solely a business advantage.²⁷⁵

Latin America

In **Brazil**, on the heels of Luiz Inácio Lula da Silva's election to the presidency in October 2022, Brazilian authorities followed up on Lula's pledge to make anti-corruption a priority of his second presidency.²⁷⁶ In December 2023, Brazil's chief anti-corruption

²⁶⁴ Press Release, Serious Fraud Office, *Serious Fraud Office charges former CEO and CFO of London Mining Plc with bribery* (June 16, 2023), <https://www.sfo.gov.uk/2023/06/16/serious-fraud-office-charges-former-ceo-and-cfo-of-london-mining-plc-with-bribery/>

²⁶⁵ Estelle Shirbon, *Nigerian ex-oil minister faces bribery charges in London court*, Reuters (Oct. 2, 2023), <https://www.reuters.com/world/former-nigerian-oil-minister-faces-bribery-charges-london-court-2023-10-02/>.

²⁶⁶ Sam Tobin, *Madagascar president's ex-aide pleads not guilty to bribery in London*, Reuters (Sep. 8, 2023), <https://www.reuters.com/world/madagascar-presidents-ex-aide-pleads-not-guilty-bribery-london-2023-09-08/>.

²⁶⁷ Press Release, Crown Prosecution Service, *First ever CPS deferred prosecution agreement for £615 million* (Dec. 5, 2023), <https://www.cps.gov.uk/cps/news/first-ever-cps-deferred-prosecution-agreement-ps615-million>; <https://www.cps.gov.uk/publication/rex-v-entain-plc-deferred-prosecution-agreement>.

²⁶⁸ Ana de Liz, *Judge approves second-largest UK DPA*, GLOB. INVESTIGATIONS REV. (Dec. 5, 2023), <https://www.linklaters.com/en/insights/blogs/businesscrimelinks/2023/december/number-13-proves-to-be-a-first-for-the-cps>;

²⁶⁹ European Commission, *Proposal for a Directive of the European Parliament and of the Council on Combating Corruption* (Mar. 5, 2023), <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=COM%3A2023%3A234%3AFIN>.

²⁷⁰ *Id.*

²⁷¹ Press Release, European Commission, *Anti-corruption: Stronger rules to fight corruption in the EU and worldwide* (May 3, 2023), https://ec.europa.eu/commission/presscorner/detail/en/ip_23_2516.

²⁷² *Id.*

²⁷³ Ana de Liz, *Australia tables tougher foreign bribery law, shelves DPA proposals*, GLOB. INVESTIGATIONS REV. (June 29, 2023), <https://globalinvestigationsreview.com/article/australia-tables-tougher-foreign-bribery-law-shelves-dpa-proposals>.

²⁷⁴ *Id.*

²⁷⁵ *Id.*

²⁷⁶ Paul, Weiss 2022 FCPA Year in Review, at 31-32.

agency, *Controladoria-Geral de União* (“CGU”), announced it had opened 63 administrative liability proceedings in the first 11 months of 2023 for breaches of Brazil’s principal anti-corruption statute, the Clean Company Act.²⁷⁷

In enforcement resolutions, Brazilian food processing company BRF SA signed a \$111 million leniency agreement in December 2022 with the CGU and Brazil’s *Advocacia-Geral de União* (“AGU”), resolving accusations of paying public officials to gain “undue advantages.”²⁷⁸ That same month, the AGU and CGU announced a \$65 million leniency agreement with shipbuilder Keppel Offshore & Marine, stemming from charges that a former employee bribed officials at Petrobras, as well as Brazilian government officials.²⁷⁹ The agreement, which supplements a 2017 agreement with Brazil, Singapore, and the United States, is expected to resolve the case in full.²⁸⁰ In July, the CGU announced sanctions for an additional seven companies for alleged violations of the Clean Company Act.²⁸¹

In May 2023, the municipality of Sao Paulo entered into a leniency agreement with Medartis Importação e Exportação, a Brazilian subsidiary of Swiss medical device company Medartis, for allegedly making payments to doctors in Sao Paulo hospitals to purchase Medartis products,²⁸² reportedly the first time a local government body has reached such a settlement in Brazil.²⁸³ In November, aiming to coordinate corruption prosecutions and minimize situations where multiple local and state agencies are independently investigating the same conduct,²⁸⁴ the CGU announced it had entered into a cooperation agreement with Brazil’s antitrust enforcement agency, *Conselho Administrativo de Defesa Econômica*.²⁸⁵

In **Ecuador**, in March 2023, the State Attorney General filed charges against 37 people, including former President Lenin Moreno, relating to bribery surrounding contracts for the Coca Codo Sinclair, a Chinese-built hydroelectric project outside Quito.²⁸⁶ The charges were approved by an Ecuadorian judge, allowing the prosecution to move forward.²⁸⁷

²⁷⁷ Ana de Liz, *CGU enforcement proceedings rise in 2023*, GLOB. INVESTIGATIONS REV. (Dec. 4, 2023), <https://globalinvestigationsreview.com/article/cgu-enforcement-proceedings-rise-in-2023>.

