Steptoe

FCPA/Anti-Corruption Developments

2022: Year in Review

FEBRUARY 2023

Table of Contents

Introduction

There was an overall uptick in the number of Foreign Corrupt Practices Act (FCPA) enforcement actions against both companies and individuals in 2022 as compared with the prior year, although numbers were still far below their peak of a few years ago. Coordinated, multijurisdictional investigations and resolutions, however, have become an established feature of the FCPA docket, and the Department of Justice points to that as an important success for enforcement. The Department also continued to stress the importance that it places on individual prosecutions and, indeed, in 2022 brought more FCPA cases against individuals than in the prior year; pursued other foreign bribery-related prosecutions against a number of individuals under anti-money laundering laws; and re-emphasized in the Department's written enforcement policy that a company that hopes to receive cooperation credit must, among other things, provide fulsome information to the Department that would assist it in pursuing individuals.

This past year also saw new and significant DOJ enforcement policy announcements reflecting the Department's continued efforts to incentivize companies to disclose voluntarily FCPA and other corporate white collar criminal matters, and to cooperate fulsomely with government investigations. Relatedly, an examination of the corporate resolutions in 2022 shows how the Department attempted to demonstrate further how in practice it applies these policies to distinguish between companies based not only on the seriousness of the underlying conduct but also based on their disclosure, cooperation, and remediation. On the one hand, the DOJ granted formal declinations in two FCPA matters under its enforcement policy, and these were the only matters in which the companies met the DOJ's standards for voluntary disclosure. (For more information on the declinations, see Section VII). On the other hand, the Department required either deferred prosecution agreements or guilty pleas in the remaining corporate FCPA matters, and imposed monitors in two of them. For its part, the SEC was active in 2022 with respect to FCPA corporate enforcement, bringing four matters jointly with DOJ and three SEC-only matters.

Finally, the Department of Justice continued to emphasize the subject of corporate compliance programs, including by building in additional obligations related to compliance programs in corporate resolutions; further augmenting the Department's Corporate Enforcement, Compliance, and Policy Unit (CECP); and emphasizing in various policy statements that independent compliance monitorships, which had declined in number in recent years, remain an important tool in appropriate cases from the Department's perspective. It is also worth noting that the Assistant Attorney General for the Criminal Division, the head of the Fraud Section within the Criminal Division, and the head of the CECP are all former Chief Compliance Officers (CCO).

In this Year in Review, we discuss these developments, as well as key developments and trends in the international arena with respect to anti-corruption enforcement and also compliance standards. We will be closely monitoring activity by both US and foreign authorities in 2023.

Section I

Enforcement Statistics & Trends

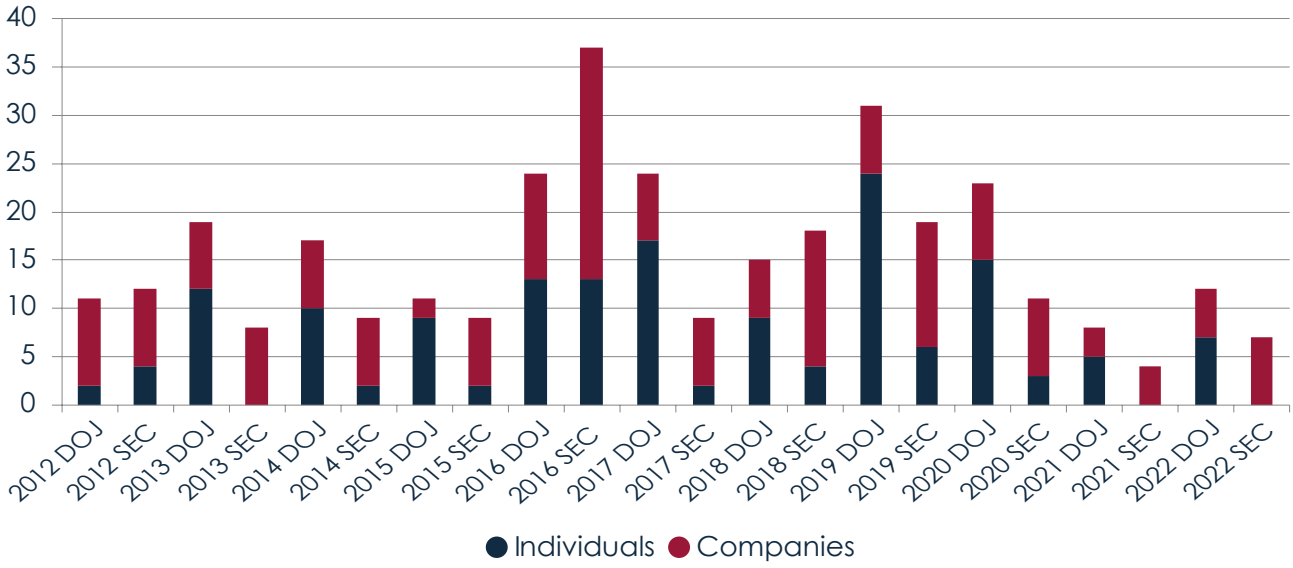
I. Enforcement Statistics & Trends

A. Number Of Enforcement Actions

2022 saw a slight increase in reported FCPA-related actions against corporations and individuals from both the DOJ and the SEC over the prior year. There were a total of 19 actions, which is an increase from the 12 reported in 2021. Still, this represents a significant decrease from the 34 FCPA-related actions in 2020 and 50 in 2019.[1] The DOJ brought 12 enforcement actions against corporations and individuals, up from eight in 2021. The SEC brought seven enforcement actions against companies, compared with four in 2021. The SEC again brought no charges against individuals for FCPA-related conduct.[2]

Eight companies faced charges from the DOJ, the SEC, or both in 2022. This represents an increase from 2021, in which only four were charged, but is still down from 2020, in which 12 were charged, and 2019, in which 14 were charged. In 2022, charges were brought against two technology companies, one airline, one supplier in the energy-sector, one mining and commodities trading company, one steel piping manufacturer, one waste disposal company, and one telecommunications company. The DOJ and SEC brought four parallel corporate enforcement actions, an increase from the three in 2021, matching the four from 2020, but still down from the six parallel actions brought in 2019. Of the companies charged in 2022 by the DOJ, three were domestic while five were foreign, compared with the four foreign companies charged in 2021.

Number of Reported Prosecutions, 2007-2022

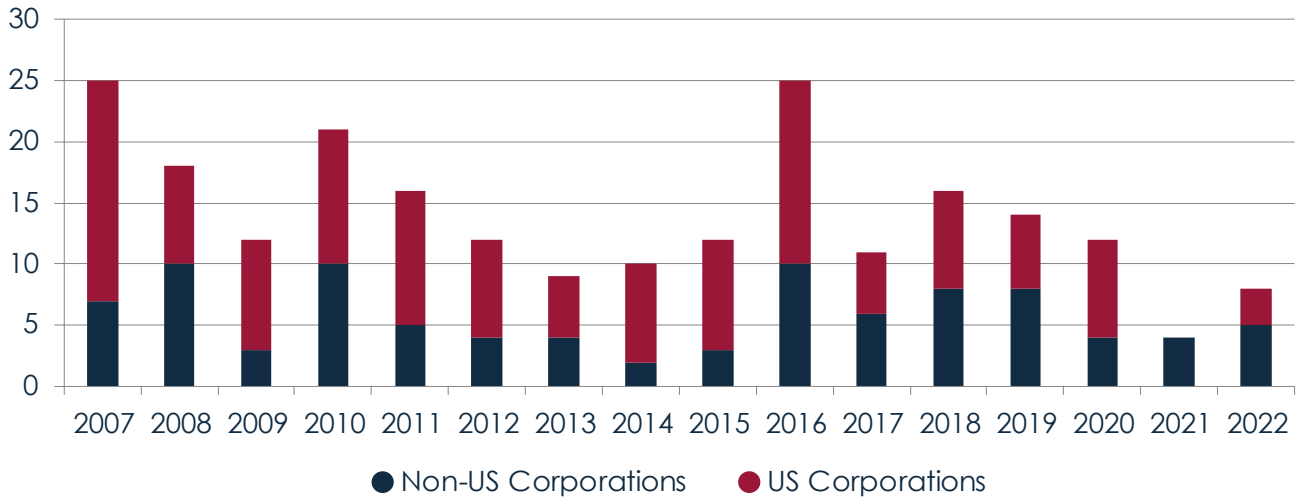


1 Steptoe's methodology accounts for charges either brought in 2022 or unreported prior to 2022. With respect to charges brought against companies and individuals, the methodology counts charges involving violations of the FCPA and conspiracy to violate the FCPA (both its anti-bribery and accounting provisions). These statistics do not include non-FCPA foreign corruption-related charges against individuals (such as money laundering charges against corrupt foreign officials).

2 The DOJ and SEC brought a total of eight corporate FCPA enforcement actions in 2022 (counting enforcement actions against more than one member of the same corporate family, such as ABB Ltd. and its subsidiaries, as a single action). The eight enforcement actions included four parallel actions by the DOJ and SEC against the same corporate groups (*Stericycle, Inc., GOL Linhas Aereas Inteligentes S.A., ABB Ltd., and UOP, LLC*). The DOJ also brought one separate enforcement action (*Glencore International AG*), and the SEC brought three separate actions (*KT Corp., Tenaris S.A., and Oracle Corp.*).

I. Enforcement Statistics & Trends

FCPA Actions Against US and Non-US Companies, 2007-2022

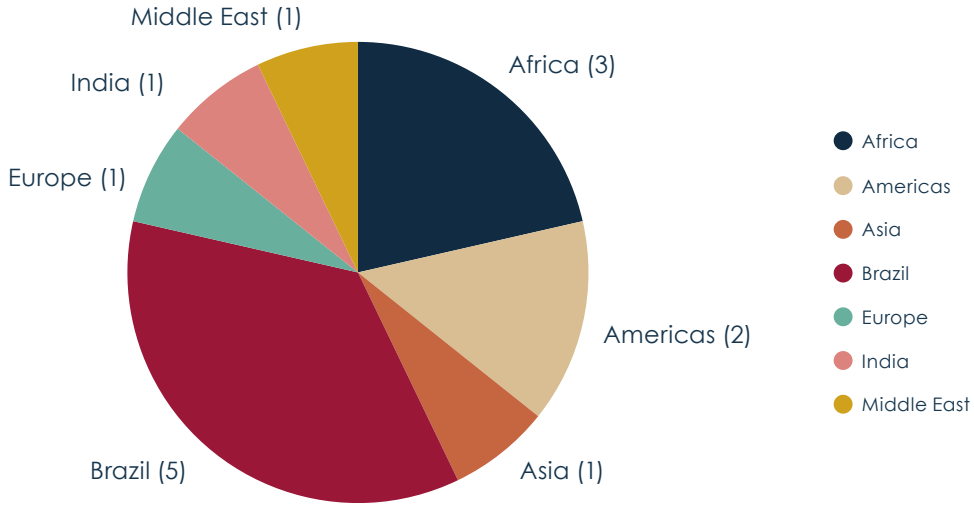


The DOJ brought seven new FCPA charges against individuals this year. As in 2021, the SEC brought none. Though the number of DOJ enforcement actions represents an increase from the five in 2021, this is still a marked decrease from the 15 brought in 2020 and 30 in 2019. The DOJ issued declinations under the Corporate Enforcement Policy (CEP) in two cases in 2022, up from zero in 2021.

B. Geography Of Conduct Chart

As in prior years, alleged FCPA-related conduct occurred in diverse jurisdictions. One notable departure from prior year trends was that in 2022 there were no enforcement actions involving alleged conduct in China. As in prior years, Brazil continued to feature prominently as a locus of alleged conduct cited in corporate enforcement actions.[3]

2022 Locus of Corrupt Conduct Cited in Corporate Cases



3 Where conduct occurs in more than one region, we count each region for purposes of tracking geography. In *Stericycle, Inc.*, for instance, the alleged conduct occurred in Argentina, Brazil, and Mexico. Accordingly, our methodology treats this alleged misconduct as occurring in two regions in the graph (the Americas and Brazil). Our methodology does not count declinations for the purposes of tracking enforcement action geography. Four of the eight corporate enforcement actions brought by US authorities in 2022 to involve conduct in more than one location. The alleged conduct in *UOP, LLC* occurred in Africa and Brazil; the alleged conduct in *Stericycle, Inc.* in the Americas and Brazil; the alleged conduct in *Glencore International AG* in Africa, the Americas, and Brazil; and the alleged conduct in *Oracle Corp.* in Europe, India, and the Middle East.

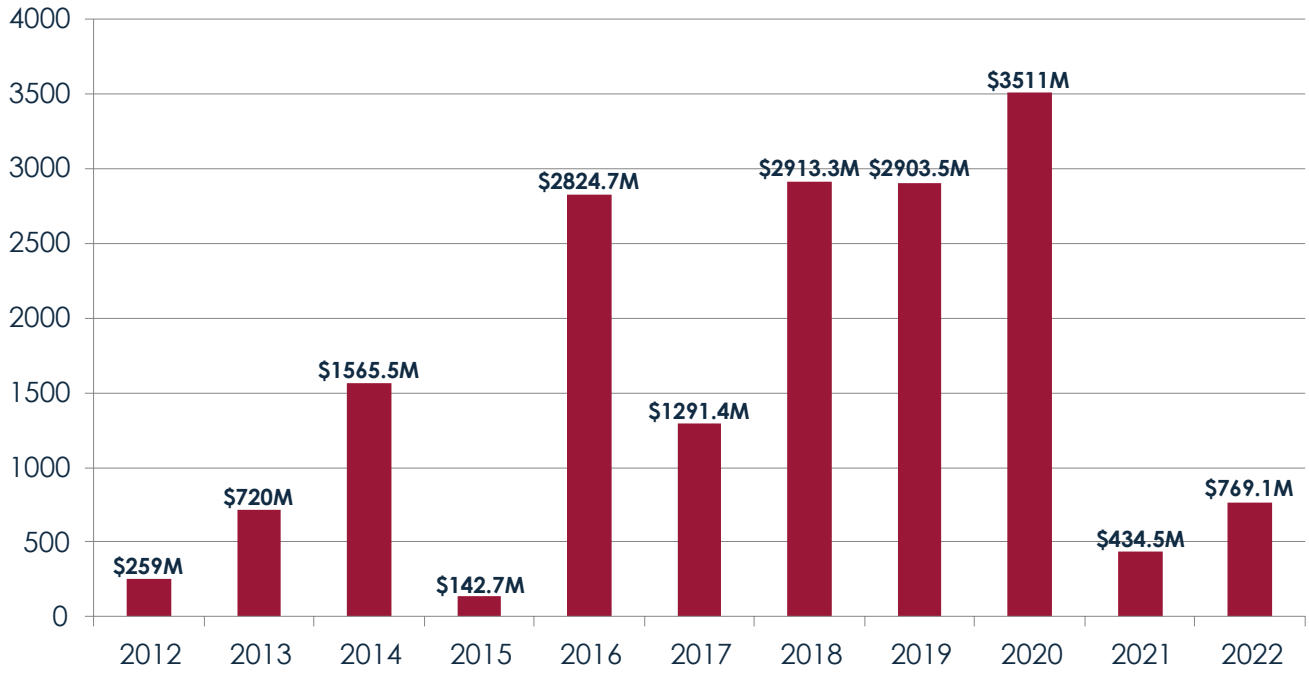
I. Enforcement Statistics & Trends

C. Monetary Sanctions[4]

The aggregate dollar value of monetary sanctions imposed by the DOJ and SEC[5] for FCPA-related offenses in 2022 was approximately $1.2 billion, with more than $769 million of that amount being ultimately paid to the US Treasury.[6] This is a substantial increase from 2021; however, it remains significantly lower than years past, such as the record-breaking $6 billion in 2020, with the US Treasury receiving $3 billion of that amount. The lower number in 2022 can be explained by the lower number of enforcement actions, but it is also notable that there were, again, no billion-dollar plus FCPA monetary penalties issued in 2022. Although the Glencore resolution involved a high-dollar monetary penalty, a substantial portion of that total penalty was in connection with its resolution of commodity and price manipulation-related charges.

Of the eight corporate enforcement actions, five involved parallel foreign enforcement (UOP, LLC, ABB Ltd., GOL Linhas Aereas Inteligentes S.A., Glencore International AG, and Stericycle, Inc.) resulting in penalties payable to foreign authorities in addition to those paid to the United States. With the exception of the penalties paid pursuant to a settlement with Brazilian authorities in the Glencore enforcement action,[7] the penalties payable to the United States were partially offset by those paid or payable to foreign authorities.

FCPA Corporate Fines Paid to US Treasury 2012-2022 (in USD)



4 All values are reported in US dollars, unless otherwise specified.

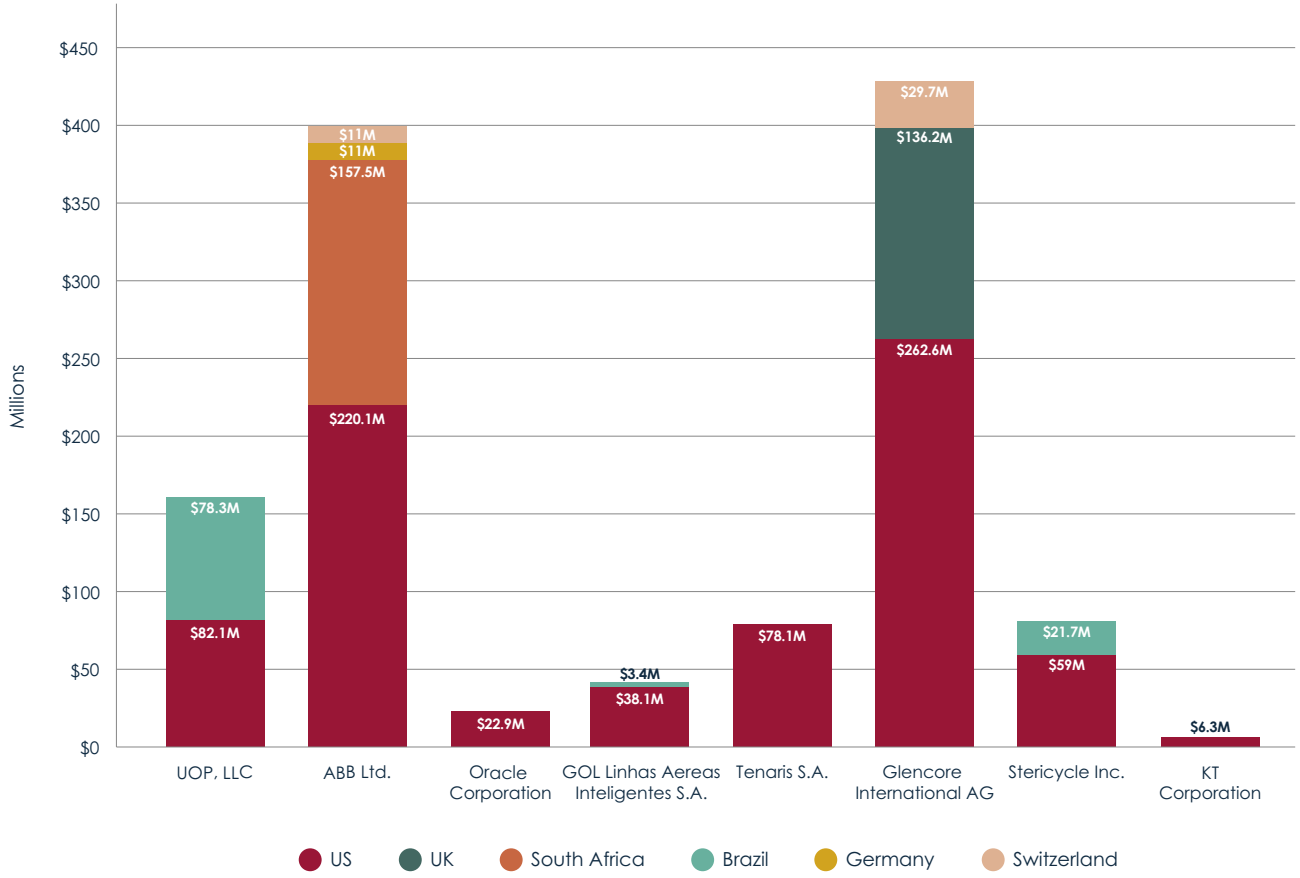
5 Glencore's resolution with DOJ also included a commodities manipulation charge in addition to FCPA charges. These statistics include only the FCPA resolution amounts.

6 The totals include penalties, disgorgement and interest. Discrepancies in fines imposed versus those payable to the US Treasury reflect payments to other enforcement authorities which are credited towards the total fine.

7 Glencore, Glencore Reaches Coordinate Resolutions with US, UK and Brazilian Authorities (May 24, 2002), https://www.glencore.com/media-and-insights/news/glencore-reaches-coordinated-resolutions-with-us-uk-and-brazilian-authorities.

I. Enforcement Statistics & Trends

2022 Corporate Enforcement Actions



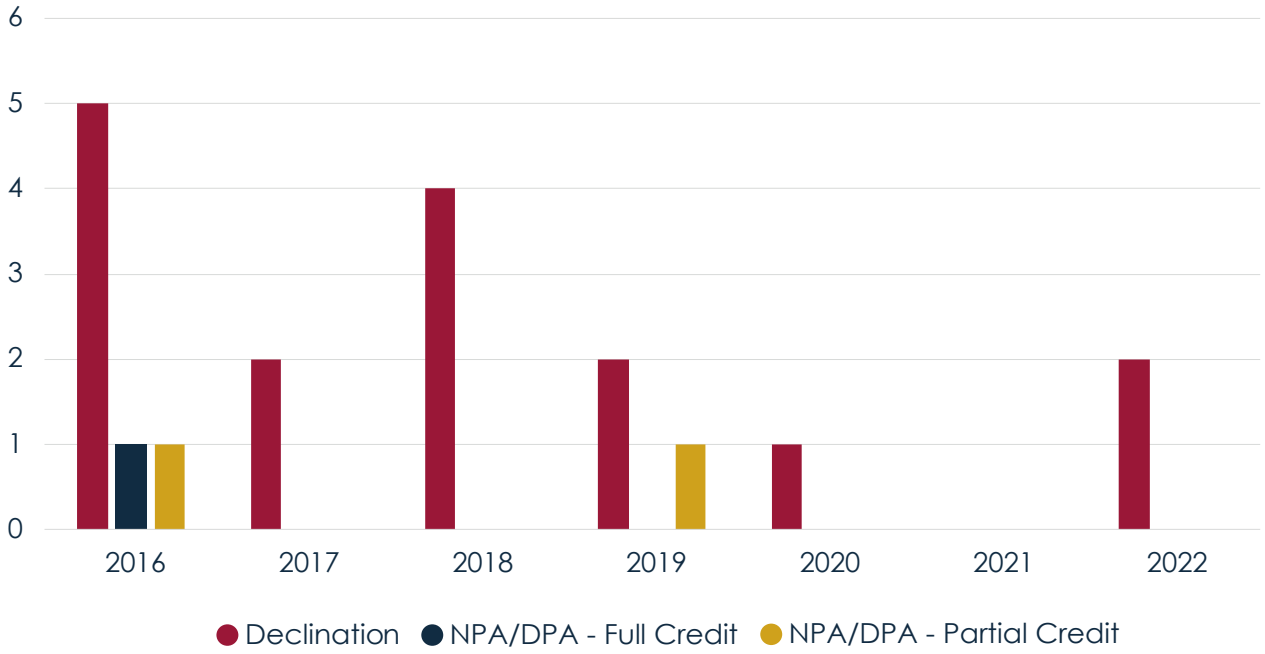
D. Nature of DOJ Resolution

In 2016, the DOJ announced its FCPA Pilot Program, now incorporated into the DOJ CEP. The DOJ CEP provides different levels of "credit" for steps taken by a company to resolve a matter with the Department, which directly impacts the penalty amount a corporation pays in resolving an FCPA enforcement action. "Credit" is primarily based on whether the company voluntarily disclosed the conduct and whether the company fully cooperated during the course of the DOJ's investigation, in addition to whether it engaged in remedial actions, all as assessed by the DOJ. Where the company has voluntarily disclosed the conduct and has cooperated and fully remediated, there is a presumption that the DOJ will decline to bring an enforcement action.

If the DOJ instead brings an enforcement action—including a non-prosecution agreement (NPA), a deferred prosecution agreement (DPA), or a guilty plea—it will afford some level of "credit" against the otherwise applicable Sentencing Guidelines. According to the enforcement policy applicable in 2022, in the context of a voluntary disclosure, a criminal resolution with 50% off of the low end of the Sentencing Guidelines is considered "full credit." Anything less was considered "partial credit" under the enforcement policy applicable in 2022.

I. Enforcement Statistics & Trends

Voluntary Disclosure[8]



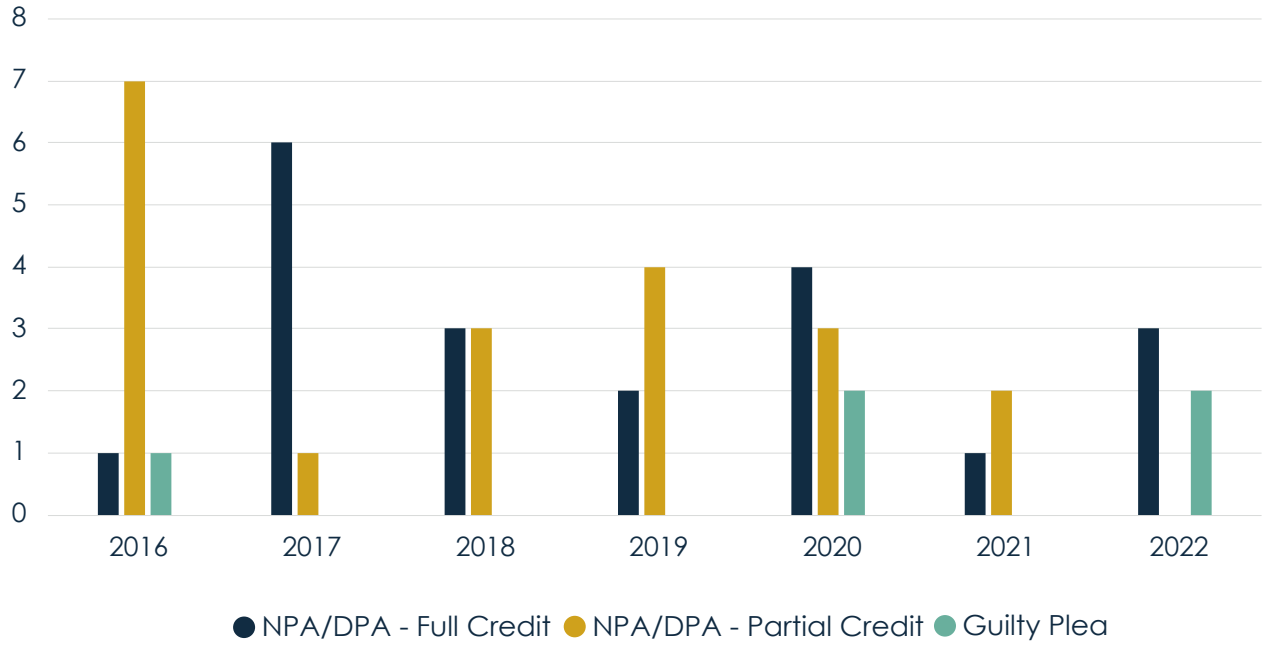
Under the CEP in place in 2022,[9] a company which did not voluntarily disclose the conduct, but fully cooperated and remediated could be given a resolution reflecting "full credit" with a 50% reduction from the low end of the Sentencing Guidelines (except in the case of repeat offenders in which case the reduction is not from the low end of the Sentencing Guidelines). Anything less is considered "partial credit." Enforcement actions in 2022 included three deferred prosecution agreements with full credit (Stericycle, Inc., GOL Linhas Aereas Inteligentes S.A., and UOP, LLC) and one guilty plea that received partial credit (Glencore International AG). In the ABB Ltd. matter, the parent company's DPA did not include a reduction from the low end of the Sentencing Guidelines due to its past FCPA violations in 2004 and 2010. Two corporate resolutions in 2022 included the imposition of an independent compliance monitor (Stericycle, Inc. and Glencore International AG).

