



# FCPA/Anti-Corruption Developments: 2020 Year in Review

January 2021

Step toe FCPA, White-Collar and International Investigations Practices

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# Step toe

## FCPA/Anti-Corruption Developments: 2020 Year in Review

Step toe FCPA, White-Collar and International Investigations Practices  
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### Introduction

Despite the challenges presented by the global COVID-19 pandemic, US Foreign Corrupt Practices Act (FCPA) enforcement authorities announced several high-profile individual and corporate enforcement matters throughout 2020, including several coordinated resolutions with foreign authorities as well as new domestic players. Overall, while the number of enforcement actions was slightly down from 2019 (34 total enforcement actions, 23 of which were brought by the Department of Justice (DOJ) and 11 of which were brought by the Securities and Exchange Commission (SEC)), 2020 was a record-breaking year in terms of corporate penalties, which totaled over \$6 billion (with approximately half of that, \$3.09 billion, ultimately payable to the US Treasury).

The biggest corporate stories of the year were mega-resolutions with Airbus SE (Airbus) and Goldman Sachs Group Inc. (Goldman Sachs), both involving coordinated enforcement activity across multiple enforcement agencies and resulting in billions in fines and penalties to authorities in the United States, France, United Kingdom, Malaysia, Singapore, and Hong Kong. For the first time in 2020, the US Commodity Futures Trading Commission (CFTC) also issued an enforcement order involving foreign corruption, finding that energy and commodities trading firm Vitol Inc. (Vitol) engaged in fraudulent and manipulative conduct in Brazil, Ecuador, and Mexico.

Enforcement against individuals slowed noticeably in 2020 following the COVID-19 pandemic, with new or unsealed charges against 18 individuals in 2020 (15 of which were brought by DOJ). These numbers are down from 2019's actions against 27 individuals, and include a number of actions which have been sealed for one or more years.

A significant Supreme Court decision and other policy developments also kept FCPA and anti-corruption experts on their toes this year. As previewed in our [2019 FCPA/Anti-Corruption Year in Review](#), in *Liu v. SEC* the Supreme Court resolved a key question left open in *Kokesh v. SEC*, determining that some forms of disgorgement could constitute permissible equitable relief (and thus is not a penalty *per se*) subject to certain conditions. We also saw updates to the *FCPA Resource Guide* and to DOJ's Corporate Compliance Program Guidance this year, as well as the first DOJ Opinion Procedure Release since 2014.

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Although there were headline-making multi-jurisdictional enforcement against Airbus and Goldman Sachs, an October 2020 Transparency International report lamented a perceived slowdown in anti-corruption enforcement among G20 countries (calling out China, Japan, the Netherlands, South Korea, Hong Kong, Canada, India, and Mexico as having the worst enforcement track records). COVID-19 restrictions and delays also resulted in the first trial in the Swiss FIFA corruption probe to be time-barred. Nonetheless, there were some notable developments including: in Austria (which saw its largest corruption trial in post-war history), Spain (where prosecutors launched an investigation into Spain's former king), France (which, in addition to the Airbus investigation, saw the trial of former president Nicolas Sarkozy for corruption and influence-peddling charges), and Peru (which continued active enforcement, including against former prime minister Yehude Simon Munaro). Investigation and enforcement by international financial institutions, including the World Bank, also remained active (though on a modified basis and with the increased use of technology in light of the COVID-19 pandemic).

In 2021, we will be keeping an eye on possible changes to FCPA enforcement policies under the Biden Administration. We may begin to see the impact of COVID-19 on the investigations pipeline. An increased focus on enforcement of securities law violations also seems likely, as enforcement authorities have indicated that the pandemic environment is "ripe" for such violations and market manipulation. Legislation giving the SEC authority to seek disgorgement as a legal remedy in federal court and doubling the statute of limitations for scienter-based securities violations (such as FCPA anti-bribery violations, 10(b) fraud claims, and others) may also result in increased prosecutions. Furthermore, companies in 2021 should be prepared to identify and address any areas of heightened anti-corruption risks created by COVID-19-related circumstances and to revisit any COVID-19-related changes to their compliance efforts as the current situation continues to evolve in 2021. Finally, we expect to see a reinvigorated international agenda in the anti-corruption arena, including in multilateral fora.



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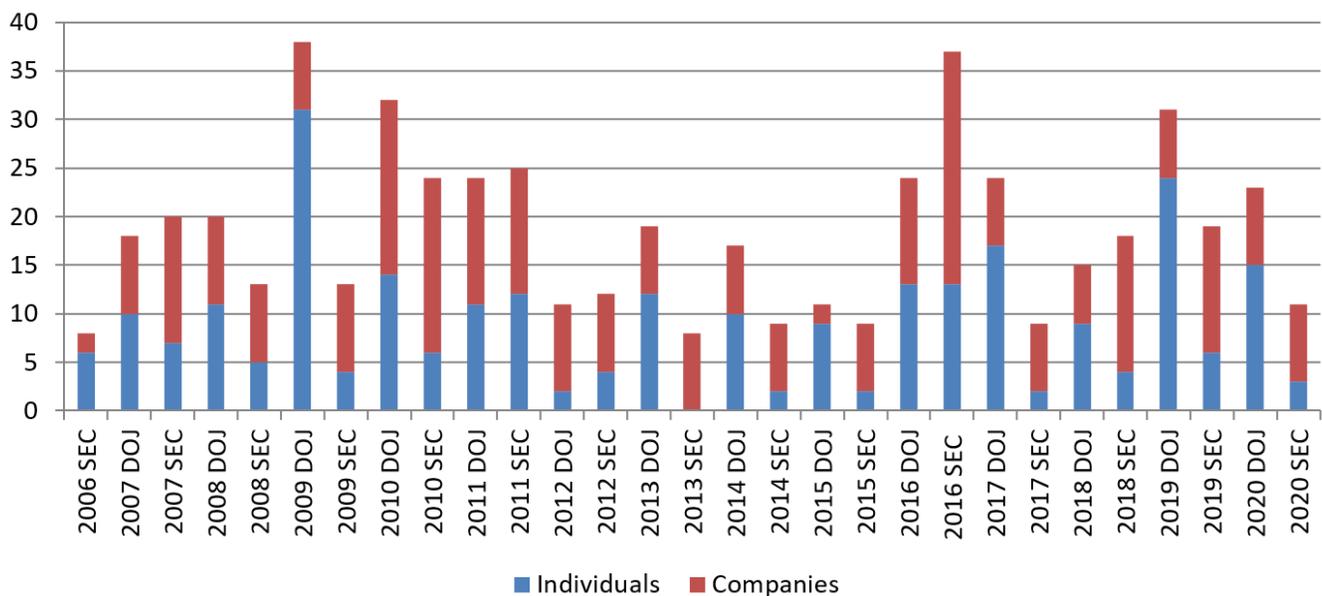
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## I. Enforcement Statistics and Trends

### A. Number of Enforcement Actions

With 34 reported FCPA-related actions against corporations and individuals, 2020 saw significantly fewer numbers of enforcement actions than the 50 brought in 2019.<sup>2</sup> Despite the COVID-19 pandemic, however, enforcement activity levels were more in line with such levels across a broader range of recent years. In 2020, the DOJ brought 23 enforcement actions against individuals and companies, while it brought 31 in 2019 and 15 in 2018. The SEC, on the other hand, brought 11 enforcement actions in 2020 as compared to 19 enforcement actions in 2019 and 18 in 2018.<sup>3</sup>

Number of Reported Prosecutions, 2006-2020



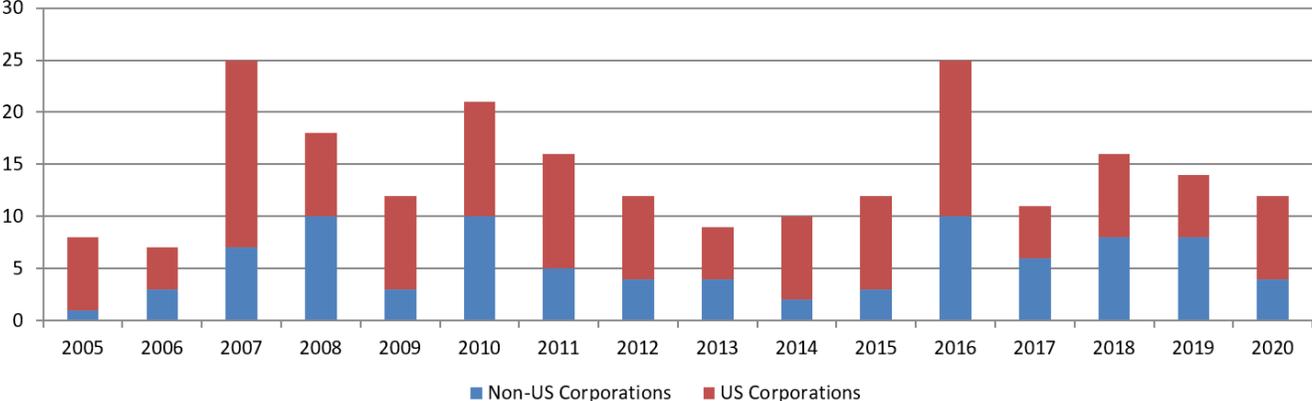
Twelve companies faced charges from the DOJ, the SEC, or both in 2020. This is a slight decrease from 2019, in which 14 companies faced charges, and 2018, in which 16 companies faced charges. These companies were in the pharmaceutical, health

<sup>2</sup> Step toe’s methodology takes into account charges brought in 2020 or unreported prior to 2020. 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 the 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, or charges of manipulative and deceptive conduct relating to foreign corruption brought by the CFTC), although we discuss such cases herein in Sections IV.B.4 and V.M, *infra*.

<sup>3</sup> The DOJ and SEC brought a total of 16 corporate FCPA enforcement actions (counting actions against more than one member of the same corporate family, such as those against Novartis AG (Novartis) and Goldman Sachs Group Inc. (Goldman Sachs) and their subsidiaries, as a single action). The 16 corporate enforcement actions include four parallel enforcement actions by the DOJ and SEC against the same corporate groups (Novartis, Herbalife Nutrition Ltd. (Herbalife), J&F Investimentos S.A. (J&F), and Goldman Sachs), four separate actions by the DOJ (Airbus SE (Airbus), Sargeant Marine Inc. (Sargeant Marine), Beam Suntory Inc. (Beam Suntory), and Vitol Inc. (Vitol)), and four separate actions by the SEC (Alexion Pharmaceuticals Inc. (Alexion), Eni S.p.A. (Eni), Cardinal Health, Inc. (Cardinal Health), and World Acceptance Corporation (World Acceptance)), and do not include a declination under the DOJ FCPA Corporate Enforcement Policy (World Acceptance).

care, energy, financial services, food and agriculture, and construction industries (among others). The DOJ and SEC brought four parallel corporate enforcement actions, compared to six in 2019 and four in 2018. Eight of the 12 companies facing charges in 2020 were US-based corporations, while four were foreign firms, potentially suggesting that the perceived gap between enforcement actions against US and foreign-based corporations is closing:<sup>4</sup>

### FCPA Actions Against US and Non-US Companies, 2005-2020



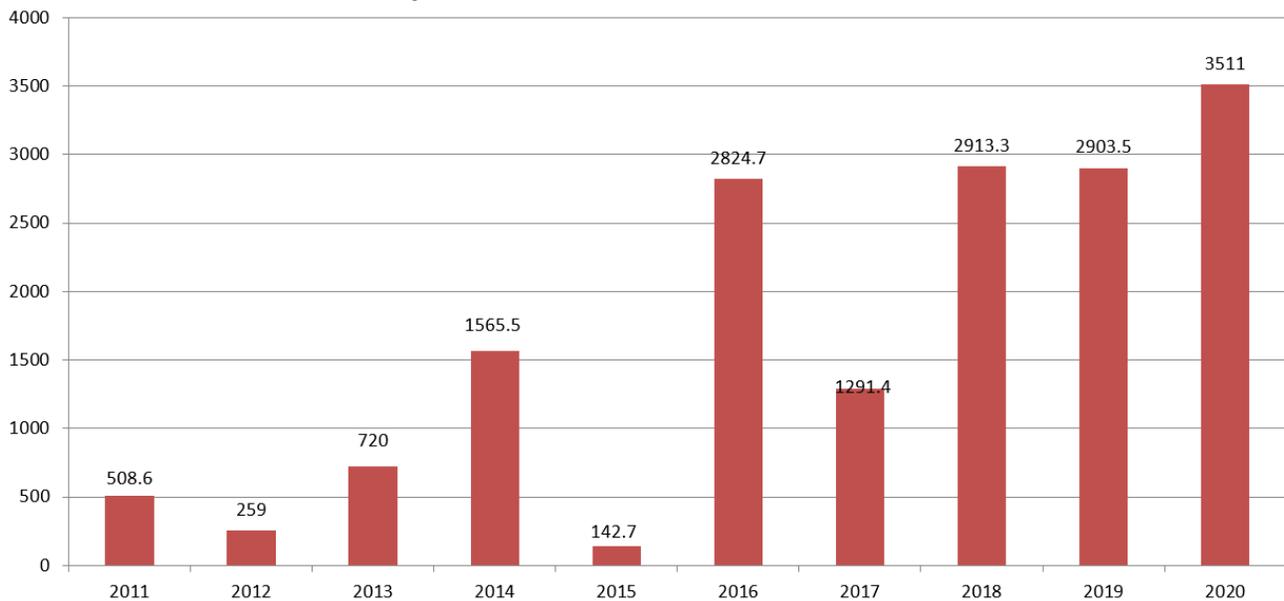
In total, US enforcement authorities brought or unsealed charges against 18 individuals in 2020. Of these, the DOJ brought 15 enforcement actions, while the SEC brought three.<sup>5</sup> This number represents a marked decrease from the 30 cases brought in 2019, particularly given that this number includes a number of cases from earlier years that were unsealed in 2020 in connection with enforcement activity against Sargeant Marine.

The DOJ also issued one formal declination this year under the FCPA Corporate Enforcement Policy, in addition to the corporate enforcement actions noted above, issued in parallel with a related SEC action (*World Acceptance*).<sup>6</sup>

<sup>4</sup> For purposes of Steptoe’s count, the US-based companies include Alexion, Cardinal Health, World Acceptance, Herbalife, Sargeant Marine, Goldman Sachs, Beam Suntory, and Vitol. Foreign-based companies include Airbus, Novartis, Eni, and J&F.  
<sup>5</sup> For the purposes of Steptoe’s count, the SEC’s charges against Joesley and Wesley Batista, brought as part of the case against J&F, were also counted as separate charges against these individuals.  
<sup>6</sup> As noted above, for the purpose of these statistics we have considered this case to be an SEC enforcement action only (and not a parallel case).

## B. Monetary Sanctions<sup>7</sup>

FCPA Corporate Fines 2011-2020 (Millions USD)



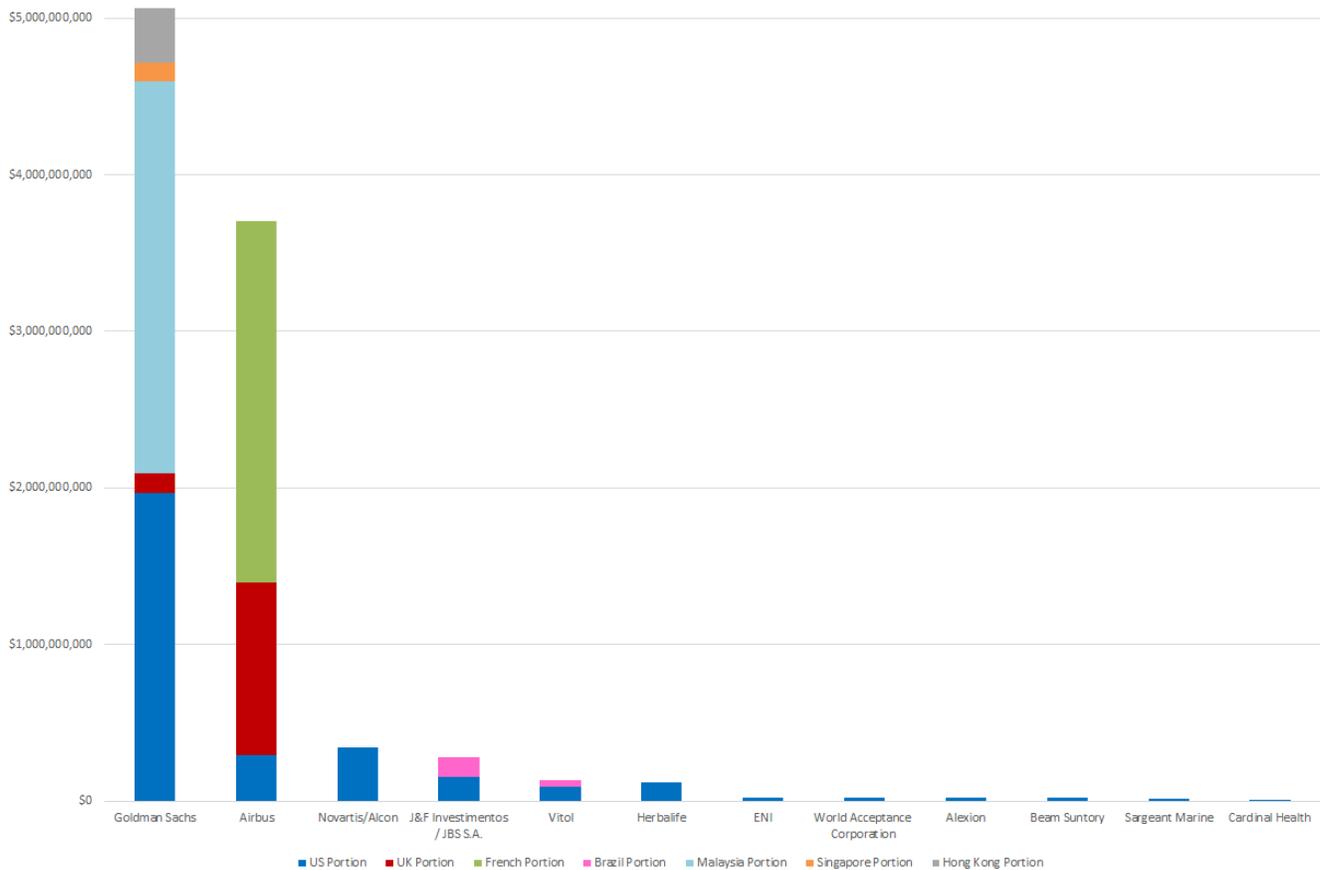
The aggregate dollar value of monetary sanctions imposed by the DOJ and SEC<sup>8</sup> for FCPA-related offenses in 2020 was just over \$6 billion with approximately half of that, approximately \$3 billion,<sup>9</sup> ultimately payable to the US Treasury. Thus, 2020 saw record total corporate fines despite lower overall enforcement levels, with two enforcement actions (*Airbus* and *Goldman Sachs*) accounting for the majority of penalties imposed.

<sup>7</sup> All values are reported in US Dollars, unless otherwise specified.

<sup>8</sup> For purposes of these statistics, Steptoe has not included disgorgement and penalties payable to the CFTC for non-FCPA charges in a matter related to *Vitol*, nor has it included ITAR-related penalties payable in the matter related to *Airbus*.

<sup>9</sup> 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. For *Sargeant Marine*, we have based this number on the reduced total fine of \$16.6 million based on Sargeant Marine's inability to pay a higher fine.

# 2020 Corporate Enforcement Actions



Several enforcement actions from 2020 involved parallel or sequential enforcement with multiple foreign authorities, resulting in further penalties payable to foreign authorities. This included *Airbus*, *Goldman Sachs*,<sup>10</sup> and *Vitol*. In addition, in *J&F*, US enforcement authorities credited up to 50% of the criminal penalty owed to the United States (approximately \$128 million) based on a 2017 resolution with Brazilian authorities.<sup>11</sup>

There were also several other notable examples of international cooperation in 2020. For example, with respect to *Novartis*, US authorities acknowledged assistance from authorities in Switzerland and the United Kingdom. US authorities also acknowledged assistance from Italian authorities in *Eni*, and Brazilian authorities in *Sargeant Marine*.

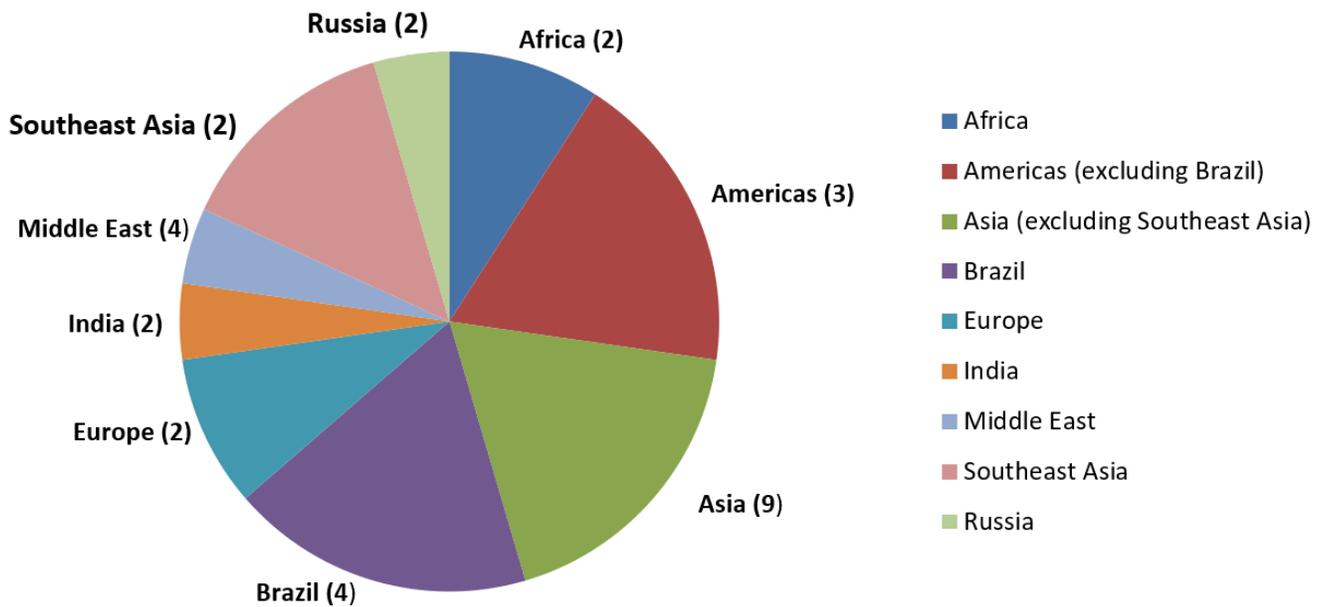
## C. Geography of Conduct

Consistent with past years, FCPA corporate enforcement activity in 2020 was based on conduct that occurred in diverse jurisdictions. This included a

<sup>10</sup> In July 2020, Goldman agreed to pay Malaysian authorities approximately \$2.5 billion in fines, approximately \$606 million of which was credited towards the US penalty.  
<sup>11</sup> In 2017, J&F agreed to pay Brazilian authorities approximately \$3.2 billion in corruption-related fines, approximately \$128 million of which was credited towards the US penalty.

continued focus on Brazil and Asia.<sup>12</sup> As noted below, prosecutions involving bribery of executives of Brazil’s state-controlled oil company, Petróleo Brasileiro S.A. – Petrobras (Petrobras) continue to be an area of US enforcement focus.

## 2020 Locus of Corrupt Conduct Cited in Corporate Cases



### D. Nature of Conduct

Enforcement actions brought in 2020 involved a variety of conduct. Alleged payment schemes included, for example: providing luxury travel or sponsorships (*Airbus*, *Novartis*, *Cardinal Health*, and *Herbalife*), payments through third parties (*Airbus*, *Alexion*, *World Acceptance*, and *Beam Suntory*), payments through shell companies (*J&F* and *Vitol*), and sham consultancies and contracts (*Novartis*, *Eni*, *Sargeant Marine*, and *Vitol*), among others.

Operation Car Wash continues to give rise to US corporate enforcement activity. Of the 12 enforcement actions brought against corporations in 2020, three (*Sargeant Marine*, *J&F*, and *Vitol*) involved allegations of bribery of executives of Brazil’s state-controlled oil company, Petrobras.

As in prior years, the SEC in 2020 continued to rely on the FCPA’s accounting provisions. Of the eight corporate enforcement actions pursued by the SEC in 2020, all included books and records and internal control charges, while three (*World Acceptance*, *J&F*, and *Goldman Sachs*) also included civil anti-bribery charges. This was a decrease from 2019, in which seven of the 13 corporate enforcement actions brought by the SEC included anti-bribery charges.

<sup>12</sup> Many enforcement actions are listed as occurring in more than one location due to the global nature of the underlying conduct. For example, conduct alleged in *Novartis* (Europe, Asia, and Southeast Asia), *Alexion* (Russia, Middle East, Brazil, and Americas), *Sargeant Marine* (Brazil and Americas), *Goldman Sachs* (Southeast Asia and Middle East), and *Vitol* (Brazil and Americas) all crossed regional boundaries. Our methodology counts only one enforcement action per region where misconduct occurred in more than one country per region. In *Novartis*, for example, conduct occurred in Greece, China, South Korea, and Vietnam. Accordingly, our methodology treats this misconduct as occurring in three regions reflected in the graph (Europe, Asia, and Southeast Asia).

## **E. Monitors**

In a notable shift away from the increase in monitors seen in 2019 (in which four monitorships were imposed), no monitors were imposed in 2020 despite the resolution of several major “grand corruption” cases. This is perhaps a reflection of the DOJ’s 2018 guidance on the use of corporate monitors, which sets forth multiple factors in evaluating the “potential benefits” of a monitor, including (1) whether the underlying conduct involved the manipulation of internal controls; (2) the pervasiveness of the misconduct and involvement of senior management; (3) improvements to the corporate compliance program and internal controls; and (4) whether compliance improvements have been tested and demonstrate that conduct is not likely to occur in the future. Self-reporting instead was a feature of most corporate resolutions, in which deferred prosecution agreements (DPAs) continued to be a tool of choice for prosecutors.

## II. FCPA Policy Developments

### A. Enforcement Agency Policies

#### 1. FCPA Resource Guide Update

On July 3, 2020, the DOJ and SEC issued the second edition of the [Resource Guide to the US Foreign Corrupt Practices Act](#) (the *2020 Guide*), the first major overhaul of the Resource Guide since its issuance in 2012. We examined the *2020 Guide* in detail in our July 20, 2020 International Law advisory, titled [Top Ten Changes to the DOJ/SEC FCPA Resource Guide](#).