²⁷⁸ *Brazil’s BRF signs \$111 million leniency deal after graft accusations*, REUTERS (Dec. 28, 2022), <https://www.reuters.com/business/brazils-brf-signs-111-million-leniency-deal-after-graft-accusations-2022-12-29/>.

²⁷⁹ Press Release, Controladoria Geral da União, *CGU e AGU assinam acordo de leniência com a Keppel Offshore & Marine* (Dec. 19, 2022), <https://www.gov.br/cgu/pt-br/assuntos/noticias/2022/12/cgu-e-agu-assinam-acordo-de-leniencia-com-a-keppel-offshore-marine>.

²⁸⁰ Press Release, Keppel Offshore & Marine, *Keppel Offshore & Marine Reaches Joint Resolution With Brazilian Attorney-General And Comptroller General* (Dec. 19, 2022), <https://www.keppelom.com/news-room/media-releases/keppel-offshore-marine-reaches-joint-resolution-with-brazilian-attorney-general-and-comptroller-general/>. Relatedly, Singapore’s anti-corruption agency declined to prosecute six unidentified former senior managers at KOM under investigation for alleged bribes to Petrobras. See Alice Johnson, *Keppel ex-managers escape charges over Brazilian bribery scheme*, GLOB. INVESTIGATIONS REV. (Jan. 12, 2023), <https://globalinvestigationsreview.com/article/keppel-ex-managers-escape-charges-over-brazilian-bribery-scheme>.

²⁸¹ Press Release, Controladoria Geral da União, *CGU aplica sanções anticorrupção a sete empresas envolvidas em atos ilícitos* (July 21, 2023), <https://www.gov.br/cgu/pt-br/assuntos/noticias/2023/07/cgu-aplica-sancoes-anticorrupcao-a-sete-empresas-envolvidas-em-atos-ilicitos>.

²⁸² Press Release, Cidade de São Paulo, *Primeiro acordo de leniência firmado pela Prefeitura de São Paulo prevê o ressarcimento de mais de R\$ 10 milhões aos cofres públicos* (May 5, 2023), <https://www.capital.sp.gov.br/noticia/primeiro-acordo-de-leniencia-firmado-pela-prefeitura-de-sao-paulo-preve-o-ressarcimento-de-mais-de-r-10-milhoes-aos-cofres-publicos>.

²⁸³ Ana de Liz, *Brazilian local government reaches first foreign bribery settlement*, GLOB. INVESTIGATIONS REV. (June 8, 2023), <https://globalinvestigationsreview.com/article/brazilian-local-government-reaches-first-foreign-bribery-settlement>.

²⁸⁴ Ana de Liz, *CGU enters into cooperation agreement with Brazil’s antitrust enforcer*, GLOB. INVESTIGATIONS REV. (Nov. 13, 2023), <https://globalinvestigationsreview.com/article/cgu-enters-cooperation-agreement-brazils-antitrust-enforcer>.

²⁸⁵ Press Release, Controladoria Geral da União, *Parceria entre CGU e Cade promete agilizar investigações contra empresas que atuam em cartéis* (Nov. 10, 2023), <https://www.gov.br/cgu/pt-br/assuntos/noticias/2023/11/parceria-entre-cgu-e-cade-promete-agilizar-investigacoes-contra-empresas-que-atuam-em-carteis>.

²⁸⁶ Press Release, Fiscalía General del Estado, *Sinohydro Case: Prosecutor’s Office prosecutes 37 people, including the former vice president of the Republic, Lenin M., for alleged bribery* (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/>.