8 Where DOJ brought actions against a parent company and a subsidiary, these statistics only took into account the resolution reached with the parent company.

9 See Section II.A. for a discussion of enforcement policy developments in late 2022 and early 2023.

I. Enforcement Statistics & Trends

No Voluntary Disclosure[10]



E. DOJ/SEC Priorities and Trends

Although 2022 saw a modest uptick in the number of enforcement actions compared to 2021, enforcement levels continue to be significantly below 2020 and 2019 levels, and a far cry from their peak in 2016. Although the DOJ again stated publicly that there is a pipeline of cases in the works,[11] this year we saw less discussion of the "pipeline" of cases that had been accumulating during the pandemic and greater emphasis on recalibration of the carrots and sticks in the DOJ's enforcement policies. These enforcement policy revisions will likely be a significant driver of how the DOJ approaches enforcement in the near-term. Although the trend towards individual prosecutions can be expected as a result of the continued emphasis on individual prosecution, whether the DOJ's policies will have a meaningful impact on the number of corporate enforcement actions is more debatable. What seems clear is that these policy changes will have an impact on the terms of corporate resolutions.

Below we highlight some of the 2022 enforcement trends. Some of these trends were also evident in 2021 and are discussed in our 2021 FCPA/Anti-Corruption Year in Review.

Continued efforts to prosecute individuals.

In 2022, DOJ reiterated that prosecution of individuals is a department priority in FCPA and other corruption-related cases.[12] Indeed, in 2022 DOJ brought a total of seven FCPA enforcement actions against individuals, which is two more than in 2021. There was, however, a notable drop in the number of non-FCPA bribery-related prosecutions using other statutes such as anti-money laundering and mail and wire fraud statutes. In 2021 the Department brought 23 of these enforcement actions, whereas in 2022 it only brought nine. It is unclear why these numbers dropped in 2022, but we expect to see an increase in FCPA and non-FCPA bribery-related prosecutions against individuals in 2023 given the Department's continued emphasis on these prosecutions.

10 Where DOJ brought actions against a parent company and a subsidiary, these statistics only took into account the resolution reached with the parent company.

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

12 DOJ Memorandum, *Further Revisions to Corporate Criminal Enforcement Policies Following Discussions with Corporate Crime Advisory Group* (Sept. 15, 2022), https://www.justice.gov/opa/speech/file/1535301/download.

I. Enforcement Statistics & Trends

Continued attention to calibrating the type of disposition and fine amount to voluntary disclosure, cooperation and remediation under the Corporate Enforcement Policy.

The Department has continued to emphasize tailoring resolutions to particular circumstances in its 2022 corporate resolutions. One area where a case-by-case analysis was evident was with respect to how the Department approached past misconduct when determining penalties. For example, although the Monaco Memorandum stresses that the DOJ may take into account any and all types of prior corporate misconduct, the UOP (Honeywell) settlement describes merely that the parent company had one (dissimilar) criminal resolution over 10 years ago, and that other UOP (Honeywell) companies have had an unspecified number of civil and administrative settlements. In the UOP (Honeywell) resolution, full cooperation credit resulted in a discount of 25% off the low end of the applicable Sentencing Guidelines range. In contrast, and as a result of its two prior FCPA violations in 2004 and 2010, ABB Ltd. was given a fine discounted from the mid-range of the Sentencing Guidelines, rather than the low end, despite receiving cooperation credit.

Monitorships

Two monitorships were announced in 2022, in the Glencore and Stericycle enforcement actions. In addition, the DOJ emphasized in public statements its continued willingness to include monitors in corporate resolutions when a company is not able to demonstrate, including through compliance program testing, that at the time of resolution the company's compliance program is able to prevent, detect and respond to potential violations of law.[13] The Department has also highlighted the GOL Linhas Aereas matter as one in which the company had completely rebuilt its compliance program and could demonstrate through testing that the program was functioning in practice and therefore no compliance monitor was imposed.[14]

With respect to the SEC, we note:

- **Enforcement activity.** Overall, the SEC filed 9% more enforcement actions than in 2021, and 20% more FCPA-related actions than in 2021.
- **Rewarding and Protecting Whistleblowers.** In 2022, the SEC awarded approximately $229 million to whistleblowers in 103 awards. This represents the second highest in both total value and number of awards. The only year that exceeded this value and number of awards was 2021. Notably, however, the SEC received a record breaking 12,300 tips, although only 2% of these tips were FCPA-related.[15] The countries from which the greatest number of tips originated include: Canada, the UK, Germany, China, Mexico and Brazil.

F. Multi-Jurisdictional Developments and Trends

Of the eight corporate settlements in 2022, five involved multi-jurisdictional coordinated resolutions, an increase from the two multi-jurisdictional settlements in 2021. In line with the DOJ and SEC's "no piling on" policy, credit was given for payments made to other authorities, with the exception of the Glencore matter in which US authorities did not credit the $39.6 million paid in connection with a settlement with Brazilian authorities. Pursuant to the Brazilian settlement, the $39.6 million was paid directly to Brazil's state-owned oil company, Petróleo Brasileiro S.A. (Petrobras), which was determined to be the victim of the underlying misconduct.

In December 2022, UOP (Honeywell) entered into settlement agreements with the DOJ and SEC in the United States as well as with Brazilian authorities, and agreed to pay roughly $160 million to United States and Brazilian authorities to resolve charges that it engaged in a scheme to pay bribes of around $4 million to a high-ranking official at Petrobras, as well as $75,000 to an Algerian government official to retain business with a state-owned entity, Sonatrach.[16] UOP (Honeywell) agreed to a Cease-and-Desist Order with the SEC with $81 million in disgorgement and prejudgment interest, a three-year DPA to resolve the one count of conspiracy to violate the FCPA with the DOJ with a $79 million fine, plus more than $105.6 million in criminal forfeiture.[17]

---

13 Criminal Division Corporate Enforcement and Voluntary Self-Disclosure Policy *available at* https://www.justice.gov/criminal-fraud/file/1562831/download at 2.

14 DOJ Speech, *Assistant Attorney General Kenneth A. Polite Delivers Remarks at the University of Texas Law School* (Sept. 16, 2022), https://www.justice.gov/opa/speech/assistant-attorney-general-kenneth-polite-delivers-remarks-university-texas-law-school.

15 SEC, 2022 Annual Report to Congress: Whistleblower Program (Nov. 15, 2022) https://www.sec.gov/files/2022_ow_ar.pdf.

16 DOJ Press Release, *Honeywell UOP to Pay Over $160 Million to Resolve Foreign Bribery Investigations in U.S. & Brazil* (Dec. 19, 2022), https://www.justice.gov/opa/pr/honeywell-uop-pay-over-160-million-resolve-foreign-bribery-investigations-us-and-brazil; SEC Press Release, *SEC Charges Honeywell with Bribery Schemes in Algeria and Brazil* (Dec. 19, 2022), https://www.sec.gov/news/press-release/2022-230. Note that while the DOJ brought an enforcement action against UOP's (Honeywell) parent entity, UOP, LLC, the SEC brought an action against Honeywell International Inc. Our analysis counted the SEC's action as being associated with the parent company as there was a connection between the FCPA-related conduct.

17 DOJ Press Release, *Honeywell UOP to Pay Over $160 Million to Resolve Foreign Bribery Investigations in U.S. and Brazil* (Dec. 19, 2022), https://www.justice.gov/opa/pr/honeywell-uop-pay-over-160-million-resolve-foreign-bribery-investigations-us-and-brazil; SEC Statement, *SEC Charges Honeywell with Bribery Schemes in Algeria and Brazil* (Dec. 19, 2022), https://www.sec.gov/news/press-release/2022-230.

I. Enforcement Statistics & Trends

UOP (Honeywell) also agreed to pay more than $39.6 million to Brazilian authorities to resolve the matter.[18] After the application of offset credit for payments to the SEC and the Brazilian authorities, the amount owed to the DOJ was $39.6 million.[19]

In May 2022, Glencore reached a plea agreement with the DOJ to resolve FCPA charges whereby it pleaded guilty to one count of conspiracy to violate the FCPA and agreed to pay $428.5 million to authorities in the United States, United Kingdom, and Switzerland.[20] Glencore's charges originated from its use of third-party intermediaries to make payments of more than $100 million in bribes to government officials in Nigeria, Cameroon, Ivory Coast, Equatorial Guinea, Brazil, Venezuela, and the Democratic Republic of the Congo (DRC).[21] Glencore reached parallel resolutions with the US Commodities Futures Trading Commission (CFTC) as well as authorities in Switzerland and the United Kingdom, with the DOJ crediting $29.7 million and $136.2 million, respectively, in payments made or to be made to those foreign authorities against Glencore's criminal fines.[22] Glencore's guilty plea also included a requirement for an independent compliance monitor for a period of three years. After the application of offset credit for payments to the CFTC, Switzerland, and the United Kingdom, the company agreed to pay $262 million to the DOJ.[23]

In April 2022, Stericycle, Inc. entered into a three-year deferred prosecution agreement with the DOJ, consented to a Cease-and Desist Order with the SEC, and agreed to a settlement with Brazilian authorities in connection with charges that it caused hundreds of bribe payments to be made to officials at government agencies in Latin America in order to obtain improper advantages in securing government waste management contracts.[24] Stericycle was alleged to have paid approximately $10.5 million in bribes to foreign officials in Argentina, Brazil, and Mexico in order to obtain and retain government business.[25] After accounting for offsets for amounts paid to Brazilian agencies, roughly $21.7 million, Stericycle agreed to a minimum total payment to the SEC and DOJ of $59.2 million.[26]

In the DOJ's first coordinated FCPA resolution with South African authorities, ABB Ltd. resolved charges in December 2022 that it bribed a high-ranking official at South Africa's state-owned energy company, Eskom Holdings Ltd., between 2014 and 2017 to obtain confidential information and win a $160 million contract.[27] ABB entered into a three-year deferred prosecution agreement with the DOJ, which established a total criminal penalty of $315 million.[28] ABB Ltd. also agreed to a Cease-and-Desist Order with the SEC and a $75 million civil penalty as well as $58 million in disgorgement and $14.5 million in prejudgment interest.[29] The DOJ agreed to credit up to one-half of the criminal penalty against amounts paid in settlements to South African officials, $157.5 million, payments made in anticipated settlements with the SEC, and $11 million each to Swiss and German authorities.[30] Thus, ABB Ltd. agreed to pay $220 million in total to US authorities.

GOL Linhas Aéreas Inteligentes S.A. (GOL), resolved charges in September 2022 that it paid millions of dollars in bribes to Brazilian officials to secure the passage of favorable legislation, by entering into agreements with the DOJ, the SEC, and Brazilian authorities.[31] GOL entered into a three-year deferred

---

18 DOJ Press Release, *supra* note 17.

19 *Id.*

20 DOJ Press Release, *Glencore Entered Guilty Pleas to Foreign Bribery and Market Manipulation Schemes* (May 24, 2022), https://www.justice.gov/opa/pr/glencore-entered-guilty-pleas-foreign-bribery-and-market-manipulation-schemes.

21 *Id.*

22 *Id.*

23 *Id.*

24 DOJ Press Release, *Stericycle Agrees to Pay Over $84 Million in Coordinated Foreign Bribery Resolution* (Apr. 20, 2022), https://www.justice.gov/opa/pr/stericycle-agrees-pay-over-84-million-coordinated-foreign-bribery-resolution; SEC Press Release, *SEC Charges Stericycle with Bribery Schemes in Latin America* (Apr. 20, 2022), https://www.sec.gov/news/press-release/2022-65.

25 DOJ Press Release, *supra* note 24.

26 DOJ Press Release, *supra* note 24.

27 DOJ Press Release, *ABB Agrees to Pay Over $315 Million to Resolve Coordinated Global Foreign Bribery Case* (Dec. 2, 2022), https://www.justice.gov/opa/pr/abb-agrees-pay-over-315-million-resolve-coordinated-global-foreign-bribery-case.

28 DOJ Press Release, *supra* note 27.

29 SEC Press Release, *ABB Settles SEC Charges That It Engaged in Bribery Scheme in South Africa* (Dec. 3, 2022), https://www.sec.gov/news/press-release/2022-214.

30 DOJ Press Release, ABB Agrees to Pay Over $315 Million to Resolve Coordinated Global Foreign Bribery Case (Dec. 2, 2022), https://www.justice.gov/opa/pr/abb-agrees-pay-over-315-million-resolve-coordinated-global-foreign-bribery-case.

31 DOJ Press Release, *GOL Linhas Aéreas Inteligentes S.A. Will Pay Over $41 Million in Resolution of Foreign Bribery Investigations in the United States and Brazil* (Sept. 15, 2022), https://www.justice.gov/opa/pr/gol-linhas-reas-inteligentes-sa-will-pay-over-41-million-resolution-foreign-bribery.

prosecution agreement with the DOJ, and a Cease-and-Desist Order with the SEC, and paid roughly $3.4 million to Brazilian authorities. Notably, GOL received reduced penalties with the DOJ and SEC due to its demonstrated inability to pay.[32] After credits, GOL agreed to penalty payments totaling approximately $30.5 million.[33]

In the last few years, there has been an increasing trend of cooperation among national authorities to reach coordinated multi-jurisdictional settlements. Notable in this regard is the addition this year of South African authorities to the list of enforcers with which the DOJ has coordinated a multi-jurisdictional corporate resolution. Indeed, as noted in our 2021 FCPA/Anti-Corruption Year in Review, the US Strategy on Countering Corruption includes a continued emphasis and priority given by the Biden administration to multilateral cooperation. Further, the OECD's 2021 Recommendation, issued in November of 2021, formally recommends continued cooperation and sharing of information among countries and encourages countries to coordinate investigations rather than prosecuting companies for the same conduct in multiple jurisdictions.

32 *Id.; see also* SEC Press Release, *SEC Charges GOL Intelligent Airlines, Brazil's Second Largest Airline, with FCPA Violations* (Sept. 15, 2022), https://www.sec.gov/news/press-release/2022-164.

33 *Id.*

Section II

Government Enforcement Policy & Compliance Guidance

II. Government Enforcement Policy & Compliance Guidance

A. Enforcement Policy Developments

1. Deputy Attorney General Lisa Monaco and Assistant Attorney General Kenneth Polite Memoranda

On September 15, 2022, Deputy Attorney General (DAG) Lisa Monaco issued a memorandum (the "Monaco Memo") formalizing and elaborating on enforcement policy changes she had first announced in a speech in October of 2021. The memo, entitled "Further Revisions to Corporate Criminal Enforcement Policies Following Discussions with Corporate Crime Advisory Group," outlined a series of both carrots and sticks to incentivize companies to voluntarily disclose white collar matters and to cooperate fully and proactively with government investigations.[34] In so doing, the memorandum built upon the DOJ Fraud Section's already-existing CEP and directed the extension of the types of policies encompassed in that Policy to all Department of Justice components. Following the directive, in a speech delivered on January 17, 2023, Assistant Attorney General (AAG) Kenneth Polite announced that the Department of Justice's Corporate Enforcement Policy, now renamed the "Corporate Enforcement and Voluntary Self-Disclosure Policy" (the 2023 CEP), would formally extended to apply to all manner of corporate misconduct, and the DOJ Justice Manual was updated to reflect this change as well.[35]

The 2023 CEP gives prosecutors greater discretion than had prior policy when giving credit for cooperation. Previously, full credit was 50% off the low end of the Sentencing Guidelines. The revised version gives prosecutors the ability, when a company is not a recidivist, to agree to between 50%-75% off the low end of the Sentencing Guidelines, including in the presence of aggravating circumstances. In determining where in this range a company should fall, the policy states that companies start at zero and earn credit based on "specific cooperative actions." The policy encourages prosecutors to differentiate among levels of cooperation offered by companies and states that substantial credit (i.e., closer to 75% rather than 50%) should be reserved for companies that demonstrate "extraordinary cooperation" that exceeds the factors listed in the CEP.

The changes and clarifications, as now fleshed out by both DAG Monaco and the Revised 2023 CEP, have important implications for corporate legal and compliance departments, their internal investigation processes, and their dealings with the DOJ if and when companies find themselves under scrutiny.

Key takeaways include:

- **Increased individual prosecutions, more quickly.** The Monaco Memo underscores the DOJ's "number one priority" of prosecuting and punishing individual wrongdoers. As DAG Monaco explained, "Whether wrongdoers are on the trading floor or in the C-suite, we will hold those who break the law accountable, regardless of their position, status, or seniority." And, DAG Monaco expects to bring wrongdoers to justice more quickly: "Speed is of the essence."
- **Timely and Complete Self-Disclosure.** Although a DOJ focus on the prosecution of individuals is not new, the September 2022 memo was remarkable for its increased and explicit emphasis on the ways in which a company that is seeking credit for cooperation from DOJ will be expected affirmatively to assist the DOJ in accomplishing that goal, and in a timely manner. Companies providing information that is both sufficiently complete and prompt to assist the DOJ in successfully identifying, investigating, and prosecuting individual wrongdoers, will benefit. And the benefits are significant: When coupled with cooperation with a government investigation and remediation, the DOJ will not seek a guilty plea from a self-reporting company; and will not require the imposition of an independent compliance monitor.

  Importantly, only timely self-disclosures, without "undue delay or intentional delay," will earn a corporation full credit. Tying the timeliness of a company's disclosure to the DOJ's stated goal of prosecuting individuals, DAG Monaco observed that delay by a company in providing relevant information to the DOJ can result in "expiration of statutes of limitations, the dissipation of corroborating evidence, and other factors that inhibit individual accountability." In addition, DAG's 2022 memo imposes two new requirements on prosecutors that are designed to buttress this goal. First, the memo requires that, "in connection with every corporate resolution, Department prosecutors must specifically assess whether the corporation provided cooperation in a timely fashion." Second, the memo directs that prosecutors "must strive to complete investigations into individuals – and seek any warranted individual criminal charges – prior to or simultaneously with the entry of a resolution against the corporation."

34 See Memorandum from Deputy Att'y Gen. Lisa Monaco, *Further Revisions to Corp. Crim. Enf't Policies Following Discussions with Corp. Crime Advisory Grp., DOJ* (Sept. 15, 2022), https://www.justice.gov/opa/speech/file/1535301/download.

35 See DOJ Press Release, *Assistant Att'y Gen. Kenneth A. Polite, Jr. Delivers Remarks on Revisions to the Crim. Div.'s Corp. Enf't Policy, DOJ* (Jan. 17, 2023), https://www.justice.gov/opa/speech/assistant-attorney-general-kenneth-polite-jr-delivers-remarks-georgetown-university-law.

II. Government Enforcement Policy & Compliance Guidance

Echoing the September 2022 memo's focus on timely and complete self-disclosure, AAG Polite's speech also underscores its importance in connection with a company's eligibility for declination. As stated by AAG Polite, even where "aggravating circumstances" are present, prosecutors still may exercise their discretion to decline prosecution of a company, so long as the company: (1) made immediate voluntary self-disclosure; (2) had a robust compliance program and internal accounting controls that helped facilitate detection and reporting of the malfeasance; and (3) provided "extraordinary cooperation" and engaged in "extraordinary remediation." As for what qualifies as "extraordinary," drawing from DAG Monaco's sentiments, AAG Polite cited "immediacy, consistency, degree, and impact" as key metrics for evaluating cooperation; for example, "when an individual begins to cooperate immediately, and consistently tells the truth"; "individuals who allow [the DOJ] to obtain evidence [it] otherwise couldn't get"; and "cooperation that produces results…"

- **Data collection.** AAG Polite and DAG Monaco also addressed ways in which a corporation's assistance in collecting evidence will count in its favor if, and when, it finds itself under investigation. Both the AAG and the DAG announced incentives for companies to collect and retain data. The Monaco Memo focused on the kinds of information that sometimes elude law enforcement, including data stored on employees' personal devices and communications sent through third-party messaging platforms. While offering no guidance on how to solve the thorny problem of locating and collecting data stored on personal devices and communications that have passed through encrypting applications (and without suggesting a ban on such devices and platforms), the Monaco Memo leaves it to companies to solve the problem. Should they solve it, corporations stand to benefit if the information turns out to be useful to DOJ investigators. If they do not collect and disclose the information, corporations risk losing full credit from the DOJ despite otherwise significant efforts at cooperation.

  Similarly, as outlined in the Monaco Memo, the DOJ also encourages companies to disclose relevant information from foreign jurisdictions. If that information cannot be produced (due to data protection or other local laws), the company bears the burden to establish why, and provide reasonable alternatives for the DOJ to obtain the facts.

- **Independent compliance monitors.** Although both the Monaco Memo and AAG Polite's speech offer a potential road map to companies to avoid the imposition of a compliance monitor, they also provide clarification as to the factors that will lead the DOJ to conclude that imposition of a monitorship is warranted. Consistent with a recent DOJ memo, which expressly rescinded DOJ guidance during the prior administration suggesting that monitorships are disfavored, the Monaco Memo notes that the decision will be case-specific and that the DOJ views monitorships not only as "necessary" but also as having "potential benefits" depending on the circumstances. In deciding whether to impose a monitor, the DOJ will consider many factors, including: whether the misconduct was satisfactorily self-disclosed; whether at all times there was an effectively utilized compliance program to detect and prevent similar future misconduct; whether the criminal conduct was pervasive or whether it was approved or ignored by senior management; and whether adequate investigative or remedial steps were taken.

- **Corporate misconduct history.** Also addressed in the Monaco Memo is how, and to what extent, a company's prior history of resolutions involving corporate misconduct will impact current resolutions. Significantly, the Memo provides detailed guidance as to how the DOJ will implement its announcement in its October 2021 memo that prosecutors' consideration of a company's prior misconduct will not be limited to similar misconduct, but instead can include consideration of any prior criminal, civil, or regulatory resolution, as well as from any jurisdiction domestic or foreign.

  The DOJ now recognizes that not all prior misconduct is equally relevant or probative. Prosecutors will give more or less weight to a company's history based on various factors, including the time that has elapsed since the prior misconduct, the nature of the prior resolution, and the conduct at issue in the prior resolution. The Monaco Memo also sets forth specific parameters, such as the notion that prior misconduct that was more than five years ago should be afforded lesser weight, absent specific countervailing circumstances that give such matters continuing relevance.

II. Government Enforcement Policy & Compliance Guidance

Additionally, the Monaco Memo acknowledges that the level of regulation to which a company is subject is a relevant factor in determining how much weight to place on a company's prior history: "Corporations operate in varying regulatory and other environments, and prosecutors should be mindful when comparing corporate track records to ensure that any comparison is apt. For example, if a corporation operates in a highly regulated industry, a corporation's history of regulatory compliance or shortcomings should likely be compared to that of similarly situated companies in the industry." Certain industries or sectors are more highly regulated than others and thus more prone to rule violations. The guidance directs prosecutors to take this into account in order to determine if the company is an outlier.

The DOJ also will consider whether prior misconduct predated an acquisition of the company. If an entity currently under investigation was acquired by a new company after the misconduct, the integration of that acquired entity into an "effective, well-designed compliance program at the acquiring company" will count in the company's favor despite its history of wrongdoing.

Finally, consistent with the overall tenor of DOJ's most recent guidance, the September 2022 memo is clear that the DOJ will be disinclined to enter into successive deferred or non-prosecution settlements with a company. Where a company has already obtained this type of resolution in a criminal matter, the DOJ will be less inclined to afford that type of settlement to the company in a subsequent matter. Essentially, this policy reinforces that the DOJ views these types of settlements as opportunities for a company to reform, and that companies must seize those opportunities.

- **Sentencing Recommendation.** In yet another change stemming from the DOJ's efforts to encourage self-reporting, AAG Polite announced that the Revised CEP contemplates significantly reduced sentencing recommendations even where aggravating circumstances are present for companies who voluntarily self-disclose, fully cooperate and remediate. As stated above, under prior policy, cooperating companies could earn up to a 50% reduction off the low end of the applicable Sentencing Guidelines penalty range. Under the new policy, the Criminal Division now will recommend "at least 50%, and up to 75%" off the low end for those companies including where aggravating factors are present. Companies deemed to be

2. Kleptocapture Task Force

This past year, the DOJ also launched a new "Kleptocapture Task Force" focused on enforcing U.S. financial sanctions and other actions against Russia as a result of its invasion of Ukraine. On March 2, 2022, Attorney General Merrick B. Garland introduced the interagency task force. Its mission includes: (1) investigating and prosecuting violations of recent U.S. sanctions imposed in response to Russia's invasion of Ukraine, as well as attempts to evade relevant "know-your-customer" (KYC) and anti-money laundering (AML) controls; (2) thwarting specific efforts to use cryptocurrency to evade U.S. sanctions or engage in money laundering activities; and (3) using civil and criminal asset forfeiture to seize assets identified as the proceeds of unlawful conduct.[36]

The Task Force is characterized by the DOJ as a key part of the current Administration's broader anti-corruption initiatives, and may play a role in continuing DOJ's trend of using anti-money laundering and other statutes to prosecute non-FCPA bribery-related offenses. In December 2022, Andrew Adams, the Task Force's Director, discussed the Task Force's work, expected future developments, and implications for private sector companies.[37] Several highlights from these remarks, summarized below, provide some insights into how the Task Force's activities may impact anti-corruption enforcement. In particular, greater engagement between authorities and the private sector on Task Force-related activity, enhanced coordination between government agencies, a more aggressive approach on data privacy restrictions, and continued use of a wide range of statutes and tools to bring prosecutions at the nexus of various forms of interrelated misconduct, may create new opportunities for bribery-related conduct to be prosecuted.