As analyzed in our Advisory, the *2020 Guide* revealed no major changes in interpretation of the law or enforcement policy but were more in the nature of fine-tuning. The top 10 items distilled from the revised edition are as follows:

- (1) increased emphasis on the accounting provisions, especially in the criminal arena, while clarifying the *mens rea* requirement for criminal violations;
- (2) continued emphasis on aggressive jurisdictional theories for anti-bribery liability, especially involving foreign persons;
- (3) pushback on adverse judicial decisions, at least with respect to decisions from the lower courts;
- (4) acknowledgement that compliance programs and internal accounting controls are not coterminous (to what ultimate effect remains to be seen);
- (5) increased focus on “lessons learned” as a hallmark of an effective compliance program along with other important updating of compliance program expectations;
- (6) possible increased benefits of a properly risk-grounded compliance program when a problem arises;
- (7) reiteration of third-party liability standards;
- (8) some refinement of the theory of parent/subsidiary liability;
- (9) continued de-emphasis of successor liability risks; and
- (10) clarifying the priority of “issuer” over “domestic concern” status when a firm qualifies as both.

#### 2. DOJ Updates Corporate Compliance Program Guidance, Emphasizes Role of Data

On June 1, 2020, the DOJ Criminal Division updated the April 2019 guidance on the [Evaluation of Corporate Compliance Programs](#) (2020 Guidance). The key takeaways from this update were detailed in our June 4, 2020 International Law Advisory, [DOJ Updates Corporate Compliance Program Guidance, Emphasizes Role of Data](#).

As explained in that Advisory, the latest updates were more in the nature of refinements than overhaul. Nonetheless, organizations should review the 2020 Guidance with an eye to identifying any compliance program enhancements that may be warranted to keep pace with DOJ expectations.

The most significant updates in the 2020 Guidance we identified were two: (1) changes emphasizing the need for a dynamic compliance program and reflecting heightened expectations for the use of data analytics and testing; and (2) clarifications concerning the DOJ's expectations for a risk-based approach to compliance.

The updated 2020 Guidance further clarifies that the DOJ's evaluation of the effectiveness of a company's compliance program continues to be a relevant factor in charging decisions under the Principles of Federal Prosecution of Business Organizations in the Justice Manual, an organization's eligibility to receive a reduction in criminal fines calculated under the US Sentencing Guidelines (USSG); and the DOJ's assessment of whether a monitor is warranted. This point was reiterated by Acting Assistant Attorney General Brian Rabbitt during remarks on November 20, 2020: "[I]t is not enough for a company to simply have a good compliance program on paper. The program must also be adequately resourced and function effectively in practice."<sup>13</sup>

### **3. DOJ Opinion Procedure Release**

On August 14, 2020, the DOJ issued its first FCPA Opinion Procedure Release since 2014, in response to a request by a US-based investment advisor (Requestor) seeking an opinion on whether payment of fees to a foreign government-linked investment bank's foreign subsidiary would trigger an FCPA enforcement action.<sup>14</sup>

The FCPA Opinion Procedure enables issuers and domestic concerns to obtain the DOJ's opinion as to whether certain specific, prospective—not hypothetical—conduct conforms with the DOJ's present enforcement policy regarding the anti-bribery provisions of the FCPA. If an action is later brought under the FCPA's anti-bribery provisions against a requestor, an FCPA opinion that the requestor's conduct is in conformity with DOJ's present enforcement policy will create a rebuttable presumption that the requestor's conduct, as specified in the opinion request, complies with those provisions of the FCPA.<sup>15</sup> DOJ opinions (and related releases) do not bind any enforcement authority except the DOJ, are not precedential, and can only be relied on by the requestor to the extent that the facts and circumstances in its request are accurate and complete.

The Requestor in Opinion Release No. 20-01 (the Release) sought to buy a portfolio of assets from a foreign investment bank's foreign subsidiary, which was majority—and indirectly—owned by a foreign government. Another foreign subsidiary

<sup>13</sup> Remarks as Prepared for Delivery, Acting Assistant Attorney General Brian C. Rabbitt Delivers Remarks at Shinsu University 2<sup>nd</sup> White Collar Crime Workshop (Nov. 20, 2020), <https://www.justice.gov/opa/speech/acting-assistant-attorney-general-brian-c-rabbitt-delivers-remarks-shinsu-university-2nd>.

<sup>14</sup> DOJ Opinion Procedure Release, *Foreign Corrupt Practices Act Review*, No. 20-01 (Aug. 14, 2020), <https://www.justice.gov/criminal-fraud/file/1304941/download>.

<sup>15</sup> See 28 CFR Part 80.

of the same foreign investment bank assisted the Requestor with the purchase before it completed in February 2019. The next month, the second foreign subsidiary sought a fee from the Requestor for its assistance amounting to \$237,500, or 0.5% of the face value of the assets. The Requestor represented that the contemplated payment was justified and commercially reasonable because the second foreign subsidiary provided “legitimate and commercially valuable services.”<sup>16</sup>

The Release emphasized the absence evidence of a corrupt intent to bribe a foreign official on the facts presented. It observed that the payment would be made to a corporate foreign subsidiary, rather than an individual foreign official, with no indication that the money would be diverted to any individual. In addition, the payment would be transparent to the corporate foreign subsidiary and its management, and the foreign subsidiary’s chief compliance officer had certified that the payment would not be forwarded to any other entity. Finally, the Release noted that the Requestor had sought and received specific, legitimate services from the foreign subsidiary, commensurate with the services provided and commercially reasonable.

The FCPA Opinion Procedure has not been popular with companies for various reasons, including timing challenges. In this case, the Requestor submitted its original request on November 5, 2019, and provided “supplemental information” four times before the DOJ issued the Release (nine months in total). In addition, because the DOJ requires companies to reveal specific, prospective (as opposed to hypothetical) conduct, and Opinion Procedure releases, although anonymized, are publicly available, they create a number of risks that can dissuade companies from using the Procedure. Given these disadvantages, it is likely that Opinion Procedure releases will remain few and far between.

#### **4. FCPA Enforcement Approach During COVID-19**

The overarching theme communicated by DOJ and SEC officials throughout 2020 has been one of continued engagement in FCPA enforcement despite the global pandemic. Recently, on November 20, 2020, during remarks at Shinshu University’s 2<sup>nd</sup> White Collar Crime Workshop, Acting Assistant Attorney General Brian Rabbitt stated that FCPA enforcement remains a priority for the DOJ Criminal Division.<sup>17</sup> Specifically, Rabbitt said the Airbus and Goldman Sachs 1MDB cases “were landmark resolutions for the Criminal Division, and they—along with our other FCPA matters—clearly demonstrate that combatting international corruption remains a priority for the Criminal Division,”<sup>18</sup> although Airbus was, of course, pre-pandemic.

Additionally, on May 20, panelists from the DOJ, SEC, and FBI participated in a virtual town hall to discuss the state of play of FCPA and healthcare fraud enforcement. We covered salient points from the event in our May 21, 2020, [International Compliance Blog post](#). Key takeaways from the town hall discussion included the following:

<sup>16</sup> *Id.* at 2.

<sup>17</sup> Remarks as Prepared for Delivery, Acting Assistant Attorney General Brian C. Rabbitt Delivers Remarks at Shinshu University 2<sup>nd</sup> White Collar Crime Workshop (Nov. 20, 2020), <https://www.justice.gov/opa/speech/acting-assistant-attorney-general-brian-c-rabbitt-delivers-remarks-shinshu-university-2nd>.

<sup>18</sup> *Id.*

- Government investigations and multi-lateral cooperation continue, supported by remote investigative tools;
- Companies should be prepared to explain any obstacles to timely cooperation;
- Companies should be prepared to explain any COVID-19-related impact on their compliance systems;
- Companies are expected to regularly review and update their policies and internal controls based on lessons learned and other developments (continuous improvement);
- Companies should identify and address areas of heightened FCPA risks created by COVID-19-related circumstances; and
- FCPA enforcement authorities will consider COVID-19-related circumstances when assessing a company’s compliance efforts and determining whether an FCPA violation has occurred.

Despite the imminent change in Administration, with the continuing pandemic, we do not anticipate a dramatic change in approach in at least the first half of 2021.

## 5. DOJ China Initiative

Since the DOJ announced the China Initiative in November 2018, the agency has provided approximately 60 “China-related cases examples” on its China Initiative information page.<sup>19</sup> The majority of the case examples involve economic espionage, trade secret theft, and charges against persons acting as illegal Chinese agents. One of the cases involving charges of acting as an illegal agent of the PRC is the indictment on October 27, 2020 of eight individuals who allegedly conducted surveillance of and engaged in a campaign to harass, stalk, and coerce certain residents of the United States to return to the PRC as part of “Operation Fox Hunt” or “Skynet Campaign” (see our [2017 FCPA/Anti-Corruption Year in Review & 2018 Q1 Preview](#) and [FCPA/Anti-Corruption Developments: 2018 Year in Review](#) for information on “Operation Fox Hunt” or “Skynet Campaign”).<sup>20</sup>

The case examples also include two FCPA-related enforcement actions—the indictment of two former Herbalife China subsidiary executives in October 2019,<sup>21</sup> and the conviction of Chi Ping Patrick Ho, a former head of a nongovernmental organization based in Hong Kong and Virginia and related to a Chinese oil and gas

<sup>19</sup> DOJ Press Release, *Information about the Department of Justice’s China Initiative and a Compilation of China-Related Prosecutions Since 2018*, <https://www.justice.gov/opa/information-about-department-justice-s-china-initiative-and-compilation-china-related> (last updated Nov. 12, 2020).

<sup>20</sup> DOJ Press Release, *Eight Individuals Charged With Conspiring to Act as Illegal Agents of the People’s Republic of China* (Oct. 28, 2020), <https://www.justice.gov/opa/pr/eight-individuals-charged-conspiring-act-illegal-agents-people-s-republic-china> (last visited Dec. 23, 2020); Indictment, *United States v. Zhu Feng*, Case No. 20-MJ-1025 (E.D.N.Y. Oct. 27, 2020).

<sup>21</sup> *Id.*; Indictment, *United States v. Yanliang Li*, No. 19-cr-760 (S.D.N.Y. Oct. 22, 2019).

company.<sup>22</sup> Both the Herbalife investigation and the Ho indictment<sup>23</sup> were issued before November 2018, as reported in our [2017 FCPA/Anti-Corruption Year in Review & 2018 Q1 Preview](#) and [FCPA/Anti-Corruption Developments: 2018 Year in Review](#).

## 6. OECD Phase 4 Review of the United States

The OECD Working Group on Bribery completed its Phase 4 Review of the United States in October 2020, and issued its report of the review on November 17, 2020.<sup>24</sup> The reviewers commended the United States for, *inter alia*, continued active enforcement since 2010, when the third review report was issued, for the *2020 Guide*, and for its increased transparency in resolutions. Several recommendations for improvement regarding both the detection of foreign bribery and the enforcement of the FCPA were made. On the detection side, the Working Group's most interesting recommendations were that the US continue enhancing its AML reporting framework by extending reporting obligations to lawyers, accounts and trust and company service providers, a topic that has been highly controversial within the US, and to consider how to enhance protections for whistleblowers reporting acts of foreign bribery, especially by non-issuers. Regarding enforcement, notable recommendations included having the SEC consolidate and publicize its policies and guidance on how it enforces the FCPA, and further evaluation by DOJ of the effectiveness of the Corporate Enforcement Policy, particularly in terms of incentivizing self-reporting. The Working Group also identified a number of legal and enforcement program issues for follow-up.<sup>25</sup>

### B. Potential Biden Administration Policy Changes

While it is very early to predict what changes the Biden Administration may bring to FCPA enforcement policy, a few broad points can be hazarded. We expect greater multilateral engagement, including greater support for OECD, G20, and UN policy initiatives, and increased support for rule-of-law programs around the world.<sup>26</sup> While that engagement will not likely constrain the US cooperation with other jurisdictions in investigations and enforcement (which has continued to grow in recent years), it may prod other countries to increase their enforcement, both of supply and demand side corruption. We anticipate a continued focus on asset recovery, including using the anti-money laundering laws to pursue the demand side when assets come into the United States, and “no safe haven” visa policies. We also foresee a continuation of the trend to use Global Magnitsky Act sanctions to target corrupt actors.

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<sup>22</sup> DOJ Press Release, *Former Head of Organization Backed by Chinese Energy Conglomerate Convicted of International Bribery, Money Laundering Offenses* (Dec. 5, 2018), <https://www.justice.gov/opa/pr/former-head-organization-backed-chinese-energy-conglomerate-convicted-international-bribery>.

<sup>23</sup> The Second Circuit's decision in *United States v. Ho* is discussed below in Section III.A.3.

<sup>24</sup> DOJ Press Release, *OECD Working Group on Bribery Issues Report Commending United States for Maintaining Leading Role in the Fight Against Transnational Corruption* (Nov. 17, 2020), <https://www.justice.gov/opa/pr/oecd-working-group-bribery-issues-report-commending-united-states-maintaining-leading-role>; OECD, *Implementing the OECD Anti-Bribery Convention, Phase 4 Report* (Nov. 17, 2020), <https://www.justice.gov/criminal-fraud/file/1337591/download> (“Phase 4 Report”).

<sup>25</sup> *Id.* at 111-13.

<sup>26</sup> We note that the UN General Assembly plans to have a special session on corruption on June 1, 2021.

Although there is a strong perception overseas that the Trump Administration has targeted foreign firms, the data do not clearly bear out that perception. It will, nonetheless, be interesting to see if the mix of foreign versus domestic targets changes. Those potential changes may take some time to emerge, given the likely effects of the pandemic on the investigations pipeline. Increased efforts to combat increased domestic fraud and corruption, while potentially diverting resources, may spawn foreign bribery enforcement as well. The policy of targeting individuals for prosecution dates back to the Obama Administration and will likely not change. A continued focus on certain jurisdictions, including China, seems likely. Industries such as financial services and health care, which have seen significant enforcement in recent years, are also liable to experience continued scrutiny. More enforcement activity from the SEC, especially given its new authorities (discussed in more detail in the section that follows), also seems likely. And as the US implements new federal-level beneficial ownership legislation passed in late 2020 as part of the National Defense Authorization Act (as discussed further in Section II.C, below), those data may also spur FCPA enforcement activity.

### **C. Enactment of National Defense Authorization Act**

On January 1, 2021, the 2021 National Defense Authorization Act (NDAA) was enacted into law. Section 6501 of the NDAA, entitled “Investigations and Prosecution of Offenses for Violations of the Securities Laws,” amended Section 21(d) of the Securities Exchange Act of 1934 (Exchange Act),<sup>27</sup> giving the SEC statutory authority to seek “disgorgement” “under any provisions of the federal securities laws” in any action brought in federal court “where any person received unjust enrichment as a result of the violation.”<sup>28</sup> Significantly, the law, which does not define “disgorgement,” extends from 5 to 10 years from the “latest date on which a violation that gives rise to the claim occurs” the period in which the SEC may bring disgorgement claims for violations under Section 10(b) of the Exchange Act, Section 17(a)(1) of the Securities Act of 1933, Section 206(1) of the Investment Advisers Act of 1940, and any “provision of the securities laws for which scienter must be established.”<sup>29</sup> The NDAA also establishes a 10-year statute of limitations for the SEC to bring claims for other equitable remedies, such as injunctions, bars, suspensions, and cease and desist orders.<sup>30</sup> Disgorgement sought in connection with violations of the federal securities laws that do not require *scienter* retain a five-year statute of limitations.<sup>31</sup>

Section 6501 applies to any “action or proceeding that is pending on, or commenced on or after, the date of enactment.”<sup>32</sup> For purposes of calculating the statute of limitations period for disgorgement and equitable relief, “any time in which the person against which the action or claim, as applicable, is brought is outside of the United States shall not count towards the accrual of that period.”<sup>33</sup>

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<sup>27</sup> William M. (Mac) Thornberry National Defense Authorization Act for Fiscal Year 2021, H.R. 6395, 116th Cong. § 6501(NDAA).

<sup>28</sup> NDAA § 6501(a)(1)(B).

<sup>29</sup> NDAA § 6501(a)(3).

<sup>30</sup> *Id.*

<sup>31</sup> *Id.*

<sup>32</sup> NDAA § 6501(b).

<sup>33</sup> NDAA § 6501(a)(3).

The new legislation, in part, was a response to the Supreme Court's 2017 decision in *Kokesh v. SEC*<sup>34</sup> and 2020 decision *Liu v. SEC*.<sup>35</sup> As discussed in Section III.A.2, the Court in *Kokesh* held that the SEC's disgorgement remedy was a "penalty" and subject to the 5-year statute of limitations for civil actions in 28 U.S.C. § 2462,<sup>36</sup> and in *Liu* the Court upheld the SEC's ability to obtain disgorgement as a form of "equitable relief" under Section 21(d)(5) as long as the award "does not exceed a wrongdoer's net profits and is awarded for victims."<sup>37</sup> With respect to net profits, the Court in *Liu* indicated that legitimate business expenses should be deducted.<sup>38</sup> The Court, however, left for remand the question of whether the SEC could obtain an order of disgorgement where it "fails to return funds to victims" (e.g., returning disgorged funds to the US Treasury if distributing disgorgement to victims was not feasible).<sup>39</sup> It also noted that while joint and several liability may be "at odds with the common law rule requiring individual liability for wrongful profits," shared liability can be appropriate for partners in "concerted wrongdoing."<sup>40</sup>

Challenges to the application, scope, and breadth of Section 6501 of the NDAA and the SEC's disgorgement remedy are certain to follow. The SEC's disgorgement remedy in *Liu* was framed as a form of "equitable" relief under Section 21(d)(5) of the Exchange Act and the extent to which its construction and its limitations remain in light of Section 6501 of the NDAA will be for the courts to determine. For example, Section 6501, unlike *Liu*, does not expressly tether disgorgement to returning such funds to victims and, therefore, it's likely the SEC will argue that its disgorgement remedy is not encumbered by such an obligation. Section 6501's "unjust enrichment" language does not appear to alter *Liu's* construction that the amount of disgorgement awarded must consider and deduct legitimate business expenses. However, by stating that the SEC can "collect disgorgement of any unjust enrichment by a person who received the unjust enrichment," Section 6501 of the NDAA appears to make clear, where the Court in *Liu* had not, that joint-and-several liability principles may not be used to obtain disgorgement from those who did not "receive" the unjust enrichment.

While courts will be left to shape aspects of the SEC's new disgorgement authority, what is certain is that the SEC's new authority, coupled with the longer limitations period, will lead to more aggressive and costly SEC enforcement investigations that create greater jeopardy and risk for entities and individuals. Investigations, already lengthy and subject to frequent staff requests to toll the statute of limitations, will now become lengthier as a matter of course. The Division of Enforcement has already begun issuing subpoenas seeking documentary evidence going back 10 or more years and the ability for the recipient of a subpoena to successfully challenge a subpoena as overbroad in district court, or to negotiate a shorter time period for the production of documents, is likely diminished by the SEC's new authority. The Division of Enforcement is increasingly likely to

<sup>34</sup> 137 S. Ct. 1635 (2017).

<sup>35</sup> 140 S. Ct. 1936 (2020).

<sup>36</sup> 137 S. Ct. 1635, 1645 (2017).

<sup>37</sup> 140 S. Ct. at 1940.

<sup>38</sup> *Id.* at 1950

<sup>39</sup> *Id.*

<sup>40</sup> *Id.* at 1949.

pursue frauds that may have spanned several years or involved isolated and dated misconduct, notwithstanding that the passage of time will seriously degrade the quality and quantity of evidence unearthed and increase the prospect that the Division of Enforcement will reach erroneous views as to the facts and misjudge the degree to which litigation risks have increased. The fact that Section 6501 applies to “any action or proceeding that is pending on, or commenced on or after, the date of the Act” can also be expected to expand the scope of *existing investigations* to investigate potential misconduct that extends beyond 5 years.

Individuals are now far more likely to face *scienter*-based fraud charges (which may be supported by a finding of “recklessness”), rather than negligence-based fraud charges (or no charges at all) where the alleged misconduct is greater than 5 years old and disgorgement relief is a meaningful aspect of the matter. Also, the ability to negotiate settlements with the staff of the Division of Enforcement are now likely to be more difficult. Not only are certain entities and individuals increasingly likely to face *scienter*-based fraud charges which had greater consequences but the staff of the Division of Enforcement will increasingly demand disgorgement reaching back many years (making settlement costlier) as SEC Commissioners begin to expect such relief to be present in the cases that the SEC settles. These twin prospects may very well make litigating against the SEC a far more attractive and, potentially more successful venture, where the alleged misconduct is significantly dated. Furthermore, an increase in litigated cases may very well be fueled by Section 6501’s statutory grant of a 10-year statute of limitations for SEC claims for equitable relief, such as injunctions, bars, suspensions and cease and desist orders. These remedies can be particularly injurious to individuals who work in regulated industries and for public companies, increasing the likelihood that such individuals will litigate. The SEC is also more likely to insist upon such relief in older cases as the new statute of limitations will allow the SEC to sidestep challenges that such remedies, if sought in connection with conduct more than 5 years old, should be considered a penalty and therefore barred by the 5-year statute of limitations applicable to SEC actions for civil penalties.<sup>41</sup>

Section 6501 of the NDAA will be particularly significant to individuals in SEC FCPA matters. As noted above, for purposes of calculating the statute of limitations period for disgorgement and equitable relief, “any time in which the person against which the action or claim, as applicable, is brought is outside of the United States shall not count towards the accrual of that period.” The statutes of limitations, therefore, will be automatically tolled for persons while they remain outside the United States. Also, FCPA investigations, already lengthy and costly, are likely to be more so to the extent the SEC ever considered itself hindered or constrained by a 5-year statute of limitations in such matters. The fact that Section 6501 does not expressly tether disgorgement to returning such funds to victims may eliminate an argument in the aftermath of *Liu* that disgorgement would not constitute “equitable

<sup>41</sup> See, e.g., *SEC v. Gentile*, 939 F.3d 549 (3d Cir. 2019), reversing the district court’s holding that the SEC’s request for an “obey the law” injunction and penny stock bar were penalties subject to 28 U.S.C. § 2462’s five-year limitations period but noting that injunctions and industry bars can have “serious collateral consequences,” that district court’s should not “rubber-stamp” SEC requests for such relief, and that upon remand, “if the court does not conclude that ‘the obey-the-law’ injunction sought here serves no preventive purpose, or is not carefully tailored to enjoin only that conduct necessary to prevent a future harm, then it should and must reject the Commission’s request.”

relief” in FCPA cases unless individual victims can be identified and funds could be distributed to them, something very difficult to do in FCPA cases. Finally, FCPA violations under Section 30A of the Exchange Act require issuers to act “corruptly.”<sup>42</sup> The NDAA, however, refers to any “provision of the securities laws for which *scienter* must be established.”<sup>43</sup> (emphasis added). It is not clear this provision will capture Section 30A of the Exchange Act (the anti-bribery provision for issuers), which, while requiring specific intent (via the “corruptly” element of the statute), may or may not be viewed as *scienter-based*. And the FCPA’s accounting provisions only acquire a *scienter* element when criminally enforced. Thus, it is not clear that Section 6501’s 10-year statute of limitation for disgorgement for *scienter*-based violations will be applicable in FCPA matters. In the absence of such a construction, Section 6501 itself would not expose issuers to increased risks of disgorgement beyond 5 years but would extend the period for the SEC to obtain other equitable relief as described above.

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<sup>42</sup> 15 U.S.C. § 78dd-1(a).

<sup>43</sup> NDAA § 6501(a)(3).

### III. Significant Judicial Decisions in FCPA Matters and Related Civil Collateral Litigation

#### A. Judicial Decisions

##### 1. United States v. Hoskins

The US District Court for the District of Connecticut in February partially overturned the conviction of British national Lawrence Hoskins, granting his Rule 29(c) motion for acquittal on counts related to the FCPA.<sup>44</sup> The decision—as to the FCPA counts—hinged on whether Hoskins should be construed as an agent of a US subsidiary (Alstom Power Inc. (API)) of French multinational firm Alstom S.A. The court held that the government had failed to demonstrate agency as a matter of law.<sup>45</sup> The case has important implications for the FCPA’s reach over foreign, non-issuer defendants.

As discussed at length in [Step toe’s 2019 FCPA Year in Review](#), the facts of the case involve a multi-year, multimillion-dollar foreign bribery scheme and a related money laundering scheme connected to an Indonesian power plant project. In 2019, Hoskins was found guilty of conspiracy to violate the FCPA, six FCPA violations, and additional conspiracy and money laundering charges.<sup>46</sup> The FCPA-related charges stemmed from Hoskins’ role in approving the retention of consultants to bribe Indonesian government officials. Significantly, Hoskins was not employed by API, the US subsidiary, nor did he travel to the United States during the relevant period. The 2020 ruling is the latest twist in a case that has dealt a series of blows to the DOJ’s expansive assertion of FCPA jurisdiction over foreign defendants, including under the FCPA’s US conduct provision (15 U.S.C. § 78dd-3), and the DOJ’s use of conspiracy theories against foreign, non-issuer defendants. See [Step toe’s International Compliance Blog](#) for further background on the case.

Following Mr. Hoskins’s conviction on the theory that he had acted as an “agent” of a domestic concern, Hoskins moved under Rule 29(c) for acquittal on all counts and under Rule 33 for a new trial.<sup>47</sup> Although the government had introduced evidence showing that API “both (1) controlled the hiring of consultants for the Tarahan Project, and (2) gave Mr. Hoskins instructions, which he followed,” the court concluded that this evidence was insufficient to prove “Mr. Hoskins acted subject to API’s control such that Mr. Hoskins was an agent of API.” Judge Arterton articulated two bases for this determination: First, the court found an absence of evidence that API had a right of “interim control over *Hoskins’s actions* to procure consultants according to API’s specifications,” noting that control over elements of “the broader

<sup>44</sup> *United States v. Hoskins*, No. 3:12CR238 (JBA), 2020 WL 914302 (D. Conn. Feb. 26, 2020).

<sup>45</sup> *Id.* at \*14.

<sup>46</sup> Jury Form, *United States v. Hoskins*, 2019 WL 7207280 (D. Conn. Nov. 8, 2019).

<sup>47</sup> *Id.* at \*1.

project” was insufficient to prove agency.<sup>48</sup> Additionally, the court found that none of the “indicia of control” typical in the agency relationship were present, including the “power [for API] to terminate Mr. Hoskins’s authority to participate in the hiring of consultants” or “to assess Mr. Hoskins’s performance.”<sup>49</sup>

The court’s decision offers a more circumscribed construction of agency than advanced by the DOJ, and resultingly, a potentially narrower scope of extraterritorial application under the FCPA, at least in the Second Circuit. But despite prevailing in part in overturning his conviction, Hoskins was sentenced in March to 15 months in federal prison and criminal monetary penalties for his remaining money laundering-related conviction.<sup>50</sup> Both the DOJ and Hoskins have appealed the district court’s decision, and are awaiting an opinion from the Second Circuit.