²⁸⁷ *Ecuador judge OKs bribery charges against ex-president over Chinese dam contract*, REUTERS (Mar. 5, 2023), [https://www.reuters.com/world/americas/ecuador-judge-oks-bribery-charges-against-ex-president-over-chinese-dam-contract-2023-03-06/#:~:text=QUITO%2C%20March%205%20\(Reuters\),in%20the%20South%20American%20nation](https://www.reuters.com/world/americas/ecuador-judge-oks-bribery-charges-against-ex-president-over-chinese-dam-contract-2023-03-06/#:~:text=QUITO%2C%20March%205%20(Reuters),in%20the%20South%20American%20nation).

In **Venezuela**, on March 20, 2023, President Nicolás Maduro announced a widespread crackdown on corruption, focusing largely on PDVSA.²⁸⁸ Within a few days of the announcement, ten public officials and 11 businessmen were arrested,²⁸⁹ and the oil minister of Venezuela, Tareck El Aissami—a longtime Maduro ally whom the U.S. designated a “narcotics kingpin” in 2017 for his activities while serving as interior minister and governor—resigned, pledging to support Maduro’s anti-corruption campaign.²⁹⁰ By April, more than 60 businesspeople and government officials had been arrested, including a former PDVSA vice president.²⁹¹ Analysts in Venezuela characterized the anti-corruption investigation, along with the arrests and El Aissami’s resignation, as part of a political strategy for Maduro’s reelection in 2024 and for Venezuela’s bilateral talks with the U.S. on issues including exportation of Venezuelan oil and economic sanctions,²⁹² which the U.S. ultimately loosened in an October agreement with Venezuela.²⁹³ Still, the U.S. urged that Venezuela pursue its anti-corruption initiatives in an “accountable, transparent, and credible way.”²⁹⁴

North America

In **Canada**, a remediation agreement between Ultra Electronics Forensic Technology Inc. (UEFTI) and the Public Prosecution Service of Canada, calling for over \$10 million in penalties and forfeitures, was approved by a Canadian court in May 2023.²⁹⁵ UEFTI, a Montreal company specializing in law enforcement technology, faced two counts of bribing officials in the Republic of the Philippines.²⁹⁶ In March, the Ontario Superior Court of Justice released a decision acquitting the former CEO of Candian Imex Systems Inc. of foreign bribery charges.²⁹⁷ The executive had been accused of paying for a trip for a Botswanan official and his family, allegedly receiving in return letters indicating Botswana’s intention to hire the company.²⁹⁸ In a jurisprudential development, Justice Rita Maxwell’s Reasons for Judgment offered clarifications of several components of Canada’s Corruption of Foreign Public Officials Act (CFPOA), including the meanings of “advantage” and “in consideration for” under the statute.²⁹⁹ Justice Maxwell analogized these terms to other provisions of the Canadian Criminal Code, holding that an “advantage” under the CFPOA “must be a material or tangible gain, or a material economic advantage,” and that “in consideration for” referred to a *quid pro quo*.³⁰⁰

In **Mexico**, the *Fiscalía Especializada en materia de Combate a la Corrupción* (FEMCC), a branch of the Attorney General’s Office formed four years ago to combat corruption, had obtained seven convictions as of June 2023.³⁰¹ For example, a Mexican police official received a three-year prison sentence after being convicted of corruption charges related to selling the genetic

²⁸⁸ EFE, *Estados Unidos Apoya Investigación Por Corrupción en PDVSA y Espera Que Sea Transparente*, EL NACIONAL (Mar. 22, 2023), <https://www.elnacional.com/venezuela/estados-unidos-apoya-investigacion-por-corrupcion-en-pdvs-y-espera-que-sea-transparente/>.

²⁸⁹ Deisy Buitrago and Marianna Parraga, *Venezuela Arrests 21 in Corruption Crackdown, 11 More Wanted*, REUTERS (Mar. 25, 2023), <https://www.reuters.com/world/americas/venezuela-arrests-21-corruption-crackdown-11-more-wanted-2023-03-25/>.

²⁹⁰ Regina Garcia Cano, *Venezuela’s Oil Czar Resigns Amid Corruption Investigations*, AP NEWS (Mar. 20, 2023), <https://apnews.com/article/venezuela-oil-corruption-investigation-pdvs-maduro-cdf7a6b1969f176411cc6b0d257cfa15>.

²⁹¹ Desiy Buitrago, *Venezuela Corruption Probe Snares Another Former Top PDVSA Executive*, REUTERS (Apr. 19, 2023), <https://www.reuters.com/world/americas/venezuela-corruption-probe-snares-another-former-top-pdvs-executive-2023-04-19/>.