- **Multilateral and US inter-agency cooperation.** Director Adams emphasized that recent enforcement actions brought by the Task Force have involved a substantial amount of foreign cooperation. The countries that have provided support include not only those that have traditionally cooperated with the DOJ but also other "fairly far flung" jurisdictions that are now committed to enforcing sanctions around the world.

36 DOJ Press Release, *Att'y Gen. Merrick B. Garland Announces Launch of Task Force, KleptoCapture* (Mar. 2, 2022) https://www.justice.gov/opa/pr/attorney-general-merrick-b-garland-announces-launch-task-force-kleptocapture.

37 Director Adams' comments were made in the context of the American Conference Institute's 39th Annual Conference on the FCPA held on November 30-December 1 in Washington, DC.

II. Government Enforcement Policy & Compliance Guidance

US inter-agency cooperation is also a core part of the Task Force's strategy. The Task Force has at least weekly interactions with the Russian Elites, Proxies, and Oligarchs Task Force (REPO), a joint task force established by the DOJ and the Department of Treasury to accelerate oligarch asset forfeiture efforts.

As a result of this enforcement coordination with local and foreign counterparts, the Task Force's views regarding success have changed. Now, director Adams indicated, success is not defined solely by actions brought by the Task Force itself, but also by the actions initiated by its counterparts, including local agencies and foreign partners.

- **Private sector "facilitators."** The Task Force's scope goes beyond specific persons who were either designated by the Treasury Department or added to the Commerce Department's export control lists. It also focuses on private-sector actors who facilitate others' evasion of US economic sanctions and export controls, acting as so-called "facilitators." Generally speaking, according to Director Adams, there are three types of facilitators: those who are actively facilitating; those who are knowingly being exploited; and those who are being victimized.

  Director Adams indicated that cooperation by private-sector actors is a critical component of the Task Force's enforcement efforts. In building its cases, the Task Force regularly engages with companies and individuals in the banking, insurance, maritime, and aviation services sectors because these actors often end up serving as facilitators.

- **Data privacy laws are not a significant barrier.** Director Adams also indicated that data privacy laws or other data-related policies of foreign jurisdictions have not hindered the Task Force's ability to obtain information when public or private actors are cooperating with the US Government. If a company is cooperative, the Task Force has found ways to allow the company to share information while complying with applicable foreign law. In fact, there has been what he terms a "sea change" in terms of obtaining information from foreign governments. With foreign governments imposing sanctions that are similar to the US regime, the Task Force confronts fewer data privacy barriers because most data- sharing agreements include a "dual criminality" provision, in which information related to misconduct can be shared if it relates to conduct criminalized in both the US and the foreign jurisdiction.

- **Expansive statutory usage for enforcement.** The Task Force's approach, according to Director Adams, is to use all potential authorities to bring any charge against either specifically designated persons or facilitators, or to seize their assets. To do so, the Task Force uses a wide variety of statutes. In general, the most common charges are sanctions evasion and money laundering. In addition, the Task Force has brought charges under wire fraud, bank fraud, visa fraud, and narcotics trafficking statutes, as well as the Foreign Agents Registration Act and conspiracy and aiding and abetting under Sections 371 and 2, respectively.

  From the day the Task Force was announced in March 2022, asset forfeiture was its primary focus. Indeed, DOJ officials made clear that a leading goal of the Task Force was to use civil asset forfeiture authority to seize and forfeit luxury assets of designated foreign nationals who were beyond the reach of US criminal jurisdiction. Civil asset forfeiture authority was wielded notably in connection with bribery-related cases in the 1MDB matter.[38]

- **Corporate Transparency Act.** The Corporate Transparency Act (CTA) was enacted in 2021 to protect the US financial system from being used for illicit activities, especially money laundering. The CTA requires entities to, among other things, file a beneficial ownership information report with the US Treasury Department's Financial Crimes Enforcement Network (FinCEN), identifying the individuals behind these entities.

  In September 2022, FinCEN issued its Final Rule to implement the CTA, which establishes further details on this CTA reporting, including when the reports have to be filed and by whom, what information has to be shared, and when updates are necessary. The effective date of the rule is January 1, 2024. The reports will be kept in a non-public database, with access limited primarily to law enforcement agencies.

  Director Adams considers the CTA to be an important tool for the Task Force because it requires that the private sector know its counterparties. In addition, based on the information contained in the required filings, the Task Force will be able to identify "slip-ups down the line" as time goes on. In the future, in investigating a sanctions violation, the Task Force will be able to look back at an earlier report and piece together a beneficial ownership that, later in time, violators were trying to hide.

38 DOJ Press Release, *Att'y Gen. Merrick B. Garland Announces Launch of Task Force, KleptoCapture* (Mar. 2, 2022) https://www.justice.gov/opa/pr/attorney-general-merrick-b-garland-announces-launch-task-force-kleptocapture.

II. Government Enforcement Policy & Compliance Guidance

- **Cryptocurrency exchanges.** Centralized cryptocurrency exchanges subject to US jurisdiction qualify as financial institutions under the Bank Secrecy Act, and also have to comply with the Russia sanctions regime. In that context, Director Adams confirmed that the Task Force is monitoring financial institutions, including non-traditional ones such as cryptocurrency exchanges, to identify weak points in the US government's sanctions enforcement. In these cases, the Task Force will partner with either the appropriate US Attorney's office or the national cryptocurrency enforcement team to the extent that the jurisdictions of these agencies overlap.

B. Compliance Guidance

The DOJ continued its heavy emphasis on corporate compliance programs including in its enforcement policy revisions, speeches by Department leadership, and the terms imposed in corporate resolutions. The Department also continued to invest in its CECP (formerly the Strategy, Policy and Training Unit).

Both the Monaco Memo and the Criminal Division's Revised CEP contain several important points related to corporate compliance programs.

- The Monaco Memo builds on the DOJ's prior policy pronouncements encouraging companies to design and maintain robust compliance programs. While the Monaco Memo explains that having an effective compliance program and ethical corporate culture does not by itself serve as a defense to corporatecriminality, it may result in a favorable corporate resolution.

  When a company finds itself in the crosshairs of a DOJ investigation, prosecutors will evaluate the adequacy and effectiveness of its compliance programs, both at the time of the offense and at the time of charging decisions. Prosecutors will favorably consider the existence of a compliance program that "is well designed, adequately resourced, empowered to function effectively, and working in practice."

  The Monaco Memo also specifically addresses companies' compensation structures as a compliance tool, encouraging companies to implement executive compensation models that encourage ethical behavior and discourage misconduct. The Monaco Memo's treatment of this topic is quite granular, noting specifically that the Department will evaluate a company's compensation structure favorably if it includes punitive provisions, including compensation escrow and claw-back provisions.[39]

  In a recent example, Danske Bank pleaded guilty to misleading U.S. banks about its anti-money laundering controls.[40] In addition to a $2 billon fine, pursuant to its plea agreement with the DOJ, Danske Bank must also implement an executive review and bonus system that ties bonuses to compliance. The agreement provides that "each bank executive [will be] evaluated on what the executive has done to ensure that the executive's business or department is in compliance with the compliance programs and applicable laws and regulations." Executives who fall short will be ineligible for a bonus.

- The Revised CEP clarifies conditions under which a company presenting aggravating circumstances with respect to the underlying criminal conduct may still obtain a declination. These conditions, discussed above in the Enforcement Policy section, include: The company had an effective compliance program and system of internal accounting controls which enabled the identification of the misconduct and led the company to voluntarily self-disclose.[41]

- As noted in the Enforcement Policy section above, the Revised CEP also establishes that an independent monitor will generally not be imposed if the company has at the time of the resolution, demonstrated "that it has implemented and tested an effective compliance program and remediated the root causes of the misconduct." This latter point was cited by AAG Polite in a September 2022 speech as the basis for not imposing a monitor in the GOL Linhas Aereas matter, because "at the time of the resolution, the company had redesigned its entire anti-corruption compliance program, demonstrated through testing that the program was functioning effectively, and committed to continuing to enhance its compliance program and internal controls." [42]

---

39 *See also, Deputy Attorney General Monaco Announces Key Updates to Corporate Criminal Enforcement Policies,* https://www.steptoe.com/en/news-publications/deputy-attorney-general-monaco-announces-key-updates-to-corporate-criminal-enforcement-policies.html.

40 Sarah Jarvis, Law 360, *Danske Bank Deal Sees DOJ Tie Exec Bonuses To Compliance* (Jan. 31, 2023), https://www.law360.com/articles/1567025/danske-bank-deal-sees-doj-tie-exec-bonuses-to-compliance.

41 *See also, DOJ's New Corporate Enforcement Policy for the Criminal Division and its Impact on Cases handled by other Divisions,* https://www.steptoe.com/en/news-publications/investigations-and-enforcement-blog/dojs-new-corporate-enforcement-policy-for-the-criminal-division-and-its-impact-on-cases-handled-by-other-divisions.html.

42 DOJ, *Assistant Att'y Gen. Kenneth A. Polite Delivers Remarks at the Univ. of Tex. Law School,* (Sept. 16, 2022), https://www.justice.gov/opa/speech/assistant-attorney-general-kenneth-polite-delivers-remarks-university-texas-law-school.

II. Government Enforcement Policy & Compliance Guidance

DOJ also leveraged corporate resolutions executed in 2022 to further emphasize the importance it attributes to corporate compliance programs. Arguably most significant in this regard, the Criminal Division began implementing a requirement in corporate resolutions that the company's CCO and CEO must certify the effectiveness of the company's compliance program at the end of the term the settlement agreement term. This requirement was placed on Glencore in its resolution with DOJ. Faced with the criticism that the certification requirement compounds pressure on CCOs by opening the door for personal liability for CCOs that may already be in challenging and high-pressure roles, DOJ officials insisted that the certifications "give compliance officers an additional tool that enables them to raise and address compliance issues within a company or directly with the department early and clearly" and as "underscore our message to corporations: investing in and supporting effective compliance programs and internal controls systems is smart business and the department will take notice." [43]

In addition to the CEO/CCO certification requirements, FCPA corporate resolutions in 2022 reflect the Department's continued efforts to tailor settlement terms to the stage of development of a company's compliance program. Thus, for example, the Department imposed "Enhanced Corporate Compliance Reporting" in both the Glencore and ABB resolutions. Even without "enhancement," the compliance program review and reporting requirements that have become standard in recent years are quite substantial. Since late 2021, settlements in corporate FCPA matters have included detailed directives as to the steps that the company must carry out, including submitting formal work plans for the review to DOJ for approval, drawing from a wide range of information sources (policies, accounting data, interviews of current and even former employees, directors, and third parties), carrying out rigorous testing, and issuing monitorship-like annual reports. For ABB and Glencore, those obligations were further enhanced by requiring the company to meet with DOJ on at least a quarterly basis throughout the settlement agreement term, to review and discuss the company's progress.

The DOJ's emphasis on corporate compliance programs reflects the profile of the key leadership in the Criminal Division. The Assistant Attorney General for the Criminal Division, the head of the Fraud Section within the Criminal Division, and the head of CECP are all former CCO.

43 DOJ, *supra* note 42.

Section III

Significant Judicial Developments

III. Significant Judicial Developments

A. Extraterritoriality and Agency

The trend of high-profile disputes regarding the FCPA's application to foreign non-resident nationals continued in 2022. The 2022 developments followed nearly half a decade of the defense bar operating with little guidance when it came to the conditions under which foreign non-resident nationals are liable for collaborating with U.S. domestic concerns to pay bribes to foreign officials. As described in previous FCPA YIRs, the debate began with the Second Circuit's 2018 United States v. Hoskins decision, which held that a foreign national who did not act as an employee, officer, director or agent of a domestic concern could not be held criminally liable for aiding and abetting or conspiring to violate the FCPA unless the alleged conduct took place within the territory of the United States. The following year, in 2019, a court in the Northern District of Illinois in United States v. Firtash declined to follow Hoskins, holding that a foreign national could indeed be subject to FCPA liability under a conspiracy theory in the absence of an agency relationship even where he does not otherwise satisfy the FCPA's jurisdictional requirements.[44] In 2021, a court in the Southern District of Texas in United States v. Rafoi-Bleuler took yet another approach: relying on the Hoskins conclusion that "the FCPA intends to criminalize the conduct of a foreign person only to the extent such conduct occurs while the person is present in or where she has previously established ties to United States," and going further by rejecting the possibility that a non-US person acting abroad could be held liable under the FCPA even as an agent of a domestic concern.[46] Two of those three cases—Rafoi-Bleuler and Hoskins—continued in 2022.

Rafoi-Bleuler

At the outset of 2022, the Government appealed the district court's order granting the defendant's motion to dismiss. As detailed in the 2021 FCPA/Anti-Corruption Year in Review, Rafoi-Bleuler involved a Swiss defendant accused of assisting U.S.-based businessmen and firms in bribing Venezuelan officials to receive favorable treatment from Venezuela's state-owned oil and natural gas company, PDVSA.[47] Rafoi-Bleuler was not alleged to have taken any action while physically present in the United States. Instead, the Government argued that, consistent with Firtash and notwithstanding Hoskins, co-conspirator liability under the FCPA extends to individuals outside of the United States who are not covered by the statute's direct proscriptions. The Government also argued that Rafoi-Bleuler's conduct fell within the FCPA's purview because she acted as an agent of a U.S. domestic concern. The Southern District of Texas agreed with Hoskins that conspiracy liability cannot be used to circumvent the FCPA's jurisdictional requirements. Moreover, despite the indictment's facial allegation that Rafoi-Bleuler acted as an agent of domestic concerns and the pretrial posture of the motion to dismiss, the court held that the Government had failed to present sufficient "direct evidence" that the defendant was an agent of a domestic concern and held that, in the alternative, the term "agent" was so vague that it was an unconstitutional basis for jurisdiction over a foreign national.[48]

On appeal to the Fifth Circuit, the Government launched a two-prong attack to resuscitate the FCPA count.[49] First, the Government argued that U.S. criminal law typically extends co-conspirator liability to those who would not otherwise be capable of violating a statute, and that the FCPA does not fall under the narrow Gebardi v. United States, 287 U.S. 112 (1932) exception for defendants who are specifically excluded from liability under the relevant criminal statute. To the contrary, the Government argued, "immuniz[ing] defendants like Rafoi[-Bleuler]" would "frustrate[], rather than effectuate[]," the FCPA's purpose.[50] The Government explicitly argued that Hoskins was incorrect and that the Fifth Circuit should instead follow the Firtash decision referenced earlier. Second, the Government argued that even if Hoskins were correctly decided, the Rafoi-Bleuler indictment adequately pleaded that Rafoi-Bleuler acted as an agent of a domestic concern, which Hoskins found fell within the FCPA's jurisdiction. The Government argued that the district court was incorrect in holding that agency was a requirement for subject-matter jurisdiction that must be established by direct or undisputed facts regarding conduct in the United States. Instead, the Government argued, agency is a question of fact for the jury that can be decided based on the totality of the evidence at trial.

---

44 *United States v. Hoskins*, 902 F.3d 69, 96 (2d Cir. 2018) (citing 15 U.S.C. § 78dd-3).

45 *United States v. Firtash*, 392 F. Supp. 3d 872, 877, 879 (N.D. Ill. 2019).

46 *United States v. Rafoi-Bleuler*, No. 4:17-cr-00514-7 (S.D. Tex. Nov. 10, 2021).

47 *Id.* at *1-2.

48 *Id.* at *6, 9.

49 Brief of Plaintiff-Appellant at 14, *United States v. Rafoi-Bleuler*, No. 21-20658 (5th Cir. Mar. 30, 2022) (Brief of Plaintiff-Appellant).

50 *Id.* at 11.

III. Significant Judicial Developments

Rafoi-Bleuler took a slightly different tack. She argued that 18 U.S.C. § 371, the general conspiracy statute, does not apply extraterritorially. Even if it did, Rafoi-Bleuler continued, the Fifth Circuit should follow Hoskins in holding foreign nationals outside of the United States to be exempt from liability under the FCPA in the absence of a qualifying relationship to a domestic concern.[51] Rafoi-Bleuler also argued that the indictment insufficiently alleged a qualifying relationship as a matter of law. She explained that the indictment's "single conclusory allegation" that Rafoi-Bleuler was an agent of US domestic concerns was unsupported by specific factual allegations establishing the "control" element of agency and contradicted by other allegations in the indictment.[52]

While the Rafoi-Bleuler appeal was pending, in mid-2022, the district court granted a motion to dismiss brought by Rafoi-Bleuler's Portuguese-Swiss co-defendant Paulo Jorge Da Costa Casqueiro Murta, who the Government has described as "play[ing] roughly the same role as Rafoi[-Bleuler]."[53] The Government alleged that Murta was an agent of, among other entities, one or more US domestic concerns, and that he worked with Banco Espitito Santo S.A. bankers to set up accounts for the Venezuelan official co-conspirators. Those accounts were allegedly used to receive bribe payments and conduct money laundering transactions that were routed through U.S. interstate commerce.[54] Murta's direct ties to the U.S. were limited: he allegedly traveled to Florida in 2012 to discuss the money laundering scheme. Although Murta allegedly sent emails and text messages to US-based co-conspirators in furtherance of the scheme, the indictment did not specifically allege that he did so in the United States. Citing its decision with respect to Rafoi-Bleuler, the court held that the conspiracy to violate the FCPA count must be "dismissed based on lack of jurisdiction, lack of due process, and vagueness."[55] The court further held that the defendant's attendance at a meeting in the United States and communications outside the United States were insufficient to establish a conspiracy charge predicated on 15 U.S.C. § 77dd-(3)(a) or to satisfy the due process clause of the Fifth Amendment.[56] The court then turned to the money laundering counts, holding that it lacked extraterritorial jurisdiction because the indictment failed to allege that the defendant was in the United States when the transactions occurred, that he initiated the transactions from the United States, or that any of the relevant communications or acts occurred in the United States finding that it lacked jurisdiction over the FCPA conspiracy offense. The court also held that it lacked jurisdiction over the derivative money laundering violations.[57] The Government's consequent appeal was consolidated with Rafoi-Bleuler for hearing before the U.S. Court of Appeals for the Fifth Circuit.

As this issue of the FCPA Year in Review went to press, the Fifth Circuit issued a consolidated opinion reversing the District Court's dismissal orders in both Rafoi-Bleuler and Murta. The Fifth Circuit held that the indictment sufficiently alleged the defendants' primary FCPA liability as agents of a domestic concern (and in Murta's case, his presence in the United States).[58] The Fifth Circuit rejected the heightened subject-matter jurisdiction standard applied below, and held that "whether a statute reaches extraterritorial acts is not a challenge to the district court's subject-matter jurisdiction. … Rather, 'extraterritoriality is a question on the merits'" to be determined at trial.[59] The Fifth Circuit avoided perhaps the most consequential question: was Hoskins correct in applying Gebardi to limit FCPA secondary liability for foreign nationals outside of the United States? Perplexingly opining that the district court had "not ruled upon" the issue, the Fifth Circuit "neither accept[ed] nor reject[ed] the theory that an individual who falls outside of the actors enumerated in the FCPA can be held liable as a conspirator under a secondary-liability theory."[60]

---

51 Brief of Respondent-Appellee at 41-42, *United States v. Rafoi-Bleuler*, No. 4:17-CR-514-7 (5th Cir. Mar. 3, 2022).

52 *Id.* at 41-43.

53 Brief of Plaintiff-Appellant at 7.

54 *United States v. Paulo Jorge Da Costa Casqueiro Murta*, No. 4:17-CR-00514-8, 2022 WL 4002321, at *2 (S.D. Tex. July 11, 2022) (*reversed and remanded* , *United States v. Rafoi*, No. 21-20658, 2023 WL 181921 (5th Cir. Feb. 8, 2023).

55 *Id.* at *3. Of relevance to evaluating agency, the court held that the indictment failed to establish that the defendant was an agent because "[n]one of the SSI's allegations establish that Rincon, Shiera, or any other 'domestic concern' (i.e., United States-based entity) had a 'right to control' the defendant's actions." *Id.* at *3 n.10 (citing *Christiana Trust v. Riddle*, 911 F.3d 799, 803 (5th Cir. 2018)).

56 Id. at *4.

57 *Id.* The court also addressed statute of limitations and suppression of evidence issues that are beyond the scope.

58 *United States v. Rafoi*, ___ F.4th ____, 2023 WL 1811921, at *3-4 (5th Cir. Feb. 8, 2023).

59 *Rafoi*, 2023 WL 1811921, at *2 (quoting United States v. Vasquez, 899 F.3d 363, 371 (5th Cir. 2018)).

60 *Id.* at *4 & n.6; for more information on this decision, see https://www.steptoe.com/en/news-publications/fifth-circuits-ruling-in-united-states-v-rafoi.html.

III. Significant Judicial Developments

Hoskins

In 2022, the Second Circuit issued its final decision in the Hoskins saga. As summarized in previous FCPA YIRs, Hoskins was indicted for allegedly participating in the retention of two consultants who were assigned to bribe Indonesian officials to secure a contract for a subsidiary of French company Alstom S.A. Hoskins was not a US person, did not work for a US company, and was not geographically located in the United States during the alleged scheme. In 2018, the Second Circuit rejected the proposition that Hoskins could be subject to FCPA conspiracy or accomplice liability based solely on his alleged co-conspirator's US status. The court held that a person could not be guilty as an accomplice or a co-conspirator for an FCPA violation that he or she is incapable of committing as a principal. Because Hoskins was not a US person or otherwise capable of committing an FCPA violation under the facts as they were then alleged, he could not be subject to FCPA conspiracy or accomplice liability. The court left open, however, the possibility that Hoskins could be held liable as an "agent," which is a category of defendant contemplated by the statute's language.

The Government proceeded at trial on a theory that Hoskins' conduct rendered him liable as "an agent of a domestic concern," i.e., an agent of Alstom's US subsidiary under 15 U.S.C. § 78dd-2. The jury convicted Hoskins on 11 counts involving FCPA violations and consequent money laundering, but the district court granted Hoskins' motion for acquittal, holding that Hoskins was not an agent within the meaning of the FCPA. The Government again appealed, arguing that the evidence had been sufficient to prove Hoskins' status as an agent.

The Second Circuit's 2022 opinion affirming the acquittal provides one potential roadmap for courts evaluating agency status under the FCPA. The court explained that under the common law of agency, "[t]he three elements necessary to an agency relationship are (1) a manifestation by the principal that the agent will act for him; (2) acceptance by the agent of the undertaking; and (3) an understanding between the parties that the principal will be in control of the undertaking." [61] Although Hoskins' actions occurred "at the behest" of Alstom's US subsidiary and were "subject to the decision-making of" the US subsidiary's executives, there was no evidence that those executives "actually controlled Hoskins' actions." [62]

The US subsidiary did not hire Hoskins, lacked the ability to fire Hoskins, and did not determine Hoskins' compensation. Because a chief justification for a principal's accountability for an agent's acts is the principal's ability to select, control, and terminate the agent, this lack of control was "fundamental" to the trial court's conclusion that Hoskins was not an agent of the US subsidiary.[63] Moreover, Hoskins lacked any authority to negotiate terms that would bind the company; indeed, the court observed there was no indication that "he served as anything more than a messenger for the US subsidiary." [64] Due to the US subsidiary's lack of control over Hoskins, the court concluded that there was not sufficient evidence from which a jury could find beyond a reasonable doubt the agency relationship required to establish criminal liability under § 78dd-2.

In the wake of these cases, the FCPA's reach to foreign non-resident nationals remains unsettled.

B. Internal Controls

2022 also saw the blockbuster trial of Ng "Roger" Chong Hwa in the U.S. District Court for the Eastern District of New York. As reported in the 2021 FCPA/Anti-Corruption Year in Review, Ng was indicted for conspiring to violate the FCPA in connection with his alleged participation in the 1MDB bribery scheme. The Government alleged that Ng had conspired to circumvent the internal accounting controls of Goldman Sachs, which underwrote more than $6 billion in bonds issued by Malaysia's state-owned investment fund, 1MDB. After a trial that spanned nearly two months, Ng was convicted in April 2022.

The district court denied Ng's Rule 29 motion for a judgment of acquittal in a detailed memorandum opinion. The court explained that Goldman had internal accounting controls that addressed the risk of unauthorized deals and required each "Deal Captain" to receive appropriate approvals and authorizations from Goldman's Firmwide Capital Committee and Firmwide Suitability Committee before executing a deal. The court concluded that the evidence at trial demonstrated that Ng and his co-conspirator withheld necessary facts from those committees in order to trick them into authorizing the 1MDB-related transactions. Although Ng argued that the Committees' review were not "internal accounting controls," but were instead risk management or compliance controls, the court

61 *United States v. Hoskins*, 44 F.4th 140, 149 (2d Cir. 2022) (quoting *Johnson v. Priceline.com, Inc.*, 711 F.3d 271, 277 (2d Cir. 2013)).

62 *Id.* at 150.

63 *Id.* (citing Restatement (Third) of Agency § 1.01 cmt. c).

64 *Id.* at 151 ("[A] hallmark of a principal-agent relationship is that an agent can bind principals to certain legal commitments.").

65 Mem. and Order, *United States v. Low Taek Jho and Ng Chong Hwa*, No. 1:18-cr-00538, Dkt. 202 (E.D.N.Y. Apr. 8, 2022).

concluded that "internal accounting controls" include controls to ensure that transactions are executed only in accordance with management's authorization, including where management would otherwise withhold that authorization for risk management or compliance reasons. The court also rejected Ng's argument that the statute was unconstitutionally vague, holding that an ordinary person would understand that withholding critical information and providing inaccurate information to the aforementioned committees to procure their authorization for bond deals would constitute unlawful circumvention of Goldman's internal accounting controls. Ng's sentencing is scheduled for March 2023.

Section IV

World Bank & Other International Financial Institutions

IV. World Bank and Other International Financial Institutions

International Financial Institutions (IFIs) play a major role in promoting economic development and global stability for nations with developing or transitional economies. In 2022, IFIs continued to actively investigate and sanction companies and individuals engaged in fraud, corruption, collusion, and other misconduct relating to projects financed by IFIs worldwide. The World Bank Group led the group of IFIs once again, as it has both the largest and the oldest sanctions system.