## 2. Liu v. Sec. & Exch. Comm’n

On June 22, 2020 the US Supreme Court held in an 8-1 decision that a disgorgement order can qualify as equitable relief under 15 U.S.C. § 78u(d)(5).<sup>51</sup> The decision, in *Liu v. SEC* effectively answered the question left open in the Court’s 2017 ruling in *Kokesh v. SEC*<sup>52</sup> as to whether the SEC could seek disgorgement as a remedy absent specific statutory authorization.

*Liu* involved the alleged misappropriation of tens of millions of dollars raised by Charles Liu and his wife, Xin Wang, from foreign investors under the EB-5 Immigrant Investor Program to construct a cancer treatment center.<sup>53</sup> The SEC brought an action against Liu and Wang imposing a civil penalty and ordering disgorgement equal to the entire amount Liu and Wang raised, subtracting the balance of corporate accounts.<sup>54</sup> Liu and Wang challenged the disgorgement order in District Court, arguing that it failed to account for legitimate business expenses, but the court found the award reasonable and Liu and Wang jointly and severally liable.<sup>55</sup> The Ninth Circuit affirmed.<sup>56</sup>

In reviewing the Ninth Circuit’s holding, the Supreme Court noted that Congress had not defined “equitable relief” in the statute and that *Kokesh* had left open the question of whether disgorgement was permissible in SEC enforcement proceedings.<sup>57</sup> As to the threshold question of whether disgorgement constitutes an equitable remedy under the statute, the Court found that it did, noting that “[e]quity courts have routinely deprived wrongdoers of their net profits from unlawful activity,

<sup>48</sup> *Id.* at \*7.

<sup>49</sup> These indicia presumably include “retain[ing] the capacity throughout the relationship to assess the agent’s performance, provide instructions to the agent, and terminate the agency relationship by revoking the agent’s authority.” *Hoskins*, 2020 WL 914302 at \*8 (citation omitted).

<sup>50</sup> Judgement, *United States v. Hoskins*, No. 3:12-CR-00238-JBA-3, 2020 WL 1638645 (D. Conn. Mar. 11, 2020).

<sup>51</sup> *Liu v. Sec. & Exch. Comm’n*, 140 S. Ct. 1936 (2020).

<sup>52</sup> In a heavily scrutinized footnote to *Kokesh*, the Court offered the following: “Nothing in this opinion should be interpreted as an opinion on whether courts possess authority to order disgorgement in SEC enforcement proceedings or on whether courts have properly applied disgorgement principles in this context.” 137 S. Ct. 1635, 1642 n.3 (2017). See our discussion of the *Kokesh* decision in Steptoe’s [2017 FCPA Mid-Year Review](#).

<sup>53</sup> *Liu*, 140 S. Ct. at 1941.

<sup>54</sup> *Id.* at 1942.

<sup>55</sup> *Id.*

<sup>56</sup> *Sec. & Exch. Comm’n v. Liu*, 754 F. App’x 505 (9th Cir. 2018), *cert. granted*, 140 S. Ct. 451 (2019), *and vacated and remanded*, 140 S. Ct. 1936 (2020).

<sup>57</sup> *Liu*, 140 S. Ct. at 1940, 1941.

even though that remedy may have gone by different names.”<sup>58</sup> The Court reasoned that “a disgorgement award that does not exceed a wrongdoer’s net profits and is awarded for victims,” and does not exceed one’s individual liability for wrongful profits is equitable relief permissible under § 78u(d)(5).<sup>59</sup> But it left unanswered several significant questions raised by the defendant, namely, whether the award fails as an equitable remedy (1) if funds are not returned to victims, (2) by imposing joint and several liability, and/or (3) by declining to deduct business expenses.<sup>60</sup> Without answering them, the Court offered guidance to the lower court<sup>61</sup> deciding these issues on remand. First, the Court noted that the award must do more than “simply benefit the public at large;”<sup>62</sup> second, the Court noted that while joint and several liability may be at odds with the common law rule requiring individual liability for wrongful profits, shared liability can be appropriate for partners in “concerted wrongdoing;”<sup>63</sup> and third, that business expenses that are found to be legitimate should be deducted.<sup>64</sup>

As the SEC frequently seeks disgorgement in FCPA cases, *Liu*, which did not involve the FCPA, nevertheless informs how the SEC may seek remedies under the FCPA in future actions. Even with the SEC’s new statutory authority discussed above authorizing the use of disgorgement in civil cases, seeking disgorgement under the FCPA may well raise substantive, fact-specific questions of the type intimated, but unanswered, by the Court. For example, identifying and distributing awards to victims could prove challenging with respect to alleged FCPA violations. Also, in the FCPA context, subtracting legitimate expenses could significantly reduce an award.

### 3. United States v. Ho

In late December, the United States Court of Appeals for the Second Circuit affirmed the conviction of Chi Ping Patrick Ho on seven counts related to FCPA violations and money laundering.<sup>65</sup> The decision is notable for its construction of various FCPA provisions, and further demonstrates the expansive jurisdictional reach of anti-money laundering laws to dollar-denominated transfers.

Ho, a citizen of Hong Kong, served as an officer and director of the Hong Kong-based China Energy Fund Committee (CEFC-NGO), which was funded by Shanghai-based energy conglomerate China CEFC Energy Company Limited (CEFC).<sup>66</sup> Ho also served as an officer and director of a CEFC-affiliated US non-profit, funded by CEFC NGO.<sup>67</sup>

Ho’s conviction, for which he was sentenced to 36 months imprisonment and

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<sup>58</sup> *Id.* at 1942.

<sup>59</sup> *Id.* at 1940.

<sup>60</sup> *Id.* at 1947.

<sup>61</sup> Pursuant to the Court’s ruling, the Ninth Circuit on July 31 vacated and remanded to District Court. See *Sec. & Exch. Comm’n v. Liu*, 814 F. App’x 311, 312 (9th Cir. 2020).

<sup>62</sup> *Id.* at 1948.

<sup>63</sup> *Id.* at 1949.

<sup>64</sup> *Id.* at 1950. The Court did note that “when the ‘entire profit of a business or undertaking’ results from the wrongdoing, a defendant may be denied ‘inequitable deductions’ such as for personal services.” *Id.*

<sup>65</sup> *United States v. Ho*, No. 19-761, 2020 WL 7702576 (2d Cir. Dec. 29, 2020).

<sup>66</sup> *Id.* at \*1-2.

<sup>67</sup> *Id.*

a \$400,000 fine,<sup>68</sup> stemmed from two alleged bribery schemes involving (1) an attempted \$2 million cash delivery to the President of Chad (which was purportedly rejected by the President) and (2) a \$500,000 wire transfer to a charity associated with the foreign minister of Uganda.<sup>69</sup> Notably, the US dollar-denominated wire originated from a bank in Hong Kong, which was transmitted through its operating unit in the United States as a correspondent to another bank in New York, which in turn was acting as a correspondent for a beneficiary bank in Uganda for final credit to an ultimate beneficiary NGO. Both acts were allegedly made for the benefit of CEFC's commercial interests in Africa.<sup>70</sup>

On appeal, Ho challenged his 2018 conviction on a number of grounds.<sup>71</sup>

His primary FCPA-related challenges concerned (1) whether the government had presented sufficient evidence that Ho had acted on behalf of a "domestic concern" in violation of § 78dd-2,<sup>72</sup> and (2) whether his indictment was defective because it charged Ho under two FCPA provisions that Ho contended were "mutually exclusive" – § 78dd-2 (the anti-bribery provision applicable to "domestic concerns" and their agents) and § 78dd-3 (the anti-bribery provision applicable to "any person other than [...] a domestic concern.)"<sup>73</sup> The Second Circuit rejected both theories.

As to the first, the court noted that the "domestic concern" need not, under the statute, "be the ultimate object of the assistance."<sup>74</sup> The statute specifically prohibits bribery to "assist such domestic concern in obtaining or retaining business for or with, or directing business to, *any person*."<sup>75</sup> The court held that the statute's reference to "any person" meant that the Government could meet that requirement by showing that the object of Ho's bribe was to direct business to an entity other than the "domestic concern."<sup>76</sup> The court determined that there was sufficient evidence to demonstrate that the US NGO "operated as an arm of CEFC NGO" and that Ho had, acting in his capacity as an officer and director of a domestic concern (US NGO), paid a bribe to assist CEFC's business interests.<sup>77</sup>

The court similarly rejected Ho's second argument that §§ 78dd-2 and 78dd-3 are mutually exclusive. Although the language of § 78dd-3 applies to "any person other than...a domestic concern (as defined in section 78dd-2 of this title)," the court found that there is "no indication that the provisions are mutually exclusive, or that both sections would not cover a director, like Ho, who acts on behalf of both a

<sup>68</sup> *United States v. Ho*, No. 1:17-CR-00779-LAP, 2019 WL 9042917 (S.D.N.Y. Mar. 27, 2019).

<sup>69</sup> *Id.* at \*2-3.

<sup>70</sup> *Id.* at \*2.

<sup>71</sup> In addition to rejecting the FCPA and money laundering arguments detailed below, the court also held that the District Court had not abused its discretion with respect to various evidentiary rulings, including, for example, the admission of certain out of court statements and text messages regarding the transfers. *Id.* at \*11-12.

<sup>72</sup> The court construed 15 U.S.C. § 78dd-2(a) as follows: "15 U.S.C. § 78dd-2 prohibits an officer or director of a 'domestic concern' from offering or paying bribes to a foreign official to gain 'any improper advantage,' 'in order to assist such domestic concern in obtaining or retaining business for or with, or directing business to, any person.'" *United States v. Ho*, 2020 WL 7702576, at \*4.

<sup>73</sup> *Id.* at \*4.

<sup>74</sup> *Id.* at \*5.

<sup>75</sup> 15 U.S.C. § 78dd-2(a) (emphasis added).

<sup>76</sup> *Id.* at \*5, \*17. In support of this finding, the court quotes, among other cases, *United States v. Ng Lap Seng*: "[The FCPA] prohibits bribery designed to obtain, retain, or direct business not only *for or to* the briber, but *for or to* 'any person'." 934 F.3d 110, 145 (2d Cir. 2019) (original emphases).

<sup>77</sup> *Id.*

domestic concern ... and on behalf of a person other than a domestic concern.”<sup>78</sup>

Ho also raised arguments against his money laundering conspiracy conviction, which the court also rejected. First, Ho challenged whether a violation of § 78dd-3 was sufficient to establish the specified unlawful activity (SUA) required for his money laundering charge.<sup>79</sup> Ho’s argument hinged on the fact that § 78dd-3 was added to the FCPA in 1998<sup>80</sup> after that provision had been added to the list of SUAs under 18 U.S.C. § 1956(c)(7)(D), and therefore the money laundering statute did not specifically reference § 78dd-3.<sup>81</sup> The court found Ho’s interpretation unpersuasive, holding “that § 1956(a) ‘plainly signals Congress’s intent to incorporate the full range of felony violations under the FCPA.’”<sup>82</sup> The court rejected Ho’s arguments under the reference canon of statutory construction<sup>83</sup> because the term “specified unlawful activity” is defined in § 1956(c)(7) to include “any felony violation of the Foreign Corrupt Practices Act.” 18 U.S.C. § 1956(c)(7)(D) (emphasis added). Thus, the court held that a violation of § 78dd-3 is a SUA under § 1956(a).

Second, Ho challenged whether a wire transfer involving US correspondent accounts met the plain statutory language of a transfer coming “to” or “from” the United States.<sup>84</sup> He alleged that the transfer from Hong Kong to Uganda was a “single, continuing transaction” that merely went “through” the United States.<sup>85</sup> In other words, Ho argued that the wire was in effect one from Hong Kong to Uganda, and simply took advantage of unaffiliated US-based correspondent accounts to conduct a dollar-denominated transaction. The court rejected this construction, noting that the language cited by the appellant is found in a “venue” provision, and that the specific provision further states that “any portion of the transaction may be charged in any district in which the transaction takes place.”<sup>86</sup> Citing Second Circuit precedent, and distinguishing cases cited by Ho,<sup>87</sup> the court held that the process of crediting and debiting through US correspondent accounts met the statutory requirements because a transfer (including by solely electronic means) is comprised of distinct transactions to and from the US-based intermediary bank.<sup>88</sup> Thus, the court held that transfers from one foreign bank to another outside the United States, and solely moving through correspondent banks in the United States, is sufficient. As such, at least in the Second Circuit, it appears that an offshore wire transaction

<sup>78</sup> *Id.* at \*16. The Court also found unpersuasive Ho’s related argument that the “indictment was facially inconsistent as to material allegations” because the Grand Jury had determined him to be a “domestic concern.” *Id.* at \*14.

<sup>79</sup> *Id.* at \*4, \*6-7.

<sup>80</sup> The FCPA was added to § 1956(c)(7)(D) by way of the INTERNATIONAL ANTI-BRIBERY AND FAIR COMPETITION ACT OF 1998, see Pub.L. 95-213, Title I, § 104A, as added Pub.L. 105-366, § 4, Nov. 10, 1998, 112 Stat. 3306.

<sup>81</sup> *Id.* at \*6-7.

<sup>82</sup> *Id.* at \*7 (quoting *New York ex rel. New York State Office of Children & Family Servs. v. U.S. Dep’t of Health & Human Servs.*, 556 F.3d 90, 92 (2d Cir. 2009)).

<sup>83</sup> Under the reference canon, “[w]hen a statute refers to a general subject, the statute adopts the law on that subject as it exists whenever a question under the statute arises.” *Jam v. Int’l Fin. Corp.*, 139 S. Ct. 759, 769 (2019); see also *United States v. Kinzler*, 55 F.3d 70, 72 (2d Cir. 1995).

<sup>84</sup> See 18 U.S.C. § 1956(a)(2).

<sup>85</sup> *Id.* at \*9.

<sup>86</sup> *Id.* at \*10.

<sup>87</sup> Cf. *United States v. Harris*, 79 F.3d 223 (2d Cir. 1996); *United States v. Dinero Express, Inc.*, 313 F.3d 803 (2d Cir. 2002), and *United States v. Moloney*, 287 F.3d 236 (2d Cir. 2002).

<sup>88</sup> *Id.* at \*9-10. In support of this proposition the Court relied upon *United States v. Daccarett*, 6 F.3d 37, 54 (2d Cir. 1993). It also cited cases interpreting Congressional intent behind the money laundering statute to cover electronic funds transfers like the transfer in *Ho*. See *United States v. Prevezon Holdings, Ltd.*, 251 F. Supp. 3d 684, 694 (S.D.N.Y. 2017); *United States v. All Assets Held at Bank Julius*, 251 F. Supp. 3d 82, 94 (D.D.C. 2017).

denominated in US dollars that is a SUA under the FCPA can sustain a money laundering conviction under § 1956(a)(2)(A).

The decision—from a unanimous panel—illustrates the parallel exposure certain actors may face under the FCPA’s distinct but overlapping anti-bribery provisions. It also further underscores the jurisdictional reach US authorities attach to dollar-denominated transfers—even those originating and concluding outside the United States—under criminal US money laundering statutes.

## **B. Significant Civil Collateral Litigation**

FCPA investigations again resulted in collateral civil litigation in 2020. These suits included shareholder class actions and claims of breach of contract, fraud, and civil RICO. A brief update on one of the more significant of these cases, *Keppel Offshore & Marine Ltd.*, follows.

### **1. Keppel Offshore & Marine Ltd.**

In late 2017, Keppel Offshore & Marine Ltd (Keppel), a Singapore-based company that operates shipyards and repairs and upgrades shipping vessels, entered into a DPA with the Department of Justice in connection with a decade-long scheme to pay millions of dollars in bribes to Brazilian officials.<sup>89</sup>

In 2018, eight investment funds managed by EIG Management Company LLC filed a civil action in the US District Court for the Southern District of New York, alleging that Keppel was part of a RICO conspiracy to engage in bribery and kickbacks and that Keppel aided and abetted the fraud committed by Petrobras and Sete Brasil Participações against EIG.<sup>90</sup> Keppel filed a Motion to Dismiss both causes of action.

US District Judge Paul G. Gardephe held that the RICO allegations were barred under the Private Securities Litigation Reform Act (PSLRA), which prohibits RICO claims that involve “predicate acts of securities fraud.” Judge Gardephe held that, contrary to EIG’s arguments, Keppel’s DPA was not a criminal conviction, so it could not trigger an exception to the PSLRA.<sup>91</sup> To hold otherwise, the court stated, would be “inconsistent with the statutory scheme.”<sup>92</sup> Specifically, the court explained that “[i]t is, of course, completely illogical to contend that an agreement expected to lead to dismissal of criminal charges actually constitutes a conviction. Moreover, case law interpreting the PSLRA’s criminal conviction exception confirms that it would be improper to treat a deferred prosecution agreement as a conviction.”<sup>93</sup> Judge Gardephe also noted that courts have found that the PSLRA’s “criminal conviction exception must be construed as narrowly as possible, and that the exception is only available as to a defendant [that] has specifically been convicted of criminal fraud.”<sup>94</sup>

EIG’s aiding and abetting cause of action will move forward to trial.

<sup>89</sup> For a discussion of this matter, see Steptoe’s [FCPA/Anti-Corruption Developments 2017 Year in Review](#).

<sup>90</sup> *EIG Energy Fund XIV, L.P. v. Keppel Offshore & Marine Ltd.*, First Amended Complaint ¶¶ 112-32.

<sup>91</sup> *EIG Energy Fund XIV, L.P. v. Keppel Offshore & Marine Ltd.*, No. 18 CIV. 1047 (PGG), 2020 WL 2319127, at \*8 (S.D.N.Y. May 11, 2020), *reconsideration denied*, No. 18 CIV. 1047 (PGG), 2020 WL 3488037 (S.D.N.Y. June 26, 2020).

<sup>92</sup> *Id.*

<sup>93</sup> *Id.*

<sup>94</sup> *Id.*

## IV. 2020 FCPA Corporate Settlements

### A. Parallel DOJ/SEC Corporate Enforcement Actions

#### 1. Goldman Sachs Group Inc.

On October 22, 2020, a few months after the Malaysian settlement involving the same conduct, the DOJ and SEC announced that Goldman Sachs Group Inc. (Goldman), a US-based financial institution and issuer, entered into resolutions relating to charges that the company conspired to violate the anti-bribery provisions of the FCPA, and violated the anti-bribery, books and records, and internal accounting control provisions of the FCPA.<sup>95</sup> Goldman Sachs (Malaysia) Sdn. Bhd. (Goldman Malaysia), a Goldman subsidiary, also pleaded guilty to one count of conspiracy to violate the anti-bribery provisions of the FCPA.<sup>96</sup> The settlements arose from Goldman's role in the 1Malaysia Development Berhad (1MDB) matter.<sup>97</sup> The total penalties imposed on Goldman are approximately \$2 billion paid to US authorities and an additional \$3.1 billion paid to foreign authorities. The penalty paid to US authorities is the highest to date in an FCPA case.

According to the DPA with the DOJ, the SEC's cease-and-desist order, and Goldman Malaysia's plea agreement, from 2009 through approximately 2014, Goldman, through certain of its agents and employees, knowingly and willfully conspired with Low Taek Jho, also known as Jho Low (Low), to pay more than \$1.6 billion in bribes, directly and indirectly, to government officials and their relatives in Malaysia and Abu Dhabi to obtain underwriting and advisory mandates from 1MDB, including a role in relation to three bond transactions between 2012 and 2013.<sup>98</sup>

The SEC found that Goldman Sachs failed to maintain sufficient internal accounting controls when it reviewed and approved these bond offerings, and its books and records failed to accurately reflect key aspects of the bond offerings. The DOJ found that the control functions of Goldman Sachs did not take reasonable steps to ensure that Jho Low was not involved, even after identifying certain risks associated with his involvement.

The US settlements were part of a coordinated resolution with the UK, Hong Kong and Singapore authorities, which will result in Goldman paying a total

<sup>95</sup> See DOJ Deferred Prosecution Agreement, *United States v. The Goldman Sachs Group, Inc.* (Oct. 22, 2020), <https://www.justice.gov/criminal-fraud/file/1329926/download>; Order Instituting Cease-and-Desist Proceedings, *In re The Goldman Sachs Group, Inc.*, SEC Exch. Act Release No. 90,243 (Oct. 22, 2020), <https://www.sec.gov/litigation/admin/2020/34-90243.pdf>.

<sup>96</sup> See DOJ Plea Agreement, *United States v. Goldman Sachs (Malaysia) Sdn. Bhd.* (E.D.N.Y. Oct. 22, 2020), <https://www.justice.gov/criminal-fraud/file/1329901/download>.

<sup>97</sup> 1MDB is a Malaysian state-owned fund, which was created to pursue investment projects for the economic benefit of Malaysia and its people.

<sup>98</sup> In the course of the scheme, payments and communications in furtherance of the scheme were made via wires that passed through the United States.

of approximately \$5.1 billion in connection with the 1MDB matter.<sup>99</sup> Goldman's settlements with the US authorities include a three-year DPA with the DOJ, settlement of an Administrative Action by the SEC,<sup>100</sup> a Consent Order with the Federal Reserve System (Fed),<sup>101</sup> and a Consent Order with the New York State Department of Financial Services (NYDFS).<sup>102</sup>

In calculating the criminal penalty, which reflects a 10 percent reduction off the bottom of the applicable USSG fine range, the DOJ considered the following factors: Goldman's failure to voluntarily and timely self-disclose the conduct to the DOJ; the nature and seriousness of the offense, including the involvement of high-level employees within Goldman; the amount of the bribes, which totaled over \$1.6 billion; the number and high-level nature of the bribe recipients; and the significant amount of actual loss incurred by 1MDB as a result of the co-conspirators' conduct. Goldman received partial credit for its cooperation in the investigation, but did not receive full cooperation credit because it did not timely produce relevant evidence.<sup>103</sup>

Based on Goldman's remediation and the state of its compliance program, as well as its agreement to report to the DOJ, the DOJ determined that an independent compliance monitor was unnecessary.<sup>104</sup> But the case shows the challenges companies face in making their compliance controls "stick".

As discussed in Steptoe's [2018 FCPA/Anti-Corruption Year in Review](#) and [2019 FCPA/Anti-Corruption Year in Review](#), a number of individuals have also been charged in relation to the 1MDB matter, including Timothy Leissner, the former Southeast Asia Chairman and participating managing director of Goldman, who pleaded guilty to the DOJ's charges in August 2018 and settled charges with the SEC in December 2019; Jho Low, who was indicted in 2018 but remains at large; and Ng Chong Hwa, also known as Roger Ng, the former managing director of Goldman and head of investment banking for Goldman Malaysia, who was charged in 2018 and is currently challenging his indictment.

## 2. Herbalife Nutrition Ltd.

In August, the DOJ and SEC announced that Herbalife Nutrition Ltd. (Herbalife) agreed to pay a combined sum of more than \$123 million to resolve the DOJ's charge that Herbalife conspired to violate the books and records provisions

<sup>99</sup> The \$5.1 billion is comprised of \$126 million paid to the UK authorities, all of which was credited by the DOJ, \$122 million paid to the Singapore authorities, all of which was credited by the DOJ, \$350 million paid to the Hong Kong authorities, \$100 million of which was credited by the DOJ, and \$2.5 billion paid to the Malaysian authorities in a separate settlement in July 2020. In addition to the \$5.1 billion, Goldman provided a \$1.4 billion asset recovery guarantee as part of its July 2020 settlement with the Malaysian authorities. See DOJ Deferred Prosecution Agreement, *United States v. The Goldman Sachs Group, Inc.* ¶¶ 4, 8, 9 (Oct. 22, 2020), <https://www.justice.gov/criminal-fraud/file/1329926/download>; Form 8-K, SEC, Goldman Sachs Group (Oct. 22, 2020), <https://sec.report/Document/0001193125-20-274226/>.

<sup>100</sup> Goldman will pay a civil penalty of \$400 million, which will be credited by the DOJ, and \$606 million in disgorgement to the SEC. The \$606 million in disgorgement was deemed satisfied by amounts Goldman paid to the Malaysian Government in its related July 2020 settlement. See DOJ Deferred Prosecution Agreement, *United States v. The Goldman Sachs Group, Inc.* ¶¶ 4, 8, 9 (Oct. 22, 2020), <https://www.justice.gov/criminal-fraud/file/1329926/download>.

<sup>101</sup> Goldman will pay the Fed a civil penalty of \$154 million, all of which will be credited by the DOJ. *Id.*

<sup>102</sup> Goldman will pay the NYDFS a civil penalty of \$150 million, all of which will be credited by the DOJ. *Id.*

<sup>103</sup> *Id.* ¶ 4.

<sup>104</sup> *Id.*

of the FCPA<sup>105</sup> and the SEC's charges that it violated the books and records and internal control provisions of the FCPA.<sup>106</sup> The conduct at issue related to Herbalife's subsidiaries in China (Herbalife China) making payments and providing meals, gifts, and other benefits to municipal and provincial officials to obtain sales licenses and curtail government investigations against the company, in addition to providing benefits to state-owned media to remove negative coverage about the company.<sup>107</sup>

In the DPA with the DOJ and as reflected in the cease-and-desist order issued by the SEC, Herbalife admitted that from 2007 to 2016, its employees in China submitted fake invoices and false expense reports to be reimbursed for improper benefits provided to Chinese officials.<sup>108</sup> By the SEC's calculations, Herbalife China reimbursed over \$7.2 million in questionable meal and gift expenditures, and gained approximately \$58.7 million from the corrupt conduct just between 2012 and 2016.<sup>109</sup> An audit report covering expenses during the last 6 months of 2012 found that an Herbalife China employee expensed over \$1 million in meals and gifts for Chinese government officials and state-owned media, for 239 meals over 184 days, for 4,312 participants—spending on average \$3,232 per meal.<sup>110</sup> The SEC order also found that Herbalife's internal policies failed to detect and prevent improper payments and benefits, referencing a response from Herbalife's Internal Audit Director when a member of Herbalife's Board of Directors questioned the high level of spending in China, that the “‘findings are the typical issues in these audits’ and were within ‘tolerance.’”<sup>111</sup> According to the DPA with the DOJ, Herbalife also admitted that it falsely maintained Sarbanes-Oxley sub-certification letters in Herbalife's books, records, and accounts.<sup>112</sup>

Herbalife agreed to pay more than \$67 million to the SEC, which included \$58.6 million in disgorgement and \$8.6 million in prejudgment interest. It also agreed to report the status of its remediation and compliance measures for three years.<sup>113</sup> The DOJ imposed a \$55 million criminal fine against Herbalife, reflecting a 25% discount off of the bottom end of the Sentencing Guideline calculation, crediting Herbalife's full cooperation in the investigation.<sup>114</sup> Herbalife agreed to continue cooperating in future criminal investigations against the company and its employees, and to enhance its compliance program and update the DOJ on the implementation

<sup>105</sup> See DOJ Non-Prosecution Agreement, *Herbalife Nutrition Ltd.* (Aug. 24, 2020), <https://www.justice.gov/usao-sdny/press-release/file/1312196/download>.