²⁹² Gustavo Ocando Alez, *Investigación de Corrupción en Venezuela Beneficia a Maduro y a Los Rodríguez, Según Analistas*, VOZ DE AMÉRICA (Mar. 21, 2023), <https://www.vozdeamerica.com/a/venezuela-investigaciones-corrupcion-benefician-a-maduro-/7014698.html>.

²⁹³ Matt Spetalnick and Marianna Parraga, *US Broadly Eases Venezuela Oil Sanctions After Election Deal*, REUTERS (Oct. 19, 2023), [https://www.reuters.com/world/americas/us-easing-venezuela-oil-sanctions-response-election-deal-official-2023-10-18/#:~:text=WASHINGTON%2C%20Oct%2018%20\(Reuters\),Trump%2Dera%20restrictions%20on%20Caracas](https://www.reuters.com/world/americas/us-easing-venezuela-oil-sanctions-response-election-deal-official-2023-10-18/#:~:text=WASHINGTON%2C%20Oct%2018%20(Reuters),Trump%2Dera%20restrictions%20on%20Caracas).

²⁹⁴ EFE, *Estados Unidos Apoya Investigación Por Corrupción en PDVSA y Espera Que Sea Transparente*, EL NACIONAL (Mar. 22, 2023), <https://www.elnacional.com/venezuela/estados-unidos-apoya-investigacion-por-corrupcion-en-pdvs-y-espera-que-sea-transparente/>.

²⁹⁵ Press Release, Public Prosecution Service of Canada, *Superior Court of Quebec Publishes Remediation Agreement for UEFTI* (May 17, 2023), https://www.ppsc-sppc.gc.ca/eng/nws-nvs/2023/17_05_23.html.

²⁹⁶ *Id.*

²⁹⁷ *R. v. Arapakota*, 2023 ONSC 1567 (CanLII), available at: <https://www.canlii.org/en/on/on/onsc/doc/2023/2023onsc1567/2023onsc1567.html>.

²⁹⁸ *Id.* at ¶¶ 1-11.

²⁹⁹ *Id.* at ¶¶ 68-232.

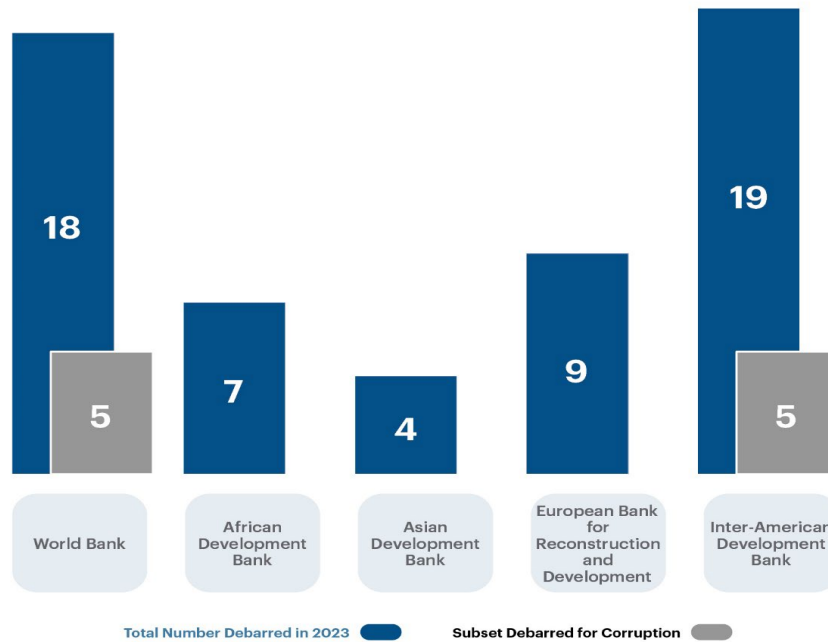
³⁰⁰ *Id.* at ¶¶ 74, 82-83.