A. The World Bank Group

Integrity Vice Presidency (INT)

INT is an independent unit within the World Bank Group (WBG) that aims to detect, deter, and prevent fraud and corruption involving WBG-financed operations and by WBG staff and corporate vendors. In FY2022, INT received 3,380 complaint submissions, which led to 330 preliminary investigations. Of these complaints, 81 were referred to INT's internal investigations unit for preliminary assessment and development. INT opened 48 full investigations, which is a 20% increase from FY2021 and the largest number of opened cases since FY2019. INT completed 31 external investigations in FY2022, which is three more than were completed in FY2021. INT submitted 18 sanctions cases and 12 settlement cases to the Office of Suspension and Debarment (OSD) for review. Additionally, three settlements were submitted to the International Finance Corporation (IFC) Evaluation Officer for review. INT made five referrals to national authorities, a decrease from the 13 referrals it made in FY2021. At the end of FY2022, INT had 94 external investigations that remained active.

Practice Tip. There is no time limit for investigations, so INT's investigations may remain open for a considerable period of time; in some cases, investigations have spanned several years and can be dormant for long periods.

INT recently launched a Strategy Update that outlines the shift in the unit's priorities to be achieved over the course of fiscal years 2022 through 2026. The Strategy Update is structured around three priorities: 1) enhancing INT's risk-based approach to investigations; 2) strengthening the delivery of timely and actionable prevention support to WBG operations; and 3) developing INT's knowledge management processes and products. Overall, the goal of the Strategy Update is to "enhance the WBG's development impact through INT's strengthened integrity support."

Office of Suspension and Debarment

INT is an independent unit within the World Bank Group (WBG) that aims to detect, deter, and prevent fraud and corruption involving OSD is the first tier of the World Bank's two-tiered adjudicative system. In FY2022, OSD reviewed 15 cases and 12 settlements. Both of these numbers dropped from FY2021, in which OSD reviewed 20 cases and 18 settlements. The Chief Suspension and Debarment Officer (SDO) referred eight (40%) of the reviewed cases back to INT after determining there was insufficient evidence to support one or more of the claims. This rate is roughly consistent with prior years. Fraud continues to be the most prevalent form of alleged misconduct, as 70% of the cases and settlements involved fraudulent practices, while 30% involved corrupt practices, 19% involved collusive practices, and 11% involved obstructive practices. OSD temporarily suspended 14 firms and 6 individuals, and sanctioned 11 out of 20 respondents through uncontested determinations.

Practice Tip: Although slightly more than half of respondents opted to accept the SDO's recommended sanction, under the WBG Sanctions Procedures, respondents have the right to submit an Explanation to contest the recommendation.

In FY2022, OSD published the Global Suspension & Debarment Directory, which represents the first consultative resource on the exclusion systems of 23 different jurisdictions and institutions. OSD also launched an interactive database along with the Directory so that users may sort and compare specific aspects of the exclusion systems, access relevant resources from each of the included jurisdictions and institutions, and download individual summaries from the Directory.

Sanctions Board

The Sanctions Board is an independent administrative tribunal that is the second and final tier of review for contested sanctions cases. The Sanctions Board issued four decisions in FY2022 (Sanctions Board Decisions No. 134-137), resolving four contested sanctions against six respondents. Overall, 33% of respondents chose to appeal their cases to the Sanctions Board in FY2022, a higher percentage than the 20% in FY2021. Since the end of FY2022, the Sanctions Board has issued two additional decisions (Sanctions Board Decisions No. 138–139). Those decisions both found the respondents liable for corrupt practices involving payments made to improperly influence the actions of other individuals relating to the procurement and execution of WBG-financed contracts.

Practice Tip: When respondents appeal their cases, the Sanctions Board's review is de novo, although the Sanctions Board will review the SDO's recommended sanction along with the entire record. However, the Sanctions Board is not bound in any way by the SDO's recommendation and often departs significantly from it.

IV. World Bank and Other International Financial Institutions

This past year, the Sanctions Board once again explained the scope of disclosure obligations related to agents in Sanctions Board Decision No. 136. The Board found that a narrow reading of the term "agent" would be inconsistent with the underlying purpose of the disclosure requirement. The Sanctions Board also examined and clarified the "rogue employee" defense to vicarious liability in Sanctions Board Decision No. 137.

The Sanctions Board welcomed Maria Vicien Milburn as its new Sanctions Board Chair, succeeding John Murphy. Milburn, who has served on the Board since 2019, is the first woman to Chair the Sanctions Board since its inception in 2007. She has broad experience as a high-level international lawyer in the UN system, having served as the General Counsel of UNESCO and as the Director of the General Legal Division of the UN Legal Office. She will occupy the position until 2025.

Integrity Compliance Officer (ICO)

In the post-sanctions phase, the ICO sent 33 notices to newly-sanctioned parties regarding their conditions for release from sanctions. In addition, the ICO engaged with 81 sanctioned parties towards meeting their conditions for release, determined that 22 entities had met their conditions for release, and determined one entity had met the conditions for the conversion of their debarment with conditional release to conditional non-debarment.

Other Developments

Beginning in July 2022, the WBG headquarters shifted to a hybrid work model, which involves staff working in the office between two to four days per week. This hybrid model was also adopted by the Sanctions Board, including for some of its hearings. In June 2022, the Sanctions Board convened a hearing in which some parties participated in person and others joined remotely.

Practice Tip: The Sanctions Board's recent communications suggest that it will continue to allow remote participation in hearings from a World Bank office.

B. Inter-American Development Bank Group

In 2022, the Inter-American Development Bank Group (IDB) sanctioned 44 entities and 15 individuals. The grounds for each of the sanctioned parties involved various combinations of corruption, collusion, and fraud. Of these, 19 firms were sanctioned as a result of entering into a Negotiated Resolution Agreement, a significant increase from five settlements in 2021. The Sanctions Officer imposed sanctions on 18 of the individuals and entities, and the Sanctions Committee sanctioned 12 entities and individuals. Additionally, IDB released its 2021 Annual Report in 2022. Notably, Ilan Goldfajn, previously a Governor of the Central Bank of Brazil and Director of the International Monetary Fund's Western Hemisphere Department, was elected as President of the IDB on November 20, 2022 and began a five-year term of office in December 2022.

Practice Tip: Although IDB's settlement framework was created years after that of the WBG, the number of settlements has rapidly increased. A notable difference between the two IFIs is that the IDB only permits settlements prior to the submission of the case to the Sanctions Officer, while the World Bank permits settlements to be reached up to the time of a final decision by the Sanctions Board.

C. African Development Bank Group

In 2022, the African Development Bank Group (AfDB) released its 2021 Annual Report. AfDB's Office of Integrity and Anti-Corruption reported that it completed 56 investigations into allegations of sanctionable practices, which led to the filing of eight findings of sanctionable practices and two negotiated settlement agreements. The Sanctions Commissioner reviewed 10 formal sanctions cases, two negotiated settlements, and one request for temporary suspension. Nine formal sanctions cases were concluded and both negotiated settlements were cleared. The Sanctions Appeals Board considered one case in June 2021 and determined two in 2022.

D. Asian Development Bank

The Asian Development Bank's (ADB) Office of Anticorruption and Integrity (OAI) released its 2021 Annual Report in 2022. OAI received 258 new complaints of alleged integrity violations and 120 complaints remained open from the previous year. Of these, OAI assessed 319 complaints total. Of those, 220 complaints were closed and 99 complaints required further investigation. OAI closed 71 external investigations total, 35 of which resulted in debarment of 150 firms and 30 individuals.

E. Cross-Debarment

Cross-debarment allows the AfDB, ADB, European Bank for Reconstruction and Development (EBRD), IDB, and the WBG to recognize each other's public debarments of more than one year's duration. Cross-debarment is designed to further increase the deterrent effects of sanctionable misconduct. In FY22, the WBG recognized 72 cross-debarments from other multilateral development banks (MDBs), and 30 WBG debarments were eligible for recognition. In comparison, this represents a decrease from the level of cross-debarment in FY21, in which the WBG recognized 92 cross-debarments from other MDBs, and 45 WBG debarments were eligible for recognition.

IV. World Bank and Other International Financial Institutions

F. European Investment Bank

In recent years, the European Investment Bank (EIB) has activated its sanctions program, which is reflected in its so-called "Exclusion Policy." The EIB is an EU institution, and as such, does not participate in the Cross-Debarment Agreement among five IFIs discussed above. As an EU institution, and unlike other IFIs, the EIB's exclusion decisions are subject to judicial review in the EU system in the first instance by the General Court and on further appeal to the Court of Justice of the EU.

The EIB's exclusion proceedings are a two-tiered process. In the first tier, the EIB's Exclusion Committee, which is a hybrid body consisting of internal and external members, assesses evidence presented by the EIB's Division of the Inspectorate General and any defenses presented and determines whether it will issue a recommendation for exclusion. If it recommends sanction, the matter proceeds to the second tier, which is before an internal body of the EIB called the Management Committee. The Management Committee determines whether to issue an exclusion decision.

In 2022, the EIB published its 2021 Investigations Activity Report, which reported that one company was excluded from participating in EIB projects for four years, with a conditional release after two years. In 2022, four additional companies were subjected to EIB exclusion decisions, with all four companies receiving the same punishment as the company excluded in 2021. The EIB publishes a list of excluded entities on its website, but does not publish reasoned exclusion decisions. The Exclusion Policy also includes a provision which allows the EIB to enter into negotiated settlements with individuals or entities that have violated the policy. There were no reported settlement agreements in 2022.

Section V

International Developments

V. International Developments

A. United Kingdom

2022 can best be described as a "mixed year" for the Serious Fraud Office (SFO), the UK agency charged with investigating and prosecuting serious or complex fraud, bribery and corruption.

While on the one hand, the SFO can almost certainly take solace from its fine of £280,965,092.95 million (over $400 million) of Glencore Energy UK Ltd, as well as the fact that it was largely cleared of wrongdoing after a three-year legal battle with ENRC, the SFO was, on the other hand, the subject of repeated criticism by two independent reviews including one commissioned following the acquittal of three individuals linked to the Unaoil corruption scandal. The SFO also saw the jury discharged, ten weeks in to trial, in the trial of two individuals linked to a former Airbus subsidiary accused of bribing Saudi royals.

With the independent reports now behind it, the appointment of a new Director of the SFO in the summer, and the real possibility of reform of English law rules on corporate criminal liability, the SFO must be hoping for a better 2023.

1. Successes (or, at least, not resounding failures)

The SFO secured a significant corporate conviction in 2022 and in doing so also secured the largest financial penalty in the history of the SFO following a criminal conviction (as opposed to a Deferred Prosecution Agreement). The conviction is also the first conviction for a substantive bribery offence under the UK Bribery Act 2010 (the UKBA). Previous convictions and DPAs under the UKBA have relied purely on the section 7 "failure to prevent bribery" corporate offence.

Glencore Energy UK Ltd (Glencore UK). Glencore UK was charged with seven counts of bribery in connection with its oil business in five African countries; five counts of bribery under section 1 of the UKBA and two counts of failing to prevent bribery under section 7 of the UKBA. In June, Glencore UK pleaded guilty to all seven counts and was ordered to pay a penalty of approximately £281 million, comprising a £182.9 million fine, £93.5 million confiscation order, and £4.5 million in respect of the SFO's costs. The conviction formed part of a global resolution with the US and Brazilian authorities, with combined penalties totaling over $1.5 billion, as discussed in Section VII.B. It is understood that investigations by the Swiss and Dutch authorities are continuing.

According to the SFO, it opened an investigation into Glencore in 2019. The SFO's investigation uncovered that "In Nigeria, Equatorial Guinea and the Ivory Coast, Glencore was revealed to have used well-connected local agents to funnel bribes into state-owned oil companies and government ministries, often disguising a bribe as an unspecified "service fee", "signing bonus" or "success fee" in financial reports" and "[i]n August 2011, two Glencore executives from the West Africa desk flew to South Sudan by private jet, carrying $800,000 in cash. The money had been withdrawn from the cash desk at Glencore Plc's Swiss headquarters and recorded as expenses for "opening [the] office in South Sudan". The money was paid via a local agent to officials in the newly established government in South Sudan, and this was followed by a further $275,000 in cash. Between 2012 and 2015, another Glencore trader withdrew a total of $8.2m in cash from the company's Swiss cash desk, recorded as "office expenses", despite there being limited evidence of any office operating in the country. This, along with $5.5m of "service fees" withdrawn in cash by a Nigerian agent, was periodically flown, again on private jets, to Cameroon." [66]

Following the conclusion of the case, Lisa Osofsky, the current Director of the SFO, said that the cooperation provided by Glencore UK resulted in a "speedy resolution". She also drew parallels with other companies who did not provide "real" cooperation and "did not demonstrate substantial reform", noting that non-cooperating companies will not be eligible for a negotiated outcome. [67]

The SFO has said it has yet to make final charging decisions about the individuals who are allegedly also implicated in Glencore UK's bribery. [68]

66 *"Glencore to pay £280 million for 'highly corrosive' and 'endemic' corruption"*, Serious Fraud Office, November 3, 2022 https://www.sfo.gov.uk/2022/11/03/glencore-energy-uk-ltd-will-pay-280965092-95-million-over-400-million-usd-after-an-sfo-investigation-revealed-it-paid-us-29-million-in-bribes-to-gain-preferential-access-to-oil-in-africa/.

67 Alice Johnson, "*Lisa Osofsky: non-cooperating companies won't get DPAs*", Global Investigations Review, November 29, 2022 https://globalinvestigationsreview.com/article/lisa-osofsky-non-cooperating-companies-wont-get-dpas.

68 Richard Crump, "*SFO Targets Up To 11 Glencore Employees In Bribery Probe*", Law 360, October 24, 2022 https://www.law360.co.uk/articles/1542685/sfo-targets-up-to-11-glencore-employees-in-bribery-probe.

V. International Developments

Eurasian Natural Resources Corporation (ENRC) Litigation against the SFO. In a ruling in May 2022, the English High Court ruled in relation to ENRC's claims that its former solicitor leaked confidential information to the SFO (to expand the investigation and make more fees) and that the SFO encouraged him in order to try to claim a high-profile corporate success. The SFO opened a criminal investigation into allegations of fraud, bribery and corruption linked to ENRC's purchase of mineral assets in Africa in 2013, but no charges have yet been brought against the company or suspects. The High Court found that the solicitor breached his duty of care to ENRC including by leaking privileged material to the press, and that the SFO induced him to do so with "bad faith opportunism" but dismissed ENRC's other allegations against the SFO, including misfeasance in public office, deliberate destruction of evidence and leaking to reporters.[69] The SFO's investigation into ENRC continues.

2. Acquittals, Criticisms and Bad Publicity

It was another complicated year for the SFO with respect to individual prosecutions and the publication of widespread criticisms, culminating in Osofsky's announcement that she will not continue in her role beyond her initial five-year term.[70] Osofsky is due to depart the agency in the summer.

Paul Bond and Stephen Whiteley (Unaoil) – Quashing of Convictions. Following on the heels of Ziad Akle (former Unaoil territory manager for Iraq) who, in December 2021, had his conviction quashed following being sentenced in 2020 to five years in prison for conspiracy to bribe an Iraqi official to secure a $55 million oil deal,[71] Paul Bond (a former senior sales manager at SBM Offshore) and Stephen Whiteley (former Unaoil territory manager for Iraq) also had their convictions quashed. As with Akle, the Court of Appeal found that the SFO had failed in its disclosure duties in relation to Messrs. Bond and Whiteley.[72]

Publication of two critical reviews into SFO disclosure failures in the Unaoil and Serco cases. In response to the acquittals in the Unaoil case as well as the collapse of the prosecution of two former executives of Serco,[73] two independent reviews were commissioned. The review by Brian Altman KC report in relation to the collapse of the prosecution of the Serco individuals made a series of recommendations to improve the way in which the SFO conducts disclosure.[74] The independent report by Sir David Calvert-Smith KC concerning the individuals linked to the Unaoil case found multiple failings by the SFO, including disclosure and inappropriate interactions between the Director of the SFO and a third party.[75] Both reviews also identified wider-ranging cultural problems at the agency, including poor staff morale, high turnover of staff, deficient technology, and inadequate resourcing.

---

69 Kristen Ridley, "*Law firm Dechert, SFO to learn lessons after stinging ENRC judgment*", Reuters, May, 16 2022 https://www.reuters.com/world/uk/london-high-court-judge-finds-former-dechert-lawyer-breached-duty-enrc-2022-05-16/.

70 "SFO *director Lisa Osofsky to depart role next summer*", The Financial Times, November 9, 2022 https://www.ft.com/content/848b3181-4d88-4fcc-9e9a-e7acb4bb1f63.

71 Kristen Ridley, "*Unaoil executive's conviction quashed in heavy blow to UK fraud agency*", Reuters, December 11, 2021 https://www.reuters.com/world/uk/conviction-former-unaoil-executive-quashed-sharp-blow-uks-sfo-2021-12-10/.

72 "*Third Unaoil conviction quashed in London*", Reuters, July 21, 2021, https://www.reuters.com/world/uk/third-unaoil-conviction-quashed-london-2022-07-21/.

73 "*SFO offers no evidence against Nicholas Woods and Simon Marshall*", Serious Fraud Office, April 26, 2021 https://www.sfo.gov.uk/2021/04/26/sfo-offers-no-evidence-against-nicholas-woods-and-simon-marshall/.

74 Brian Altman QC & Rebecca Chalkley "*Review of R v Woods & Marshall by Brian Altman QC,*" Serious Fraud Office, April 26, 2021 https://www.sfo.gov.uk/download/review-of-r-v-woods-marshall-by-brian-altman-qc/.

75 Sir David Calvert-Smith KC, "Independent Review into the Serious Fraud Office's handling of the Unaoil Case – R v Akle & Anor," July 2022 https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/1092872/DCS_report_-__FINAL_-_21_July_08.31_.pdf.

V. International Developments

John Mason and Jeffrey Cook (GPT Special Project Management or "GPT"). In our Year in Review for 2021, we reported that GPT had pleaded guilty under Section 1 of the Prevention of Corruption Act 1906 (which governs conduct committed prior to the UKBA's entry into force) involving conduct between December 2008 and July 2010 in relation to a £2 billion ($2.7 billion) contract to supply telecoms services to the Saudi Arabian National Guard. GPT was ordered to pay a confiscation order of £20,603,000 ($28 million), a fine of £7,521,920 ($10 million), and costs of £2,200,000 ($3 million). In May 2022, John Mason (chartered accountant) and Jeffrey Cook (former managing director of GPT) went on trial for allegedly channeling at least £9.7 million in bribes to high-ranking Saudi Arabian officials, including a prince, to win military contracts. After ten weeks of trial, the Court discharged the jury. Stringent restrictions mean the circumstances in which the jury was discharged cannot be reported. It is understood that a retrial will take place in due course.[76]

3. Other Notable Developments

Proposal to Reform Corporate Criminal Liability. In July 2022, the UK Law Commission concluded that there is a consensus on the need for reform of English law rules on corporate criminal liability, including making it easier to make a company criminally liable. The proposals on the table include introducing a new corporate "failure to prevent fraud" offence (similar to the section 7 offence under the UKBA). This is the first time that the Law Commission has reported a consensus on the need for reform. All eyes are now on the government for its response.[77]

B. Latin America

2022 was another challenging year for anti-corruption efforts in Latin America. The region's three largest economies –Brazil, Mexico and Argentina— received their lowest overall Capacity to Combat Corruption scores since that index was created in 2019, and did not improve their scores in Transparency International's (TI) Corruption Perception Index. One of the region's bright spots continued to be Uruguay, which now occupies the top TI Ranking in the Americas alongside Canada and boasts the top score in Latin America on the Capacity to Combat Corruption index. Overall, however, the three largest economies reflected the broader regional trend in that the defining features for the region in 2022 were: the continued slow recovery from the effects of the global pandemic; inflationary pressures caused by supply chain disruptions and the war in Ukraine shifted focus away from anti-corruption initiatives to more immediate needs; and an overall lack of significant progress and, in some cases, potential backsliding on local anti-corruption efforts. Despite these local setbacks, cross-border enforcement involving the region continues to be strong. Notably, four of the five DOJ corporate enforcement actions were related to Latin America as were four of the seven SEC corporate enforcement actions. Also noteworthy, is that for the first time, DOJ credited cooperation with Mexico's Attorney General of the Republic (the Fiscalía General de la República) in the Stericycle case.

The elections last year (in Brazil) and in the next two years (in Argentina and Mexico) are expected to have a significant impact on how anti-corruption efforts in the region develop. In the near term, it is likely that corruption will take center stage in Argentina's presidential and Mexico's Gubernatorial elections this year, drawing attention to the issue, while likely pausing meaningful reform and advancement until after the elections. Consistent with past years, however, and despite the formal demise of the Brazilian "Operation Car Wash" investigation, we expect the region to continue to feature heavily in cross-border enforcement actions given the deep economic ties with the US and EU, potential for Latin America to play a more significant role in US supply chains as companies seek to "near shore" their operations as a result of the supply chain challenges experienced during the pandemic, and the deep-seated ties that formed between US enforcement agencies and their counterparts in the region during the height of local anti-corruption enforcement.

1. Brazil

In October 2022, Brazilians again elected Luiz Inácio Lula da Silva (Lula) (2003 to 2010, 2022 to present) President over incumbent Jair Bolsonaro (2019 to 2022) in a close and heated election. As scenes of Bolsonaro supporters storming and vandalizing the seat of Brazil's democracy streamed around the world on January 8, 2023, it is apparent that deep-seated divisions persist. Reconciling these divisions will be one of the many challenges the Lula administration faces in his return to the presidential palace. How to proceed in the fight against corruption will be another.

76 "*SFO's Saudi Corruption Case Halted as Jury Discharged,*" Bloomberg, July 14, 2022 https://news.bloomberglaw.com/esg/sfos-saudi-corruption-case-halted-as-jury-discharged-1.

77 Law Commission, Corp. Crim. Liab., https://www.lawcom.gov.uk/project/corporate-criminal-liability/.

V. International Developments

Unlike in the 2018 presidential elections in which Bolsonaro was elected and potential voters overwhelmingly identified "corruption" as the most important issue the country faced five months ahead of the election, in 2022 corruption ranked only sixth on voters' minds behind inflation, education, unemployment, health, and hunger and poverty. Of course, it is to be expected that a global pandemic and the war in the Ukraine would reorder priorities, given their impact on the lives of ordinary Brazilians; however, the data also reflect a growing disillusionment with Operation Car Wash and what it represents.

Contributing to this disillusionment are some of the developments we outlined in last year's Year-in-Review: the dismantling of the Operation Car Wash task force in February 2021 and declarations by then-President Bolsonaro in October 2020 that Brazil is now corruption-free. These factors were compounded by continued corruption scandals involving Bolsonaro's family members, as well as his Minister of Education and Minister of Health. Indeed, questions have arisen regarding Operation Car Wash's legacy in Brazil given that—as of December 2022—none of the politicians investigated or charged, including President Lula, are serving time in custody; leaks of Telegram messages between Operation Car Wash prosecutors and judge Sergio Moro indicated their involvement in intentional investigation leaks and a lack of impartiality on the part of the presiding judge; and the fact the Governor of Rio de Janeiro, one of the most high-profile arrests of Operation Car Wash, was released from custody after six years of "preventative detention" as his case continues to go through the various levels of appeal.

It is clear that Brazil is at a critical juncture in its efforts to combat corruption and, as discussed below, there are pockets of excellence that offer promise that the country will get back to making progress on its anti-corruption efforts. That said, the fact that Brazil received its lowest ever overall score on the Capacity to Combat Corruption Index will give skeptics room to argue that Operation Car Wash was the high-water mark of Brazil's anti-corruption efforts.

Optimists, however, will point to the steady institutional developments that Brazilian enforcement agencies have been making, not only during Operation Car Wash, but since then. In July 2022, for example, new provisions (Decree No. 11,129/2022) regulating Brazil's Anti-Corruption Law, including the negotiation of leniency agreements and the criteria for authorities to evaluate corporate compliance programs, took effect. Relatedly, the Comptroller General's Ordinance 19/2022, issued in July, established the possibility of entering into guilty pleas in exchange for lighter penalties in administrative proceedings brought by the Comptroller for violation of the Clean Company Act. The Comptroller's office continued its leadership on these issues through the enactment of CGU/AGU Ordinance No. 36/2022 together with the Attorney General's Office, which further defined criteria for fine reductions in leniency agreements for cooperation. These developments make administrative proceedings related to violations of the Clean Company Act function in a more predictable and foreseeable manner.

Meanwhile, FCPA enforcement related to Brazil continues to form a significant portion of the overall enforcement actions brought by DOJ and SEC. Five of the enforcement actions brought this past year involved conduct occurring in Brazil and, as discussed in the Case Summaries Appendix, resolutions with UOP (Honeywell), GOL Linhas Aereas, and Stericycle all provided for credit for penalties owed to Brazilian authorities.

2. Argentina

The most high-profile anti-corruption development coming from Argentina in 2022 was vice-president and former president Cristina Kirschner's six-year sentence and lifetime ban from public office issued on December 6th in connection with corruption charges brought against her and 12 other defendants accused of public works graft in the Vialidad case. Although the decision is expected to be appealed, and Kirschner's sentence would not begin until she leaves office, the news sent shockwaves throughout Argentina. The long-term impact of the decision is unclear, particularly as appeals are decided, but an emerging aspect that will likely have long-term impact and appears to be repeating itself across the region is the public debate around these high-profile enforcement actions. Those that are the subject of these high-profile corruption scandals throughout the region, including Kirschner, have claimed that the judiciary and prosecutor's offices are engaging in politically motivated persecution of overwhelmingly popular politicians in what these politicians are referring to as "lawfare." Indeed, in a televised address, Kirschner claimed she was the victim of "a judicial mafia" she likened to a "firing squad" while the then-president elect of Brazil, Lula, issued a statement of solidarity with Kirschner on social media suggesting that Brazilians understand the threat to democracy that "lawfare" represents. Continued anti-corruption efforts in Argentina and elsewhere in the region will likely be heavily impacted by how successful these types of arguments prove in overcoming the evidence prosecutors have presented of the underlying schemes.

V. International Developments

Against the backdrop of these high-profile anti-corruption developments, Argentina made notable institutional progress in its anti-corruption initiatives led by its Anti-Corruption Office (Oficina Anticorrupción – "OA"). In April, the OA approved the System for Monitoring Private and Public Activities Before or After Holding a Public Office (Sistema de Monitoreo de Actividades Privadas y Públicas Anteriores y Posteriores al Ejercicio de la Función Publica - "MAPPAP"). The MAPPAP was designed to verify compliance with "revolving door" rules applicable to high-ranking officials of the Executive branch. Similarly, in December 2022, the OA officially launched the Integrity and Transparency Registry for Companies and Entities (Registro de Integridad y Transparencia para Empresas y Entidades – "RITE"), which is a platform that offers a range of educational materials that can be used by companies to enhance their ethics & compliance programs.