<sup>106</sup> See Order Instituting Cease-and-Desist Proceedings, *In the Matter of Herbalife Nutrition Ltd.*, SEC Exch. Act Release No. 89704 (Aug. 28, 2020), <https://www.sec.gov/litigation/admin/2020/34-89704.pdf>.

<sup>107</sup> Order Instituting Cease-and-Desist Proceedings, *In the Matter of Herbalife Nutrition Ltd.*, SEC Exch. Act Release No. 89704 ¶¶ 8-22 (Aug. 28, 2020), <https://www.sec.gov/litigation/admin/2020/34-89704.pdf>.

<sup>108</sup> *Id.* at 1; DOJ Deferred Prosecution Agreement, *United States v. Herbalife Nutrition Ltd.*, Attachment A ¶¶ 13-14 (Aug. 24, 2020), <https://www.justice.gov/usao-sdny/press-release/file/1312196/download>.

<sup>109</sup> Order Instituting Cease-and-Desist Proceedings, *In the Matter of Herbalife Nutrition Ltd.*, SEC Exch. Act Release No. 89704 ¶ 33 (Aug. 28, 2020), <https://www.sec.gov/litigation/admin/2020/34-89704.pdf>.

<sup>110</sup> *Id.* ¶ 30.

<sup>111</sup> *Id.* ¶ 32.

<sup>112</sup> DOJ Deferred Prosecution Agreement, *United States v. Herbalife Nutrition Ltd.*, Attachment A ¶ 14 (Aug. 24, 2020), <https://www.justice.gov/usao-sdny/press-release/file/1312196/download>; see also Information, *United States v. Herbalife Nutrition Ltd.*, Case No. 20-cr-443 ¶ 15, <https://www.justice.gov/usao-sdny/press-release/file/1310851/download>.

<sup>113</sup> Order Instituting Cease-and-Desist Proceedings, *In the Matter of Herbalife Nutrition Ltd.*, SEC Exch. Act Release No. 89704 ¶¶ 38, 41 (Aug. 28, 2020), <https://www.sec.gov/litigation/admin/2020/34-89704.pdf>.

<sup>114</sup> DOJ Deferred Prosecution Agreement, *United States v. Herbalife Nutrition Ltd.* ¶¶ 4, 7 (Aug. 24, 2020), <https://www.justice.gov/usao-sdny/press-release/file/1312196/download>.

of such enhancements.<sup>115</sup>

### 3. J&F Investimentos S.A.

On October 14, 2020, the DOJ announced that J&F Investimentos S.A. (J&F), a Brazil-based investment holding company primarily involved in the meat and agriculture industry, pleaded guilty to one count of conspiracy to violate the anti-bribery provisions of the FCPA.<sup>116</sup> The SEC concurrently announced charges and entered into a cease-and-desist order with J&F, JBS S.A. (JBS), a Brazil-based subsidiary of J&F and the world's largest meat producer, and their ultimate beneficial owners, the brothers Joesley and Wesley Batista, for causing a US issuer, Pilgrim's Pride Corporation (Pilgrim's), for violating the books and records and internal accounting control provisions of the FCPA.<sup>117</sup> These resolutions followed the Brazilian resolution of this matter by three years.

The actions arose from a scheme by J&F, through certain of its agents and employees, to pay millions of dollars in bribes, from 2005 through approximately 2017, to, and for the benefit of, Brazilian government officials to obtain financing from two Brazilian state-owned banks and approval for a merger from a Brazilian state-owned pension fund.<sup>118</sup> While this case involved bribery by a Brazilian company of Brazilian officials, the DOJ nonetheless took the position that "foreign officials" were involved. Jurisdiction was based on the use of US bank accounts, purchase of New York City real estate as a bribe, and various meetings held in the United States.

According to the statement of facts in connection with J&F's guilty plea and the SEC's cease-and-desist order, J&F and its co-conspirators used shell companies and New York-based bank accounts of the shell companies to facilitate and conceal the bribery scheme.<sup>119</sup> The Batistas also paid bribes to Brazilian officials to ensure that a Brazilian state-owned bank maintained a large equity investment in JBS to facilitate the latter's acquisition of Pilgrim's, among other companies.<sup>120</sup> After the Pilgrim's acquisition, the Batistas continued bribing Brazilian officials using JBS bank accounts which contained funds that were commingled with Pilgrim's funds through intercompany transfers, special dividends, and other means.<sup>121</sup> These bribes were paid using various mechanisms including "fake invoices, official election donations, and cash."<sup>122</sup> By failing to disclose the funding of the bribery scheme to Pilgrim's accountants, the Batistas caused Pilgrim's to inaccurately record the transfers and

<sup>115</sup> *Id.* ¶¶ 5, 10-11.

<sup>116</sup> DOJ Press Release, *J&F Investimentos S.A. Pleads Guilty and Agrees to Pay Over \$256 Million to Resolve Criminal Foreign Bribery Case* (Oct. 14, 2020), <https://www.justice.gov/opa/pr/jf-investimentos-sa-pleads-guilty-and-agrees-pay-over-256-million-resolve-criminal-foreign>.

<sup>117</sup> SEC Press Release, *SEC Charges Brazilian Meat Producers With FCPA Violations* (Oct. 14, 2020), <https://www.sec.gov/news/press-release/2020-254>.

<sup>118</sup> See DOJ Plea Agreement, *United States v. J&F Investimentos SA*, Attachment A (E.D.N.Y. Oct. 14, 2020), <https://www.justice.gov/usao-edny/press-release/file/1327471/download>.

<sup>119</sup> *Id.* ¶¶ 19-21, 25, 30, 32, 36, 38, 39, 42, 44, 52; Order Instituting Cease-and-Desist Proceedings, *In re J&F Investimentos, S.A., JBS, S.A., Joesley Batista, Wesley Batista*, SEC Exch. Act Release No. 90,170 ¶ 20, 21 (Oct. 14, 2020), <https://www.sec.gov/litigation/admin/2020/34-90170.pdf>.

<sup>120</sup> Order Instituting Cease-and-Desist Proceedings, *In re J&F Investimentos, S.A., JBS, S.A., Joesley Batista, Wesley Batista*, SEC Exch. Act Release No. 90,170 ¶ 14, 15 (Oct. 14, 2020), <https://www.sec.gov/litigation/admin/2020/34-90170.pdf>.

<sup>121</sup> *Id.* ¶¶ 2, 3, 19, 22.

<sup>122</sup> *Id.* ¶ 22.

payments in its books and records, and to fail to maintain an adequate system of internal accounting controls.<sup>123</sup>

J&F agreed to pay a criminal penalty of over \$256 million as part of a plea agreement with the DOJ, half of which will be credited to the approximately \$1.8 billion in penalties payable by J&F to Brazilian authorities pursuant to a 2017 settlement.<sup>124</sup> In addition, JBS will pay close to \$27 million to resolve the SEC's charges.<sup>125</sup>

In calculating the total criminal penalty, which reflects a 10% reduction off the bottom of the applicable USSG fine range, the DOJ considered the following factors: J&F's failure to voluntarily self-disclose the conduct to the DOJ; the nature and seriousness of the offense, including the involvement of high-level employees within J&F and payment of bribes to high-level government officials in Brazil for over a decade; and J&F's prior resolution with the Brazilian authorities for the same underlying conduct. J&F received partial but not full credit for cooperation and remediation because it had initially declined to produce all relevant materials and failed to produce all relevant documents in a timely manner.<sup>126</sup>

Based on J&F's remediation, the state of its compliance program, its agreement to report to the DOJ, and the fact that J&F's resolution with Brazilian authorities requires it to report internal investigations and compliance audits to the authorities, the DOJ determined that an independent compliance monitor was unnecessary.<sup>127</sup>

#### 4. Novartis AG and Subsidiaries

On June 25, 2020, Novartis AG, a Greek subsidiary (Novartis Hellas), and a former affiliate headquartered in Singapore, Alcon Pte Ltd. (Alcon Singapore) resolved FCPA charges with the DOJ and the SEC, including \$345 million in criminal penalties, disgorgement, and prejudgment interest.<sup>128</sup> Novartis AG is a global pharmaceutical and health care company headquartered in Basel, Switzerland. The settled charges arose from various alleged payment schemes to health care providers, including state-run and state-controlled hospitals and clinics, in Greece, Vietnam, South Korea, and China that resulted in nearly \$92.3 million in profits to

<sup>123</sup> *Id.* ¶¶ 2, 3, 17, 19, 23.

<sup>124</sup> *Id.* ¶ 37, Footnote 2; DOJ Plea Agreement, *United States v. J&F Investimentos SA* ¶ 7, 22 (E.D.N.Y. Oct. 14, 2020), <https://www.justice.gov/usao-edny/press-release/file/1327471/download>.

<sup>125</sup> Order Instituting Cease-and-Desist Proceedings, *In re J&F Investimentos, S.A., JBS, S.A., Joesley Batista, Wesley Batista*, SEC Exch. Act Release No. 90,170 § IV(D) (Oct. 14, 2020), <https://www.sec.gov/litigation/admin/2020/34-90170.pdf>.

<sup>126</sup> See DOJ Plea Agreement, *United States v. J&F Investimentos SA* ¶ 7 (E.D.N.Y. Oct. 14, 2020), <https://www.justice.gov/usao-edny/press-release/file/1327471/download>.

<sup>127</sup> *Id.*

<sup>128</sup> See DOJ Press Release, *Novartis AG and Subsidiaries to Pay \$345 Million to Resolve Foreign Corrupt Practices Act Cases* (Jun. 25, 2020), <https://www.justice.gov/usao-nj/pr/novartis-ag-and-subsidiaries-pay-345-million-resolve-foreign-corrupt-practices-act-cases>; SEC Press Release, *SEC Charges Novartis AG with FCPA Violations* (Jun. 25, 2020), <https://www.sec.gov/news/press-release/2020-144>.

Novartis and its subsidiaries.<sup>129</sup> Novartis Hellas and Alcon Asia entered into DPAs with the DOJ, with Novartis Hellas charged with conspiring to violate the FCPA's anti-bribery and recordkeeping provisions and Alcon Singapore charged with conspiracy to violate the FCPA's recordkeeping provisions. The parent company, Novartis AG, agreed to a cease-and-desist order with the SEC that alleged violations of the FCPA's recordkeeping and internal control provisions.

According to the Novartis Hellas DPA, the company sponsored Greek state health care providers to attend international medical conventions that took place in destination cities in Europe and the United States in order to corruptly influence those health care providers to prescribe Novartis products, earning the company at least \$71.48 million in profits from sales in Greece between 2012-2015.<sup>130</sup> In addition, Novartis Hellas paid health care providers as part of an epidemiological study that was intended to induce participating health care providers to prescribe Novartis products.<sup>131</sup> Novartis Hellas employees and agents allegedly conspired to falsely record these travel sponsorships and direct payments related to the investigational study as legitimate advertising and promotion expenses.<sup>132</sup>

According to the Alcon Asia DPA, prior to, and continuing after Novartis AG's merger with Alcon in 2011, Alcon representative offices in Vietnam reimbursed improper payments third-party distributors made to health care providers to purchase Alcon products.<sup>133</sup> Before the merger, Alcon Asia had an affiliate issue credit notes to the distributor for purported consultancy fees. Following the merger, Alcon Asia falsely recorded payments and inflated reimbursable costs to the distributor as consulting expenses, human resources expenses, administration costs, and/or margin reconciliation costs.<sup>134</sup> Alcon Asia executives also submitted false Sarbanes-Oxley sub-certifications that were maintained as part of Novartis AG's books and records. This enforcement action underscores the importance of pre- and post-acquisition due diligence, including into relationships with third-party distributors in high-risk countries.

The SEC's cease-and-desist order against parent company Novartis AG arose out of its subsidiaries' activities in South Korea, Vietnam, Greece, and China.<sup>135</sup> In addition to the misconduct chronicled in the DOJ's DPAs related to Greece and Vietnam, the SEC's order further alleged that employees of Novartis Korea Ltd. (Novartis Korea) made improper payments to health care providers, disguised

<sup>129</sup> See Order Instituting Cease-and-Desist Proceedings, *In the Matter of Novartis AG*, SEC Exch. Act Release No. 89149 (Jun. 25, 2020), <https://www.sec.gov/litigation/admin/2020/34-89149.pdf>; DOJ Deferred Prosecution Agreement, *Novartis Hellas S.A.C.I.*, Case No. 20-cr-538, (Jun. 25, 2020), <https://www.justice.gov/opa/press-release/file/1289751/download>; DOJ Deferred Prosecution Agreement, *Alcon Pte Ltd.*, Case No. 20-cr-539 (Jun. 25, 2020), <https://www.justice.gov/opa/press-release/file/1289736/download>.

<sup>130</sup> See DOJ Deferred Prosecution Agreement, *Novartis Hellas S.A.C.I.* ¶9 (Jun. 25, 2020), <https://www.justice.gov/opa/press-release/file/1289751/download>.

<sup>131</sup> *Id.* ¶32.

<sup>132</sup> *Id.* ¶27.

<sup>133</sup> See DOJ Deferred Prosecution Agreement, *Alcon Pte Ltd.* ¶21 (Jun. 25, 2020), <https://www.justice.gov/opa/press-release/file/1289736/download>.

<sup>134</sup> *Id.* ¶33.

<sup>135</sup> Order Instituting Cease-and-Desist Proceedings, *In the Matter of Novartis AG*, SEC Exch. Act Release No. 89149 ¶4 (Jun. 25, 2020), <https://www.sec.gov/litigation/admin/2020/34-89149.pdf>. Novartis AG previously settled an FCPA action with the SEC in 2016 alleging violations related to conduct in China. See *In the Matter of Novartis AG*, Sec. Exch. Act Release No. 77431, <http://www.sec.gov/litigation/admin/2016/34-77431-s.pdf>

as payments for medical journal activities, in an effort to increase prescriptions and sales of Novartis products.<sup>136</sup> This conduct also served as the basis for civil administrative fines and criminal proceedings by the South Korean authorities against Novartis Korea and several former Novartis Korea employees.<sup>137</sup> In addition, the SEC identified internal control deficiencies in connection with certain equipment financing arrangements in China that led to Novartis and Alcon provisioning more than \$50 million in bad debt. The SEC order included both recordkeeping and internal control charges.

Although no voluntary disclosure credit was accorded, both the DOJ and the SEC considered the companies' cooperation with their investigations and various remedial acts undertaken in reaching these resolutions. Remediation included the termination of certain personnel and third-party entities involved in the misconduct, the strengthening of internal accounting controls, the retention of additional compliance personnel, improvements to due diligence and business justification processes for third parties, and provision of enhanced training.<sup>138</sup> The companies undertook to self-report to the DOJ and the SEC during a three-year period on the status of their remediation and compliance program enhancements.

## **B. DOJ Corporate Enforcement Actions**

### **1. Airbus SE**

On January 31, 2020, the DOJ announced that it had entered into a three-year DPA with Airbus SE (Airbus), a global aerospace company with its main office in France, based on charges that the company conspired to violate the FCPA's anti-bribery provisions, as well as the Arms Export Control Act (AECA) and its implementing regulations, the International Traffic in Arms Regulations (ITAR), which control the export of US defense articles.<sup>139</sup> Airbus's settlement with the DOJ was part of a coordinated resolution with various US, UK, and French authorities arising out of a years-long bribery scheme involving China and multiple other countries, with combined penalties totaling more than \$3.9 billion.

According to the US DPA, between 2008 and 2015, Airbus engaged in a conspiracy to bribe decision makers and other influencers in China and multiple other countries,<sup>140</sup> in order to obtain improper business advantages and to win business (including aircraft sales) from both privately-owned enterprises and entities

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<sup>136</sup> *Id.* ¶28.

<sup>137</sup> *Id.* ¶¶29–31.

<sup>138</sup> *Id.* ¶49.

<sup>139</sup> See DOJ Deferred Prosecution Agreement, *United States v. Airbus SE*, Case No. 20-cr-00021-TFH, ¶¶ 1-3, (Jan. 31, 2020), <https://www.justice.gov/criminal-fraud/file/1242051/download>; Information, *United States v. Airbus SE*, Case No. 20-cr-00021-TFH, ¶ 6 (Jan. 28, 2020), <https://www.justice.gov/criminal-fraud/file/1242046/download>. The DPA was entered into by the DOJ's Criminal Division (Fraud Section) and National Security Division, as well as the US Attorney's Office for the District of Columbia (Criminal Division).

<sup>140</sup> The DPA does not list the countries involved in the alleged bribery scheme other than China. It does allege ITAR violations in Ghana, Indonesia, and Vietnam. See DOJ Deferred Prosecution Agreement, *United States v. Airbus SE*, Case No. 20-cr-00021-TFH, ¶¶ 132-162 (Jan. 31, 2020), <https://www.justice.gov/criminal-fraud/file/1242051/download>. However, the United Kingdom's Serious Fraud Office (SFO) alleged Airbus failed to prevent bribery in Sri Lanka, Malaysia, Indonesia, Taiwan and Ghana. See SFO Case Updates, *SFO enters into €991m Deferred Prosecution Agreement with Airbus as part of a €3.6bn global resolution* (Jan. 31, 2020), <https://www.sfo.gov.uk/2020/01/31/sfo-enters-into-e991m-deferred-prosecution-agreement-with-airbus-as-part-of-a-e3-6bn-global-resolution/>.

that were state-owned and -controlled.<sup>141</sup> The DOJ alleged that in furtherance of the China bribery scheme, which was the focus of the US DPA, between approximately 2013 and 2015, Airbus engaged third-party business partners to facilitate and conceal bribery payments offered and intended to be paid to Chinese officials.<sup>142</sup> For example, Airbus engaged a business partner in China to bribe Chinese government officials in connection with the approval of certain agreements associated with the purchase and sale of Airbus aircraft to state-owned and -controlled airlines in China.<sup>143</sup> In order to conceal the payments and its engagement of the business partner in China, Airbus made payments to a bank account in Hong Kong in the name of a company controlled by an intermediary business partner, which issued sham contracts and invoices for services that were never provided.<sup>144</sup> Airbus also provided luxury travel (including to Hawaii) for Chinese government officials. In support of the DOJ's assertion of FCPA anti-bribery jurisdiction over Airbus, as a foreign, non-issuer, defendant, the DOJ alleged that Airbus executives and agents sent emails related to the scheme while located in the United States; they also traveled to—and discussed business with Chinese officials while located in—the United States.<sup>145</sup>

Under the terms of the US DPA, Airbus was required to pay the United States approximately \$294 million for the criminal FCPA bribery charges, \$233 million for the ITAR violations, \$10 million to the US Department of State's Directorate of Defense Trade Controls (DDTC)—\$5 million of which DOJ agreed to credit as part of its resolution—and post a bond worth 50 million Euros (approximately \$55.5 million) as civil forfeiture related to the ITAR violations. In addition, \$2.31 billion was payable to the PNF in France in relation to bribes paid to government officials and non-governmental airline executives in China, and \$1.09 billion to the United Kingdom's Serious Fraud Office (SFO) in relation to bribes paid in Malaysia, Sri Lanka, Taiwan, Indonesia and Ghana.<sup>146</sup> The total coordinated penalty payable in this case is almost \$4 billion. Consistent with its policy against “piling-on,” the DOJ acknowledged the “significantly stronger” interests of France and the United Kingdom in the corruption-related conduct and “jurisdictional bases for resolution,” and indicated that it took into account the French and UK resolutions in all aspects of the US resolution.<sup>147</sup> This included crediting a portion of penalties paid to other authorities in determining the

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<sup>141</sup> See DOJ Press Release, *Airbus Agrees to Pay over \$3.9 Billion in Global Penalties to Resolve Foreign Bribery and ITAR Case* (Jan. 31, 2020), <https://www.justice.gov/opa/pr/airbus-agrees-pay-over-39-billion-global-penalties-resolve-foreign-bribery-and-itar-case>.

<sup>142</sup> *Id.*

<sup>143</sup> *Id.*

<sup>144</sup> *Id.*

<sup>145</sup> *Id.* The US DPA also detailed Airbus's ITAR-related violations arising out of the company's payment of (and failure to report to the US Department of State's Directorate of Defense Trade Controls (DDTC)) political contributions, commissions, and fees paid in connection with the export of ITAR-controlled defense articles; its failure to maintain records of its sales of ITAR-controlled defense articles for the required period; and its use of unauthorized brokers for the sale of ITAR-controlled defense articles, including to prohibited countries. See DOJ Deferred Prosecution Agreement, *United States v. Airbus SE*, Case No. 20-cr-00021-TFH, Attachment A ¶¶ 93-191 (Jan. 31, 2020), <https://www.justice.gov/criminal-fraud/file/1242051/download>.

<sup>146</sup> See DOJ Press Release, *Airbus Agrees to Pay over \$3.9 Billion in Global Penalties to Resolve Foreign Bribery and ITAR Case* (Jan. 31, 2020), <https://www.justice.gov/opa/pr/airbus-agrees-pay-over-39-billion-global-penalties-resolve-foreign-bribery-and-itar-case>.

<sup>147</sup> See DOJ Deferred Prosecution Agreement, *United States v. Airbus SE*, Case No. 20-cr-00021-TFH, ¶ 4(i) (Jan. 31, 2020), <https://www.justice.gov/criminal-fraud/file/1242051/download>.

amount due under the US DPA.<sup>148</sup>

Although Airbus did not receive voluntary disclosure credit from the DOJ in relation to the FCPA-related conduct (in contrast to the ITAR-related conduct), it received full cooperation and remediation credit, earning it a 25% reduction off the bottom of the USSG fine range. The DOJ determined that an independent compliance monitor was unnecessary based on Airbus's remedial measures (including terminating and disciplining employees, freezing payments to third parties and applying enhanced due diligence, hiring new legal and compliance leadership, and improving training and other compliance procedures and controls), the state of its compliance program, and the fact the company would be separately entering into a resolution with the PNF and subject to oversight by French authorities.<sup>149</sup>

## 2. Beam Suntory Inc.

On October 27, 2020, Beam Suntory Inc. (Beam), a Delaware corporation headquartered in Chicago, which produces and sells distilled beverages, entered into a three-year DPA with the DOJ for FCPA violations by Beam's Indian subsidiary, Beam Global Spirit & Wine (India) Private Ltd. (Beam India).<sup>150</sup> Beam agreed to pay \$19,572,885 to resolve the investigation.<sup>151</sup> The alleged violations included conspiracy to violate the FCPA's anti-bribery, internal control, and books and records provisions.<sup>152</sup> The violations and investigation are similar in nature to the SEC's investigation of Beam in July 2018, discussed in Steptoe's [2018 FCPA/Anti-Corruption Year in Review](#).<sup>153</sup>

Beam admitted to a variety of conduct between 2006 and 2012 that resulted in the DOJ's charges. Among other things, Beam admitted to paying a bribe of one million Indian Rupees (\$18,000) to an Indian government official in exchange for approval of a license to bottle a new line of products Beam sought to market and sell in India.<sup>154</sup> The bribe was authorized by a high-ranking executive at Beam's Asia Pacific/South America regional business unit.<sup>155</sup> On other occasions, Beam India funneled payments through third-party sales promoters and distributors, in part to make improper payments to government officials to secure orders of Beam products at government-controlled depots and obtain prominent placement of Beam products

<sup>148</sup> The total US criminal penalty, following application of a 25% reduction of the USSG range for Airbus's cooperation and remediation, was calculated as \$2,329,715,271 (which included \$2,091,978,881 for the FCPA-related conduct), in addition to the 50,000,000 Euro civil forfeiture bond. However, the DOJ agreed to credit \$1,797,490,796 of the amount paid to French authorities toward the total US criminal penalty. See DOJ Deferred Prosecution Agreement, *United States v. Airbus SE*, Case No. 20-cr-00021-TFH, Attachment A ¶¶ 7-11 (Jan. 31, 2020), <https://www.justice.gov/criminal-fraud/file/1242051/download>.

<sup>149</sup> See DOJ Deferred Prosecution Agreement, *United States v. Airbus SE*, Case No. 20-cr-00021-TFH, ¶ 4(f), (Jan. 31, 2020), <https://www.justice.gov/criminal-fraud/file/1242051/download>.

<sup>150</sup> See DOJ Press Release, *Beam Suntory Inc. Agrees to Pay Over \$19 Million to Resolve Criminal Foreign Bribery Case*, (Oct. 27, 2020), <https://www.justice.gov/opa/pr/beam-suntory-inc-agrees-pay-over-19-million-resolve-criminal-foreign-bribery-case>.

<sup>151</sup> *Id.*

<sup>152</sup> *Id.*

<sup>153</sup> See Order Instituting Cease-and-Desist Proceedings, *In re Beam Inc.* SEC Exch. Act Release No.83575 (July 2, 2018), <https://www.sec.gov/litigation/admin/2018/34-83575.pdf>.

<sup>154</sup> See Deferred Prosecution Agreement, *United States v. Beam Suntory Inc.*, Case No. 20-CR-745, ¶ 10 (Oct. 23, 2020), <https://www.justice.gov/opa/press-release/file/1331666/download>, Attachment A.

<sup>155</sup> *Id.* ¶ 11.

in government retail stores, among other benefits.<sup>156</sup> Beam India maintained off-the-books accounts tracking those payments and concealed the scheme in the entity's books and records to make the bribes appear legitimate,<sup>157</sup> in addition to submitting false Sarbanes Oxley sub-certifications to Beam that failed to include these improper payments.<sup>158</sup>

Beam also admitted to implementing inadequate internal controls sufficient to detect and stop Beam India's practice of making improper payments to government officials.<sup>159</sup> Finally, the DOJ found that Beam failed to conduct adequate due diligence of Beam India before it was acquired in 2006, and further found that high level executives and members of Beam's legal team ignored and declined to implement recommendations from audit findings and reports from 2008 to 2011 that revealed significant corruption concerns.<sup>160</sup>

In calculating the penalty, the DOJ granted Beam only partial cooperation credit due to its "inconsistent and, at times, inadequate cooperation . . . as well as significant delays caused by the Company in reaching a timely resolution and its refusal to accept responsibility for several years."<sup>161</sup> Notably, the DOJ did not credit the penalty Beam paid to the SEC in 2018 because the company did not seek to coordinate a parallel resolution at that time.<sup>162</sup> DOJ also considered the involvement of a member of Beam's legal team, who affirmatively avoided uncovering information related to Beam India's corrupt payments, in calculating the penalty, in addition to the company's failure to discipline certain individuals involved in the conduct.<sup>163</sup>

### 3. Sargeant Marine Inc.

On September 22, 2020, Sargeant Marine Inc. (Sargeant Marine), an asphalt company formerly based in Boca Raton, FL, entered into a plea agreement with the DOJ which required the company to pay a criminal fine of \$16.6 million to resolve charges stemming from schemes to bribe foreign officials in South America.<sup>164</sup> The company admitted to conspiracy to violate the FCPA's anti-bribery provisions by paying millions in bribes to foreign officials in Brazil, Venezuela, and Ecuador from 2010 to 2018.<sup>165</sup>

In Brazil, Sargeant Marine used intermediaries to bribe a Brazilian government minister, a powerful member of the Brazilian Congress, and Petrobras officials to secure business.<sup>166</sup> In total, these payments amounted to over \$5 million.<sup>167</sup> The DOJ

<sup>156</sup> *Id.*

<sup>157</sup> *Id.* ¶ 12-13.