³⁰¹ Ana de Liz, *Mexico’s special anti-corruption office highlights first strides*, GLOBAL INVESTIGATIONS REVIEW, <https://globalinvestigationsreview.com/article/mexicos-special-anti-corruption-office-highlights-first-strides>.

information of 50,000 people.³⁰² The FEMCC also obtained a conviction against an agent of the Public Ministry of the Eastern Regional Prosecutor’s Office who had obstructed an investigation.³⁰³ FEMCC’s mandate allows investigations into influence trading and bribery only, and, within that sphere, only conduct that has occurred since the FEMCC’s inception.³⁰⁴

Multilateral Development Bank Sanctions

In 2023, multilateral development banks (“MDBs”) imposed a total of 57 debarments, 10 of which were imposed at least in part on the basis of corrupt practices.³⁰⁵



MULTILATERAL DEVELOPMENT BANK DEBARMENTS, 2023

³⁰² *Id.*
³⁰³ Press Release, Fiscalía Especializada en Combate a la Corrupción, *La Fiscalía Anticorrupción Logró Que Un Tribunal De Enjuiciamiento Dictara Fallo Condenatorio Contra Una Agente Del Ministerio Público De La Fiscalía Regional Oriente Por Delitos Cometidos Por Servidores Públicos Y Contra La Administración De Justicia*, <https://fiscaliaanticorrupcion.morelos.gob.mx/noticias/la-fiscalia-anticorrupcion-logro-que-un-tribunal-de-enjuiciamiento-dictara-fallo>.
³⁰⁴ *Id.*
³⁰⁵ Debarments were counted based on the data reported by each MDB, using each bank’s own reporting criteria for the calendar year 2022. See *Debarment and Sanctions Procedures*, African Dev. Bank Grp., <https://www.afdb.org/en/projects-and-operations/procurement/debarment-and-sanctions-procedures/>; *Published List*, Asian Dev. Bank, <http://lnadbg4.adb.org/oga0009p.nsf/sancALLPublic?OpenView&count=999>; *Ineligible Entities*, European Bank For Reconstructr. & Dev., <https://www.ebrd.com/ineligible-entities.html> (including debarments based upon third-party findings); *Sanctioned Firms and Individuals*, Inter-American Dev. Bank, <https://www.iadb.org/en/transparency/sanctioned-firms-and-individuals>; *World Bank Listing of Ineligible Firms & Individuals*, World Bank, <https://www.worldbank.org/en/projects-operations/procurement/debarred-firms>.

The 2023 debarments represent a significant reduction in sanctions compared to 2021 and 2022, when MDBs conducted 239 and 161 debarments, respectively.³⁰⁶ The decline is largely attributable to the World Bank and the Inter-American Development Bank, which have produced the vast majority of debarments in the recent history. While the World Bank Group (“WBG”) and the Inter-American Development Bank imposed a combined 211 debarments in 2021 and 140 debarments in 2022, in 2023 these two MDBs imposed only 37 debarments total. The European Bank for Reconstruction and Development, which has historically not imposed large numbers of sanctions, debarred nine firms or individuals in 2023 after just five debarments combined in 2021 and 2022.³⁰⁷

This year the WBG also published the third edition of its Sanctions Board Law Digest, on the twenty-fifth anniversary of the creation of the Sanctions Board (formerly the Sanctions Committee).³⁰⁸ The Digest presents case updates, highlights, and statistics from Sanctions Board cases decided from 2000 to 2022 and offers further guidance on the history and procedure of the World Bank’s sanctions system.³⁰⁹ The third edition of the Digest provides an important resource for understanding the legal framework and principles that guide the WBG’s approach to sanctions and debarments.

Conclusion

While the number of enforcement actions and penalty amounts in 2023 remained somewhat below pre-pandemic levels, the enactment of the FEPA and DOJ’s announcement of the ICAB initiative signal that the government may be building up its capacity and tools for increased anti-corruption enforcement. The administration appears intent on leveraging federal agencies beyond DOJ and the SEC, such as the State Department and Treasury Department, to detect and punish FCPA, money laundering, and sanctions evasion violations, with an eye towards addressing national security risk. And DOJ continues to invest in greater, and more formalized, international coordination efforts.

We will be monitoring these initiatives closely over the coming year and look forward to sharing our views with you on these and other developments.

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³⁰⁶ Paul, Weiss FCPA 2022 Year in Review, at 33–34; Paul, Weiss FCPA 2021 Year in Review, at 33.

³⁰⁷ *Id.*

³⁰⁸ 2023 World Bank Group Sanctions Board Law Digest, available at: <https://documents.worldbank.org/en/publication/documents-reports/documentdetail/099015504192331566/idu0848d3488048e0049dc097bf045c63f32c16b>.

³⁰⁹ *Id.* at 1, 3.

This memorandum is not intended to provide legal advice, and no legal or business decision should be based on its content. Questions concerning issues addressed in this memorandum should be directed to:

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