While the continued economic crisis and runaway inflation are likely to be the leading issues on voters' minds in the upcoming 2023 presidential election, the shape of the country's continued efforts to combat corruption will also take center stage. It is unlikely that meaningful advancement on this front will take place during the election season. Similarly, corruption will likely not be the top agenda item in the near-to-medium-term for a new administration given the economic situation. In the long-term, however, the extent to which the new administration allows the slow and steady institutional developments that have been taking place to continue, particularly if there are new opportunities for further development through OECD accession, will likely be more meaningful for the country's long-term anti-corruption prospects.

3. Mexico

Mexico continues to be a puzzle from an anti-corruption perspective. Over the past decade it has made significant institutional advancements that could facilitate pursuing an aggressive anti-corruption agenda, but that promise has not yet materialized. For example, in 2016, Mexico established a National Anti-Corruption System to coordinate corruption cases; in 2017 it established new penalties for corruption-related offenses; and in 2019 a special prosecutor was appointed to focus on corruption, and the states in Mexico were required to establish their own anti-corruption systems. By any measure, these were very significant steps.

The institutional progress, however, has not been matched with a concerted effort to implement an aggressive anti-corruption agenda such as the ones we saw in the mid-2010s elsewhere in the region. As a result, Mexico's TI score has stagnated for the past three years, and in 2022 it received its worst Capacity to Combat Corruption index score since that index was created in 2019.

There are good reasons nonetheless to believe that a real focus on addressing corruption may take root in the medium to long term in Mexico, and that significant enforcement may follow. The 2023 gubernatorial and 2024 presidential elections will offer a high-profile platform for candidates to make a name for themselves by embracing an anti-corruption agenda. Whether candidates will pursue these agendas once in office remains to be seen.

There will be increasing pressure, moreover, to increase enforcement as international businesses seek to near-shore their supply chains and Mexico looks to take advantage of its geographic proximity to the US market and manufacturing capacity to position itself in redefined supply chains. With more actors in the market exposed to US FCPA risk, and requiring their downstream suppliers to implement anti-corruption controls, we would expect to see some improvement in the anti-corruption landscape and renewed demands on government for an even playing field. The local business community and the national bar association are already active on anti-corruption advocacy and thought leadership through organizations such as the Anti-corruption Commission of the International Chamber of Commerce and the Comisión de Anticorrupción de la Barra Mexicana Colegio de Abogados, and these trends may lend growing urgency to head the calls of these important local stakeholders. Combining political will with the institutional advancements that have taken place in recent years may finally clear the log jam that has hindered meaningful anti-corruption enforcement.

Finally, to the extent that local authorities collaborate with US enforcement agencies, as in the 2022 Stericycle matter (in which DOJ and the Attorney General of Mexico collaborated), that will further increase the pressure on companies operating in Mexico.

V. International Developments

C. China and Hong Kong

1. China

In 2022, China's anti-corruption efforts focused on: (i) key sectors that are rich in capital and natural resources, where both government officials and private-sector employees sought to exploit their power to gain benefits, and (ii) on companies' compliance obligations. In addition, following the Opinions on Further Promoting the Investigation of Bribe-Giving and Bribe-Acceptance promulgated in 2021,[78] there have been aggressive enforcement and legislative actions emphasizing punishment for both offering and taking bribes.

a. Anti-Corruption/Bribery Enforcement

In January 2023, the Supreme People's Procuratorate (SPP) released its 2022 report noting that procuratorates prosecuted 8,380 people for taking bribes and 2,563 people for offering bribes nationwide.[79] We have not identified any publicly reported enforcement cases in China on foreign bribery, i.e., bribery by Chinese companies operating overseas.

Broadened Focus on Domestic Private-sector and Supply-side Bribery. In the past two years, China has continued to enhance its regulatory and enforcement actions relating to domestic private-sector bribery.[80] In particular, the National Supervision Commission (NSC) and the Central Commission for Discipline Inspection (CCDI) turned their attention to the accountability of bribe-giving parties and made every effort to deter the offering of bribes. This includes putting companies on a "blacklist" for paying bribes and restricting companies market entry and qualifications.[81]

- Specifically, companies and individuals on the blacklist would be subject to various types of penalties, such as a prohibition against participating in bids for government contracts, limits on access to government subsidies, and additional and more frequent inspections by enforcement authorities.[82]
- Over the past year, various local bribe-giver blacklists have been developed at the provincial level.[83] Local authorities in many places have been investigating the implementation of the "blacklist" system for bribe-givers. Among them, authorities in Zhangjiagang in Jiangsu province have established multiple databases. Companies and individuals on the blacklists include pharmaceutical companies, suppliers, and agents with a history of engaging in commercial bribery, among others.[84]
  Because there is currently no unified platform that synthesizes the information included on the various bribe-giver blacklists, CCDI members commented in April 2022 that they would continue to make efforts to establish a national database listing bribe-givers.[85] The CCDI is also refining a more comprehensive punishment mechanism for those on the blacklists, including restrictions on corporate qualification and market entry. [86]

Emphasis on Domestic Corruption in Key Areas. China shows a strong interest in industries that have "concentrated power, intensive capital, and rich resources," such as the pharmaceutical, mining, finance, and construction sectors.[87]

---

78 The National Supervision Commission, *Opinions on Further Promoting the Investigation of Bribe-Giving and Bribe-Acceptance* (Sep. 8, 2021).

79 SPP Press Release, *The Procuratorate Prosecuted 16,000 Individuals For Duty-Related Crimes in 2022* (Jan. 9, 2023), https://www.spp.gov.cn/spp/zdgz/202301/t20230109_598013.shtml.

80 South China Morning Post, *China's corruption watchdog moves to crackdown on bribe-givers* (Mar. 1, 2022), https://www.scmp.com/news/china/politics/article/3168731/chinas-corruption-watchdog-moves-crackdown-bribe-givers.

81 The National Supervision Commission *supra* note 78.

82 CCDI News Release, *Once bribed, every aspect restricted* (Mar. 16, 2022), http://v.ccdi.gov.cn/2022/03/16/VIDErHoH2MY2CXQaous7mJav220316.shtml.

83 These lists are publicly available at provincial levels and industrial levels, but they are not published on the same platform. See http://m.ccdi.gov.cn/content/08/d3/75456.html. For example, several districts in Ningbo, Zhejiang province have established blacklists for bribers; CCDI Website also released the blacklist for bribers in the tobacco industry.

84 CPC News, *Comprehensive measures to curb commercial bribery* (Jan. 4, 2023), http://fanfu.people.com.cn/n1/2023/0104/c64371-32599465.html.

85 China Discipline Inspection and Supervision Magazine, Enlisting the bribe-givers in a blacklist (April 2022), https://zgjjjc.ccdi.gov.cn/bqml/bqxx/202202/t20220216_172001.html.

86 *Id.*

87 Xinhua News, the 20th CPC National Congress passed the Work Report of the 19th CCDI (Oct. 27, 2022), https://www.xinhuanet.com/2022-10/27/c_1129083550.html.

V. International Developments

- **Five Model Cases.** In April 2022, the NSC and the SPP jointly released five model cases related to bribery. These model cases cover key areas of investigation and punishment such as tendering and bidding, which are relevant to high-risk industries such as medical treatment and mining sectors.[88] The model cases reflected that, while continuing to punish bribe-taking, law enforcement is also taking multiple measures to improve the accuracy and effectiveness of punishing bribe-givers.
- **CCDI Report.** On October 22, 2022, the 20th CPC National Congress passed the Work Report of the 19th CCDI (the CCDI Report).[89] The CCDI Report highlighted punishment for corruption in key areas that have concentrated power, rich resources, and intensive capital. The CCDI Report also highlighted key practices that can be regarded as "corrupt tumors," which include engaging in behind-the-scenes transactions in financial institutions, embezzling state-owned assets and conducting insider trading involving State-Owned Enterprises (SOEs), coal-related corruption in local mining industries, corruption in all aspects of engineering construction, and corruption related to transfer of public resources and environmental pollution. The CCDI Report also asked the authorities to punish both bribe takers and givers, to combat new and disguised forms of corruption such as using a "shadow company and shadow shareholder," and to concentrate on preventing and punishing corruption in areas such as law enforcement, food purchase and sale, construction of developing zones, as well as the pharmaceutical industry.[90]

b. New Rules and Guidance

Punishment of Duty-Related Crimes. On May 15, 2022, the newly revised Provisions of the Standards for Filing and Prosecution of Criminal Cases Under the Jurisdiction of Public Security Organs (II) (Standards for Filing and Prosecution (II)) came into effect.[91] Remarkably, the revised standards:

- lowered the threshold for filing criminal charges against duty-related crimes committed by non-state employees to the same level as that by state employees (e.g., RMB 30,000 for non-state employees accepting bribes);[92] and
- imposed more detailed requirements on the punishment of duty-related crimes in the private sector.

These duty-related crimes by non-state employees include acceptance of bribes, bribe-offering to non-state employees, embezzlement, and funds misappropriation. Besides more stringent restrictions, such as the lower threshold, imposed on non-state employees regarding corrupt behavior, in practice, the release of Standards for Filing and Prosecution (II) may also increase the punishment of duty-related crimes within private enterprises, so as to ensure fair competition among market players.

c. Corporate Compliance

More Comprehensive Compliance Guidance and Robust Enforcement Mechanism. Effective on October 1, 2022, the State-owned Assets Supervision and Administration Commission of the State Council (SASAC) issued the Measures for the Compliance Management of Centrally-administered SOEs (Measures for the Compliance Management), which sets forward further requirements for centrally-administered SOEs to adjust and optimize their compliance management structure.[93]

- Centrally-administered SOEs are required to (i) appoint a CCO, (ii) make the principal person in charge of the SOE the primary person responsible for promoting the various work related to compliance management, and (iii) develop "specific rules or special guidelines" for compliance management in essential fields such as anti-commercial bribery.[94]

---

88 SPP Press Release, CCDI and SPP jointly released five model cases of bribery-related crimes for the first time (Apr. 4, 2022), https://www.spp.gov.cn/spp/xwfbh/wsfbt/202204/t20220420_554587.shtml#1.

89 *Supra* note 85.

90 *Id.*

91 Supreme People's Procuratorate and Ministry of Public Security, *Provisions of the Standards for Filing and Prosecution of Criminal Cases Under the Jurisdiction of Public Security Organs (II)* (2022 Revision) (May 15, 2022), https://www.spp.gov.cn/spp/xwfbh/wsfbt/202204/t20220429_555906.shtml.

92 *Id.*; Supreme People's Court and Supreme People's Procurate, *Interpretation of the Supreme People's Court and the Supreme People's Procuratorate on Several Issues concerning the Application of Law in the Handling of Criminal Cases of Embezzlement and Bribery* (Apr. 18, 2016).

93 State-owned Asset Supervision and Administration Commission of the State Council, *Measures for the Compliance of Central Enterprises* (Oct. 1, 2022), http://www.sasac.gov.cn/n2588035/n2588320/n2588335/c26018430/content.html.

94 *Id.* at Art. 18.

V. International Developments

- Centrally-administered SOEs are required to "embed the compliance review as a mandatory procedure" in the operation and management activities, and the CCO should sign the compliance review opinions on significant decision-making matters.[95] Business units and the compliance department shall keep improving "the standard, process, and focus of the compliance review" and assess the review periodically.[96] If a centrally-administered SOE has "violations due to the ineffective compliance management," the SASAC may summon the company and order the company to make rectification; if the violations resulted in "losses or adverse effects," the SASAC would "assign accountability according to related provisions."[97]

Practice Tip: China's interest in targeting private-sector bribery is just as strong as it is for public-sector bribery. Companies operating in China should keep updated on new local laws and regulations, especially those relating to foreign bribery. There is also value in proactively investigating known bribery within the company to uncover any systemic issues. The PRC's historic lack of publicly reported enforcement should not be interpreted as acceptance of the same conduct in today's enforcement regime.

2. Hong Kong SAR

Hong Kong SAR continued to be ranked 12th by Transparency International's 2022 Corruption Perceptions Index, with no changes to its rank or score compared to 2021.[98] Hong Kong ranks 28th among 194 jurisdictions in the TRACE Bribery Risk Matrix 2022, three ranks lower than in 2021 due to a lower level of "civil society oversight" including a "low degree of media freedom/quality" and a "medium degree of civil society engagement."[99]

Hong Kong experienced a contraction in terms of bribery-related complaints and prosecutions in 2022, and in particular, witnessed a prominent collapse in complaints regarding the private sector. Despite the slowdown in enforcement, the Independent Commission Against Corruption (ICAC), an independent body tasked with investigating bribery and corruption in Hong Kong, along with other agencies such as the Stock Exchange of Hong Kong Limited (HKEX), continued to refine and devise compliance policies and guidance for various industries, with an emphasis on corporate governance, and Environmental, Social and Governance (ESG) programs (which include an anti-bribery and corruption component).

Additionally, according to the ICAC, it has enhanced its mainland and international cooperation, as travel restrictions have been gradually lifted around the world. Through international cooperation in law enforcement, experience-sharing, and technical assistance, the ICAC has leveraged its expertise and played a more active role in the global fight against corruption.[100]

a. Complaints and Prosecutions Overview

The ICAC briefing report for the first eight months of 2022 reflects a decrease of 17% in corruption-related complaints and prosecution compared to the same period in 2021.[101] In particular, there was a notable decline in the number of corruption complaints relating to government, public bodies, and the private sector such as in Building Management and Construction sector.[102]

Practice Tip: Although there has been a drop in prosecutions, we have not seen any evidence that Hong Kong has softened its approach to enforcement. Therefore, companies should continue to review and update their compliance programs.

b. Selected Hong Kong ICAC Cases

SME Director and Ex-accounting Clerk. On October 24, 2022, Chan Wing-fuk and Wong Tsz-wa, a director and a former accounting clerk of Waty International Company Limited (WICL), were each sentenced to around three years of imprisonment for conspiracy to defraud four commercial banks of loans and banking facilities between August 2010 and January 2015. During the investigation, the ICAC found that the sole purpose of setting up WICL was to apply for loans from four banks, and that the company did not have any business operations. [103]

---

95 *Id.* at Art 21.

96 *Id.*

97 *Id.* at Art. 37.

98 Transparency International, Corruption Perceptions Index 2022 (Jan. 31, 2023), https://www.transparency.org/en/cpi/2022/index/hkg.

99 TRACE Bribery Risk Matrix 2022, https://www.traceinternational.org/trace-matrix.

100 ICAC, *A New Role in Global Anti-Corruption Community* (Jan. 5, 2022), https://www.icac.org.hk/icac/c_online/en/202201/index.html.

101 Legislative Council Panel on Security, *The Chief Executive's 2022 Policy Address Briefing by Commissioner Independent Commission Against Corruption* (Oct. 20, 2022), https://www.legco.gov.hk/yr2022/english/panels/se/papers/se20221031cb2-803-3-e.pdf.

102 *Id.*

103 ICAC Press Release, *SME Duo Jailed for $102m Bank Loans Fraud Revealed in ICAC Graft Probe* (Oct. 24, 2022), https://www.icac.org.hk/en/press/index_id_1453.html.

V. International Developments

Company Director and Former Purchaser. On October 24, 2022, Ho Kwok-wing and Lai Suk-fan, a director of a garment accessories trading company and a former purchaser, were sentenced to 22 and 17 months imprisonment, respectively. The District Court concluded that between 2012 and 2019, they offered and accepted bribes totaling about $8.4 million USD relating to purchase orders worth over $36 million USD. The bribes were offered to secure businesses, and the purchaser's orders increased significantly after the bribery.[104]

Ex-HKUST Suppliers and Adjunct Associate Professor. On September 26, 2022, the ICAC charged Au Yeung Siu-fung and Yeung Siu-on, operators of two former suppliers of the Hong Kong University of Science and Technology (HKUST), for allegedly conspiring with Yeung Lam-lung, the then Adjunct Associate Professor of the university, to conceal the latter's interest in the two suppliers relating to 17 procurements. The professor conducted the procurements to purchase laboratory equipment and services from the suppliers, totaling about $4 million USD over more than seven years, while neither the suppliers nor the professor has declared a conflict of interests. A Magistrate issued a warrant to arrest Yeung Lam-lung on October 7, 2022.[105]

c. New Policies and Guidance

HKEX Corporate Governance Code. As mentioned in our 2021 FCPA/Anti-Corruption Year in Review, the HKEX has issued a consultation paper to introduce several amendments to the Corporate Governance Code. As we have seen from policies and practices, companies need to have well-structured and effective corporate governance. Worth noting, HKEX also required issuers to establish an anti-corruption policy and to upgrade the adoption of a whistleblowing policy from a recommended best practice to a mandate. The proposal was approved and became effective from January 1, 2022.[106]

HKEX Listing Decision. In a listing decision released in May this year, the HKEX elaborated that, if indications of bribery related to a listing applicant raises concerns about its director's "character and integrity, or ability to fulfill duties," the HKEX may regard the director as unsuitable, or the company's listing may be impacted.[107]

HKEX 2022 Analysis of ESG Practice Disclosure. In this report published in November 2022, the HKEX analyzed 400 sample issuers' ESG reports in 2021 and 2022. In terms of board governance over ESG issues, the HKEX observed that most of the sample issuers disclosed the ESG governance structure and roles and responsibilities of a designated working committee on such issues. Although the disclosure of the issuers' anti-corruption training is not as detailed as the HKEX expected, HKEX's review indicates that most issuers in the sample provide such training to directors and employees. While more and more companies have realized the importance of periodic anti-corruption training for a healthy corporate culture and for investor confidence, the HKEX encouraged issuers to include information on "the scope and method of the training, the audience, as well as the frequency of the training provided" for more detailed disclosure.[108]

ICAC Corruption Prevention Guide for Banks. Released in December 2022, this guide aims to provide practical guidance to banks in "establishing and strengthening their corruption prevention capabilities" on anti-bribery legislation, elements of good corporate governance, and effective anti-corruption control. The guide also discusses corruption risks and corresponding operational safeguards including management of bank accounts, credit facility and loan services, sales process and wealth management, procurement, as well as staff administration.[109]

---

104 ICAC Press Release, *Company Director and Purchaser Charged by ICAC Jailed for 22 and 17 Months for Offering and Accepting $8.4m Bribes* (Oct. 24, 2022), https://www.icac.org.hk/en/press/index_id_1452.html.

105 ICAC Press Release, *Ex-HKUST Supplier Duo Charged By ICAC over $4m Procurement Fraud* (Sep. 27, 2022), https://www.icac.org.hk/en/press/index_id_1433.html; ICAC Press Release, Ex-HKUST Adjunct Associate Professor Wanted by ICAC over $4m Procurement Fraud (Oct. 10, 2022), https://www.icac.org.hk/en/press/index_id_1438.html.

106 HKEX, Consultation Conclusions: Review of Corp. Governance Code & Related Listing Rules, & Housekeeping Rule Amendments (December 2021), https://www.hkex.com.hk/-/media/HKEX-Market/News/Market-Consultations/2016-Present/April-2021-Review-of-CG-Code-and-LR/Conclusions-(Dec-2021)/cp202104cc.pdf?la=en.

107 HKEX, *HKEX Listing Decision (HKEx-LD132-2022)* (May 2022), https://en-rules.hkex.com.hk/rulebook/ld132-2022.

108 HKEX, *2022 Analysis of ESG Practice Disclosure*, ¶ 58 (November 2022), https://www.hkex.com.hk/-/media/HKEX-Market/Listing/Rules-and-Guidance/Environmental-Social-and-Governance/Reports-on-ESGPD/esgreport_2022.pdf.

109 ICAC, *Corruption Prevention Guide for Banks* (December 2022), https://cpas.icac.hk/UPloadImages/InfoFile/cate_43/2022/d4515a23-0288-4f73-aab6-c68441df81ae.pdf.

V. International Developments

Construction Industry Integrity Charter 2.0. Following the launch of the "Integrity Charter" in September 2021, on December 23, 2022, the ICAC, the Development Bureau, and the Construction Industry Council jointly released the Construction Industry Integrity Charter 2.0. The Integrity Charter encouraged consultants and contractors in the construction industry to participate in, and expected to continue to build "a management culture of integrity" in the construction industry. [110]

d. Interagency, Mainland, and International Collaboration

SFC and ICAC Joint Enforcement. On November 9 and 10, 2022, the Securities and Futures Commission (SFC) and the ICAC arrested eight individuals in a joint operation against a sophisticated syndicate operating a "ramp-and-dump" scheme. One of the individuals arrested operated ramp-and-dump schemes through "a complex cross-shareholding network of Hong Kong-listed companies involving illicit gains of [USD] $191 million." According to the ICAC's press release, more than 120 SFC officers and 70 ICAC officers participated in the joint operation during which a total of 50 premises were searched.[111]

Mainland Cooperation. In 2022, the ICAC continued to exchange views on strengthening collaboration with the anti-corruption authorities of Guangdong Province and Macao SAR to fight corruption in the Guangdong-Hong Kong-Macao Greater Bay Area. In particular, as a "pilot project," the ICAC is "in active dialogue with the Qianhai Anti-corruption Bureau" to cooperate on anti-corruption enforcement actions.[112]

International Cooperation. The ICAC has been making efforts to advance international cooperation and to share its graft-fighting experience with anti-corruption agencies (ACAs) around the world.[113]

- **Training.** As disclosed in the ICAC report, the ICAC has provided training services to overseas ACAs over the past years, and received positive feedback on their online training programs globally. [114]
- **UN-ICAC Joint Guide.** In addition, it is reported that the ICAC and the United Nations Office on Drugs and Crime are jointly developing a global policy guide on "youth engagement and empowerment on anti-corruption efforts for reference by national ACAs worldwide," which is expected to launch in late 2023.[115]
- **IAACA Contribution.** More than 20 ACAs have joined the International Association of Anti-Corruption Authorities (IAACA) as organizational members. The entity is currently led by the ICAC Commissioner Simon Peh Yun-lu. So far, members of IAACA are from 100 countries.[116]

Practice Tip: The ICAC continued to enhance its close cooperation with other regulators, whether domestically or abroad. Multinational companies with operations in Hong Kong should be aware that they could be under closer examination in the context of cross-border investigations. On the other hand, the UK and US suspension of their extradition treaties with Hong Kong in 2020 may continue to hinder enforcement of the Foreign Corrupt Practices Act and the UK Bribery Act in Hong Kong.

D. Other International Developments of Note

On December 9, 2022, Belgian police carried out 20 raids at 19 different addresses across Brussels. The succeeding days' raids, coordinated with the Belgian Police, were carried out by Italian and Greek police authorities. Some eight individuals were arrested, about €1.5M in cash was seized from several locations, assets and real estate were frozen. Several individuals have been charged and some have confessed and are cooperating with authorities.

---

110 ICAC, DEVB, and CIC, *Construction Industry Integrity Charter 2.0* (Dec. 23, 2022), https://cpas.icac.hk/UPloadImages/InfoFile/cate_43/2022/1b3de8be-b859-4f43-a2cc-eb034f56fe66.pdf; Hong Kong Government Press Release, *Construction Industry Integrity Charter 2.0 Promotes Management Culture of Integrity in Construction Industry* (Dec. 23, 2022), https://www.info.gov.hk/gia/general/202212/23/P2022122300159.html; Development Bureau, *Construction Industry Integrity Charter 2.0 Promotes Management Culture of Integrity in Construction Industry* (Dec. 23, 2022), https://www.devb.gov.hk/en/publications_and_press_releases/press/index_id_11400.html.

111 ICAC Press Release, *Joint Press Release: SFC and ICAC Joint Operation against Sophisticated Ramp-And-Dump Syndicate* (Nov. 10, 2022), https://www.icac.org.hk/en/press/index_id_1469.html.

112 ICAC International Cooperation and Corporate Services Department, Mainland Liaison, https://www.icac.org.hk/icac/post/iaaca2/en/index.html#1; Legislative Council Panel on Security, *The Chief Executive's 2022 Policy Address Briefing by Commissioner Independent Commission Against Corruption* (Oct. 20, 2022), https://www.legco.gov.hk/yr2022/english/panels/se/papers/se20221031cb2-803-3-e.pdf.

113 ICAC, *International Collaboration and Capacity Building*, https://www.icac.org.hk/en/icd/work/iccb/index.html.

114 Legislative Council Panel on Security, *The Chief Executive's 2022 Policy Address Briefing by Commissioner Independent. Commission Against Corruption*, ¶ 37 (Oct. 20, 2022), https://www.legco.gov.hk/yr2022/english/panels/se/papers/se20221031cb2-803-3-e.pdf.

115 *Id.* ¶ 38.

116 China Global Television Network, *HK ICAC Leaves No One Behind on The Way Towards Corruption-Free World* (May 5, 2022), https://news.cgtn.com/news/2022-05-05/HK-ICAC-leaves-no-one-behind-on-the-way-towards-corruption-free-world-19MrCupdrBS/index.html.

V. International Developments

This is how the Qatar corruption scandal broke over the European Parliament in December in a scandal whose reverberations are continuing - and which are expanding. It has been described by MEP Daniel Freund, co-chair of the Parliament's anti-corruption group as one of "the most serious corruption scandals in Brussels in recent decades." [117] These words have been echoed by many other commentators, both within and outside Parliament.

So what is the scandal about? The criminal investigation is focused on "criminal organization, corruption and money laundering." It centers around an NGO called Fight Impunity, which may have been used in part to funnel cash from State actors to MEPs and others in an effort to influence Parliamentary processes. States which have been named include Qatar and Morocco. In the case of Qatar, it had hoped to enhance its prestige on the international stage through its hosting of the FIFA World Cup. In fact, the opposite happened, with allegations of unsafe building practices, worker deaths, and slave-like working conditions. In addition, attention was drawn to Qatar's treatment of women and of LGBTQ+ rights. Qatar wanted to shore up its reputation as it sought to negotiate deals with EU Member States for its natural gas and it was active in supporting various initiatives being considered by Parliament. One was a visa waiver program for Qataris. Another initiative was a dedicated EU-Qatar Friendship Group. A more significant initiative was the negotiation of an air transit agreement which would have permitted Qatar Airways unlimited access to the EU market. Already this had been put on hold because some Member States had warned that Qatar may have interfered in Parliament's internal processes and that the air transit agreement was unduly favorable to Qatar.