<sup>158</sup> *Id.* ¶ 15.

<sup>159</sup> *Id.* ¶ 23.

<sup>160</sup> *Id.* ¶ 24-37.

<sup>161</sup> Deferred Prosecution Agreement, *United States v. Beam Suntory Inc.*, Case No. 20-CR-745, ¶ 4(c) (Oct. 23, 2020), <https://www.justice.gov/opa/press-release/file/1331666/download>.

<sup>162</sup> *Id.* ¶ 4(k).

<sup>163</sup> *Id.* ¶¶ 4(f) and 4(i).

<sup>164</sup> See DOJ Press Release, *Sargeant Marine Inc. Pleads Guilty and Agrees to Pay \$16.6 Million to Resolve Charges Related to Foreign Bribery Schemes in Brazil, Venezuela, and Ecuador* (Sept. 22, 2020), <https://www.justice.gov/opa/pr/sargeant-marine-inc-pleads-guilty-and-agrees-pay-166-million-resolve-charges-related-foreign>.

<sup>165</sup> *Id.*

<sup>166</sup> See DOJ Plea Agreement, *United States v. Sargeant Marine Inc.*, Attachment A ¶ 27 (E.D.N.Y. Sept. 21, 2020), <https://www.justice.gov/criminal-fraud/file/1320011/download>.

<sup>167</sup> *Id.* ¶ 40.

noted that the Ministerio Público Federal in Brazil provided significant cooperation. In Venezuela, Petróleos de Venezuela S.A. (PDVSA) refused to sell asphalt to Sargeant Marine, so Sargeant Marine made an agreement with another company, Swiss Asphalt Company, to buy asphalt on Sargeant Marine’s behalf.<sup>168</sup> To facilitate this arrangement, Sargeant Marine and Swiss Asphalt Company agreed to offer and pay bribes to two PDVSA officials.<sup>169</sup> Sargeant Marine also bribed several PDVSA officials in order to receive non-public information, and to gain and retain business.<sup>170</sup> In Ecuador, Sargeant Marine worked with intermediaries to secure contracts to supply asphalt to Petroecuador by bribing Petroecuador officials.<sup>171</sup> Sargeant Marine used similar methods to make these improper payments in all three countries—by funneling payments through shell companies controlled by intermediaries and their relatives and by disguising the improper payments as those related to fake consulting agreements.<sup>172</sup>

The DOJ’s criminal fine in this case is noteworthy in that the USSG fine calculation was \$150 million, which was reduced by 25% to \$90 million for “full cooperation and remediation”—yet the final penalty was only \$16.6 million.<sup>173</sup> The reduced final penalty is a result of Sargeant Marine’s representation that it was unable to pay a fine greater than \$16.6 million.<sup>174</sup> The DOJ independently verified Sargeant Marine’s representation, finding that a greater fine would “substantially threaten the continued viability of the Company.”<sup>175</sup>

#### 4. Vitol, Inc.

On December 3, 2020, Vitol Inc. (Vitol), a Houston-based US affiliate of one of the largest energy trading firms in the world, entered into a DPA with the DOJ in relation to the payment of bribes to government officials in Brazil, Ecuador, and Mexico in order to win business contracts and gain an unfair competitive advantage.<sup>176</sup> The DOJ charged Vitol with two counts of conspiracy to violate the anti-bribery provisions of the FCPA.<sup>177</sup> Vitol will pay a combined \$135 million to resolve the DOJ’s investigations into FCPA violations and a parallel investigation in Brazil. In another related investigation, resolved on a coordinated basis, the Commodity Futures Trading Commission (CFTC) also settled charges against Vitol, requiring Vitol to pay an additional \$28.7 million to the CFTC.<sup>178</sup> This was the first ever CFTC enforcement action involving foreign corruption.<sup>179</sup>

<sup>168</sup> *Id.* ¶ 50.

<sup>169</sup> *Id.* ¶ 51.

<sup>170</sup> *Id.* ¶ 57.

<sup>171</sup> *Id.* ¶ 67.

<sup>172</sup> *Id.* ¶¶ 39, 54, 62, 73.

<sup>173</sup> See DOJ Plea Agreement, *United States v. Sargeant Marine Inc.*, ¶ 22a (E.D.N.Y. Sept. 21, 2020), <https://www.justice.gov/criminal-fraud/file/1320011/download>.

<sup>174</sup> *Id.* ¶ 22b.

<sup>175</sup> *Id.* ¶ 7j.

<sup>176</sup> DOJ Press Release, *Vitol Inc. Agrees to Pay over \$135 Million to Resolve Foreign Bribery Cases* (Dec. 3 2020), <https://www.justice.gov/opa/pr/vitol-inc-agrees-pay-over-135-million-resolve-foreign-bribery-case>.

<sup>177</sup> *Id.*

<sup>178</sup> CFTC Order, *In re Vitol Inc.*, CFTC Docket No. 21-01, § V(E)(3)-(4) (Dec. 3, 2020), [https://d6jxgaftxvagq.cloudfront.net/Uploads/c/e/x/enfvitolorder120320\\_171626.pdf](https://d6jxgaftxvagq.cloudfront.net/Uploads/c/e/x/enfvitolorder120320_171626.pdf).

<sup>179</sup> CFTC Press Release, *CFTC Order Vitol Inc. to Pay \$95.7 Million for Corruption-Based Fraud and Attempted Manipulation* (Dec. 3 2020), [https://www.cftc.gov/PressRoom/PressReleases/8326-20?utm\\_source=govdelivery](https://www.cftc.gov/PressRoom/PressReleases/8326-20?utm_source=govdelivery).

According to the DPA, between 2005 and 2014, Vitol paid more than \$8 million to at least four officials at the Brazilian state oil company Petrobras.<sup>180</sup> These bribes were paid in order to receive confidential Petrobras pricing information such as weekly reports with the company's oil production volume and anticipated imports, as well as competitor information such as "last look" information that revealed competitors' private bids.<sup>181</sup> Vitol used intermediaries and a fictitious company to transfer payments to offshore accounts held by *doleiros* (professional money launderers and black market money exchangers), and, eventually, to Petrobras officials.<sup>182</sup> Vitol also admitted that from 2011 to 2014, it bribed at least five other Petrobras officials in order to receive confidential pricing information which allowed Vitol to win oil contracts with Petrobras during pre-arranged sham negotiations staged to appear legitimate.<sup>183</sup>

In a second conspiracy, between 2015 and 2020, Vitol admitted to paying more than \$2 million in bribes to officials of the state oil companies of Ecuador and Mexico, Petroecuador and PEMEX,<sup>184</sup> in order to obtain and retain business related to the sale and purchase of oil products.<sup>185</sup> The scheme involved a back-to-back contract with a state-owned enterprise to avoid a tendering process, fake consulting agreements, shell companies, and the use of alias email accounts to transfer funds to offshore accounts which were then be used to bribe officials.<sup>186</sup> The DOJ agreed to credit \$45 million of the \$135 million total criminal penalty against the amount that Vitol will pay in its coordinated resolution with Brazil of the investigation by the Brazilian Ministério Público Federal for conduct related to the company's bribery scheme in Brazil.<sup>187</sup> The \$135 million resolution is in addition to \$28.7 million Vitol agreed to pay to the CFTC, which involved similar conduct to that of the DOJ's investigation, in addition to other conduct.<sup>188</sup> The CFTC resolution amounted to \$95.79 million in civil penalties and disgorgement, but the CFTC credited \$67,000,000 of the criminal penalty to that paid to DOJ. In setting the fine at 25% off the bottom of the USSG fine range, the DOJ considered Vitol's cooperation, designation of involved individuals, timely acceptance of responsibility, and prompt production of documents as mitigating factors in determining punishment. In addition, Vitol and its affiliate Vitol S.A. committed to enhance the group's compliance and internal controls, and agreed to provide annual reports to the DOJ regarding implementation of the compliance measures.<sup>189</sup>

<sup>180</sup> DOJ Press Release, *Vitol Inc. Agrees to Pay over \$135 Million to Resolve Foreign Bribery Cases* (Dec. 3 2020), <https://www.justice.gov/opa/pr/vitol-inc-agrees-pay-over-135-million-resolve-foreign-bribery-case>.

<sup>181</sup> See Deferred Prosecution Agreement, *United States v. Vitol Inc.*, Case No. 20-539-ENV, ¶¶ 25-38 (Dec. 3 2020), <https://www.justice.gov/opa/press-release/file/1342896/download>.

<sup>182</sup> DOJ Press Release, *Vitol Inc. Agrees to Pay over \$135 Million to Resolve Foreign Bribery Cases* (Dec. 3 2020), <https://www.justice.gov/opa/pr/vitol-inc-agrees-pay-over-135-million-resolve-foreign-bribery-case>; Deferred Prosecution Agreement, *United States v. Vitol Inc.*, Case No. 20-539-ENV, ¶¶ 39-43 (Dec. 3 2020), <https://www.justice.gov/opa/press-release/file/1342896/download>, Attachment A.

<sup>183</sup> Deferred Prosecution Agreement, *United States v. Vitol Inc.*, Case No. 20-539-ENV, ¶¶ 44-45 (Dec. 3 2020), <https://www.justice.gov/opa/press-release/file/1342896/download>, Attachment A.

<sup>184</sup> *Id.* ¶¶ 57, 69.

<sup>185</sup> *Id.* ¶¶ 55-70.

<sup>186</sup> *Id.* ¶¶ 55-70.

<sup>187</sup> Deferred Prosecution Agreement, *United States v. Vitol Inc.*, Case No. 20-539-ENV, ¶ 7 (Dec. 3 2020), <https://www.justice.gov/opa/press-release/file/1342896/download>.

<sup>188</sup> *Id.* ¶ 4(i); CFTC Order, *In re Vitol Inc.*, CFTC Docket No. 21-01, § V(E)(3)-(4). (Dec. 3, 2020), [https://d6jxgaftxvagq.cloudfront.net/Uploads/c/e/x/enfvitolorder120320\\_171626.pdf](https://d6jxgaftxvagq.cloudfront.net/Uploads/c/e/x/enfvitolorder120320_171626.pdf)

<sup>189</sup> Deferred Prosecution Agreement, *United States v. Vitol Inc.*, Case No. 20-539-ENV, ¶ 10 (Dec. 3 2020), <https://www.justice.gov/opa/press-release/file/1342896/download>.

In connection with the misconduct, the DOJ unsealed charges against a Houston-based former Petrobras official, Rodrigo Berkowitz, as discussed in more detail at Section V.M, and one of the intermediaries involved in the Brazil scheme, Luiz Eduardo Andrade, as discussed in more detail at Section V.J.<sup>190</sup> Both individuals are awaiting sentencing.<sup>191</sup> Javier Aguilar, a Vitol trader, was also indicted for his alleged role in the Ecuador scheme,<sup>192</sup> as discussed more in detail at Section V.I.

## C. DOJ Declinations

### 1. World Acceptance Corporation

On August 6, 2020, the DOJ issued its sole declination under its Corporate Enforcement Policy for the year, to World Acceptance Corporation (WAC) relating to violations of the FCPA's anti-bribery provisions by WAC's Mexican subsidiary from 2010 to 2017.<sup>193</sup> As part of the DOJ declination, WAC agreed to disgorge the full amount of ill-gotten gains to the SEC, as discussed at Section IV.D.4, below.

## D. SEC Corporate Enforcement Actions

### 1. Alexion Pharmaceuticals Inc.

On July 2, 2020, Alexion Pharmaceuticals Inc. (Alexion), a Boston-based pharmaceutical company, settled charges with the SEC related to alleged violations of the FCPA's recordkeeping and internal control provisions associated with payments by Alexion subsidiaries to foreign government officials to favorably influence the regulatory treatment of Alexion's primary drug, Soliris.<sup>194</sup> Without admitting or denying the SEC's allegations, Alexion agreed to a cease-and-desist order and to pay more than \$21 million to resolve the charges related to actions by Alexion subsidiaries in Russia, Turkey, Brazil, and Colombia.<sup>195</sup> The SEC's order followed Alexion's announcement that the DOJ had issued a declination letter in relation to the FCPA allegations in May 2020.<sup>196</sup>

The SEC found that from 2010-2015 Alexion Turkey hired and paid a consultant over \$1.3 million, a portion of which the consultant passed on to Turkish government officials, in the form of cash, meals, or gifts, in order to secure approvals and other favorable treatment for Soliris, including the provision of confidential information and advance feedback from the Turkish government on regulatory submissions.<sup>197</sup>

<sup>190</sup> DOJ E.D.N.Y Press Release, *Vitol Inc. Agrees to Pay Over \$135 Million to Resolve Charges for Bribery Schemes in Latin America* (Dec. 3, 2020), <https://www.justice.gov/usao-edny/pr/vitol-inc-agrees-pay-over-135-million-resolve-charges-bribery-schemes-latin-america>; DOJ Press Release, *Vitol Inc. Agrees to Pay over \$135 Million to Resolve Foreign Bribery Cases* (Dec. 3 2020), <https://www.justice.gov/opa/pr/vitol-inc-agrees-pay-over-135-million-resolve-foreign-bribery-case>.

<sup>191</sup> *Id.*

<sup>192</sup> *Id.*

<sup>193</sup> See DOJ Declination Letter, World Acceptance Corporation (Aug. 6, 2020), <https://www.justice.gov/criminal-fraud/file/1301826/download>.

<sup>194</sup> See SEC Press Release, *SEC Charges Alexion Pharmaceuticals with FCPA Violations* (July 2, 2020), <https://www.sec.gov/news/press-release/2020-149>.

<sup>195</sup> *Id.*

<sup>196</sup> See Form 10-Q, *Alexion Pharmaceuticals, Inc.* 29 (May 4, 2020), <https://ir.alexion.com/static-files/03035174-d46e-403f-a30b-d35f7f6c0785>.

<sup>197</sup> See SEC Order, *In re Alexion Pharms., Inc.*, ¶ 15 (July 2, 2020), <https://www.sec.gov/litigation/admin/2020/34-89214.pdf>.

Alexion Turkey failed to require that the consultant provide sufficient documentation of the expenses, in addition to making some payments to the consultant by asking a third-party vendor to pay the consultant and then provide falsified invoices for reimbursement.<sup>198</sup> In addition to paying Turkish government officials through the consultant, from 2012-2015, Alexion Turkey managers also paid over \$100,000 to or at the request of health care providers who were serving on Ministry of Health commissions.<sup>199</sup> According to the SEC, these payments were inaccurately recorded in Alexion Turkey's books and records as honoraria and grants.<sup>200</sup>

According to the SEC, between 2011 and 2015, Alexion Russia paid health care professionals employed at state-owned health care institutions over \$1 million because Alexion Russia senior managers believed that these individuals had decision-making authority regarding health care budgets and regulatory decisions.<sup>201</sup> These payments, which allegedly were intended to influence the health care providers to take positions favorable to Alexion Russia in connection with regional budget allocations, to increase the number of approved Soliris prescriptions, and to favorably influence the regulatory treatment of Soliris, were inaccurately recorded in Alexion Russia's books and records as honoraria, educational expenses, business meeting expenses, and scientific research.<sup>202</sup> The SEC further alleged that, as a result of the conduct in Turkey and Russia, Alexion was unjustly enriched by over \$14.1 million.<sup>203</sup>

Furthermore, the SEC stated that between 2013-2015, certain employees at Alexion Brazil and Alexion Colombia created or directed third parties to create inaccurate financial records concerning payments to third parties, such as patient advocacy organizations.<sup>204</sup> Both subsidiaries failed to maintain adequate books and records of certain financial transactions involving payments to third parties, and Alexion allegedly failed to prevent the destruction of relevant documents by certain Alexion Brazil employees.<sup>205</sup>

The SEC considered Alexion's cooperation throughout the investigation and remedial acts undertaken by Alexion, including strengthening and expanding its global compliance organization; improving its policies and procedures regarding payments to third parties; revamping its process for engaging and overseeing state-owned health care providers; enhancing its internal audit function and conducting proactive compliance reviews; and improving anti-corruption training provided to Alexion employees.<sup>206</sup>

## 2. Cardinal Health, Inc.

On February 28, 2020, the SEC issued a cease-and-desist order against Cardinal Health, Inc. (Cardinal) alleging FCPA recordkeeping and internal accounting

<sup>198</sup> *Id.* ¶¶ 15-16.

<sup>199</sup> *Id.* ¶ 17.

<sup>200</sup> *Id.*

<sup>201</sup> *Id.* ¶ 22.

<sup>202</sup> *Id.*

<sup>203</sup> *Id.* ¶¶ 20, 25.

<sup>204</sup> *Id.* ¶ 28.

<sup>205</sup> *Id.* ¶ 29.

<sup>206</sup> *Id.* ¶¶ 33, 35.

control violations related to conduct by Cardinal's former subsidiary operating in China (Cardinal China) between 2013 and 2016.<sup>207</sup> Cardinal is an Ohio-based health care services and products company that is listed on the New York Stock Exchange.<sup>208</sup>

In November 2010, Cardinal entered the Chinese market by acquiring the Chinese subsidiaries of an established pharmaceutical distribution company which had longstanding distribution agreements with a number of global manufacturers of prescription medicine, medical devices, and consumer health products.<sup>209</sup> The Chinese subsidiaries also maintained certain marketing accounts on its books consisting of excess distribution margin, from which the subsidiaries paid operating and marketing expenses for their distribution customers as directed by customer employees.

According to the SEC order, after the acquisition, Cardinal rebranded the entities as "Cardinal China" and terminated most of the marketing accounts it inherited through Cardinal China due to FCPA-related compliance risks associated with channeling customer marketing expenses through its own books and records.<sup>210</sup> However, Cardinal maintained its relationship with a European dermocosmetic company after inaccurately assessing the risks as minimal.<sup>211</sup> Between 2010 and 2016, Cardinal China acted as the exclusive distributor in the Chinese market for the dermocosmetic company, maintained and operated marketing accounts for said company, and also retained marketing employees on the company's behalf.<sup>212</sup> According to the SEC, Cardinal China, at the request of the marketing employees that were acting on behalf of the dermocosmetic company, regularly made payments from the marketing accounts that were improperly redirected to government-employed health care providers and employees of Chinese state-owned retailers who had influence over purchasing decisions related to the dermocosmetic company's products.<sup>213</sup> The improper payments allegedly took varied forms, including cash, smartphones, luxury dermocosmetic products, gift cards, and travel.<sup>214</sup>

The order found that Cardinal China did not subject these marketing employees to its full internal accounting controls, such as providing FCPA and anti-bribery training, or conducting any oversight of their interactions with third parties in China.<sup>215</sup> Furthermore, the order found that Cardinal China regularly authorized the payments without reasonable assurances that the transactions were executed appropriately and failed to accurately record in its books and records payments made from the accounts.<sup>216</sup> According to the SEC, due to Cardinal's insufficient internal accounting controls, the marketing employees were able to easily disguise these payments by channeling funds through complicit third-party vendors. In

<sup>207</sup> See Order Instituting Cease-and Desist-Proceedings, *In re Cardinal Health, Inc.*, SEC Exch. Act Release No. 88303 (Feb. 28, 2020), <https://www.sec.gov/litigation/admin/2020/34-88303.pdf>.

<sup>208</sup> See *id.* ¶ 9.

<sup>209</sup> See *id.* ¶ 2.

<sup>210</sup> See *id.* ¶¶ 2, 4.

<sup>211</sup> See *id.* ¶ 6.

<sup>212</sup> See *id.* ¶¶ 4, 5.

<sup>213</sup> See *id.* ¶¶ 7, 15.

<sup>214</sup> See *id.* ¶¶ 15, 22-23.

<sup>215</sup> See *id.* ¶ 13.

<sup>216</sup> See *id.* ¶ 6.

addition, by characterizing transactions with health care providers as payments to printing companies for “production fees,” the marketing employees were also reimbursed for high-value gifts based on falsified or incomplete documentation.<sup>217</sup> Cardinal China allegedly failed to appropriately respond to concerns reported in 2012 by a Cardinal China employee about the marketing accounts, to a 2014 fine by the Shanghai Administration of Industry and Commerce for providing “secret commissions” to retailer employees using the marketing accounts, or to a 2015 email from a Cardinal China Compliance Vice President noting an “enormous compliance risk” associated with the relationship.<sup>218</sup> Cardinal and Cardinal China began taking steps to enhance controls in 2016, including conducting an audit and investigation that resulted in a self-report to the SEC.<sup>219</sup>

Based on Cardinal China’s distribution margin from sales of the dermocosmetic company’s products, Cardinal benefitted from its arrangement with the dermocosmetic company, including through sales made as a result of improper payments made from the marketing accounts. The SEC order found that Cardinal was unjustly enriched by approximately \$5,400,000 between March 1, 2013, and December 31, 2016.<sup>220</sup>

Cardinal did not admit or deny the allegations in the SEC order, but agreed to cease and desist from committing or causing any future violations of the FCPA’s recordkeeping and internal control provisions and to pay disgorgement of \$5.4 million, prejudgment interest of \$916,887, and a civil money penalty of \$2.5 million to resolve the charges—totaling \$8.8 million.<sup>221</sup> The SEC considered Cardinal’s self-disclosure, cooperation, and remedial efforts in the cease-and-desist order.<sup>222</sup> Cardinal’s remedial efforts included terminating the marketing accounts and its employment contracts with the marketing employees; adding anti-bribery representations and obligations to the relevant contracts; and strictly limiting the use of the remaining balance of the dermocosmetic company’s funds to low-risk expenses, such as salary payments, with robust controls and monitoring from Cardinal China’s legal and compliance personnel.<sup>223</sup>

### **3. Eni S.p.A.**

On April 17, 2020, Eni S.p.A. (Eni), an Italian multinational oil and gas company, agreed to settle charges with the SEC that it violated the FCPA’s books and records and internal control provisions.<sup>224</sup> Without admitting or denying the SEC’s allegations, Eni, whose American Depositary Receipts are traded on the New York Stock Exchange and is thus an “issuer” for purposes of the FCPA, agreed to pay \$24.5 million in disgorgement and prejudgment interest.<sup>225</sup> According to a press release by Eni, in October 2019, the DOJ closed its investigation into Eni with respect to the

<sup>217</sup> See *id.* ¶ 16.

<sup>218</sup> See *id.* ¶¶ 21-23.

<sup>219</sup> See *id.* ¶ 23, 27.

<sup>220</sup> See *id.* ¶¶ 8, 25.

<sup>221</sup> See *id.* § IV.

<sup>222</sup> See *id.* ¶ 26.

<sup>223</sup> See *id.* ¶ 29.

<sup>224</sup> See SEC Administrative Proceeding Press Release, *SEC Charges Eni S.p.A. with FCPA violations* (Apr. 17, 2020), <https://www.sec.gov/enforce/34-88679-s>.

<sup>225</sup> *Id.* ¶¶ 1, 8.

conduct alleged in the SEC’s recent administrative order.<sup>226</sup>

According to the consent order, the charges arose out of an improper payment scheme in Algeria between 2007 and 2010 by Saipem S.p.A (Saipem), in which Eni was a controlling minority shareholder with a 43% interest.<sup>227</sup> Saipem allegedly hired an intermediary with close ties to the Algerian energy minister<sup>228</sup>—to assist it in obtaining contracts with Algeria’s state-owned oil company, Sonatrach, but the company conducted little or no due diligence before entering into the contracts.<sup>229</sup> Between 2007 and 2010, Saipem entered into at least four sham contracts with the intermediary in order to acquire contracts with Sonatrach.<sup>230</sup> Saipem allegedly paid the intermediary approximately €198 million for the contracts, a portion of which the intermediary directed to offshore shell entities owned by Algerian officials or their designees, including Algeria’s energy minister, Chakib Khelil.<sup>231</sup> During this period, Saipem obtained at least seven contracts for projects with Sonatrach, and received approximately \$57 million in tax benefits. The SEC further alleged that Saipem’s then-CFO participated in Saipem’s approval of the intermediary contracts and conduct of inadequate due diligence, and that he continued to approve and conceal the payments from colleagues at Eni after becoming Eni’s CFO.<sup>232</sup>

The SEC order stated that, despite receiving no legitimate services from the intermediary, Saipem falsely recorded payments to the intermediary as legitimate “brokerage fees” in violation of the FCPA’s books-and-records provisions.<sup>233</sup> These false entries were then consolidated into Eni’s financial reports.<sup>234</sup> The SEC order further found Eni failed to use good-faith efforts to cause Saipem to devise and maintain a system of internal accounting controls sufficient to provide reasonable assurances of Saipem’s compliance with the FCPA.<sup>235</sup>

The SEC’s charges follow a September 2018 Italian court finding Saipem, Executive A, and others guilty of the crime of international corruption for the payments from Saipem through an intermediary to Algerian officials. That finding was reversed by a Court of Appeals, which acquitted each of the defendants.<sup>236</sup>

The SEC order noted that Eni had previously settled an action with the SEC in July 2010 related to conduct in Nigeria; that order permanently enjoined Eni from violating the FCPA’s anti-bribery, books and records, and internal accounting control

<sup>226</sup> See Eni Press Release, *Eni: U.S. Department of Justice closes investigation into Eni’s Nigerian and Algerian Activities* (Oct. 1, 2019), <https://www.eni.com/en-IT/media/press-release/2019/10/eni-us-department-of-justice-closes-investigation-into-enis-nigerian-and-algerian-activities.html>.

<sup>227</sup> See SEC Administrative Proceeding, *In the Matter of Eni S.p.A.*, ¶¶ 1-2 (Apr. 17, 2020), <https://www.sec.gov/litigation/admin/2020/34-88679.pdf>.

<sup>228</sup> *Id.* ¶ 9.

<sup>229</sup> *Id.* ¶ 1.

<sup>230</sup> *Id.* ¶¶ 9, 11; Gaia Pianigiani & Stanley Reed, *Eni Scrambles to Contain Damage From Inquiry*, N.Y. TIMES (Feb. 8, 2013), <https://www.nytimes.com/2013/02/09/business/global/eni-scrambles-to-contain-damage-from-inquiry.html> (identifying Chakib Khelil as the Algerian energy minister and Sonatrach as the state-owned oil company involved in the bribery scheme).

<sup>231</sup> See *In re Eni S.p.A.* ¶ 11.

<sup>232</sup> *Id.* ¶¶ 2, 5.

<sup>233</sup> *Id.*

<sup>234</sup> *Id.* ¶ 1.

<sup>235</sup> *Id.* The SEC noted that Eni required Saipem to comply with Eni’s anti-corruption requirements, but found that the conduct at issue reflected that the controls were inadequately implemented. *Id.* ¶ 16.

<sup>236</sup> *Id.* ¶ 7.

provisions.<sup>237</sup> In considering Eni’s remedial efforts to resolve the charges, the SEC noted Eni’s efforts in compiling financial data and analysis relating to the transactions at issue, making substantive presentations on key topics, and providing translations of key documents and foreign proceedings.

#### 4. World Acceptance Corporation

On August, 6, 2020, the SEC settled FCPA anti-bribery, recordkeeping, and internal control charges with World Acceptance Corporation (WAC), a South Carolina-based consumer loan company.<sup>238</sup> According to the SEC, WAC’s former wholly-owned Mexican subsidiary (WAC Mexico) authorized its employees and third-party intermediaries to make payments to Mexican state government officials and union officials in order to continue making loans to union members and state government employees and to ensure repayments on such loans.<sup>239</sup> On the same day, the DOJ issued a formal declination to WAC in the same matter under the FCPA Corporate Enforcement Policy.<sup>240</sup>

According to the SEC’s cease-and-desist order, WAC paid approximately \$4.1 million in bribes to Mexican state government officials and union officials, directly and through third-party intermediaries, from at least December 2010 to June 2017 in order to ensure loan repayments continued to be sent to WAC Mexico in a timely manner.<sup>241</sup> The payments, known internally as the “glove,” “scholarship,” “royalty payments,” or “support,” were made directly by WAC Mexico or by authorized third party intermediaries.<sup>242</sup> The order found that payments were inaccurately recorded as legitimate “commission” expenses in WAC’s consolidated books and records, and that WAC implemented inadequate accounting controls to prevent and detect the misconduct.<sup>243</sup> In particular, the order alleged deficiencies in WAC’s accounts payable, vendor due diligence, and other vendor-related controls, in its implementation of an anti-corruption policy and training, and in the tone at the top set by WAC management regarding internal audit and compliance.<sup>244</sup>

WAC did not admit or deny the allegations contained in the SEC order but agreed to pay approximately \$21.7 million in civil penalties, disgorgement, and prejudgment interest.<sup>245</sup> The SEC considered WAC’s divestiture of WAC Mexico, general cooperation, and remedial actions (including terminating certain implicated officers and facilitating flights for witnesses from Mexico to the US for interviews) in accepting WAC’s settlement offer.<sup>246</sup> Meanwhile, the DOJ declined to prosecute WAC under the FCPA Corporate Enforcement Policy based on the company’s voluntary

<sup>237</sup> See SEC Administrative Proceeding, *In the Matter of Eni S.p.A.*, ¶ 8 (Apr. 17, 2020), <https://www.sec.gov/litigation/admin/2020/34-88679.pdf>.

<sup>238</sup> See Order Instituting Cease and Desist Proceeding, *In re World Acceptance Corp.*, SEC Exch. Act Release No. 89489 (Aug. 6, 2020), <https://www.sec.gov/litigation/admin/2020/34-89489.pdf>.

<sup>239</sup> *Id.*

<sup>240</sup> See DOJ Declination Letter, *World Acceptance Corp.* (Aug. 6, 2020), <https://www.justice.gov/criminal-fraud/file/1301826/download>.

<sup>241</sup> Order Instituting Cease and Desist Proceeding, *In re World Acceptance Corp.*, SEC Exch. Act Release No. 89489, ¶ 7 (Aug. 6, 2020), <https://www.sec.gov/litigation/admin/2020/34-89489.pdf>.

<sup>242</sup> *Id.*

<sup>243</sup> *Id.* ¶ 10.

<sup>244</sup> *Id.* ¶¶ 10-15.

<sup>245</sup> *Id.* at Section II.

<sup>246</sup> *Id.* ¶ 20.

self-disclosure, cooperation, and remediation, which included enhancing WAC's compliance training, separating implicated executives, ceasing relations with third parties in Mexico, and WAC's agreement to disgorge all ill-gotten gains to the SEC.<sup>247</sup>

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<sup>247</sup> See DOJ Declination Letter, World Acceptance Corp. (Aug. 6, 2020), <https://www.justice.gov/criminal-fraud/file/1301826/download>.

## V. 2020 Individual Enforcement Actions

This section covers both new FCPA charges that were filed against individuals in 2020 by the DOJ and SEC as well as significant updates in cases we have covered in prior years. As in past years, FCPA charges against alleged bribe payers—which included company owners and executives, investment bankers, intermediaries and consultants, and others—were often accompanied by related charges, such as conspiracy to violate the FCPA, money laundering, and wire fraud. Following its trend from recent years, the DOJ continues to bring money laundering charges against foreign officials who allegedly received bribes and laundered this money using the US financial system. These cases are also covered in this section.

Overall there was a noticeable slowdown in individual enforcement in 2020 due to the COVID-19 pandemic. The DOJ and SEC brought fewer new actions this year, and many of the individual enforcement activities were continuations of investigations and indictments and/or complaints that were filed prior to March. Due to many courts either closing for periods of time or dramatically reducing caseloads, there was also a delay in moving cases to resolution. There was one trial early in the year but all other trials have been pushed to 2021.

Despite these challenges, the DOJ and SEC continued to investigate individuals and either reach plea agreements or settlements or bring charges and file complaints when they could not resolve the cases. In addition, in the latter part of 2020 the DOJ and SEC were able to move more cases forward with new cases being brought. Many of these cases arose from on-going corporate investigations.

### A. Alstom/Marubeni – Eko Sulianto; Reza Moenaf; Junji Kusunoki

On November 14, 2013, the DOJ charged Junji Kusunoki, the former Deputy General Manager of Marubeni Power Systems Corporation’s Overseas Power Project Department and the President of another Marubeni subsidiary, with one count of conspiracy to violate the FCPA, six counts of violating the FCPA’s anti-bribery provisions, one count of conspiracy to commit money laundering, and four counts of money laundering.<sup>248</sup> A superseding indictment filed on February 26, 2015—unsealed on February 18, 2020—charged Kusunoki with these same charges and also brought charges against Reza Moenaf, the President of PT Energy Systems Indonesia (a subsidiary of Alstom Indonesia) and Eko Sulianto, the Director of Sales of Alstom Indonesia. All three were charged with conspiracy to violate the FCPA and conspiracy to commit money laundering.<sup>249</sup>

Marubeni allegedly entered into a joint-venture partnership with Alstom to obtain a power services contract in Indonesia in 2002. In furtherance of this “Tarahan

<sup>248</sup> First Indictment, *United States v. Kusunoki*, Case No. 13-cr-00212 (D. Conn. 2013).

<sup>249</sup> Superseding Indictment, *United States v. Kusunoki*, Case No. 13-cr-00212 (D. Conn. 2013), <https://www.justice.gov/opa/pr/former-alstom-executives-and-marubeni-executive-charged-bribing-indonesian-officials>.

Project,” mentioned earlier in our discussion of the *Hoskins* case at Section III.A, the executives named in the superseding indictment thereafter allegedly hired two consultants and wired hundreds of thousands of dollars to these consultants’ accounts, with the understanding that they were to use the funds to bribe members of the Indonesian parliament and state-owned power company.<sup>250</sup> No trials for these individuals have been scheduled, nor have guilty pleas been entered at this time.

## **B. European Adoption Consultants - Margaret Cole; Debra Parris; Dorah Mirembe**

As reported in our [2019 FCPA/Anti-Corruption Year in Review](#), Robin Longoria of Mansfield, Texas, a manager of an international program at an Ohio-based adoption agency, pleaded guilty on August 29, 2019 to one count of conspiracy to violate the FCPA, commit wire fraud, and commit visa fraud. Longoria admitted to being a part of a conspiracy in which Ugandan judges and other court officials were paid bribes to corrupt the adoption process. Longoria was supposed to be sentenced in the Northern District of Ohio in January 2020, but that date has continually been pushed back and she has not yet been sentenced.<sup>251</sup>

Relatedly, three other women, Margaret Cole of Ohio, Debra Parris of Texas, and Dorah Mirembe of Uganda, were charged in a 13-count indictment on August 13, 2020 in the Northern District of Ohio related to Uganda and Poland adoption schemes.<sup>252</sup> With respect to the Uganda scheme, Parris and Mirembe were each charged with one count of conspiracy to violate the FCPA and commit visa fraud, one count of conspiracy to commit mail fraud and wire fraud, one count of conspiracy to commit money laundering, three substantive FCPA counts, and three substantive counts of money laundering.<sup>253</sup> Parris was also charged with one count of mail fraud.<sup>254</sup> Parris and Mirembe allegedly 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.<sup>255</sup> They also allegedly lied to and concealed material information from adoptive parents and caused false documents to be submitted to the US Department of State to hide the scheme and obtain visa applications for the Ugandan children.<sup>256</sup>

With respect to the Poland scheme, Parris and Cole were each charged with one count of conspiracy to defraud the United States.<sup>257</sup> Cole was also charged with one count of making a false statement to a US accrediting entity and one count of making a false statement to a Polish authority.<sup>258</sup> Parris and Cole allegedly caused a Polish child that an adoption agency could not care for to be transferred to Parris’s

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<sup>250</sup> *Id.*

<sup>251</sup> See *United States v. Longoria*, No. 1:19-cr-00482 (N.D. Ohio Aug. 29, 2019).

<sup>252</sup> Indictment, *United States v. Cole*, No. 20-cr-00424-CAB (D. Ohio Aug. 13, 2020).

<sup>253</sup> *Id.*

<sup>254</sup> *Id.*

<sup>255</sup> 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>.

<sup>256</sup> *Id.*

<sup>257</sup> First Indictment, *United States v. Kusunoki*, Case No. 13-cr-00212 (D. Conn. 2013).

<sup>258</sup> *Id.*

relatives, who were not eligible for intercountry adoption and physically abused the child.<sup>259</sup> Parris and Cole allegedly acted to conceal the scheme and continue profiting from adoptions.<sup>260</sup> Due to the coronavirus (COVID-19) pandemic, the jury trial, originally scheduled for January 11, 2021, but has been continued to a later date.<sup>261</sup>

### C. Goldman Sachs – Asante Berko

On April 13, 2020, Asante Berko, a US citizen and former executive at Goldman Sachs' London-based subsidiary, was charged in the Eastern District of New York with violating the anti-bribery provisions of the FCPA.<sup>262</sup> According to the SEC, from 2015 through 2016, Berko arranged for his firm's client, a Turkish energy company (the Energy Company), to funnel at least \$2.5 million to a Ghana-based intermediary company to pay illicit bribes to Ghanaian government officials in order to secure a contract to build and operate an electrical power plant and sell power to the Ghanaian government (the Power Plant Project).<sup>263</sup> As alleged by the SEC, Berko secretly received more than \$2 million from the Energy Company for arranging the bribery scheme, and his firm stood to earn over \$10 million in fees if the Energy Company secured the Power Plant Project.<sup>264</sup> Moreover, according to the SEC's complaint, Berko took deliberate measures to prevent his employer from detecting the scheme, including assisting the Energy Company's CEO to "draft[] false and misleading responses to the questions posed by [Goldman Sachs'] compliance personnel."<sup>265</sup> Nevertheless, in August 2016, following an investigation into the matter, Goldman Sachs terminated its involvement in the project,<sup>266</sup> and Berko resigned from the firm shortly thereafter.<sup>267</sup>

In its complaint, the SEC seeks disgorgement of Berko's ill-gotten gains plus pre-judgment interest, as well as other civil remedies.<sup>268</sup> Berko has publicly denied the SEC's allegations, and now awaits a trial date.<sup>269</sup>

### D. Haiti Port Development – Roger Richard Boncy and Joseph Baptiste

As discussed in more detail in our [2018 FCPA/Anti-Corruption Year in Review](#) and [2019 FCPA/Anti-Corruption Year in Review](#), on June 20, 2019, after a two-week trial, Joseph Baptiste, a retired US Army Colonel, and Roger Richard Boncy, a Haitian

<sup>259</sup> 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>.

<sup>260</sup> *Id.*

<sup>261</sup> See Order to Continue, *United States v. Cole, et al.*, Case No. 1:20CR424, ECF No. 33 (N.D. Ohio Dec. 14, 2020).

<sup>262</sup> Complaint, *SEC v. Asante K. Berko*, No. 20-civ-01789 (E.D.N.Y. Apr. 13, 2020), <https://www.sec.gov/litigation/complaints/2020/comp-pr2020-88.pdf>; see also Dave Michaels, *Ex-Goldman Banker Arranged Bribes to Ghana Officials*, *SEC Says*, *WALL STREET J.* (Apr. 13, 2020), <https://www.wsj.com/articles/ex-goldman-banker-arranged-bribes-to-ghana-officials-sec-says-11586817542>; Tofe Ayeni, *Former Goldman Sachs Banker Accused by U.S. of Bribery in Ghana*, *AFRICA REP.* (Apr. 16, 2020), <https://www.theafricareport.com/26343/former-goldman-sachs-banker-accused-by-us-of-bribery-in-ghana/>.

<sup>263</sup> Complaint, *Securities and Exchange Commission v. Asante K. Berko*, No. 20-civ-01789 (E.D.N.Y. Apr. 13, 2020), <https://www.sec.gov/litigation/complaints/2020/comp-pr2020-88.pdf>

<sup>264</sup> *Id.*

<sup>265</sup> *Id.*

<sup>266</sup> *Id.*

<sup>267</sup> *Id.*

<sup>268</sup> *Id.*

<sup>269</sup> Yinka Ibukun, *Ex-Goldman Banker Quits Ghana Refinery After SEC Bribe Claim*, *BLOOMBERG* (Apr. 15, 2020), <https://www.bloomberg.com/news/articles/2020-04-15/ex-goldman-banker-quits-ghana-oil-refinery-after-sec-bribe-claim>

Ambassador-at-Large, were both convicted of one count of conspiracy to violate the FCPA and the Travel Act.<sup>270</sup> Baptiste was also convicted of one count of violating the Travel Act and one count of conspiracy to commit money laundering.<sup>271</sup> On March 11, 2020 both Baptiste and Bony were granted new trials based on ineffective assistance of counsel based on the performance of Baptiste's attorney. Bony was also granted a new trial because of the larger role his attorney had to take on in the trial due to Baptiste's attorney's performance.<sup>272</sup> The DOJ has appealed this order to the First Circuit.<sup>273</sup>

### **E. Donville Inniss**

As discussed in the [2018 FCPA/Anti-Corruption Year In Review](#), Donville Inniss, a former member of the Barbados Parliament and former Minister of Industry, was charged with conspiracy to commit money laundering and money laundering for allegedly accepting bribes in exchange for facilitating contracts between the Barbados Investment and Development Corporation, a government agency, and the Insurance Corporation of Barbados Limited (ICBL). Inniss was alleged to have accepted \$36,000 in bribes from high-level ICBL executives between 2015 and 2016. Following a one-week trial, on January 16, 2020, Inniss was found guilty on all counts after just two hours of deliberations.<sup>274</sup> Inniss is scheduled to be sentenced on April 27, 2021.

### **F. J&F Investimentos S.A. – Joesley and Wesley Batista**

On October 14, 2020, the SEC announced that brothers Joesley and Wesley Batista agreed to civil penalties of \$550,000 each for causing Pilgrim's Pride Corporation (Pilgrim's Pride) to violate the books and records and internal accounting control provisions of the FCPA. The Batistas were alleged to have engaged in a bribery scheme in furtherance of the acquisition of Pilgrim's Pride by their companies, J&F Investimentos S.A. (J&F) and JBS S.A (JBS), both based in Brazil. The Batistas were also alleged to have continued to engage in the scheme as board members of Pilgrim's Pride following the acquisition. In total, the SEC alleged that the Batistas made \$150 million in bribery payments to Brazilian government officials between 2009 and 2015. The Batistas resigned their positions with J&F, JBS and JBS US, and agreed to pay a personal civil penalty, among other undertakings.

### **G. Deck Won Kang**

On December 17, 2020 Deck Won Kang pleaded guilty to one count of violating the anti-bribery provisions of the FCPA based on his role in a scheme to pay bribes to a Korean government official.<sup>275</sup>

<sup>270</sup> DOJ Press Release, Two Businessmen Convicted of International Bribery Offenses (June 20, 2019), <https://www.justice.gov/opa/pr/two-businessmen-convicted-international-bribery-offenses-0>.

<sup>271</sup> *Id.*

<sup>272</sup> See Memorandum and Order, *United States v. Baptiste*, 1:17-CR-10305, Dkt. No. 286 (D. Mass. Mar. 11, 2020).

<sup>273</sup> See Notice of Appeal, *United States v. Baptiste*, 1:17-CR-10305, Dkt. No. 293 (D. Mass. Apr. 6, 2020).

<sup>274</sup> DOJ Press Release, *Former Member of Barbados Parliament and Minister of Industry Found Guilty of Receiving and Laundering Bribes from Barbadian Insurance Company* (Jan. 16, 2020), <https://www.justice.gov/opa/pr/former-member-barbados-parliament-and-minister-industry-found-guilty-receiving-and-laundering>.

<sup>275</sup> DOJ Press Release, *New Jersey Man Pleads Guilty to Violating the Foreign Corrupt Practices Act* (Dec. 17, 2020), <https://www.justice.gov/opa/pr/new-jersey-man-pleads-guilty-violating-foreign-corrupt-practices-act>.

Kang controlled two U.S.-based companies that provided goods and services, including naval equipment and technology, to the Defense Acquisition Program Administration (DAPA), a state-owned and state-controlled agency that is part of Korea's Ministry of National Defense. Kang admitted to paying Korean officials a total of \$100,000 to obtain and retain contracts with DAPA from 2009 to 2013. In exchange for Kang providing this money, the government officials provided Kang with non-public information relating to the contracts.<sup>276</sup> A sentencing date has not yet been set.<sup>277</sup>

#### **H. PDVSA - Tulio Anibal Farias-Perez; Lennys Rangel; Edoardo Orsoni; Carlos Enrique Urbano Fermin; Leonardo Santilli; Jose Luis De Jongh-Atencio; Daniel Comoretto**

In our [2016 FCPA/Anti-Corruption Year in Review](#), [2017 FCPA/Anti-Corruption Year in Review](#), and [2018 FCPA/Anti-Corruption Year in Review](#), we covered the investigation of an alleged bribery scheme to obtain and extend contracts from Venezuelan state-owned company PDVSA and in the [2019 FCPA/Anti-Corruption Year in Review](#), we covered several individuals who had pleaded guilty for their involvement in the scheme. 2020 brought additional guilty pleas, as well as new indictments.

On February 19, 2020, Tulio Anibal Farias-Perez pleaded guilty to FCPA conspiracy in connection with payments made to PDVSA officials in furtherance of the scheme.<sup>278</sup> In addition, new criminal charges related to the scheme were filed against six additional individuals: Daniel Comoretto, Leonardo Santilli, Enrique Urbano Fermin, Jose Luis De Jongh-Atencio, Edoardo Orsoni, and Lenny Rangel, the latter two of whom have entered guilty pleas.

On February 6, 2020, in a sealed criminal complaint, Comoretto, a Venezuelan citizen and former trading manager at PDVSA, was charged with conspiring to commit money laundering and to receive bribes to facilitate contracts with PDVSA between 2011 and 2015.<sup>279</sup> The complaint was unsealed on September 10, 2020. His case is ongoing.

On March 20, 2020, the government filed a criminal complaint that alleges that Santilli, who controlled several companies in Venezuela and Florida, paid bribes totaling over \$9 million to PDVSA officials between 2014 and 2017 to facilitate business between PDVSA and his companies. Santilli was charged with both conspiracy and direct money laundering violations.<sup>280</sup> On September 1, 2020, Santilli died from gunshot wounds sustained while in Venezuela.<sup>281</sup>

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<sup>276</sup> *Id.*

<sup>277</sup> Docket, *United States v. Kang*, 2:20-CR-01077 (D.N.J.).

<sup>278</sup> Docket, *United States v. Tulio Anibal Farias-Perez*, Case No. 4:20-cr-00089-1 (S.D. Tex. Feb. 19, 2020).

<sup>279</sup> *United States v. Daniel Comoretto*, Case No. 20-MJ-00125-RLM (E.D.N.Y. Feb. 6, 2020).

<sup>280</sup> Criminal Complaint, *United States v. Leonardo Santilli*, Case No: 20-MJ-02459-LFL (S.D. Fla. Mar. 20, 2020).

<sup>281</sup> Jay Weaver and Antonio Maria Delgado, *Venezuelan Charged in Miami Money Laundering Case Gunned Down by Motorcycle Assassin*, (Sept. 2, 2020), <https://www.miamiherald.com/news/local/article245436795.html>.

On March 20, 2020, the government filed an information alleging that Fermin, who controlled companies that provided goods or services to PDVSA subsidiaries, agreed to pay bribes to a Venezuelan prosecutor to prevent his companies from being prosecuted for corruption relating to the procurement process. He faces a single charge of conspiracy to commit money laundering.<sup>282</sup> On April 20, 2020, the court entered an order transferring his case to fugitive status.<sup>283</sup>

On July 16, 2020, the government filed a sealed indictment against Jongh-Atencio, a US and Venezuelan citizen who was formerly a procurement officer and manager at Citgo Petroleum Corporation, a subsidiary of PDVSA. Jongh-Atencio is charged with both conspiracy and direct money laundering violations. He is alleged to have accepted over \$2.5 million in bribes in exchange for facilitating business with Citgo and PDVSA between 2013 and 2015, as well as directing that bribe payments be made to others.<sup>284</sup> On December 16, 2020, the government filed a superseding indictment charging Jongh-Atencio with additional charges of conspiracy and commercial bribery. On December 21, 2020, Jongh-Atencio entered a plea of not guilty.<sup>285</sup> A bench trial has been scheduled for January 25, 2021.<sup>286</sup>

On August 25, 2020, Orsoni, who was indicted on a single charge of conspiracy to commit money laundering in 2019, entered a guilty plea.<sup>287</sup> He is scheduled to be sentenced on February 10, 2021.<sup>288</sup> Orsoni, a Venezuelan citizen and former general counsel at PDVSA, was alleged to have received at least \$1 million in bribes from 2014 to 2015 in exchange for contracts with PDVSA.<sup>289</sup>

Rangel, former head of procurement at PDVSA, was indicted on a single charge of conspiracy to commit money laundering on the same day as Orsoni. Rangel was alleged to have agreed to receive at least \$5 million in payments in exchange for contracts with PDVSA.<sup>290</sup> Rangel pleaded guilty to the charge on August 11, 2020 and is scheduled to be sentenced on March 23, 2021.<sup>291</sup>

## **I. Petroecuador - Armengol Alfonso Cevallos Diaz; Javier Aguilar**

As discussed in the [2019 FCPA/Anti-Corruption Year in Review](#), Armengol Alfonso Cevallos Diaz was indicted for conspiracy to violate the FCPA and conspiracy to commit money laundering for his role in an alleged scheme to bribe Petroecuador officials. Cevallos Diaz, a Miami-based businessman and Ecuadorian citizen, was alleged to have solicited and funneled \$4.4 million in bribes to Petroecuador officials from an oil services company. On January 23, 2020, Cevallos

<sup>282</sup> Information, *United States v. Carlos Enrique Urbano Fermin*, Case No. 20-CR-20163-RNS (S.D. Fla. Mar. 20, 2020).

<sup>283</sup> Order, *United States v. Carlos Enrique Urbano Fermin*, Case No. 20-CR-20163-RNS (S.D. Fla. Apr. 20, 2020).

<sup>284</sup> DOJ Press Release, *Former Venezuelan Official Charged in Connection with International Bribery and Money Laundering Scheme* (Aug. 6, 2020), <https://www.justice.gov/opa/pr/former-venezuelan-official-charged-connection-international-bribery-and-money-laundering>.

<sup>285</sup> Docket, *United States v. Jose Luis De Jongh-Atencio*, Case No. 4:20-cr-00305 (S.D. Tex. Dec. 21, 2020).

<sup>286</sup> Docket, *United States v. Jose Luis De Jongh-Atencio*, Case No. 4:20-cr-00305 (S.D. Tex. Oct. 23, 2020).

<sup>287</sup> *United States v. Edoardo Orsoni*, Case No. 19-CR-20725-MGC (S.D. Fla. Aug. 25, 2020).

<sup>288</sup> *United States v. Edoardo Orsoni*, Case No. 19-CR-20725-MGC (S.D. Fla. Dec. 3, 2020).

<sup>289</sup> *United States v. Edoardo Orsoni*, Case No. 19-CR-20725-MGC (S.D. Fla. Nov. 4, 2019) (announced Mar. 12, 2020).

<sup>290</sup> Information, *United States v. Lennys Rangel*, Case No. 19-CR-20726-JEM (S.D. Fla. Nov. 4, 2019) (announced Mar. 11, 2020).

<sup>291</sup> *United States v. Lennys Rangel*, Case No. 19-CR-20726-JEM (S.D. Fla. Dec. 17, 2020).

Diaz pleaded guilty to the charges.<sup>292</sup> He is scheduled to be sentenced on January 28, 2021.<sup>293</sup>

In addition, on September 22, 2020, Javier Aguilar, a former manager and oil trader at Vitol Group, was charged with conspiracy to violate the FCPA and conspiracy to commit money laundering for allegedly paying more than \$870,000 in bribes to Ecuadorian officials, including officials at Petroecuador, in exchange for a \$300 million fuel contract with his employer.<sup>294</sup> On October 2, 2020, Aguilar pleaded not guilty to each count. Trial has not yet been scheduled.<sup>295</sup>

#### **J. Sargeant Marine Inc. - Daniel Sargeant; Jose Tomas Meneses; Hector Nunez Troyano; David Diaz; Luiz Eduardo Andrade; Roberto Finocchi; Daniel Comoretto; Jorge Luz; Bruno Luz**

As described in Section IV.B.3, Sargeant Marine Inc. pleaded guilty on September 22, 2020 to conspiracy to violate the anti-bribery provisions of the FCPA and agreed to pay a criminal fine of \$16.6 million.<sup>296</sup> In pleading guilty, the asphalt company admitted that between 2010 and 2018, it bribed Brazilian, Venezuelan, and Ecuadorian officials with millions of dollars in order to obtain contracts to buy or sell asphalt to the countries' state-owned and state-controlled oil companies.<sup>297</sup>

Several individuals working for and associated with Sargeant Marine were also implicated in the scheme and prosecuted by the DOJ out of the Eastern District of New York. On December 18, 2019, the DOJ filed a two count Information against Daniel Sargeant charging conspiracy to violate the anti-bribery provisions of the FCPA and conspiracy to commit money laundering.<sup>298</sup> On June 8, 2018, the DOJ filed a complaint against Jose Tomas Meneses, and on August 2, 2018, DOJ filed a single count Information against Meneses alleging conspiracy to violate the anti-bribery provisions of the FCPA. Meneses, a Brazilian national, was a trader for Sargeant Marine.<sup>299</sup> On February 20, 2019, the DOJ filed a single count Information against Hector Nunez Troyano alleging conspiracy to commit money laundering. According to the Information, Troyano, a former employee of PDVSA, served as an agent for Sargeant Marine and paid bribes to PDVSA officials.<sup>300</sup> On March 28, 2018, the DOJ filed a two-count Information against David Diaz, a consultant who acted as bribe intermediary, alleging conspiracy to violate the anti-bribery provisions of the FCPA.<sup>301</sup> On September 22, 2017, the DOJ filed a single count Information against

<sup>292</sup> DOJ Press Release, *Miami-Based Businessman Pleads Guilty to FCPA and Money Laundering Violations in Scheme Involving PetroEcuador Officials* (Jan. 23, 2020), <https://www.justice.gov/opa/pr/miami-based-businessman-pleads-guilty-fcpa-and-money-laundering-violations-scheme-involving>.