The criminal investigation had started a year earlier, and in July 2022 the Central Office for the Repression of Corruption (English translation of the French and Flemish), which is a unit of the Belgian Police, raided homes, business offices and offices within Parliament premises. Because the raids involved MEPs, including Vice President Eva Kaili, their diplomatic immunity had to be suspended before they could be arrested. In the case of Kaili, the President of the Parliament, Roberta Metsola, was required (under the Belgian Constitution) to return from her home in Malta in order to be present for the searches of MEPs' properties (Eva Kaili and Marc Tarabella). Kaili's father was arrested at the Sofitel Hotel as he tried to leave with a suitcase containing "several hundred thousand Euros."[118]

The initial targets of the raids included a former MEP, some parliamentary assistants and a trade union boss. But the arrest of Kaili blew open the scope of the investigation. She was a Vice President of the Parliament (one of 14) with special responsibility for the Middle East. She had emerged as one of the most ardent defenders of Qatar, recently having visited Qatar alone (the official Parliamentary visit having been mysteriously cancelled) and describing the country, on the floor of Parliament, as a "frontrunner in labor rights."[119] This was despite significant international concern about conditions for stadium construction workers preparing for the FIFA World Cup. Significantly, Kaili's life partner, Francesco Giorgio, who is an advisor to an MEP, was arrested and on December 15 confessed to having been bribed by Qatari officials to influence Parliamentary decisions. He directly implicated several individuals who had been arrested, but sought to exonerate Kaili. Giorgio also confessed to having received funds from the Moroccan government, thus potentially significantly broadening the scope of the police corruption investigation. Morocco, unlike Qatar, has a large diaspora population in the EU from its former French colonial status and significant trading relations

The raids were carried out by Belgium's anti-corruption unit of the Police, under Belgian criminal law powers. They worked closely with Italian and Greek police authorities. Two European Arrest Warrants were issued and executed (by the Italian police). The "wrinkle" was the fact of MEPs were implicated, which brought in constitutional issues relating to MEPs' diplomatic immunity, the requirement for it to be suspended for arrests and the requirement for the Parliament President to be physically present during searches of MEP premises. On December 15, 2022, the European Public Prosecutor's Office requested that the European Parliament lift diplomatic immunity from Kaili and another Greek MEP. This request was made following a report from the European Anti-Fraud Office (known as "OLAF"). OLAF's report concerned money paid to parliamentary assistants (concerning "suspicion of fraud detrimental to the EU budget").[120]

---

117 Sarah Wheaton, *Qatar scandal: What just happened at the European Parliament,?* Political EU (Dec. 11, 2022), https://www.politico.eu/article/eva-kaili-doha-panzeri-qatargate-what-just-happened-at-the-european-parliament/.

118 Emily Rauhala and Annabelle Timsit, *What are the Qatar bribery allegations rocking the European Parliament?*, The Washington Post (Dec. 22, 2022), https://www.washingtonpost.com/world/2022/12/12/qatar-european-parliament-eva-kaili-corruption/.

119 *Id.*

120 Unknown Author, *Greek governing party suspends Euro MP pending investigation,* AP News (Dec. 16, 2022), https://apnews.com/article/greece-european-parliament-6e04b6af4b54c36c51c6bfb6fc00ded6.

V. International Developments

Another individual who has been arrested and has confessed is Antonio Panzeri, an Italian former MEP. His wife and daughter were also arrested. The Police found a large quantity of cash in his safe and at the same time raided the offices of an international NGO called Fight Impunity, of which Panzeri was president and of which Giorgio was a co-founder. It was set up ostensibly to promote the fight against impunity for serious violations of human rights and crimes against humanity. It had an advisory board of well-known luminaries and engaged in Parliamentary lobbying activities. However, it appears not to have been registered on the EU's transparency register, which EU-based NGOs are required to do. They are also required to disclose significant information about their funding sources. Panzeri, as part of his confession, confirmed the involvement of both Qatar and Morocco in the affair. He confessed to being a leader in the criminal organization and indicated that he will reveal significant and 'revealing' information as part of his plea deal with the Belgian Police.

What will happen now? Michiel Van Hulten, head of Transparency International, said that over the years the European Parliament had created a culture of impunity, with MEPs refusing to create an independent ethics oversight body. Now, the Commission is due to propose an independent ethics body that would apply to all EU institutions. It remains to be seen whether this proposed body will have teeth: in the form of investigative or enforcement powers.

It has also been suggested that States should also be required to follow the EU rules and register on the EU's transparency register. The European Ombudsman's office has also warned that a Parliamentary body must be given funds and powers to launch independent investigations. There is a 14-point plan proposed by the Parliament President, which is under consideration. It includes a cooling off period for MEPs from engaging in lobbying activities for a period after leaving office and banning so-called "friendship groups."[121]

And what of Qatar? Qatar has denied any and all involvement in the alleged influence peddling scandal. However, there have been significant repercussions. The friendship group has been suspended, the air transit agreement is on ice and negotiation of the visa waiver program has been suspended.

121 Nikolaj Nielsen, *EU Parliament to present 14 point anti-corruption reform*, EUobserver (Jan. 12, 2023), https://euobserver.com/eu-political/156594.

Section VI

Looking Ahead

VI. Looking Ahead

2022 was a significant year for FCPA enforcement activity. Despite lower enforcement numbers, US authorities continued to set the stage for enforcement efforts and holding companies and individuals to very exacting standards. As noted in last year's Year in Review, 2021 also saw significant foreshadowing from the DOJ and SEC of FCPA enforcement to come. With all the policy revisions and policy priority statements that have been issued in the past two years, the room for additional policy change at least at the margins is becoming increasingly limited. With the stage fully set, the next logical step is more enforcement. This is consistent with DOJ's continued public statements about the robust enforcement pipeline. Although the DOJ has made greater rewards available to companies through its policy revisions in 2022, we expect they will be tougher in their assessments of whether companies deserve them. Given the continued emphasis on individual prosecutions from the DOJ, we also expect to see increased numbers of FCPA and bribery-related non-FCPA charges brought against individuals in 2023.

We also expect that multi-jurisdictional investigations and resolutions will continue to feature prominently in FCPA enforcement activity in 2023. Some of the DOJ and SEC's new foreign enforcement agency partners, such as Mexico and South Africa, will likely feature more prominently in coordinated resolutions in the coming years. At the same time, unless local enforcement picks up, we may see one of the DOJ and SEC's strongest partners in recent years, Brazilian authorities, feature less prominently in coordinated resolutions as we run out of legacy Operation Car Wash matters. In terms of the country of origin of alleged misconduct in FCPA corporate enforcement actions, there were no enforcement actions in 2022 with underlying conduct that occurred in China. We expect this is an outlier and that China will return as a locus of alleged misconduct in 2023 and beyond.

We also expect IFIs to continue to actively investigate and sanction companies and individuals they believe engaged in fraud, corruption, collusion, and other misconduct relating to projects they finance. Sanctioned parties are likely going to be primarily from regions that receive more IFI resources. For the World Bank, which has the most active sanctions system, these regions would be Latin America, East Asia and Pacific, and Sub-Saharan Africa.[122] Pressure to increase lending around climate change matters, and any other programs that feature increased funding under time pressure, may give rise to cases. Even in countries where local enforcement may not be strong, or is slowing, IFI investigation and sanction activity will likely remain robust since collaboration with local authorities is less relevant to IFI investigations than it is to national enforcement agencies investigating conduct occurring in other jurisdictions in collaboration with other national enforcement agencies (e.g., US authorities investigating conduct occurring in Brazil in collaboration with Brazilian authorities).

122 The World Bank, IFC Investment By Region - Annual Summary (Nov. 22, 2022), https://finances.worldbank.org/Projects/IFC-Investment-By-Region-Annual-Summary/wdx8-uxce.

Section VII

FCPA Corporate Settlements

VII. FCPA Corporate Settlements

A. ABB Ltd. (South Africa)

Conduct: Swiss conglomerate ABB Ltd. (ABB) allegedly bribed a high-ranking official at South Africa's state-owned energy company (Eskom) between 2014 and 2017 to obtain confidential information and win lucrative contracts.[123] ABB executives in Switzerland and South Africa allegedly colluded with the official to funnel bribes to that official through complicit third-party service providers, with whom the government official had close personal relationships.[124]

Statutory Provisions: The DOJ charged ABB Ltd. with conspiracy to violate the FCPA, violating the anti-bribery provisions and records provisions of the FCPA.[125]

Payments: ABB and its subsidiaries allegedly paid service providers more than $37 million to bribe the South African government official.

Benefit: ABB obtained a $160 million contract to provide cabling and installation work at Eskom's Kusile Power Station.

Prosecuting Agencies: DOJ, SEC.

Resolution: ABB entered into a three-year deferred prosecution agreement with the DOJ, which established a total criminal penalty of $315 million.[126] The DOJ agreed to credit up to one-half of the criminal penalty against amounts the company pays to authorities in South Africa in related proceedings, along with other credits for amounts ABB pays to resolve investigations conducted by the SEC and authorities in Switzerland and Germany, so long as payments underlying an anticipated resolution with German authorities are made by December 2, 2023.[127] In addition, ABB subsidiaries—ABB Management Services Ltd. (Switzerland) and ABB South Africa (Pty) Ltd. (South Africa)—each pleaded guilty to one count of conspiracy to violate the anti-bribery provisions of the FCPA.[128]

Voluntary Disclosure/Other: ABB did not receive voluntary disclosure credit because the DOJ's investigation was initiated before ABB cooperated with the investigation.[129]

Noteworthy: This case was the DOJ's first coordinated FCPA resolution with authorities in South Africa.[130]

---

123 DOJ Press Release, *ABB Agrees to Pay Over $315 Million to Resolve Coordinated Global Foreign Bribery Case* (Dec. 2, 2022), https://www.justice.gov/opa/pr/abb-agrees-pay-over-315-million-resolve-coordinated-global-foreign-bribery-case.

124 SEC Press Release, *ABB Settles SEC Charges That It Engaged in Bribery Scheme in South Africa* (Dec. 3, 2022), https://www.sec.gov/news/press-release/2022-214.

125 *United States v. ABB Ltd.*, No. 1:22-cr-00220, Criminal Information, at 49, 52, 55, 57 (E.D. Va. Dec. 2, 2022),

126 DOJ Press Release, *ABB Agrees to Pay Over $315 Million to Resolve Coordinated Global Foreign Bribery Case* (Dec. 2, 2022), https://www.justice.gov/opa/pr/abb-agrees-pay-over-315-million-resolve-coordinated-global-foreign-bribery-case.

127 *Id.*

128 *Id.*

129 *United States v. ABB Ltd.*, No. 1:22-cr-00220, Deferred Prosecution Agreement, at 4(b) (E.D. Va. Dec. 2, 2022), https://www.justice.gov/opa/press-release/file/1556131/download.

130 DOJ Press Release, *ABB Agrees to Pay Over $315 Million to Resolve Coordinated Global Foreign Bribery Case* (Dec. 2, 2022), https://www.justice.gov/opa/pr/abb-agrees-pay-over-315-million-resolve-coordinated-global-foreign-bribery-case.

VII. FCPA Corporate Settlements

B. Glencore International AG (Nigeria, Cameroon, Ivory Coast, Equatorial Guinea, Brazil, Venezuela, and the DRC).

Conduct: From 2007 through 2018, Glencore engaged in a scheme whereby it paid more than $100 million in bribes to government officials in Nigeria, Cameroon, Ivory Coast, Equatorial Guinea, Brazil, Venezuela, and the Democratic Republic of the Congo (DRC), through third-party intermediaries.[131] Glencore concealed these bribe payments through the use of sham consulting agreements, inflated invoices, and using the third-party intermediaries to make payments.[132]

Statutory Provisions: The DOJ charged Glencore with one count of conspiracy to violate the anti-bribery provisions of the FCPA.[133]

Payments: Glencore admitted to making payments to foreign government officials and third-party intermediaries totaling more than $100 million.[134] Approximately $79.6 million of that figure stemmed from payments Glencore and its UK subsidiaries caused to be made to two West African intermediary companies to pay bribes to government officials in Cameroon, Equatorial Guinea, Ivory Coast, and Nigeria.[135] In the DRC, Glencore admitted to paying $27.5 million to third parties to be used as bribes to government officials.[136] Glencore also admitted to the bribery of officials in Brazil and Venezuela, with payments of $147,202 and over $1.2 million, respectively.[137]

Benefit: Glencore and its subsidiaries made payments with the intent that significant portions of those payments be used to pay bribes to foreign officials for the purpose of obtaining and retaining business with state-owned and state-controlled entities. For example, Glencore and its UK subsidiaries engaged two West African intermediary companies to pursue business opportunities in Nigeria, such as the award of crude oil contracts, knowing that the intermediaries would make bribe payments to Nigerian government officials to obtain the business.[138] In total, Glencore earned approximately $315 million as a result of its corrupt payments.[139]

Prosecuting Agencies: DOJ, CFTC, UK Serious Fraud Office, and the Brazilian Ministério Público Federal.

---

131 DOJ Press Release, *Glencore Entered Guilty Pleas to Foreign Bribery and Market Manipulation Schemes* (May 24, 2022), https://www.justice.gov/opa/pr/glencore-entered-guilty-pleas-foreign-bribery-and-market-manipulation-schemes.

132 *Id.*

133 *United States v. Glencore International A.G.*, No. 22-cr-00297, Information at 77–81 (S.D.N.Y. May 24, 2022).

134 Plea Agreement Attachment A, *United States v. Glencore International A.G.*, No. 22-cr-00297, at 30 (S.D.N.Y. May 24, 2022).

135 *Id.* at 31.

136 DOJ Press Release, *Glencore Entered Guilty Pleas to Foreign Bribery and Market Manipulation Conspiracies*, Plea Agreement Attachment A, at 30 (May 24, 2022), https://www.justice.gov/usao-sdny/pr/glencore-entered-guilty-pleas-foreign-bribery-and-market-manipulation-conspiracies.

137 *Id.*

138 *Id.*

139 DOJ Press Release, *supra* note 150, Plea Agreement, at 19.

VII. FCPA Corporate Settlements

Resolution: Glencore reached a plea agreement with the DOJ to resolve its FCPA charges.[140] Per the terms of the plea deal, Glencore pleaded guilty to one count of conspiracy to violate the FCPA and agreed to a total criminal fine of $428,521,173.[141] The DOJ agreed to credit $136,236,140 of the fine against the amount Glencore paid UK agencies, and $29,694,819 against the amount Glencore paid Swiss agencies (but not to Brazil),[142] resulting in a $262,590,214 criminal fine payable to the DOJ.[143] Glencore also agreed to forfeit $272,185,792, with up to $90,728,597 of that amount credited against payments Glencore made in relation to its concurrent settlement with the CFTC. As a result, Glencore paid a minimum forfeiture amount of $181,457,195.[144] In addition its payment of criminal fines and forfeiture, Glencore agreed to retain a compliance monitor for a period of three years.[145] Pursuant to Glencore's partial cooperation and remediation, the DOJ agreed to give Glencore a 15 percent discount off the bottom of the Sentencing Guidelines fine range.[146] Glencore did not receive full credit for cooperation and remediation, as the company was delayed in producing evidence and failed to discipline employees involved in the misconduct in a timely and appropriate manner.[147]

Voluntary Disclosure/Other: The case did not originate with a voluntary disclosure (no credit given by DOJ for such disclosure).

Noteworthy: Anthony Stimler, a former senior trader who worked on Glencore's West Africa Desk, pleaded guilty to one count of conspiracy to violate the FCPA and one count of conspiracy to commit money laundering in July 2021.

In a separate proceeding, Glencore entered into a plea agreement in which it pleaded guilty to one count of conspiracy to engage in commodity price manipulation.[148] In the price manipulation scheme, Glencore employees conspired to manipulate two benchmark price assessments published by S&P Global Platts for fuel oil products by submitting orders to buy and sell to artificially increase or decrease the price assessment for the benefit of Glencore.[149] The terms of the plea agreement require Glencore to pay a criminal fine of $341,221,682 and forfeiture of $144,417,203; the DOJ agreed to credit over $242 million in payments to the CFTC, resulting in a total minimum payment to the DOJ of $242,819,442.[150]

The DOJ settlement included a requirement of certification by the company's CEO and COO, the first time such a requirement had been imposed. See discussion supra Section II.B.

---

140 Judicial approval of this plea deal remains outstanding.

141 Plea Agreement Attachment A, *United States v. Glencore International A.G.*, No. 22-cr-00297, at 22 (S.D.N.Y. May 24, 2022).

142 No reasons are stated by the DOJ, but it appears the Brazilian payment was to Petrobras.

143 *Id.*

144 *Id.*

145 *Id.* at 1, 25–29; DOJ Press Release, *Glencore Entered Guilty Pleas to Foreign Bribery and Market Manipulation Schemes* (May 24, 2022), https://www.justice.gov/opa/pr/glencore-entered-guilty-pleas-foreign-bribery-and-market-manipulation-schemes.

146 *United States v. Glencore International A.G.*, No. 22-cr-00297, Plea Agreement Attachment A, at 22 (S.D.N.Y. May 24, 2022).

147 DOJ Press Release, *Glencore Entered Guilty Pleas to Foreign Bribery and Market Manipulation Schemes* (May 24, 2022), https://www.justice.gov/opa/pr/glencore-entered-guilty-pleas-foreign-bribery-and-market-manipulation-schemes.

148 *Id.*

149 *Id.*

150 *Id.*

VII. FCPA Corporate Settlements

C. GOL Linhas Aéreas Inteligentes S.A. (Brazil)

Conduct: GOL Linhas Aéreas Inteligentes S.A. (GOL), an airline headquartered in São Paulo, Brazil, allegedly paid millions of dollars in bribes to Brazilian officials to secure passage of legislation that was beneficial to GOL, including payroll tax and fuel tax reductions.[151] According to the DOJ, in 2012 and 2013, the airline "entered into fraudulent contracts with third-party vendors for the purpose of generating and concealing the funds necessary to perpetrate this criminal conduct, and then falsely recorded the sham payments in their own books." [152]

Statutory Provisions: The DOJ charged GOL with conspiracy to violate the FCPA.[153]

Payments: Approximately $3.8 million in bribes to Brazilian government officials.

Benefit: Securing the passage of legislation that would benefit GOL.

Prosecuting Agencies: DOJ, SEC.

Resolution: GOL entered into a three-year deferred prosecution agreement with the DOJ under which GOL will pay a criminal penalty of $17 million. This was reduced from a criminal penalty calculated under the Sentencing Guidelines, reflecting the company's inability to pay.[154] Additionally, the DOJ agreed to credit up to $1.7 million of that criminal penalty against an approximately $3.4 million fine the company agreed to pay to authorities in Brazil in connection with related proceedings.[155] As part of a resolution to a parallel investigation by the SEC, GOL agreed to pay $70 million, composed of a disgorgement of $51,940,000 and prejudgment interest of $18,060,000.[156] However, the SEC waived all but $24.5 million due to the company's inability to pay.[157]

Voluntary Disclosure/Other: GOL did not receive voluntary disclosure credit because the DOJ's investigation was initiated before GOL cooperated with the investigation.[158]

Noteworthy: The DOJ noted that it not impose a monitor in this case because, by the time of the resolution, GOL "had redesigned its entire anti-corruption compliance program, demonstrated through testing that the program was functioning effectively, and committed to continuing to enhance its compliance program and internal controls." [159]

---

151 *United States v. GOL Linhas Aéreas Inteligentes S.A.*, No. 8:22-cr-00325, Information, at 16 (D. Md. Sept. 9, 2022), https://www.justice.gov/opa/press-release/file/1562366/download.

152 DOJ Press Release, *GOL Linhas Aéreas Inteligentes S.A. Will Pay Over $41 Million in Resolution of Foreign Bribery Investigations in the United States and Brazil* (Sept. 15, 2022), https://www.justice.gov/opa/pr/gol-linhas-reas-inteligentes-sa-will-pay-over-41-million-resolution-foreign-bribery.

153 *United States v. GOL Linhas Aéreas Inteligentes S.A.*, No. 8:22-cr-00325, Information, at 1 (D. Md. Sept. 9, 2022), https://www.justice.gov/opa/press-release/file/1562366/download.

154 *United States v. GOL Linhas Aéreas Inteligentes S.A.*, No. 8:22-cr-00325, Deferred Prosecution Agreement, at 4 (D. Md. Sept. 16, 2022), https://www.justice.gov/opa/press-release/file/1562361/download/.

155 DOJ Press Release, *GOL Linhas Aéreas Inteligentes S.A. Will Pay Over $41 Million in Resolution of Foreign Bribery Investigations in the United States and Brazil* (Sept. 15, 2022), https://www.justice.gov/opa/pr/gol-linhas-reas-inteligentes-sa-will-pay-over-41-million-resolution-foreign-bribery.

156 *In re GOL Linhas Aéreas Inteligentes S.A.*, Exchange Act Release No. 95800, SEC Order, 6 (Sept. 15, 2022), https://www.sec.gov/litigation/admin/2022/34-95800.pdf.

157 *Id.*

158 *United States v. GOL Linhas Aéreas Inteligentes S.A.*, No. 8:22-cr-00325, Deferred Prosecution Agreement, at 4(a) (D. Md. Sept. 16, 2022), https://www.justice.gov/opa/press-release/file/1562361/download/.

159 DOJ Press Release, *Assistant Attorney General Kenneth A. Polite Delivers Remarks at the University of Texas Law School* (Sept. 16, 2022), https://www.justice.gov/opa/speech/assistant-attorney-general-kenneth-polite-delivers-remarks-university-texas-law-school.

VII. FCPA Corporate Settlements

D. Jardine Lloyd Thompson Group Holding Ltd. (Ecuador)

Conduct: UK-based multinational insurance company, Jardine Lloyd Thompson Group Holding Ltd. (JLT) allegedly made payments between 2014 and 2016 to a third party while knowing that part of those payments would be used to fund bribes to Ecuadorian officials to secure contracts with state-owned insurance company, Seguros Sucre S.A.[160]

Statutory Provisions: The DOJ declined to prosecute JLT for violations of the anti-bribery provisions of the FCPA.[161]

Payments: JLT allegedly paid approximately $10.8 million to the third-party, of which, $3.1 million was used to pay bribes the Ecuadorian official.[162]

Benefit: JLT allegedly obtained or retained contracts with Seguros Sucre S.A. valued at approximately $29 million.

Prosecuting Agencies: DOJ and UK Serious Fraud Office.

Resolution: The DOJ declined to prosecute JLT. JLT agreed to pay a $29 million disgorgement, 100% of which the DOJ agreed to credit against any amounts JLT pays the UK Serious Fraud Office in connection with the same conduct.[163]

Voluntary Disclosure/Other: JLT voluntarily self-disclosed the conduct.[164]

Noteworthy: The DOJ decided not to prosecute based on JLT's voluntarily self-disclosure, JLT's "full and proactive cooperation" including with respect to individuals known to be involved in the conduct, the seriousness of the conduct, JLT's "timely and full remediation" including separation of an executive and termination of a relationship with a third party, and JLT's agreement to disgorge all ill-gotten gains.[165]

160 See DOJ Declination Letter, Jardine Lloyd Thompson Group Holding Ltd. (Mar. 18, 2022), https://www.justice.gov/criminal-fraud/file/1486266/download.

161 *Id.*

162 *Id.*

163 *Id.*

164 *Id.*

165 *Id.*

VII. FCPA Corporate Settlements

E. KT Corporation (South Korea, Vietnam)

Conduct: KT Corporation (KT) is South Korea's largest comprehensive telecommunications operator. KT's American Depositary Shares are registered with the SEC and traded on the New York Stock Exchange. According to the SEC's order, KT lacked sufficient internal accounting controls over expenses, which enabled the company employees, including high-level executives, to generate slush funds that were used to make gifts and illegal political contributions to Korean government officials and Vietnamese government customers in exchange for their influence over KT's business.[166]

Statutory Provisions: KT allegedly violated the books and records and internal accounting control provisions of the FCPA.[167]

Payments: KT allegedly used the slush funds to pay (a) approximately $1.3 million in political contributions or entertainment expenses to Korean legislators and candidates, (b) approximately $1.6 million in charitable donations to organizations with close ties to Korean government officials, and (c) approximately $6.3 million in salaries or commissions to two individuals and an advertising firm that were hired by KT at the urging of Korean government officials. KT was also alleged to have paid (a) $95,031 in bribes and $3,000 in facilitation payments to Vietnamese government officials to obtain a contract for a construction project and (b) $550,000 to a Vietnamese government official to increase KT's chances of winning a bid for another project.[168]

Benefit: The SEC Order does not mention the purpose or return on KT's payments to government officials in the Korean scheme. As for the Vietnam scheme, KT was awarded contracts for the two projects.[169]

Prosecuting Agency: SEC.

Resolution: On February 17, 2022, KT consented to a Cease-and-Desist Order with the SEC to resolve its FCPA charges and agreed to pay approximately $2.8 million in disgorgement and prejudgment interest, and a $3.5 million civil penalty, for a total of approximately $6.3 million. KT also agreed to periodically self-report to the SEC on the status of its remediation efforts and implementation of compliance programs during a two-year term. KT received credit for its cooperation and remediation. KT's cooperation included providing translated documents, sharing facts developed through internal investigations, and making its employees available for interviews. KT's remediation included terminating executives and employees involved in the misconduct as well as strengthening global compliance, internal investigations, risk, and control functions.[170]

Voluntary Disclosure/Other: This case originated with investigations in South Korea and did not originate with a voluntary disclosure.[171]

Noteworthy: According to the SEC, between 2009 and 2013, senior executives at KT created slush funds by returning cash from inflated executive bonuses. They maintained the funds in both off-the-books bank accounts and physical stashes of cash. Although other executives were aware of the conduct, no one kept records of the funds or their use. This scheme became unworkable when criminal charges were filed in Korea in 2014. KT officials thereafter devised a new method to continue generating slush funds instead of improving internal accounting controls. And, from 2014 to 2017, KT managers used an internal purchasing system to purchase gift cards from a vendor at inflated prices and then passed the cash returned from the vendor to KT executives. KT falsely booked the gift card expenses as either "research and analysis" or "entertainment." In November 2021, Korean authorities indicted KT and fourteen executives for criminal violations in connection with the gift card scheme.[172]

166 SEC Press Release, *Largest South Korean Telecommunications Co. Agrees to Pay the SEC to Settle FCPA Charges* (Feb. 17, 2022), https://www.sec.gov/news/press-release/2022-30.

167 *Id.*; *In re KT Corp.*, Exchange Act Release No. 94279, SEC Order, at 25–27 (Feb. 17, 2022).

168 *Id.* 3-24.

169 *Id.*

170 *Id.* 25, 28-30.

171 *Id.* 5, 28.

172 *Id.* 3-7, 9.