<sup>293</sup> Docket, *United States v. Cevallos Diaz et al.*, Case No. 1:19-cr-20284 (S.D. Fla. Nov. 20, 2020).

<sup>294</sup> DOJ Press Release, *Former Manager of Oil Trading Firm Charged in Money Laundering and Bribery Scheme* (Sept. 22, 2020), <https://www.justice.gov/usao-edny/pr/former-manager-oil-trading-firm-charged-money-laundering-and-bribery-scheme>.

<sup>295</sup> Docket, *United States v. Javier Aguilar*, Case No. 1:20-cr-00390 (E.D.N.Y. Oct. 2, 2020).

<sup>296</sup> DOJ Press Release, *Sargeant Marine Inc. Pleads Guilty and Agrees to Pay \$16.6 Million to Resolve Charges Related to Foreign Bribery Schemes in Brazil, Venezuela, and Ecuador* (Sep. 22, 2020), <https://www.justice.gov/opa/pr/sargeant-marine-inc-pleads-guilty-and-agrees-pay-166-million-resolve-charges-related-foreign>.

<sup>297</sup> *Id.*

<sup>298</sup> Information, *United States v. John Doe 19 CR 319*, Case No. 19-cr-00319 (E.D.N.Y. 2019).

<sup>299</sup> Complaint and Information, *USA v. Meneses*, Case No. 18-cr-00358 (E.D.N.Y. 2018).

<sup>300</sup> Information, *United States v. Nunez Troyano*, Case No. 19-cr-00135 (E.D.N.Y. 2019).

<sup>301</sup> Information, *United States v. Diaz*, Case No. 18-cr-00140 (E.D.N.Y. 2018).

Luiz Eduardo Andrade alleging a conspiracy to violate the anti-bribery provisions of the FCPA. According to the Information, Andrade acted as an agent for Sargeant Marine and bribed Petrobras officials.<sup>302</sup> On November 17, 2017, the DOJ filed a single count Information against Roberto Finocchi alleging conspiracy to violate the anti-bribery provisions of the FCPA. Finocchi was employed as a trader for Sargeant Marine.<sup>303</sup> On February 6, 2020, the DOJ filed a complaint against Daniel Comoretto, a former trader at PDVSA, alleging conspiracy to commit money laundering and violate the antibribery provisions of the FCPA for his role in receiving bribes to facilitate business with PDSVA.<sup>304</sup> More recently, the DOJ filed one-count Information against Brazilian nationals Jorge Luz and his son, Bruno Luz, for conspiracy to violate the FCPA for their roles in arranging bribes to be paid to Brazilian politicians and Petrobras officials to obtain business for Sargeant Marine.<sup>305</sup>

All of these individual defendants pleaded guilty on the same date (or in very close proximity) that they were charged by Information, with the exception of Daniel Comoretto whose case is ongoing.<sup>306</sup> Additionally, all of these individual defendants' cases were unsealed in September 2020, with the exception of Roberto Finocchi, whose charges were not sealed in the first place.<sup>307</sup>

### **K. TechnipFMC – Zwi Skornicki**

As discussed in more detail in our [2019 FCPA/Anti-Corruption Year in Review](#), Zwi Skornicki, a former consultant for TFCM, a global oil and gas company, pleaded guilty to a one-count criminal information charging him with conspiracy to violate the FCPA's anti-bribery provisions.<sup>308</sup> Skornicki admitted that between 2001 and 2014 he conspired to pay more than \$55 million in illegal bribes to officials at Petrobras and the Brazilian Workers' Party to win contracts related to oil and gas projects.<sup>309</sup> On August 4, 2020 he was sentenced to 18 months of probation and ordered to pay a \$50,000 fine.<sup>310</sup>

### **L. Transport Logistics – Mark Lambert**

As discussed in more detail in our [2018 FCPA/Anti-Corruption Year in Review](#) and [2019 FCPA/Anti-Corruption Year in Review](#), in November 2019 Mark Lambert, the former co-president of Transport Logistics International, was found guilty of four counts of violating the FCPA, two counts of wire fraud, and one count of conspiracy to violate the FCPA and commit wire fraud for his role in a scheme involving the

<sup>302</sup> Information, *United States v. Andrade*, Case No. 17-cr-00497 (E.D.N.Y. 2017).

<sup>303</sup> Information, *United States v. Finocchi*, Case No. 17-cr-00600 (E.D.N.Y. 2017).

<sup>304</sup> Complaint, *United States v. Comoretto*, Case No. 20-mj-00125-RLM (E.D.N.Y. 2020). For further discussion of the charges against Comoretto, a PDVSA official, see Section V.H, above.

<sup>305</sup> Information, *United States v. Jorge Luz*, Case No. 20-cr-00559-ENV (E.D.N.Y. 2020); Information, *United States v. Bruno Luz*, Case No. 20-cr-00558-ENV (E.D.N.Y. 2020).

<sup>306</sup> See Thomas Fox, *Sargeant Marine – The Individual Guilty Pleas*, JDSUPRA (Oct. 1, 2020), <https://www.jdsupra.com/legalnews/sargeant-marine-the-individual-guilty-69548/>; see also *United States v. Comoretto*, Case No. 20-mj-00125-RLM (E.D.N.Y. 2020).

<sup>307</sup> Information, *United States v. Finocchi*, Case No. 17-cr-00600 (E.D.N.Y. 2017).

<sup>308</sup> DOJ Press Release, *Technipfmc PLC and U.S.-Based Subsidiary Agree to Pay Over \$296 Million in Global Criminal Fines to Resolve Foreign Bribery Case* (June 25, 2019), <https://www.justice.gov/usao-edny/pr/technipfmc-plc-and-us-based-subsidiary-agree-pay-over-296-million-global-criminal-fines>.

<sup>309</sup> See Criminal Information, CR. No. 19-277 (KAM), *United States v. Skornicki*.

<sup>310</sup> See Judgment, CR. No. 19-277 (KAM), *United States v. Skornicki*, Dkt. No. 24

bribery of an official at a subsidiary of Russia’s State Atomic Energy Corporation (RUSATOM).<sup>311</sup> On October 28, 2020 he was sentenced to 48 months in prison and three years of supervised release and ordered to pay a \$20,000 fine.<sup>312</sup> He filed a notice of appeal of his conviction on November 24, 2020.<sup>313</sup>

## **M. Cases involving “money laundering involving foreign bribery”**

### **1. Alstom - Lawrence Hoskins**

As discussed in more detail in our [2019 FCPA/Anti-Corruption Year in Review](#) on November 8, 2019 Lawrence Hoskins, a UK citizen and former executive at Alstom S.A. (Alstom), was convicted on six counts of violating the FCPA, three counts of money laundering, and two counts of conspiracy for allegedly hiring two consultants to bribe Indonesian officials to secure a lucrative power contract known as the “Tarahan Project.”<sup>314</sup> Following the November trial, Hoskins filed a motion for acquittal or, in the alternative, a new trial, asserting that the government did not prove that he was an agent of Alstom’s US-based subsidiary, Alstom Power Inc. (API), because there was no evidence showing that API had control over his work, “let alone in connection with the retention of consultants on the Tarahan project.”<sup>315</sup> On February 26, 2020, in a highly fact-based opinion, a federal judge in Connecticut found that the government failed to prove as a matter of law that Hoskins had acted as an “agent” of API, and thus granted Hoskins’ motion for acquittal on all FCPA counts.<sup>316</sup> Importantly, however, the court’s ruling left intact Hoskins’ money laundering convictions. Based on those charges, on March 6, 2020, the court sentenced Hoskins to fifteen months in prison and ordered him to pay a \$30,000 fine. Due to the COVID-19 pandemic, Hoskins’ surrender date has been postponed to January 11, 2021.<sup>317</sup> Both the DOJ and Hoskins have appealed the district court’s decision, and are awaiting an opinion from the Second Circuit.

### **2. Odebrecht – Luis Enrique Martinelli Linares; Ricardo Alberto Martinelli Linares**

On July 6, 2020, Luis Enrique Martinelli Linares and Ricardo Alberto Martinelli Linares, brothers and sons of the former President of Panama, Ricardo Alberto Martinelli Berrocal, were arrested in Guatemala for their roles in the Odebrecht S.A. bribery and money laundering scheme. As discussed more thoroughly in our [2016 FCPA/Anti-Corruption Year in Review](#), the former Brazilian global construction conglomerate pleaded guilty in 2016 to engaging in a money laundering and bribery scheme that paid over \$700 million in bribes to government officials and political

<sup>311</sup> 6 DOJ Press Release, *Former President of Transportation Company Found Guilty of Violating the Foreign Corrupt Practices Act and Other Crimes* (Nov. 22, 2019), <https://www.justice.gov/opa/pr/former-president-transportationcompany-found-guilty-violating-foreign-corrupt-practices-act>.

<sup>312</sup> DOJ Press Release, *Former President of Nuclear Transportation Company Sentenced to Prison for Foreign Bribery and Other Offenses* (Oct. 28, 2020), <https://www.justice.gov/opa/pr/former-president-nuclear-transportation-company-sentenced-prison-foreign-bribery-and-other>.

<sup>313</sup> See Notice of Appeal, *United States v. Lambert*, 8:18-cr-00012, Dkt. No. 229 (D. Md. Nov. 24, 2020).

<sup>314</sup> *United States v. Hoskins*, No. 3:12cr238 (JBA), 2019 WL 7207280 (D. Conn. Nov. 8, 2019). See also Section III.A.1. above for recent litigation developments.

<sup>315</sup> See Memorandum of Law in Support of Hoskins’s Rule 29(c) Motion for a Judgment of Acquittal & Rule 33 Motion for a New Trial, *United States v. Hoskins*, No. 3:12-cr-238 (D. Conn. Nov. 29, 2019).

<sup>316</sup> *United States v. Hoskins*, No. 3:12-CR-238 (JBA), 2020 WL 914302, at \*18 (D. Conn. Feb. 26, 2020).

<sup>317</sup> Notice of Appeal, No. 3:12-cr-238 (D. Conn. Mar. 9, 2020).

parties in Panama and other countries.<sup>318</sup> According to the charging documents, between 2009 and 2014, the Linares brothers allegedly established offshore bank accounts in the names of foreign shell companies to receive and disguise approximately \$28 million in bribe payments from Odebrecht made for the benefit of their father.<sup>319</sup> The DOJ alleges that the Linareses served as signatories on certain of the shell company bank accounts and personally sent wire transfers—many of which were in US dollars and involved US banks—through the accounts.<sup>320</sup> At the time of this report, neither defendant has entered a plea, and a trial date has not been scheduled.

### **3. Petrobras – Rodrigo Garcia Berkowitz**

On November 30, 2020, the government unsealed charges against former Petrobras official Rodrigo Garcia Berkowitz.<sup>321</sup> Berkowitz, a Brazilian citizen, worked as an energy trader for the Brazilian state-owned oil company, and was thus deemed to be a foreign official under the FCPA.<sup>322</sup> Between 2010 and 2014 and again from 2017 to 2018, Berkowitz was seconded to Petrobras’ Houston-based subsidiary, Petrobras America Inc.<sup>323</sup> During that time, the information alleged that intermediaries working for three oil trading companies paid bribes to foreign officials, including Berkowitz, in order to secure business with Petrobras.<sup>324</sup> In furtherance of the bribery scheme, Berkowitz established shell companies and bank accounts in the United States, Switzerland, and Uruguay, through which he and his co-conspirators transferred at least \$14.4 million in bribe proceeds.<sup>325</sup> On February 8, 2019, Berkowitz pleaded guilty to one count of conspiracy to commit laundering.<sup>326</sup> As of the publication of this report, no sentencing date has been set.

### **4. Seguros Sucre - Jose Vicente Gomez Aviles; Juan Ribas Domenech; Felipe Moncaleano Botero; Roberto Heinert**

On February 13, 2020, the DOJ charged Juan Ribas Domenech, Jose Vicente Gomez Aviles, and Felipe Moncaleano Botero with money laundering conspiracy for their alleged roles in a scheme to secure contracts with Seguros Sucre S.A., Ecuador’s state-owned insurance company.<sup>327</sup> In addition, on March 3, 2020, the DOJ separately charged Roberto Heinert, a dual US-Ecuadorian citizen and business associate of Gomez, with a related money laundering offense.<sup>328</sup> Ribas, a citizen of Ecuador, formerly served as the Chairman of Seguros Sucre and as an advisor to the President of Ecuador.<sup>329</sup> Gomez, a citizen of Ecuador and a US lawful permanent resident

<sup>318</sup> *United States v. Odebrecht* <https://www.justice.gov/opa/pressrelease/file/919916/download>

<sup>319</sup> *United States v. Luis Enrique Martinelli Linares* <https://www.justice.gov/opa/press-release/file/1292366/download>

<sup>320</sup> *Id.*

<sup>321</sup> DOJ Press Release, *Vitol Inc. Agrees to Pay Over \$135 Million to Resolve Charges for Bribery Schemes in Latin America* (Dec. 3, 2020), <https://www.justice.gov/usao-edny/pr/vitol-inc-agrees-pay-over-135-million-resolve-charges-bribery-schemes-latin-america>; Order to Unseal Information, *United States v. Berkowitz*, No. 1:19-cr-00064-RJD (E.D.N.Y. Nov. 30, 2020).

<sup>322</sup> Information, *United States v. Berkowitz*, No. 1:19-cr-00064-RJD (E.D.N.Y. Feb. 8, 2019).

<sup>323</sup> *Id.*

<sup>324</sup> *Id.*

<sup>325</sup> *Id.*

<sup>326</sup> Transcript of Plea Agreement Hearing, *United States v. Berkowitz*, No. 1:19-cr-00064-RJD (E.D.N.Y. Feb. 14, 2020).

<sup>327</sup> *United States v. Jose Vicente Gomez Aviles*

<sup>328</sup> *United States v. Roberto Heinert*

<sup>329</sup> *United States v. Jose Vicente Gomez Aviles*

residing in Miami, was a partial owner of a Panamanian company, which helped companies secure contracts with Seguros Sucre in exchange for a commission.<sup>330</sup> Botero, a Colombian national, was an executive and shareholder of Colombian-based subsidiaries of an unidentified reinsurance broker and risk adviser based in the UK.<sup>331</sup> According to the DOJ, between 2013 and 2017, Ribas received more than \$3 million in bribery payments from Aviles, Heinert, and Botero, in exchange for securing contracts to provide reinsurance for Ecuador's Ministry of Defense, which was provided through Seguros Sucre.<sup>332</sup> The DOJ further alleged that the defendants laundered the bribery proceeds in US currency through US bank accounts.<sup>333</sup>

On June 11, 2020, Gomez pleaded guilty to a one-count Information charging him with conspiracy to launder money,<sup>334</sup> and on October 15, 2020, the court ordered Aviles to forfeit \$3,157,000 – a sum for which he was jointly and severally liable with Heinert, Ribas, and Botero.<sup>335</sup> Gomez's sentencing is currently scheduled for March 26, 2021.<sup>336</sup>

On August 4, 2020, and September 16, 2020, respectively, Botero and Ribas each pleaded guilty to one count of conspiracy to launder money.<sup>337</sup> Botero's sentencing is scheduled for January 27, 2021,<sup>338</sup> and Ribas is currently scheduled to be sentenced on February 25, 2021.<sup>339</sup> At the time of this report, Heinert is awaiting a trial date.

## **5. Raul Gorrin Belisario; Claudia Patricia Diaz Guillen; Adrian Jose Velasquez Figueroa**

On October 30, 2020, the DOJ filed a criminal Information, charging former Venezuelan National Treasurer Claudia Patricia Diaz Guillen and her husband, Adrian Jose Velasquez Figueroa, for their alleged involvement in a billion-dollar currency exchange and money laundering scheme.<sup>340</sup> On December 16, 2020, the DOJ filed a superseding indictment against Diaz and Velasquez, charging each with one count of conspiracy to commit money laundering and two counts of money laundering.<sup>341</sup> As alleged in the superseding indictment, Raul Gorrin Belisario, the billionaire owner of Venezuelan news network Globovision, funneled millions of dollars in illicit bribes to governmental officials, including Diaz and Alejandro Andrade Cedeno, who preceded Diaz as Venezuela's National Treasurer, in order to secure the rights to conduct foreign currency exchange transactions for the Venezuelan government at favorable rates.<sup>342</sup> Gorrin allegedly engaged in over \$1 billion in foreign currency exchange

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<sup>330</sup> *Id.* at \*4.

<sup>331</sup> *Id.*

<sup>332</sup> *Id.* at \*5-9; see also Complaint *United States v. Roberto Heinert*, No. 1:20-MJ-02337, at \*7-10 (S.D. Fla. Mar. 4, 2020).

<sup>333</sup> *Id.* at \*3-4.

<sup>334</sup> Plea Agreement, *United States v. Jose Vicente Gomez Aviles*, No. 1:20-CR-20169 (S.D. Fla. June 11, 2020), <https://www.justice.gov/criminal-fraud/file/1303091/download>.

<sup>335</sup> *United States v. Jose Vicente Gomez Aviles*.

<sup>336</sup> *United States v. Jose Vicente Gomez Aviles*.

<sup>337</sup> *United States v. Felipe Moncaleano Botero*; *United States v. Juan Ribas Domenech*.

<sup>338</sup> *United States v. Felipe Moncaleano Botero*.

<sup>339</sup> *United States v. Juan Ribas Domenech*.

<sup>340</sup> *United States v. Claudia Patricia Diaz Guillen*.

<sup>341</sup> *United States v. Raul Gorrin Belisario*.

<sup>342</sup> *Id.*

transactions, netting him hundreds of millions in profits.<sup>343</sup>

As discussed in our [2018 FCPA/Anti-Corruption Year in Review](#), Andrade pleaded guilty in December 2017 to one count of conspiracy to commit money laundering.<sup>344</sup> As part of his guilty plea, Andrade admitted that he received more than \$1 billion in bribes from Gorrin as part of the illicit foreign currency operation.<sup>345</sup> In November 2018, Andrade was sentenced to ten years in prison for his role in the scheme.<sup>346</sup>

At the time of writing, Gorrin remains at large,<sup>347</sup> and Diaz and Velasquez are reportedly expected to face extradition to the United States.<sup>348</sup>

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<sup>343</sup> *Id.*

<sup>344</sup> *United States v. Alejandro Andrade Cedeno*

<sup>345</sup> *Id.*

<sup>346</sup> *United States v. Alejandro Andrade Cedeno*

<sup>347</sup> *Former Venezuelan National Treasurer and Her Spouse Charged in Connection with International Bribery and Money Laundering Scheme*<https://www.justice.gov/opa/pr/former-venezuelan-national-treasurer-and-her-spouse-charged-connection-international-bribery> see also *United States v. Belisario*

<sup>348</sup> *Former Venezuelan Treasurer Charged with Accepting Millions in Miami Corruption Case*<https://www.miamiherald.com/news/local/article246791877.html>

## VI. New FCPA Investigations

A total of eight new FCPA investigations were disclosed in 2020. This is the same number as reported in 2019, down from ten in 2018 and twenty in 2017. These new, publicly announced, investigations span a number of industries, including health care, industrials, energy and extractives, and others.

### A. Health Care

The health care industry continued to be a focus of FCPA enforcement activities with two new FCPA investigations disclosed in 2020. On July 24, 2020, Johnson & Johnson filed a Form 10-Q disclosing that the company was responding to FCPA inquiries from the DOJ and SEC, following Brazilian authorities' investigation involving both antitrust issues and "possible improper payments in the medical device industry."<sup>349</sup> On November 5, 2020, Pfizer also disclosed that it had received inquiries from both the DOJ and SEC regarding its operations in China and that the company was producing records pursuant to the DOJ and SEC requests.<sup>350</sup>

### B. Construction, Engineering and Defense

Firms in the construction and engineering and defense sector also had two new investigation disclosures in 2020. Jacobs Engineering Group, a Dallas, Texas-based technical and construction services firm, disclosed in its Form 10-Q filed on February 4, 2020 that the company received a voluntary document request from the SEC on October 31, 2019 regarding operations of a joint venture in Morocco, which was subsequently divested by the company. Jacobs Engineering Group stated that the SEC request included the language "in respect of possible corrupt practices."<sup>351</sup>

In addition, the Waltham, Massachusetts-based defense contractor Raytheon disclosed in its Form 10-K filed on February 12, 2020 that the company had received a subpoena from the SEC with respect to whether there were improper payments made by Thales-Raytheon Systems (a Raytheon and Thales joint venture), Raytheon, or anyone acting on their behalf in connection with contracts in certain Middle East countries since 2014.<sup>352</sup> In April 2020, Raytheon merged with United Technologies Corporation to form Raytheon Technologies. On May 7, 2020, Raytheon Technologies filed a Form 10-Q disclosing that the DOJ had informed the company in the first quarter of 2020 that it had opened a parallel investigation into Middle East contracts.<sup>353</sup> On October 27, 2020, Raytheon Technologies' updated disclosure

<sup>349</sup> <https://www.sec.gov/ix?doc=/Archives/edgar/data/200406/000020040620000050/jnj-20200628.htm>

<sup>350</sup> Pfizer Inc., Form 10-Q at 41 (Nov. 5, 2020), <https://www.sec.gov/ix?doc=/Archives/edgar/data/78003/000007800320000070/pfe-20200927.htm>.

<sup>351</sup> Jacobs Engineering Group Inc., Form 10-Q at 31 (Feb. 4, 2020), <https://www.sec.gov/ix?doc=/Archives/edgar/data/52988/000005298820000019/jec-20191227.htm>.

<sup>352</sup> Raytheon Co., Form 10-K at 79, 111 (Feb. 12, 2020), <https://www.sec.gov/ix?doc=/Archives/edgar/data/1047122/000104712220000009/rtn-12312019x10k.htm>.

<sup>353</sup> Raytheon Technologies Corp., Form 10-Q at 54 (May 7, 2020), <https://www.sec.gov/ix?doc=/Archives/edgar/data/101829/000010182920000034/utx-20200331.htm>.

indicated that it had received a second subpoena in the third quarter of 2020 as a part of the SEC's ongoing investigation.<sup>354</sup>

### C. Energy and Extractives

The energy and extractives industry remained a focus of FCPA-related activity with the new investigation disclosed by Kosmos Energy. On February 24, 2020, Kosmos Energy filed a Form 10-K disclosing that, after the BBC broadcast a television program in June 2019, which discussed various allegations concerning oil blocks in Senegal in which the company holds interests, the SEC requested that the company voluntarily provide certain documents relating to the Senegal blocks.<sup>355</sup>

### D. Other Industries

On January 2, 2020, Landec, a Santa Clara, California-based health and wellness products company, filed a Form 10-Q disclosing that the company engaged external counsel in October 2019 to conduct an internal investigation relating to potential environmental and FCPA compliance matters associated with regulatory permitting at a facility in Mexico. Landec disclosed its internal investigation to the DOJ and SEC, and these agencies have started an investigation.<sup>356</sup>

On April 29, 2020, KT Corporation, South Korea's largest telecommunications company, disclosed in its Form 20-F filing that the company was cooperating with an investigation by the SEC related to a series of corruption cases in South Korea and other allegations regarding compliance with the FCPA. Some of the corruption cases involved making solicited donations, providing financial sponsorships, or awarding contracts to organizations related to public officials, or donations or gifts directly to public officials in South Korea, and others involved corruption and/or improper conduct by the company's former executives/officers. For example, one of the South Korean corruption cases involved Ms. Soon-sil Choi, a confidante of former President Geun-hye Park, in which the Constitutional Court of Korea found that many Korean companies, including KT Corporation, made donations to two non-profit foundations at the direction of former President Park, and that the company also awarded seven advertising contracts amounting to 3.7% of the company's annual advertising spending in 2016 to an advertising agency that was majority-owned by Ms. Choi.<sup>357</sup>

In addition, Pactiv Evergreen, the Lake Forest, Illinois-based food and beverage packaging company, disclosed in its Form S-1/A filed on September 8, 2020 that the company had identified practices in its Shanghai-located China business unit that involve acts potentially in violation of the FCPA. Specifically, the company said that the China business unit occasionally gave gift cards to Chinese regulators and/or employees of state-owned companies over the course of several years. In addition,

<sup>354</sup> Raytheon Technologies Corp., Form 10-Q at 47 (Oct. 27, 2020), <https://www.sec.gov/ix?doc=/Archives/edgar/data/101829/000010182920000071/utx-20200930.htm>.

<sup>355</sup> Kosmos Energy Ltd., Form 10-K at 50 (Feb. 24, 2020), <https://www.sec.gov/ix?doc=/Archives/edgar/data/1509991/000150999120000052/kos-12312019x10k.htm>.

<sup>356</sup> Landec Corp., Form 10-Q at 13 (Jan. 2, 2020), <https://www.sec.gov/Archives/edgar/data/1005286/000162828020000015/Indc-20191124x10q.htm>.

<sup>357</sup> KT Corp., Form 20-F at 10-12 (Apr. 29, 2020), <https://www.sec.gov/Archives/edgar/data/892450/000119312520124602/d848352d20f.htm>.

the China business unit engaged third-party consultants to interact with Chinese regulators to avoid potential adverse action by those regulators. Pactiv Evergreen disclosed these matters to the DOJ and SEC. The investigation is ongoing.<sup>358</sup>

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<sup>358</sup> Pactiv Evergreen Inc., Form S-1/A at 47-48 (Sept. 8, 2020), <https://www.sec.gov/Archives/edgar/data/1527508/000119312520240486/d920461ds1a.htm>.