VII. FCPA Corporate Settlements

F. Oracle Corporation (Turkey, UAE, and India)

Conduct: Oracle Corporation (Oracle) is a multinational information technology company headquartered in Texas. According to the SEC, from at least 2014 through 2019, employees of Oracle subsidiaries based in Turkey, the UAE, and India, used discount programs and sham marketing reimbursement payments to generate slush funds held by Oracle's channel partners in those markets. The slush funds were then used to bribe foreign officials and to provide benefits to foreign officials to attend technology conferences around the world, in violation of Oracle's internal policies. In Turkey, for example, they routinely used slush funds to pay for foreign officials' travel and accommodation expenses to attend Oracle's annual technology conferences. In some cases, they also paid for similar expenses of foreign officials' relatives.[173]

Statutory Provisions: Oracle allegedly violated the anti-bribery, books and records, and internal accounting control provisions of the FCPA.[174]

Payments: The Oracle subsidiaries allegedly paid bribes to foreign officials of at least $185,605 in Turkey, $130,000 in the UAE, and $392,000 in India.[175]

Benefit: According to the SEC Order, the Oracle subsidiaries maintained or obtained contracts with government agencies or state-owned companies in their respective countries by making slush funds through excessive discounts on the contracts and using the funds to provide bribes and entertainment to government officials.[176]

Prosecuting Agency: SEC.

Resolution: Oracle consented to a Cease-and-Desist Order with the SEC to resolve its FCPA charges and agreed to pay approximately $7.9 million in disgorgement and prejudgment interest, and a $15 million civil penalty, totaling approximately $22.9 million. Oracle received credit for its self-report, cooperation, and remediation. Oracle's cooperation included sharing facts developed through internal investigations, translating key documents, and making its subsidiaries' employees available for interviews. Oracle's remediation included terminating executives and employees involved in the misconduct, as well as strengthening global compliance, internal investigations, risk, and control functions.[177]

Voluntary Disclosure/Other: According to the SEC's Order, "Oracle self-reported certain unrelated conduct." However, the Order does not elaborate as to the self-reported conduct, and it is unclear whether this case originated with a voluntary disclosure of FCPA violations.[178]

Noteworthy: The SEC previously charged Oracle with violating the FCPA by failing to prevent improper payments by employees of its Indian subsidiary. In that case, the SEC alleged that employees of the subsidiary created schemes to allow Oracle India's distributors to retain unauthorized sub-funds, which distributors paid to local vendors that did not provide any services to Oracle. In August 2012, Oracle agreed to pay a $2 million penalty to resolve its FCPA charges.[179] In the wake of the second charge arising from Oracle's use of slush funds, Charles Cain, the Chief of the SEC's FCPA Unit, noted the risk of improper use of such funds and stated that Oracle's conduct "highlight[ed] the critical need for effective internal accounting controls throughout the entirety of a company's operations."[180]

---

173 SEC Press Release, *SEC Charges Oracle a Second Time for Violations of the Foreign Corrupt Practices Act* (Sept. 27, 2022), https://www.sec.gov/news/press-release/2022-173.

174 *Id.*; *In re Oracle Corp.*, Exchange Act Release No. 95913, SEC Order, at 22–25 (Sept. 27, 2022).

175 *In re Oracle Corp.*, at 11–21.

176 *Id.*

177 *Id.* at 26-29.

178 *Id.* at 26.

179 SEC Press Release, *SEC Charges Oracle Corporation with FCPA Violations Related to Secret Side Funds in India* (Aug. 16, 2012), https://www.sec.gov/litigation/litreleases/2012/lr22450.html.

180 SEC Press Release, *SEC Charges Oracle a Second Time for Violations of the Foreign Corrupt Practices Act* (Sept. 27, 2022), https://www.sec.gov/news/press-release/2022-173.

VII. FCPA Corporate Settlements

G. Safran S.A. (China)

Conduct: Prior to being acquired by Safran S.A. (Safran), employees and agents of Safran's US Subsidiary (Monogram Systems) and its German subsidiary (EVAC GmbH) allegedly made payments between 1999 and 2015 to a consultant who was also a relative of a senior Chinese official while knowing some of these payments would be used to fund bribes to secure contracts.[181]

Statutory Provisions: The DOJ declined to prosecute Safran for violations of the anti-bribery provisions of the FCPA.[182]

Payments: Safran allegedly paid "millions of dollars" to the consultant, of which a portion was used to pay bribes to the senior Chinese official.[183]

Benefit: Monogram Systems and EVAC GmbH allegedly obtained train lavatory contracts with the Chinese government.

Prosecuting Agencies: DOJ and German authorities.

Resolution: The DOJ declined to prosecute Safran. Safran agreed to pay a $17.2 million disgorgement, which represents the amount of profit Monogram Systems obtained in connection with the alleged bribes. The DOJ deferred to German authorities with respect to any amounts Safran should pay in connection with EVAC GmbH's conduct.[184]

Voluntary Disclosure/Other: Safran voluntarily self-disclosed the conduct after identifying it in post-acquisition due diligence.[185]

Noteworthy: The DOJ decided not to prosecute based on Safran's timely voluntarily self-disclosure, Safran's "full and proactive cooperation," the seriousness of the conduct, Safran's "timely and full remediation" including separation of an employee still at the company and withholding of deferred compensation of a former employee, the fact that the misconduct ended by the time of the acquisition by Safran, the fact that the misconduct was identified and disclosed in post-acquisition due diligence, Safran's agreement to disgorge all ill-gotten gains, and Safran's agreement to resolve the matter with German authorities with respect to the German subsidiary.[186]

---

181 *See* DOJ Declination Letter, Safran S.A. (Dec. 21, 2022), https://www.justice.gov/criminal-fraud/file/1559236/download.

182 *Id.*

183 *Id.*

184 *Id.*

185 *Id.*

186 *Id.*

VII. FCPA Corporate Settlements

H. Stericycle, Inc. (Argentina, Brazil, and Mexico)

Conduct: Between 2011 and 2016, Stericycle, Inc. (Stericycle) allegedly caused hundreds of bribe payments to be made to officials at government agencies in Latin America in order to obtain improper advantages in securing government waste management contracts.[187] Stericycle employees in the company's Argentina, Brazil, and Mexico offices were allegedly directed to pay bribes to government officials, which were then tracked in spreadsheets describing the payments using code words and euphemisms.[188]

Statutory Provisions: The DOJ charged Stericycle with one count of conspiracy to violate the anti-bribery provisions of the FCPA and one count of conspiracy to violate the FCPA's books and records and internal accounting control provisions, as well as one count of conspiracy to commit wire fraud affecting a financial institution.[189] The SEC found that Stericycle violated anti-bribery, books and records, and internal accounting controls provisions of the FCPA.[190]

Payments: According to the DOJ, Stericycle paid approximately $10.5 million in bribes to foreign officials in Argentina, Brazil, and Mexico in order to obtain and retain government business.[191]

Benefit: The DOJ and SEC alleged that Stericycle received a benefit of approximately $22 million in profits from improperly obtaining and retaining government contracts.[192]

Prosecuting Agencies: DOJ, SEC, Brazil Controladoria-Geral da Uniao/Advocacia-Geral da Uniao.

Resolution: Stericycle entered into a three-year deferred prosecution agreement with the DOJ and consented to a Cease-and Desist Order with the SEC to resolve its FCPA charges in April 2022. As part of its resolution with the SEC, Stericycle agreed to hire an independent compliance monitor to assess Stericycle's compliance with anticorruption laws and to pay disgorgement and interest totaling approximately $28.2 million to the SEC.[193] In addition, Stericycle agreed to a $52.5 million criminal penalty with the DOJ.[194] After accounting for offsets for amounts paid to the Brazilian agencies to settle parallel investigations, Stericycle agreed to a minimum total payment to the SEC and DOJ of approximately $59.2 million. In calculating the criminal fine, the DOJ gave Stericycle full credit for its cooperation in the investigation and for its extensive remedial measures, resulting in a 25 percent reduction from the low end of the Sentencing Guidelines.[195]

Voluntary Disclosure/Other: The case did not originate with a voluntary disclosure (no credit given by DOJ for such disclosure).

187 DOJ Press Release, *Stericycle Agrees to Pay Over $84 Million in Coordinated Foreign Bribery Resolution* (Apr. 20, 2022), https://www.justice.gov/opa/pr/stericycle-agrees-pay-over-84-million-coordinated-foreign-bribery-resolution.

188 *Id.*

189 *Id.; United States v. Stericycle, Inc.*, No. 22-20156-CR, Information, at 47–52 (S.D. Fla. Apr. 14, 2022).

190 *In re Stericycle, Inc.*, Exchange Act Release No. 94760, Order Instituting Cease-and-Desist Proceedings, at 1, 20–23 (Apr. 20, 2022), https://www.sec.gov/litigation/admin/2022/34-94760.pdf.

191 DOJ Press Release, *supra note* 173; *Stericycle, Inc.*, No. 22-20156-CR, Information, at 15.

192 *Id.* at 15; *In re Stericycle, Inc.*, Exchange Act Release No. 94760, SEC Order, at 1.

193 *Id.* at IV.C.

194 DOJ Press Release, *Stericycle Agrees to Pay Over $84 Million in Coordinated Foreign Bribery Resolution* (Apr. 20, 2022), https://www.justice.gov/opa/pr/stericycle-agrees-pay-over-84-million-coordinated-foreign-bribery-resolution.

195 *Id.*

VII. FCPA Corporate Settlements

I. Tenaris S.A. (Brazil)

Conduct: Tenaris S.A. (Tenaris) is a global manufacturer and supplier of steel pipe products headquartered in Luxembourg. Tenaris trades ADRs on the New York Stock Exchange. According to the SEC, between 2008 and 2013, Confab Industrial S.A. (Confab), a Brazilian subsidiary of Tenaris, paid bribes to a Brazilian government official in connection with the bidding process at Petroleo Brasileiro S.A. (Petrobras), a Brazilian state-owned oil company. The bribes were funded on behalf of Confab by companies affiliated with Tenaris' controlling shareholder.[196]

Statutory Provisions: Tenaris allegedly violated the anti-bribery, books and records, and internal accounting control provisions of the FCPA.[197]

Payments: Confab allegedly paid approximately $10.4 million through a shell company to a Brazilian government official to influence Petrobras in the bidding process in order to maintain Confab's status as the sole domestic supplier.[198]

Benefit: The SEC alleged that Confab obtained more than $1 billion in contracts from Petrobras.[199]

Prosecuting Agency: SEC.

Resolution: Tenaris consented to a Cease-and-Desist Order with the SEC to resolve its FCPA charges and agreed to pay approximately $53.1 million in disgorgement and prejudgment interest, and a $25 million civil penalty, for a total of approximately $78.1 million. Tenaris also agreed to periodically self-report to the SEC on the status of its remediation and implementation of compliance programs during a two-year term. Tenaris received credit for its cooperation and remediation. Tenaris' cooperation included providing translated documents and witness testimony and encouraging parties outside the SEC's subpoena power to provide information to the agency. Tenaris' remediation included enhancing its internal controls and compliance programs, terminating its commercial agents in Brazil, and significantly reducing its use of commercial agents worldwide.[200]

Voluntary Disclosure/Other: Unknown (no credit given by the SEC for such disclosure).

Noteworthy: On May 17, 2011, Tenaris entered into a deferred prosecution agreement with the SEC for alleged FCPA violations involving bribes to Uzbek officials in the bidding process to supply pipelines to transport oil and natural gas. Tenaris agreed to pay $5.4 million in disgorgement and prejudgment interest, as well as a $3.5 million criminal penalty. That case was initiated by Tenaris' voluntary disclosure to the SEC of the conduct discovered during the company's internal investigation, and Tenaris was the first company to enter into a deferred prosecution agreement with the SEC since the agency announced in 2010 that it would use deferred prosecution agreements to encourage voluntary disclosures.[201]

196 SEC Press Release, *SEC Charges Global Steel Pipe Manufacturer with Violating Foreign Corrupt Practices Act* (June 2, 2022), https://www.sec.gov/news/press-release/2022-98.

197 *Id.*; *In re Tenaris S.A.*, Exchange Act Release No. 95030, SEC Order, at 19–22 (June 2, 2022).

198 *Id.* at 9-18.

199 *Id.* at 1.

200 *Id.* at 23-26, IV.B. and D.

201 SEC Press Release, *Tenaris to Pay $5.4 Million in SEC's First-Ever Deferred Prosecution Agreement* (May 17, 2011), https://www.sec.gov/news/press/2011/2011-112.html.

VII. FCPA Corporate Settlements

J. UOP LLC (Brazil and Algeria)

Conduct: Between 2010 and 2014, UOP (Honeywell) allegedly conspired to offer an approximately $4 million bribe to a then-high-ranking executive of Petrobras, Brazil's state-owned oil company.[202] Specifically, UOP (Honeywell) is alleged to have offered the bribe to secure improper advantages in order to obtain and retain business from Petrobras in connection with UOP's (Honeywell) efforts to win an approximately $425 million contract from Petrobras to design and build an oil refinery called Premium.[203] Additionally, the SEC has alleged that employees and agents of UOP's Belgian subsidiary bribed an Algerian government official to obtain and retain business with Sonatrach, the Algerian state-owned oil company.[204]

Statutory Provisions: The DOJ charged UOP (Honeywell) with conspiracy to violate the FCPA.[205]

Payments: UOP (Honeywell) allegedly conspired to offer an approximately $4 million bribe to the Petrobras executive, and employees of its Belgian subsidiary paid more than $75,000 in bribes to an Algerian government official.

Benefit: UOP (Honeywell) sought to win a large government contract to build an oil refinery in Brazil to obtain and retain business with an Algerian state-owned entity.

Prosecuting Agencies: DOJ, SEC, Brazil Controladoria-Geral da União, Brazil Ministério Público Federal, Brazil Advocacia-Geral de União.

Resolution: UOP (Honeywell) entered into a three-year deferred prosecution agreement with the DOJ, under which it will pay a criminal penalty of approximately $79 million to the DOJ.[206] The DOJ agreed to credit approximately $39.6 million of that criminal penalty against amounts UOP (Honeywell) agreed to pay to authorities in Brazil in connection with related proceedings.[207] In addition, UOP (Honeywell) will pay approximately $81 million in disgorgement and prejudgment interest as part of the resolution of the SEC investigation.[208]

Voluntary Disclosure/Other: UOP (Honeywell) did not receive voluntary disclosure credit because the DOJ's investigation was initiated before UOP (Honeywell) cooperated with the investigation.[209]

Noteworthy: The DOJ's information reveals the complicity of UOP's (Honeywell) senior management and the surprising lack of compliance in relation to the Brazilian bribery scheme. For example, UOP (Honeywell) senior management regularly referred to the Petrobras director in charge of the bidding process as "the King" and the Petrobras lobbyist as "the King's Assistant." [210]

---

202 DOJ Press Release, *Honeywell UOP to Pay Over $160 Million to Resolve Foreign Bribery Investigations in U.S. and Brazil* (Dec. 19, 2022), https://www.justice.gov/opa/pr/honeywell-uop-pay-over-160-million-resolve-foreign-bribery-investigations-us-and-brazil.

203 *Id.*

204 SEC Press Release, *SEC Charges Honeywell with Bribery Schemes in Algeria and Brazil* (Dec. 19, 2022), https://www.sec.gov/news/press-release/2022-230; *re Honeywell International Inc.*, Exchange Act. Release No. 96529, SEC Order, at 1 (Dec. 19, 2022).

205 *United States v. UOP, LLC, d/b/a Honeywell UOP*, No. 4:22-cr-00624, Information at 35 (S.D. Tex. Dec. 14, 2022), https://www.justice.gov/opa/press-release/file/1562356/download.

206 DOJ Press Release, *Honeywell UOP to Pay Over $160 Million to Resolve Foreign Bribery Investigations in U.S. and Brazil* (Dec. 19, 2022), https://www.justice.gov/opa/pr/honeywell-uop-pay-over-160-million-resolve-foreign-bribery-investigations-us-and-brazil.

207 *Id.*

208 *Id.*

209 *United States v. UOP, LLC, d/b/a Honeywell UOP*, No. 4:22-cr-00624, Deferred Prosecution Agreement, at 4(b) (S.D. Tex. Dec. 19, 2022), https://www.justice.gov/opa/press-release/file/1562351/download.

210 *United States v. UOP, LLC, d/b/a Honeywell UOP*, No. 4:22-cr-00624, Information at 20 (S.D. Tex. Dec. 14, 2022), https://www.justice.gov/opa/press-release/file/1562356/download.

Section VIII

Individual Enforcement Actions

VIII. Individual Enforcement Actions

A. FCPA and Anti-Money Laundering Cases involving Foreign Bribery Brought in 2022

1.Esteban Eduardo Merlo Hidalgo, Christian Patricio Pintado Garcia, Luis Lenin Maldonado Matute (Ecuador)

Names of Individuals: Esteban Eduardo Merlo Hidalgo, operator and controller of company (Intermediary Company) that was used to bribe Ecuadorian officials; Christian Patricio Pintado Garcia, President of Intermediary Company; Luis Lenin Maldonado Matute, General Manager of Intermediary Company.

Conduct: Defendants Merlo, Pintado, and Maldonado allegedly conspired, from 2013 through 2018, to pay bribes to Ecuadorian officials at the state-owned insurance companies, Seguros Sucre S.A. and Seguros Rocafuerte S.A., in order to obtain and retain business for themselves, an intermediary company, and reinsurance clients.[211] The defendants are further alleged to have laundered the funds earned from the bribery scheme using bank accounts in Florida.

Statutory Provisions: The DOJ charged the defendants with conspiracy to violate the FCPA; FCPA, conspiracy to commit money laundering, and engaging in transactions in criminally derived property.[212]

Payments: Pintado is alleged to have caused wire transfers totaling approximately $790,000. [213]

Benefit: In exchange for facilitating the bribery scheme, the defendants received a portion of the brokerage commission paid by reinsurance companies and also obtained business for themselves.[214] The defendants are alleged to have received approximately $2.13 million. [215]

Prosecuting Agency: DOJ.

Resolution: Merlo has made an initial court appearance; Pintado and Maldonado remain at large.[216]

2. Jhonnatan Teodoro Marin Sanguino (Venezuela)

Name of Individual: Jhonnatan Teodoro Marin Sanguino (Marin), Mayor of Guanta, Venezuela and owner of a company that maintained a bank account in Florida.

Conduct: Marin, along with two unidentified co-conspirators, engaged in a scheme, along with two unidentified co-conspirators, to obtain contracts with Petroleos de Venezuela (PDVSA), the Venezuelan state-owned and state-controlled oil company by paying bribes.[217] Marin used his position as Mayor to influence PDVSA officials to award contracts to his co-conspirator's companies.[218]

Statutory Provisions: The DOJ charged Marin with conspiracy to commit money laundering.

Payments: Approximately $1.2 million in bribes paid to Venezuelan officials.[219]

Benefit: Marin received wire transfers totaling approximately $365,000 from his co-conspirators.[220]

Prosecuting Agency: DOJ.

Resolution: Marin accepted a plea agreement in which he plead guilty to conspiracy to commit money laundering.[221] He may receive up to five years in prison and/or a fine of up to $250,000 or twice the amount of criminally derived property, whichever is greater, as well as criminal forfeiture and restitution.[222]

---

211 DOJ Press Release, *Three Men Charged in Ecuadorian Bribery and Money Laundering Scheme* (July 19, 2022), https://www.justice.gov/opa/pr/three-men-charged-ecuadorian-bribery-and-money-laundering-scheme.

212 *United States v. Merlo et al.*, No. 22-cr-20311, Indictment, at 4, 13–15 (S.D. Fla. July 15, 2022).

213 *Id.* at 8-12.

214 *Id.* at 8.

215 *Id.* at 8-12.

216 DOJ Press Release, *Three Men Charged in Ecuadorian Bribery and Money Laundering Scheme* (July 19, 2022), https://www.justice.gov/opa/pr/glencore-entered-guilty-pleas-foreign-bribery-and-market-manipulation-schemes.

217 *United States v. Marin*, No. 22-cr-20164, Indictment, at 4 (S.D. Fla. Apr. 21, 2022).

218 *Id.* at 4-5.

219 *Id.* at 5-6.

220 *Id.* at 6.

221 *United States v. Marin*, No. 22-cr-20164, Plea Agreement,at 2–4 (S.D. Fla. June 23, 2022).

222 *Id.*

VIII. Individual Enforcement Actions

3.Ralph Steinmann and Luis Fernando Vuteff (Venezuela)

Names of Individuals: Ralph Steinmann, financial asset manager from Switzerland; Luis Fernando Vuteff, financial asset manager from Argentina.

Conduct: Between December 2014 and August 2018, defendants Ralph Steinmann and Luis Fernando—financial asset managers from Switzerland and Argentina, respectively—along with others, allegedly engaged in a conspiracy to launder the proceeds of a $1.2 billion bribery scheme which targeted Venezuela's state-owned and state-controlled energy company.[223] The defendants allegedly agreed to create financial mechanisms to launder more than $200 million and open accounts on behalf of two Venezuelan officials so that they could receive their bribe payments.[224]

Statutory Provisions: The DOJ charged the defendants with conspiracy to commit money laundering.

Payments: $200 million in laundered funds.[225]

Benefit: None.

Prosecuting Agency: DOJ, Swiss government agencies.

Resolution: Vuteff has been arrested and extradited to the United States; Steinmann remains at large.

4. Lionel Hanst (Ecuador, Mexico, and Venezuela)

Name of Individual: Lionel Hanst, a former Vitol trader.

Conduct: Hanst engaged in a conspiracy to launder bribes from energy trading firm, Vitol, to officials at state-owned oil companies in Ecuador, Mexico, and Venezuela from 2014 through 2020.[226] Hanst utilized shell companies he controlled to wire funds to shell companies controlled by intermediaries, who then used the funds to bribe Ecuadorian, Mexican, and Venezuelan officials.

Statutory Provisions: The DOJ charged Hanst with conspiracy to commit money laundering.

Payments: Hanst wired approximately $19.9 million to bank accounts in the names of shell companies or foreign officials either as direct bribes or to be used as bribes.[227]

Benefit: Hanst kept approximately five percent of the money received from, and wired on behalf, of Vitol.[228]

Prosecuting Agency: DOJ.

Resolution: Hanst plead guilty to conspiracy to commit wire fraud and is currently awaiting sentencing.

223 DOJ Press Release, *Two Financial Asset Managers Charged in Alleged $1.2 Billion Venezuelan Money Laundering Scheme* (July 12, 2022), https://www.justice.gov/opa/pr/two-financial-asset-managers-charged-alleged-12-billion-venezuelan-money-laundering-scheme.

224 *Id.*

225 *Id.*

226 *United States v. Hanst*, No. 22-cr-00075, Information, at 19–31 (E.D.NY. Mar. 16, 2022).

227 *Id.* at 31.

228 *Id.* at 22.

VIII. Individual Enforcement Actions

5. Charles Hunter Hobson (Egypt)

Name of Individual: Charles Hunter Hobson (Hobson), former Vice President of a Pennsylvania coal company.

Conduct: From 2016 to 2020, Hobson is alleged to have engaged in a bribery scheme to obtain coal contracts.[229] As part of the bribery scheme, Hobson allegedly paid commissions to a sales intermediary who used a portion of the commissions to pay bribes to Egyptian officials at the state-owned and state-controlled Al Nasr Company for Coke and Chemicals.[230] The indictment further alleges that Hobson conspired to receive portions of the commissions paid to the sales intermediary as commissions.[231]

Statutory Provisions: The DOJ charged the Hobson with conspiracy to violate the FCPA, FCPA bribery, conspiracy to commit money laundering, money laundering, and conspiracy to commit wire fraud.

Payments: Hobson is alleged to have caused $4.8 million in commission payments to be made to a sales intermediary, with at least $450,000 allocated for bribes to members of the conspiracy and Egyptian officials.[232]

Benefit: Hobson's company allegedly obtained approximately $143 million in coal contracts from the Al Nasr Company and is alleged to have received $50,000 in kickbacks.[233]

Prosecuting Agency: DOJ.

Resolution: Hobson was arrested and made his initial court appearance March 31, 2022.[234]

229 DOJ Press Release, *Former Coal Company Vice President Arrested and Charged with Foreign Bribery, Money Laundering, and Wire Fraud* (Mar. 31, 2022), https://www.justice.gov/opa/pr/former-coal-company-vice-president-arrested-and-charged-foreign-bribery-money-laundering-and.

230 *Id.*

231 *United States v. Hobson*, No. 22-cr-00086, Indictment (W.D. Pa. Mar. 29, 2022).

232 *Id.* at 18, 28.

233 *Id.* at 4, 28.

234 DOJ Press Release, *supra* note 229.

VIII. Individual Enforcement Actions

6. Claudia Patricia Diaz Guillen, Adrian Jose Velasquez Figueroa, and Raul Gorrin Belisario (Venezuela)

Names of Individuals: Claudia Patricia Diaz Guillen (Diaz); former Venezuelan National Treasurer, her spouse Adrian Jose Velasquez Figueroa (Velasquez); and Venezuelan billionaire businessman Raul Gorrin Belisario (Gorrin).

Conduct: Between 2008 and 2017, Diaz and Velasquez allegedly accepted over $100 million in bribes from Gorrin, who secured the rights to engage in over $1 billion in foreign currency exchange transactions.[235] In the alleged scheme, Gorrin made corrupt payments to Venezuelan government officials, including Diaz, in order to secure an improper advantage in obtaining and retaining the rights to conduct foreign currency exchange transactions at favorable rates.[236] The defendants spent the bribe money on private jets and yachts and laundered funds through the US financial system, according to the DOJ.[237]

Statutory Provisions: The DOJ charged the defendants with conspiracy to violate the FCPA; conspiracy to commit money laundering, and money laundering.[238]

Payments: Over $100 million in bribes.

Benefit: Access to purchase bonds from the Venezuelan National Treasury at a favorable exchange rate.

Prosecuting Agency: DOJ.

Resolution: Diaz and Velasquez were each found guilty at trial of one count of conspiring to commit money laundering and one count of money laundering.[239] Velasquez was also convicted of a second count of money laundering. Diaz and Velasquez are currently engaged in post-trial proceedings, and face a maximum possible penalty of 20 years in prison on each count of conviction.[240] Gorrin was charged by indictment in August 2018 and remains charged in the superseding indictment as a co-conspirator in the same money laundering scheme. He is currently a fugitive residing in Venezuela.[241]

Voluntary Disclosure/Other: Unknown.

Noteworthy: Diaz's predecessor as National Treasurer of Venezuela, Alejandro Andrade, was a key witness at Diaz's trial. Andrade was sentenced in 2018 to 10 years in prison for accepting over $1 billion in bribes as part of the same scheme, as discussed in our FCPA/Anti-Corruption Developments: 2018 Year in Review. Andrade was released in 2022, after his sentence was reduced for cooperating with the DOJ.[242]

235 *United States v. Belisario et al.*, No. 9:18-cr-80160, Superseding Indictment, at 10–11 (S.D. Fla. Dec. 15, 2020), https://www.justice.gov/criminal-fraud/file/1346691/download.

236 *Id.*

237 DOJ Press Release, *Former Venezuelan National Treasurer and Husband Convicted in International Bribery Scheme (Dec. 15, 2022)*, https://www.justice.gov/opa/pr/former-venezuelan-national-treasurer-and-husband-convicted-international-bribery-scheme.

238 *United States v. Belisario*, No. 9:18-cr-80160, Superseding Indictment, at 25, 30, 32 (S.D. Fla. Dec. 15, 2020), https://www.justice.gov/criminal-fraud/file/1346691/download.

239 *Id.* at 32.

240 *Id.*

241 DOJ Press Release, *Former Venezuelan National Treasurer and Husband Convicted in International Bribery Scheme* (Dec. 15, 2022), https://www.justice.gov/opa/pr/former-venezuelan-national-treasurer-and-husband-convicted-international-bribery-scheme.

242 Vanessa Buschschlüter, *Venezuela corruption: Hugo Chávez's nurse guilty of money laundering* (Dec. 14, 2022), BBC, https://www.bbc.com/news/world-latin-america-63971269.

VIII. Individual Enforcement Actions

7. Daniel D'Andrea Golindano and Luis Javier Sanchez Rangel (Venezuela)

Names of Individuals: Daniel D'Andrea Golindano (D'Andrea) and Luis Javier Sanchez Rangel (Sanchez), former senior prosecutors in the Venezuelan Attorney General's Office.

Conduct: According to the DOJ, in or around 2017, D'Andrea and Sanchez investigated an individual for alleged corruption in connection with contracts with subsidiaries of PDVSA. D'Andrea and Sanchez allegedly conspired to accept bribes in exchange for not pursuing criminal charges against the individual and others.[243]

Statutory Provisions: Conspiracy to commit money laundering; engaging in monetary transactions in criminally derived property.[244]

Payments: D'Andrea and Sanchez allegedly conspired to receive at least $1 million in bribes from the subject of their investigation.[245]

Benefit: As a result of the bribe payment, the defendants allegedly used their official positions, duties, and responsibilities to cause the Venezuelan Attorney General's Office not to seek criminal charges against the subject of their investigation and others.[246]

Prosecuting Agency: DOJ.

Resolution: According to the DOJ, the defendants are in Venezuela and remain at large.[247]

8. Fernando Martinez Gomez (Ecuador)

Name of Individual: Fernando Martinez Gomez (Martinez), a dual citizen of the United States and Ecuador who worked as a financial advisor for Biscayne Capital, a Miami-based firm that provided financial services to clients primarily in Latin America.

Conduct: Between 2013 and 2018, Martinez allegedly coordinated with his co-conspirators to pay bribes to Seguros Sucre S.A. and Seguros Rocafuerte S.A., state-owned insurance companies in Ecuador, and helped launder and transfer the bribe funds through bank accounts in the United States. Martinez is also alleged to have conspired in an investment fraud that misappropriated Biscayne Capital client funds, which were purportedly invested for the development of real estate, to the above-referenced bribery schemes.[248]

Statutory Provisions: Conspiracy to commit money laundering; conspiracy to commit wire fraud.[249]

Payments: Martinez laundered and transferred $1,434,834.[250]

Benefit: The bribes were paid in exchange for the officials using their official positions to assist the co-conspirators in order to obtain and retain business.[251]

Prosecuting Agency: DOJ.

Resolution: On March 24, 2022, Martinez pleaded guilty to one count of money laundering and currently awaits sentencing.[252]

Noteworthy: Martinez's four co-conspirators were indicted in 2020 for the same money laundering and bribery scheme to secure contracts with Seguros Sucre. They each pleaded guilty and were sentenced to 36 to 72 months in prison. (For more details, see our 2020 FCPA/ Anti-Corruption Year in Review.)

---

243 DOJ Press Release, *Two Former Senior Venezuelan Prosecutors Charged for Receiving Over $1 Million in Bribes* (Mar. 8, 2022), https://www.justice.gov/opa/pr/two-former-senior-venezuelan-prosecutors-charged-receiving-over-1-million-bribes.

244 *United States v. D'Andrea*, No. 22-cr-20087, Information, at 2-7 (S.D. Fla. Mar. 8, 2022).

245 *Id.* at 5.

246 *Id.*

247 DOJ Press Release, *Two Former Senior Venezuelan Prosecutors Charged for Receiving Over $1 Million in Bribes* (Mar. 8, 2022), https://www.justice.gov/opa/pr/two-former-senior-venezuelan-prosecutors-charged-receiving-over-1-million-bribes.

248 *United States v. Martinez*, No. 22-cr-00065, Information, at 22–42 (E.D.N.Y. Mar. 24, 2022).

249 *Id.* at 44, 47.

250 *Id.* at 45.

251 *Id.*

252 Docket, *United States v. Martinez*, No. 22-cr-00065 (E.D.N.Y. Mar. 24, 2022).

VIII. Individual Enforcement Actions

9. Carlos Ramon Polit Faggioni (Ecuador)

Name of Individual: Carlos Ramon Polit Faggioni (Polit), the former Comptroller General of Ecuador.

Conduct: From around 2010 to 2016, Polit allegedly orchestrated with co-conspirators to solicit and accept bribes from Odebrecht S.A. (Odebrecht), a Brazil-based construction conglomerate, in exchange for his influence as Comptroller General to benefit the conglomerate's business in Ecuador. In or around 2015, Polit also allegedly received bribes from an Ecuadorian businessperson in exchange for supporting the businessperson and his company.[253]

Statutory Provisions: Conspiracy to commit money laundering; concealment money laundering; engaging in transactions in criminally derived property.[254]

Payments: Pollitt allegedly received more than $11 million in bribes from Odebrecht and approximately $500,000 in bribes from an Ecuadorian businessperson.[255]

Benefit: In exchange for the bribes, Polit allegedly used his official position and influence to prevent the imposition of large fines on Odebrecht by the comptroller's office and to assist the businessperson in obtaining contracts from a state-owned insurance company in Ecuador.[256]

Prosecuting Agency: DOJ.

Resolution: Polit pleaded not guilty in the Southern District of Florida. Trial is scheduled for May 2023.[257]

Noteworthy: With respect to the Odebrecht bribery scheme, Odebrecht and its subsidiary pleaded guilty on December 21, 2016, and agreed to pay between $3.5 billion and 5.4 billion in penalties to settle charges that the companies paid hundreds of millions of dollars in bribes to secure construction projects in 12 countries, including Ecuador. (For more details, see our 2016 FCPA Year in Review.)

10. Rixon Rafael Moreno Oropeza (Venezuela)

Name of Individual: Rixon Rafael Moreno Oropeza (Moreno), who controlled several companies in Venezuela.

Conduct: Moreno allegedly coordinated a money laundering and bribery scheme from 2015 to 2019. The DOJ alleged that Moreno laundered money through bank accounts in Florida and paid bribes to senior officials at Petropiar, S.A. (Petropiar), a joint venture between Venezuela's state-owned oil company PDVSA and a US oil company, to obtain procurement contracts from Petropiar.[258]

Statutory Provisions: Conspiracy to commit money laundering; concealment money laundering; international promotional money laundering; engaging in transactions involving criminally derived property.[259]

Payments: Moreno allegedly paid bribes totaling approximately $1 million via wire transfers to Petropiar officials.[260]

Benefit: Moreno is alleged to have received at least $30 million in payments on contracts from Petropiar. These payments were allegedly obtained by significantly inflating multimillion-dollar contracts.[261]

Prosecuting Agency: DOJ.

Resolution: This case was filed on August 24, 2022, in the Southern District of Florida and is ongoing.

---

253 DOJ Press Release, *Former Comptroller General of Ecuador Indicted for Alleged Bribery and Money Laundering Scheme* (Mar. 29, 2022), https://www.justice.gov/opa/pr/former-comptroller-general-ecuador-indicted-alleged-bribery-and-money-laundering-scheme.

254 *United States v. Polit*, No. 22-cr-20114, Indictment, at 3-9 (S.D. Fla. Mar. 24, 2022).

255 *Id.* at 7.

256 *Id.* at 4.

257 *United States v. Polit*, No. 22-cr-20114, Minute Entry, ECF No. 21 (S.D. Fla. July. 8, 2022).

258 DOJ Press Release, *Venezuelan Businessman Charged in Bribery and Money Laundering Scheme* (Aug. 24, 2022), https://www.justice.gov/opa/pr/venezuelan-businessman-charged-bribery-and-money-laundering-scheme.

259 *United States v. Moreno*, No. 22-20391, Indictment, at 3-10 (S.D. Fla. Aug. 24, 2022).

260 *Id.* at 5.

261 *Id.* at 6.

VIII. Individual Enforcement Actions

B. Significant Updates to FCPA and Anti-Money Laundering Cases Involving Foreign Bribery Brought in Prior Years

1. Jorge Cherrez Miño and John Luzuriaga Aguinaga (Ecuador)

Names of Individuals: Jorge Cherrez Miño (Cherrez), the manager, president, and director of a group of Folida-based investment fund companies; John Luzuriaga Aguinaga (Luzuriaga), the director of Ecuador's public police pension fund (ISSPOL). (Also discussed in our 2021 FCPA/Anti-Corruption Year in Review.)

Conduct: From around 2014 to 2020, Cherrez allegedly paid bribes to ISSPOL officials, including Luzuriaga, in exchange for their influence over ISSPOL's investment decisions. Luzuriaga conspired with Cherrez to launder the corrupt proceeds through Florida-based companies and bank accounts.[262]

Statutory Provisions: Cherrez and Luzuriaga were each charged with conspiracy to commit money laundering, promoting unlawful activity, and concealing proceeds of specified unlawful activity. Cherrez was also charged with violations of the FCPA.[263]

Payments: Cherrez allegedly paid $2.6 million in bribes to ISSPOL officials, including at least approximately $1,397,066 to Luzuriaga.

Benefit: Cherrez allegedly obtained contracts and other business advantages, including contracts to act as an investment advisor for an Ecuadorian public institution that is responsible for managing the financial contributions of Ecuadorian police officers toward their social security. According to the DOJ, Cherrez obtained approximately $65 million in profits from one aspect of the scheme.[264]

Prosecuting Agency: DOJ.

Resolution: Luzuriaga entered a plea agreement on February 2, 2022, in which he pleaded to one count of conspiracy to commit money laundering.[265] On December 21, 2022, Luzuriaga was sentenced to 58 months in prison, followed by three years of supervised release.[266] Cherrez remains at large.[267]

262 DOJ Press Release, *Two Men Charged in Ecuadorian Bribery and Money Laundering Scheme* (Mar. 2, 2021), https://www.justice.gov/opa/pr/two-men-charged-ecuadorian-bribery-and-money-laundering-scheme.

263 *United States v. Cherrez et al.*, No. 21-cr-20528, Indictment, at 3-16 (S.D. Fla. Oct. 14, 2021).

264 DOJ Press Release, *Two Men Charged in Ecuadorian Bribery and Money Laundering Scheme* (Mar. 2, 2021), https://www.justice.gov/opa/pr/two-men-charged-ecuadorian-bribery-and-money-laundering-scheme.

265 *United States v. Luzuriaga*, No. 21-cr-20528, Plea Agreement, (S.D. Fla. Feb. 2, 2022).

266 *United States v. Luzuriaga*, No. 21-cr-20528, Order Transferring Case to Fugitive Status (S.D. Fla. Dec. 21, 2022).

267 Order Transferring Case to Fugitive Status, *United States v. Cherrez*, No. 21-cr-20528 (S.D. Fla. Nov. 16, 2021).

VIII. Individual Enforcement Actions

2. Margaret Cole, Debra Parris, and Dorah Mirembe (Uganda)

Names of Individuals: Margaret Cole, a US citizen and the former executive director of an Ohio-based international adoption agency; Debra Parris, a US citizen and employee of the adoption agency; Dorah Mirembe, a Ugandan citizen who provided adoption-related services to the adoption agency. (Also discussed in our 2020 FCPA/Anti-Corruption Year in Review.)

Conduct: Parris engaged in a scheme to pay bribes to Ugandan officials to corruptly procure the adoption of Ugandan children by American families, including children who had been returned to their biological parents and not properly determined to be orphaned. Mirembe allegedly collaborated with Parris on this scheme.[268] In addition, Cole and Parris caused a Polish child to be transferred to Parris's relatives, who were not eligible for intercountry adoption and who physically abused the child. Parris and Cole agreed to defraud US authorities to conceal the scheme and continue profiting from adoptions. Cole also made a false statement to the Polish authority responsible for intercountry adoptions regarding the child's transfer.[269]

Statutory Provisions: With respect to the Uganda scheme, Parris and Mirembe were each charged with conspiracy to violate the FCPA and commit visa fraud, conspiracy to commit mail fraud and wire fraud, conspiracy to commit money laundering, and violations of the FCPA. Parris was also charged with mail fraud. In connection with the Poland scheme, Parris and Cole were each charged with conspiracy to defraud the United States. Cole was also charged with making false statements to a US accrediting entity and Polish authority.[270]

Payments: Unknown.

Benefit: The adoption agency received more than $900,000 stemming from the Uganda scheme.[271]

Prosecuting Agency: DOJ.

Resolution: Parris pleaded guilty and entered a plea agreement on November 16, 2021.[272] On November 4, 2022, she was sentenced to one year and one day in prison, followed by three years of supervised release. In addition, Parris was also ordered to pay a $10,000 fine and $118,197 restitution.[273] Cole entered a plea agreement on February 4, 2022.[274] She was later sentenced to three months in prison, followed by three years of supervised release, and ordered to pay a $7,500 fine.[275] Mirembe remains at large.[276]

---

268 DOJ Press Release, *Three Individuals Charged with Arranging Adoptions from Uganda and Poland Through Bribery and Fraud* (Aug. 17, 2020), https://www.justice.gov/opa/pr/three-individuals-charged-arranging-adoptions-uganda-and-poland-through-bribery-and-fraud.

269 DOJ Press Release, *Former Executive Director of International Adoption Agency Pleads Guilty to Fraudulent Adoption Scheme* (Feb. 4, 2022), https://www.justice.gov/opa/pr/former-executive-director-international-adoption-agency-pleads-guilty-fraudulent-adoption.

270 *United States v. Cole*, No. 20-cr-00424, Indictment, at 74, 78, 80, 84, 87, 89, 91, 96, 98 (N.D. Ohio Aug. 13, 2020).

271 DOJ Press Release, *Three Individuals Charged with Arranging Adoptions from Uganda and Poland Through Bribery and Fraud* (Aug. 17, 2020), https://www.justice.gov/opa/pr/three-individuals-charged-arranging-adoptions-uganda-and-poland-through-bribery-and-fraud.

272 *United States v. Parris*, No. 20-cr-00424 Plea Agreement (N.D. Ohio Nov. 17, 2021).

273 Adam Ferrise, *Ex-Strongsville adoption agency employee sentenced for schemes to bribe Ugandan judges, lying to adopt Polish girl, who was raped* (Nov. 4, 2022), THE CLEVELAND, https://www.cleveland.com/court-justice/2022/11/ex-strongsville-adoption-agency-employee-sentenced-for-schemes-to-bribe-ugandan-judges-lying-to-adopt-polish-girl-who-was-raped.html?outputType=amp.

274 *United States v. Cole*, No. 20-cr-00424, Plea Agreement (N.D. Ohio May 19, 2022).

275 *United States v. Cole*, No. 20-cr-00424, Judgment (N.D. Ohio Feb. 4, 2022).

276 DOJ Press Release, *Former Executive Director of International Adoption Agency Pleads Guilty to Fraudulent Adoption Scheme* (Feb. 4, 2022), https://www.justice.gov/opa/pr/former-executive-director-international-adoption-agency-pleads-guilty-fraudulent-adoption.

VIII. Individual Enforcement Actions

3. Cary Yan and Gina Zhou (Marshall Islands)

Names of Individuals: Cary Yan, the former president and chairman of a non-governmental organization based in New York; Gina Zhou, the former executive assistant for Cary Yan.

Conduct: Yan and Zhou are alleged to have conspired with elected officials of the Republic of the Marshall Islands (RMI) in connection with a bribery and money laundering scheme from 2016 through 2020. As part of the scheme, the defendants allegedly paid cash bribes to the RMI officials by physically using the NGO's headquarters in New York in exchange for supporting legislation.[277]

Statutory Provisions: Conspiracy to violate the FCPA; violation of the anti-bribery provisions of the FCPA; conspiracy to commit international money laundering; international money laundering.[278]

Payments: Yan and Zhou allegedly offered to pay at least $39,000 to RMI officials. Of these, $10,000 was not received because a foreign exchange company did not execute the wire transfer.[279]

Benefit: The defendants had RMI officials support and pass legislation that would benefit the business interests of the defendants and their associates.[280]

Prosecuting Agency: DOJ.

Resolution: Yan and Zhou were indicted on August 10, 2020, in the Southern District of New York. They were arrested in Thailand on November 17, 2020, and extradited to the United States on September 2, 2022, pursuant to a bilateral extradition treaty. On December 1, 2022, the defendants pleaded guilty to one count of conspiracy to violate the anti-bribery provisions of the FCPA. They each face a maximum penalty of five years in prison.[281]

4. Roger Ng (Malaysia and Abu Dhabi)

Name of Individual: Ng Chong Hwa, also known as Roger Ng, a former managing director of Goldman Sachs and head of investment banking for Goldman Malaysia. (Also discussed in our 2021 FCPA/Anti-Corruption Year in Review.)

Conduct: Between 2009 and 2014, Ng participated in a bribery and money laundering scheme to misappropriate funds from the Malaysian state-owned and state-controlled 1MDB fund which was created to pursue investment and development projects for the economic benefit of Malaysia.[282] Ng, along with others, misappropriated and diverted funds raised for 1MDB using a co-conspirator's close relationship with government officials in Malaysia and Abu Dhabi, and bribe payments to obtain and retain business for Goldman Sachs.[283]

Statutory Provisions: The DOJ charged Ng with conspiracy to violate the FCPA and conspiracy to commit money laundering.

Payments: Ng and his co-conspirators paid over $600 million in bribes to government officials.[284]

Benefit: Ng and his co-conspirators misappropriated more than $2.7 billion from 1MDB. As a result of the scheme, Ng received $35 million, and Goldman Sachs received approximately $600 million in fees and revenues.

Prosecuting Agency/Agencies: DOJ, SEC, and Malaysian, Singaporean, and Luxembourgian government agencies.

Resolution: Ng was found guilty on all counts by a jury on April 8, 2022, following a seven-week trial.[285] Ng is scheduled to be sentenced in March 2023.

---

277 DOJ Press Release, *Former Heads of New York-Based Non-Governmental Organization Charged with Bribing Elected Officials of the Marshall Islands Extradited to the United States from Thailand* (Sept. 2, 2022), https://www.justice.gov/opa/pr/former-heads-new-york-based-non-governmental-organization-charged-bribing-elected-officials.

278 *United States v. Yan*, No. 20-cr-00402, Indictment, at 18, 23, 25, 27, 30 (S.D.N.Y. Aug. 10, 2020).

279 *Id.* at 11-17.

280 *Id.*

281 DOJ Press Release, *Former Heads of New York-Based Non-Governmental Organization Plead Guilty to Conspiring to Bribe Elected Officials of the Marshall Islands* (Dec. 1, 2022), https://www.justice.gov/opa/pr/former-heads-new-york-based-non-governmental-organization-plead-guilty-conspiring-bribe.

282 DOJ Press Release, *Former Goldman Sachs Investment Banker Convicted in Massive Bribery and Money Laundering Scheme* (Apr. 8, 2022), https://www.justice.gov/usao-edny/pr/former-goldman-sachs-investment-banker-convicted-massive-bribery-and-money-laundering.

283 *Id.*

284 *United States v. Ng*, No. 18-cr-00538, Indictment, at 17 (E.D.N.Y. Dec. 20, 2021).

285 DOJ Press Release, *Former Goldman Sachs Investment Banker Convicted in Massive Bribery and Money Laundering Scheme* (Apr. 8, 2022), https://www.justice.gov/usao-edny/pr/former-goldman-sachs-investment-banker-convicted-massive-bribery-and-money-laundering.

VIII. Individual Enforcement Actions

5. Asante Berko (Ghana)

Name of Individual: Asante Berko, a US citizen and former executive at Goldman Sachs's London-based subsidiary. (Also discussed in our 2021 FCPA/Anti-Corruption Year in Review and 2020 FCPA/Anti-Corruption Year in Review).

Conduct: Berko was arrested in London on November 3, 2022 on charges stemming from a bribery scheme in Ghana.[286] The DOJ's 2020 indictment was unsealed on the day of his arrest.[287] The DOJ alleged that between 2014 and 2017, Berko arranged for his firm's client, a Turkish energy company, to funnel money through a Ghana-based intermediary to pay illicit bribes to a to Ghanaian government officials in order to gain their approval of an electrical power plant project.[288] The DOJ further alleged that Berko personally paid bribes to members of the Ghanaian parliament and other government officials.[289] Berko allegedly took deliberate measures to prevent his employer from detecting his bribery scheme, including misleading his employer's compliance personnel about the true role and purpose of the intermediary company.[290]

Statutory Provisions: The DOJ charged Berko with conspiracy to violate the FCPA, violating the FCPA, and conspiracy to commit money laundering.[291]

Payments: At least $2.5 million in bribes for the power plant approval and more than $260,000 in bribes to other government officials.[292]

Benefit: Helping client secure a deal to construct a power plant.

Prosecuting Agencies: DOJ, SEC.

Resolution: The criminal case is still pending. Last year, without admitting or denying the SEC's allegations, Berko consented to the entry of a final judgment that ordered him to disgorge $275,000 in ill-gotten gains plus $54,163.92 in prejudgment interest.[293] The judgment also permanently enjoins Berko from violating Section 30A of Securities Exchange Act of 1934 (the anti-bribery provision of the FCPA).[294]

Voluntary Disclosure/Other: Unknown.

---

286 Patricia Hurtado, *Ex-Goldman Banker Arrested Over Alleged Ghana Bribery Scheme* (Nov. 9, 2022), BLOOMBERG, https://www.bloomberg.com/news/articles/2022-11-09/ex-goldman-banker-charged-with-paying-bribes-to-ghana-officials.

287 *Id.*

288 *United States v. Kwaku Berko*, No. 1:20-cr-00328, Indictment, at 13 (E.D.N.Y. Aug. 26, 2020), https://www.justice.gov/criminal-fraud/file/1561556/download.

289 *Id.* at 19.

290 *Id.* at 52.

291 *Id.* at 64, 67, 69.

292 SEC Press Release, *SEC Obtains Final Judgment Against Former Executive of Financial Services Company* (June 23, 2021), https://www.sec.gov/litigation/litreleases/2021/lr25121.html.

293 *SEC v. Asante K. Berko*, No. 1:20-cv-01789, Final Judgment, at 3-4 (E.D.N.Y. June 23, 2021), https://www.sec.gov/litigation/litreleases/2021/judgment25121.pdf.

294 *Id.*

Section IX

About Steptoe

IX. About Steptoe

In over 100 years of practice, Steptoe has earned an international reputation for vigorous representation of clients before governmental agencies, successful advocacy in litigation and arbitration, and creative and practical advice in structuring business transactions.

The firm is particularly noted for its capabilities in white-collar defense and government investigations and enforcement including anti-corruption and economic sanctions, fraud, money laundering, criminal antitrust, and tax investigations, examinations, and enforcement actions.

Steptoe has more than 500 lawyers and other professional staff across offices in Beijing, Brussels, Chicago, Hong Kong, London, Los Angeles, New York, San Francisco, and Washington.

Our FCPA Practice

Over the years, Steptoe has assisted many companies – US and international, their foreign affiliates, and individuals – in effectively managing risks arising under the Foreign Corrupt Practices Act (FCPA) and other anti-corruption laws in their trade and investment activities.

Our practice encompasses both preventive and remedial services as well as the representation of companies and individuals before key enforcement agencies. We represent companies before the Department of Justice (DOJ), the Securities and Exchange Commission (SEC), World Bank Sanctions Board, and other bodies, and have performed special board committee investigations and internal investigations for companies, boards of directors, audit committees, and special litigation committees.

In serving our clients' needs in the anti-corruption area, Steptoe fields a deep and broad team that includes resources from senior partners to junior associates, all of whom are focused on anti-corruption matters as the principal (and in some cases exclusive) emphasis of their practice. In addition to their experience in private practice, our lawyers' governmental experience includes service in the DOJ, SEC, and the Permanent Subcommittee on Investigations of the US Congress.

What Others Say

"Steptoe's FCPA record is impressive."
Global Investigations Review, GIR Top 30, 2022

"Established FCPA practice, adept at conducting internal investigations and crafting compliance programs."
Chambers USA 2022, FCPA

"A team of 'smart, practical lawyers with useful prior government experience'. It acts for high-profile executives and multinational corporations, supporting international clients from its wide international network of offices."
Legal 500 USA 2022, Corporate Investigations And White-Collar Criminal Defense: Advice To Corporates

"Clients turn to Steptoe for sophisticated advice in the most complex sanctions and bribery cases."
Global Investigations Review, GIR Top 30, 2022

Further Information

Visit our FCPA Practice page online for further information about our experience and our team members, read our previous FCPAYear in Review Reports, and to find out about schedule of related webinars.

For instant updates on key legal and enforcement developments, subscribe to Investigations & Enforcement blog that offers original, up-to-date and practical insights from our highly experienced lawyers from across the globe. We offer insights drawn from our experience efficiently investigating, favorably resolving (often confidentially and without charges), and when necessary litigating sensitive matters on behalf of corporate and individual clients.

IX. About Steptoe

Main Editors

Lucinda Low
Washington, DC
Partner

Iris E. Bennett
Washington, DC
Partner

Rachel Peck
Washington, DC
of Counsel

Carlos Grover
Washington, DC
of Counsel

The Editors are grateful to colleagues in US, Hong Kong, London and Brussels for their valuable contributions to the Report.

Contributors

Jacob Bell, Associate
Brigida Benitez, Partner
James Brochin, Partner
Ali Burney, Partner
Dwight Draughon, Partner
Joshua Dupre, Associate
Julia Gatto, Partner
Thomas Greco, International Associate
Zoey Hong, Law Clerk
Meredith Lewis, Associate
Patrick Linehan, Partner
Samantha McCarthy, Associate
Alexandra Melia, Partner
Nailah Ogle, Associate
Zoe Osborne, Partner
Ryan Poscablo, Partner
James Purce, Associate
Zanda Romata, Senior Associate
Troy Shepard, Associate
Nicholas Silverman, Partner
Kane Smith, Associate
Charles Whiddington, Partner
Wendy Wysong, Partner
Yu Yuasa, International Associate

Steptoe

For more information about Steptoe, the partners and their qualifications, see **www.steptoe.com**.

Where case studies are included, results achieved do not guarantee similar outcomes for other clients. Attorney advertising. Images of people may feature current or former lawyers and employees at Steptoe or models not connected with the firm.