## VII. World Bank and Other International Financial Institutions

### A. The World Bank Group

The Integrity Vice Presidency (INT) of the World Bank Group continued to actively investigate fraud and corruption in World Bank-financed projects throughout 2020. Despite this year's global challenges, INT received 2,958 complaints and opened 429 new external preliminary investigations, leading to 46 external investigations.<sup>359</sup> Of the 46 initiated investigations in FY2020, 30% were in Africa, 22% in Europe and Central Asia, and 20% in South Asia. Overall, INT submitted 26 cases and 22 settlements to the Office of Suspension and Debarment (OSD).<sup>360</sup>

The numbers of Final Investigation Reports (FIRs) submitted by INT to the World Bank President dropped from 41 in FY2019 to 29 in FY2020.<sup>361</sup> The FIRs involved 40 World Bank-financed projects totaling \$8.3 billion and 70 contracts totaling \$974 million. Additionally, INT made 17 referrals to national authorities and published 31 redacted reports. Redacted reports set forth the allegations, methodology, and findings of an investigation and are addressed to the World Bank's Board of Executive Directors and subsequently made public.<sup>362</sup>

OSD reviewed 29 cases and 22 settlements, resulting in the temporary suspension of 30 firms and eight individuals. OSD sanctioned 19 out of 32 respondents via an uncontested determination. Unlike previous years, OSD did not reject any cases in their entirety; while it found insufficient evidence for at least one claim in 11 of 29 cases, it did find sufficient evidence for at least one claim in the remaining 18 cases. Consistent with previous years, allegations of fraud were the most commonly cited sanctionable practice: 86% of the cases and settlements reviewed by OSD included at least one claim of fraud.<sup>363</sup> The number of corruption claims increased from 12% in FY2019 to 20% in FY2020; the cases and settlements involving collusion similarly increased from 13% in FY2019 to 20% in FY2020.<sup>364</sup>

Noteworthy settlements of FY2020 included a settlement with a Vietnamese technology company involving two urban transport projects in Vietnam.<sup>365</sup> The company improperly influenced the bidding process, failed to disclose its involvement in the upstream work of the two projects, and included falsified

<sup>359</sup> World Bank Group Sanctions System Annual Report FY20 <http://documents1.worldbank.org/curated/en/861191602141633639/pdf/World-Bank-Group-Sanctions-System-Annual-Report-FY20.pdf>

<sup>360</sup> *Id.*

<sup>361</sup> *Id.*

<sup>362</sup> *Id.* at 34.

<sup>363</sup> *Id.* at 50.

<sup>364</sup> *Id.* at 49.

<sup>365</sup> World Bank Press Release, *World Bank Group Debars Sao Bac Dau Technologies Corporation for Collusive and Fraudulent Practices* (June 24, 2020), <https://www.worldbank.org/en/news/press-release/2020/06/24/world-bank-group-debars-sao-bac-dau-technologies-corporation-for-collusive-and-fraudulent-practices>.

documents in the bid. The settlement agreement included a seven-year debarment for fraudulent and collusive practices. In connection with the same two projects, the WB debarred an individual for six years. The individual entered into a settlement for fraudulent, collusive, and corrupt practices during the bidding process of both projects.<sup>366</sup>

The Sanctions Board issued six decisions, convened 14 times and held oral hearings in more than 30% of the cases.<sup>367</sup> The number of firms and individuals sanctioned dropped from 14 in FY2019 to seven in FY2020. In five of the cases before the Sanctions Board in FY2020, the respondents were charged with fraudulent misconduct, while only one case included corruption.<sup>368</sup> As in 2019, only one case involved an allegation of corruption.<sup>369</sup> Unlike previous years, the Sanctions Board did not review any cases in FY2020 involving alleged collusion or obstruction.<sup>370</sup>

Meanwhile, the Integrity Compliance Officer (ICO) engaged with over 107 sanctioned firms and individuals, notified 43 new sanctioned parties regarding their conditions for release, and ultimately released 18 sanctioned parties from debarment.<sup>371</sup> To date, the ICO has released 107 parties. In the past year, the ICO has been developing an initiative to improve its processes of evaluating a company's compliance program. The goal is to establish a more "formal" process by which the ICO works closely with INT investigators to perform a thorough compliance program analysis before a company is sanctioned to determine whether and to what extent mitigation is warranted.<sup>372</sup> Previously, the ICO typically did not become involved in reviewing a compliance program in any detail until after a company had already been sanctioned.

With respect to internal investigations, INT assessed 114 complaints related to fraud and corruption involving WB staff members and corporate vendors, pursued 66 cases involving WB staff members, of which only six were substantiated, and 16 cases involving corporate vendors, of which only one was declared ineligible for a period of four years.<sup>373</sup>

Despite the challenges of a global pandemic, the World Bank Group successfully continued its investigations, determinations, and sanctions hearings. In May 2020, the Sanctions Board reached its first decision where all deliberations took place remotely and conducted its first virtual hearing in September 2020.

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<sup>366</sup> World Bank Press Release, *World Bank Group Debars Individual for Collusive, Corrupt and Fraudulent Practice* (May 13, 2020), <https://www.worldbank.org/en/news/press-release/2020/05/13/world-bank-group-debars-individual-for-collusive-corrupt-and-fraudulent-practices>.

<sup>367</sup> World Bank, *World Bank Group Sanctions System Annual Report FY20* at 6, <http://documents1.worldbank.org/curated/en/861191602141633639/pdf/World-Bank-Group-Sanctions-System-Annual-Report-FY20.pdf>.

<sup>368</sup> *Id.* at 65.

<sup>369</sup> *Id.*

<sup>370</sup> *Id.*

<sup>371</sup> *Id.* at 6.

<sup>372</sup> Office of Suspension and Debarment, *Roundtable 2: The Importance of Transparency: Efforts to Enforce Debarment Decisions* (Sept. 30, 2020), <https://worldbank.scene7.com/s7viewers/html5/VideoViewer.html?asset=worldbankprod/OSD%20Virtual%20Colloquium%20-%20Roundtable%202-AVS&config=worldbankprod/WBG-Standard-Player&serverUrl=https://worldbank.scene7.com/is/image/&contenturl=https://worldbank.scene7.com/is/content/&posterimage=worldbankprod/OSD%20Virtual%20Colloquium%20-%20Roundtable%202-AVS&videoserverurl=https://worldbank.scene7.com/is/content>.

<sup>373</sup> *Id.*

The World Bank also made significant personnel appointments in 2020. It appointed Mouhamadou Diagne as Vice President of Integrity, succeeding Pascale Dubois. Diagne, a former inspector general for the Switzerland-based Global Fund to Fight AIDS, Tuberculosis and Malaria, joined INT in September 2020.<sup>374</sup> INT also hired Alan Bacarese, former head of the African Development Bank's Integrity and Anti-Corruption Department, as Director of Investigations, Strategy and Operations.<sup>375</sup> INT appears to have combined two positions (Director of Investigations and Director of Strategy and Operations) into the position that Bacarese now occupies.<sup>376</sup> It remains to be seen what, if any, changes the new leadership will bring to INT's work.

## B. Other International Financial Institutions

In 2020, the Inter-American Development Bank (IDB) sanctioned 27 companies and six individuals of which 17 were sanctioned by the Sanctions Committee and 12 were debarred as a result of a settlement with the IDB. The number of companies and individuals sanctioned by the Sanctions Officer dropped from 28 in FY2019 to four in FY2020.<sup>377</sup> The sanctions imposed on the 33 parties involved 27 instances of corruption, 17 of collusion, and ten of fraud.<sup>378</sup> Unlike last year, there were no cases of obstructive practices.<sup>379</sup>

The IDB entered into a settlement agreement with the Brazilian construction firm Andrade Gutierrez Engenharia S.A. on April 24, 2020. The company allegedly made illicit payments to public officials totaling \$47 million in exchange for the award of contracts under four IDB-financed projects in Brazil.<sup>380</sup> The settlement agreement included a 37-month debarment of the company and 11 of its subsidiaries. Two years prior, in September 2018, the company settled these and other matters with the Brazilian authorities as part of the Car Wash investigation and agreed to pay \$381 million.

On April 20, 2020, the African Development Bank announced a 36-month debarment of the Chinese energy solutions company Sinotec Company Limited in connection with fraudulent practices.<sup>381</sup> The company misrepresented its previous experience and its relationship with other bidders under three power plant projects in Uganda, Rwanda, and Kenya.

<sup>374</sup> World Bank Press Release, *Mouhamadou Diagne Appointed Vice President of Integrity at the World Bank Group* (May 1, 2020), <https://www.worldbank.org/en/news/press-release/2020/05/01/mouhamadou-diagne-appointed-vice-president-of-integrity-at-the-world-bank-group>.

<sup>375</sup> See Adam Dobrik, *World Bank appoints new investigations director*, Global Investigations Rev., Just Anti-Corruption (Nov. 24, 2020), <https://globalinvestigationsreview.com/just-anti-corruption/multilateral-development-banks/world-bank-appoints-new-investigations-director>.

<sup>376</sup> The Economist, *Job Posting Director of Investigations, Strategy and Operations* (June 30, 2020), <https://jobs.economist.com/job/22783/director-of-investigations-strategy-and-operations/>.

<sup>377</sup> Inter-American Development Bank, *List of sanctioned firms and individuals*, <https://www.iadb.org/en/transparency/sanctioned-firms-and-individuals>; Inter-American Development Bank Office of Institutional Integrity and Sanctions System Annual Report 2019 <https://publications.iadb.org/publications/english/document/Office-of-Institutional-Integrity-and-Sanctions-System-Annual-Report-2019.pdf>.

<sup>378</sup> *Sanctioned firms and individuals*, <https://www.iadb.org/en/transparency/sanctioned-firms-and-individuals>.

<sup>379</sup> Office of Institutional Integrity and Sanctions System Annual Report 2019 at 61-64, IADB, <https://publications.iadb.org/publications/english/document/Office-of-Institutional-Integrity-and-Sanctions-System-Annual-Report-2019.pdf>.

<sup>380</sup> A. Gutierrez Engenharia reaches settlement agreement with IDB Group resulting in sanctions, (Apr. 24, 2020), <https://www.iadb.org/en/news/gutierrez-engenharia-reaches-settlement-agreement-idb-group-resulting-sanctions>.

<sup>381</sup> African Development Bank debars Sinotec Company Limited for 36 months for fraudulent practices AFDB (Apr. 30, 2020) <https://www.afdb.org/en/news-and-events/press-releases/african-development-bank-debars-sinotec-company-limited-36-months-fraudulent-practices-35462#:~:text=The%20African%20Development%20Bank%20Group,for%20engaging%20in%20fraudulent%20practices>.

## VIII. International Developments

### A. United Kingdom

The UK Serious Fraud Office (SFO) recorded another quiet year in 2020. The agency opened seven new cases into corporate misconduct, marking the second-lowest number in its history. The SFO currently is handling 55 ongoing investigations, which represents a slight decrease from its 2018 and 2019 caseload. The pandemic also caused the SFO to halt suspect interviews and applications for search warrants for nearly two months.

*DPAs—Airbus.* The year began with the SFO’s biggest ever success. Following a joint investigation with the French Parquet National Financier (PNF) and the US DOJ, the SFO entered into a DPA with the aircraft manufacturer Airbus on January 31, 2020.<sup>382</sup> The company agreed to pay €991 million after it was charged with five counts of failure to prevent bribery. This settlement was part of a \$3.6 billion global resolution with the US and French authorities, discussed above at Section IV.B.1, and resulted in the largest global anti-corruption coordinated resolution in history.<sup>383</sup> According to the DPA, the company paid bribes through agents in order to secure contracts in Malaysia, Sri Lanka, Taiwan, Indonesia, and Ghana. At the time, this marked the SFO’s seventh DPA since DPAs were first introduced in 2013.

*Other DPAs.* Although it was not a corruption case, the SFO received approval on July 17, 2020, for its eighth DPA with G4S Care and Justice Services (UK) Ltd (G4S) in connection with G4S’s scheme to defraud the UK Ministry of Justice (MoJ) by overcharging the MoJ for the electronic tagging of offenders who had moved abroad, returned to prison, or died.<sup>384</sup> Under the terms of the DPA, G4S will pay a £38.5m penalty and £5.9m to cover the SFO’s costs. Those amounts include a 40 percent discount for G4S’s cooperation with the SFO’s investigation.

The G4S DPA is especially notable because, along with the fine, the DPA included a long list of highly detailed conditions for an SFO-approved third-party “reviewer” that will be tasked with tracking G4S’s compliance with the terms of the DPA and laying out requirements and recommendations for improvements to the company’s compliance systems. This is the first time that the SFO has imposed the appointment of an external reviewer as a condition of a DPA, and many now question whether the appointment of a “reviewer” will become more common in DPAs with corporate entities going forward. The conditions regarding the reviewer (which take up 9 of the DPA’s 19 pages) are much more detailed than in prior DPAs, leading some to liken the G4S reviewer to the monitorships imposed by the US DOJ. According

<sup>382</sup> *SFO enters into €991m Deferred Prosecution Agreement with Airbus as part of a €3.6bn global resolution*, SFO (Jan. 31, 2020), <https://www.sfo.gov.uk/2020/01/31/sfo-enters-into-e991m-deferred-prosecution-agreement-with-airbus-as-part-of-a-e3-6bn-global-resolution/>.

<sup>383</sup> *Id.*

<sup>384</sup> *SFO receives approval for DPA with G4S Care & Justice Services (UK) Ltd*, SFO (Jul. 17, 2020), <https://www.sfo.gov.uk/2020/07/17/sfo-receives-final-approval-for-dpa-with-g4s-care-justice-services-uk-ltd/>.

to the terms of the DPA, however, the reviewer likely will be less invasive than a US-style monitor, although indications are that the “reviewer” will have the same levels of authority and responsibility. While the G4S DPA represents a significant jump in UK third-party reviewers, it is not a monitorship. In fact, should the SFO wish to impose a monitorship in the future, the DPA code of practice requires the monitor to be selected and provisionally installed before a judge approves the DPA.

In connection with the same matter, the SFO charged three former G4S executives with seven counts of fraud, each for making false representations to the MoJ, with the 12-week trial scheduled to begin in January 2022.<sup>385</sup> Similarly, two former Serco directors have also been charged with fraud and false reporting tied to the electronic monitoring fraud scheme that saw Serco Geografix Ltd agree to a DPA with the SFO in July 2019.<sup>386</sup> The 12-week trial of the two former Serco directors is scheduled to begin on January 18, 2021.<sup>387</sup>

And, finally, on the DPA front, on October 30, 2020, the SFO received court approval for a DPA with Airline Services Limited (ASL), bringing a five-year investigation to an end.<sup>388</sup> Under the DPA, ASL agreed to accept responsibility for three counts of failing to prevent bribery related to acts of the company’s agent in connection with three contracts awarded to ASL by Germany’s largest airline, Lufthansa (a private entity). According to the facts which form part of the DPA, the agent also worked as a project manager for Lufthansa and used sensitive business information obtained in that role to benefit ASL’s tender bids. The DPA requires ASL to pay £1,238,714.31 in financial penalties, £990,971.45 in disgorgement, and £750,000 as a contribution to the SFO’s costs, totaling £2,979,685.76. ASL also agreed to cooperate fully with the SFO and any other domestic or foreign law enforcement agencies. SFO Director Lisa Osofsky said “[i]t is to the credit of [ASL] that it voluntarily disclosed this conduct to the SFO and will remain in existence to fulfill the terms of the DPA.” ASL is not trading anymore and will remain open only as a non-trading entity to satisfy the DPA, which is the ninth DPA secured by the SFO. For a discussion of Germany’s investigation of ASL, see Section VIII.B.2, below.

*Civil Recovery Order—Faerman.* The SFO secured on November 12, 2020, a civil recovery order in the sum of £1,198,424.78 from Julio Faerman in connection with Mr. Faerman’s purchase of a luxury apartment in London that the SFO believes was purchased partly with funds obtained through his criminal conduct.<sup>389</sup> Mr. Faerman, a Brazilian national, has admitted to paying bribes to win contracts related to Brazil’s Operation Car Wash, which revealed widespread bribes paid to secure contracts from Petrobras. Mr. Faerman admitted to Brazilian authorities that he paid bribes to win contracts for SBM Offshore NV, a Dutch company for which Mr. Faerman used

<sup>385</sup> Richard Crump, *G4S Execs Face 2022 Trial Over Gov’t Contract Fraud Charges*, Law 360 (Oct. 6, 2020) <https://www.law360.com/articles/1317140/g4s-execs-face-2022-trial-over-gov-t-contract-fraud-charges>.

<sup>386</sup> *SFO charges former Serco directors with fraud*, SFO (Dec. 16, 2019) <https://www.sfo.gov.uk/2019/12/16/sfo-charges-former-serco-directors-with-fraud/>.

<sup>387</sup> Richard Crump, *Ex-Serco Execs Face 2021 Trial Over Gov’t Contract Fraud*, Law 360 (Feb. 19, 2020) <https://www.law360.com/articles/1245172/ex-serco-execs-face-2021-trial-over-gov-t-contract-fraud>.

<sup>388</sup> *SFO enters into Deferred Prosecution Agreement with Airline Services Limited*, SFO (Oct. 30, 2020), <https://www.sfo.gov.uk/2020/10/30/sfo-enters-into-deferred-prosecution-agreement-with-airline-services-limited/>.

<sup>389</sup> *SFO secures £1.2m following investigation into West London property linked to Brazilian bribery scandal*, SFO (Nov. 12, 2020), <https://www.sfo.gov.uk/2020/11/12/sfo-secures-1-2m-following-investigation-into-west-london-property-linked-to-brazilian-bribery-scandal/>.

to act as an agent. After those Brazilian proceedings, which saw Mr. Faerman pay nearly \$54 million in settlement, the SFO began a civil recovery investigation into UK assets that it suspected Mr. Faerman purchased with illicit proceeds. At the center of the SFO's investigation was a £4.25 million luxury apartment in West London. The SFO obtained a property freezing order that prevented Mr. Faerman from selling the property during the investigation and a disclosure order that would allow the SFO to tie commissions paid to Mr. Faerman for bribes to the purchase of the apartment. After Mr. Faerman's June 2020 application to discharge the order was rejected by a UK court, Mr. Faerman and the SFO agreed to a settlement. Under the settlement, the property freezing order and the disclosure order will remain valid until Mr. Faerman pays the agreed amount of £1,198,424.78 plus £57,000 representing the SFO's costs.

*Investigations—Unaoil-Related.* The SFO's investigation into alleged misconduct related to the former Monaco-based oil consultancy Unaoil has also continued throughout the year. The UK and US initiated investigations into Unaoil in 2016 related to alleged payments to government officials on behalf of oil and gas companies around the world to secure contracts. The SFO continues to investigate UK oil services companies Amec Foster Wheeler<sup>390</sup> and Petrofac<sup>391</sup> in connection with alleged misconduct related to the Unaoil matter, but has closed its investigations into KBR for its alleged Unaoil-related misconduct.<sup>392</sup>

*Investigations—GPT.* On July 30, 2020, the SFO charged GPT Special Project Management Ltd (GPT) and three individuals following an investigation into corruption related to contracts for work for the Saudi Arabian National Guard.<sup>393</sup> The alleged corruption took place between January 2007 and December 2012. GPT's former managing director, Jeffrey Cook, and John Mason, the financial officer and part owner of GPT subcontractors Simec and Duranton, have been charged with corruption. Mr. Cook also has been charged with two counts of misconduct in public office for commissions he was paid for placing contracts with ME Consultants Ltd when employed by the UK Ministry of Defence. Terence Dorothy has been charged with aiding and abetting the misconduct in public office charge facing Mr. Cook. Mr. Dorothy is a former UK Ministry of Defence official who worked for a government contractor at the time of the alleged misconduct. The three individuals made their first appearances in court on September 14, 2020.<sup>394</sup> All three defendants were granted bail. For more information on the SFO's investigation in GPT, please see our [2019 FCPA/Anti-Corruption Year in Review](#).

The SFO also found some success with regards to individual convictions and confiscations in 2020.

*Barclays Traders.* Following the convictions of two former Barclays traders of

<sup>390</sup> *Amec Foster Wheeler PLC*, SFO (July 19, 2017), <https://www.sfo.gov.uk/cases/amec-foster-wheeler-plc/>.

<sup>391</sup> *SFO confirms investigation into Petrofac PLC*, SFO (May 12, 2017), <https://www.sfo.gov.uk/2017/05/12/sfo-confirms-investigation-petrofac-plc/>.

<sup>392</sup> *US, UK end Unaoil investigations into KBR*, GLOBAL INVESTIGATIONS REV. (Aug. 6, 2020), <https://globalinvestigationsreview.com/just-anti-corruption/unaoil/us-uk-end-unaoil-investigations-kbr>.

<sup>393</sup> *SFO charges GPT and three individuals following corruption investigation*, (July 30, 2020), <https://www.sfo.gov.uk/2020/07/30/sfo-charges-gpt-and-three-individuals-following-corruption-investigation/>.

<sup>394</sup> *GPT in court on corruption charges over Saudi military contract*, FINANCIAL TIMES (Sep. 14, 2020), <https://www.ft.com/content/d8382dba-bc2c-415b-8e50-93d7d03af216>.

conspiring to rig EURIBOR, as we discussed in our [2018 FCPA/Anti-Corruption Year in Review](#), Southwark Crown Court ordered the two men to pay £1.2 million in total in confiscation orders and costs on March 5, 2020.<sup>395</sup>

*Unaoil Managers Ziad Akle and Basil Al Jarah.* On July 14, 2020, the SFO secured two convictions before the Southwark Crown Court. One of them was Ziad Akle, Unaoil's former Iraqi territory manager. He was found guilty on two counts of conspiracy to make corrupt payments and was sentenced to five years' imprisonment on each count, to be served concurrently.<sup>396</sup> Following Mr. Akle's conviction, a judgment was released in which Judge Martin Beddoe criticized Ms. Osofsky and other senior employees of the SFO for communicating with an American non-lawyer agent acting for the Ahsani family who control Unaoil. The communications were brought to the judge's attention by Mr. Akle's legal team, who used them to suggest that Mr. Akle was facing an unfair trial. While there was no evidence found that sensitive information was exchanged between the SFO and the agent or that there was any bad faith or unlawful behavior, the SFO committed to conduct a review of the matter.

On October 8, 2020, former Unaoil executive Basil Al Jarah was sentenced to three years and four months in prison for paying bribes to win contracts in Iraq.<sup>397</sup> Mr. Al Jarah pleaded guilty in July 2019 to five counts of conspiracy to give corrupt payments. In total, Mr. Al Jarah paid officials at South Oil Company and the Iraqi Ministry of Oil over \$17 million in bribes to win about \$1.7 billion worth of contracts.

*SBM Offshore—Stephen Whiteley and Paul Bond.* Stephen Whiteley, former vice president of Dutch energy services company, SBM Offshore, and subsequently Unaoil's general territories manager, also was found guilty of one count of conspiracy to give corrupt payments and was sentenced to three years' imprisonment.<sup>398</sup> With regards to Paul Bond, former sales manager at SBM Offshore, the jury was not able to reach a verdict and he will be retried at Southwark Crown Court on January 18, 2021. According to the SFO, the two individuals paid officials at the Iraqi Ministry of Oil more than \$500,000 to secure a contract for offshore mooring buoys for SBM worth \$55 million.

*Closed Investigations.* In addition to closing its investigation into KBR (as noted above), the SFO closed a number of additional ongoing investigations during 2020. On May 19, 2020, the SFO dropped its bribery investigation into the Swiss-Swedish technology company ABB for alleged misconduct in connection with Unaoil.<sup>399</sup> In 2017, the company disclosed the results of an internal investigation showing irregularities related to its businesses with Unaoil and alleged third party payments.

<sup>395</sup> *EURIBOR bankers ordered to pay over £1.2 million*, SFO (Mar. 5, 2020), <https://www.sfo.gov.uk/2020/03/05/euribor-bankers-ordered-to-pay-over-1-2-million/>.

<sup>396</sup> *Second former Unaoil executive sentenced for bribery in post-occupation Iraq*, (July 30, 2020), <https://www.sfo.gov.uk/2020/07/30/second-former-unaoil-executive-sentenced-for-bribery-in-post-occupation-iraq/>.

<sup>397</sup> *Former Unaoil executive sentenced for paying bribes to win \$1.7bn worth of contracts*, (Oct. 8, 2020), <https://www.sfo.gov.uk/2020/10/08/former-unaoil-executive-sentenced-for-paying-bribes-to-win-1-7bn-worth-of-contracts-in-post-occupation-iraq/>.

<sup>398</sup> *Id.*

<sup>399</sup> *SFO closes its investigation into ABB Ltd*, SFO (May 19, 2020), <https://www.sfo.gov.uk/2020/05/19/sfo-closes-its-investigation-into-abb-ltd/>.

On June 16, 2020, a year after opening an investigation into the UK bank note producer De La Rue plc, the SFO closed the investigation and concluded that the alleged corruption case does not meet the relevant test for prosecution as defined in the Code for Crown Prosecutors,<sup>400</sup> which requires that the evidence must support a realistic prospect of conviction and prosecution must be in the public interest.

*Pending and New Investigations.* There appears to have been little substantial progress in relation to many of the SFO's historic and high-profile bribery investigations, including into ENRC Ltd, Chemring, British American Tobacco, Rio Tinto and Glencore. The investigation into ENRC, however, has taken up a lot of press coverage, with the company currently pursuing a £90 million lawsuit against the SFO for misfeasance in public office. ENRC alleged that the SFO improperly conspired with ENRC's former lawyers and that the law firm leaked information to the SFO via the press to prompt the opening of a bribery investigation into the Kazakh miner. The case is due to be heard in the middle of 2021.<sup>401</sup>

The SFO had little success with respect to opening new investigations in 2020. On November 5, 2020, the agency announced its investigation into Canadian aircraft manufacturer Bombardier Inc. over suspected bribery and corruption related to 2012 contracts with Garuda Indonesia.<sup>402</sup> Although the SFO has provided no further information about the investigation, Bombardier announced in its Q3 financial results that it "has met with the SFO to discuss the status of the Corporation's internal review and its potential assistance with the SFO investigation on a voluntary basis."<sup>403</sup> Along with the SFO's investigation, Bombardier also disclosed in its November 5, 2020 financial disclosure that it received from the US DOJ an enquiry about the bidding process for a 2013 railway contract in Azerbaijan.<sup>404</sup>

*Policy Guidance.* The SFO issued a range of guidance documents during 2020. On January 17, 2020, the SFO published additional guidance on what an "adequate" compliance program may look like as an inconspicuous update to its Operational Handbook titled "Evaluating Companies Programs."<sup>405</sup> As discussed more thoroughly in our [January 27, 2020 blog post](#), the guidance provides some new information but nothing substantially useful to in-house compliance professionals tasked with creating and running an effective compliance program.

The SFO also published on October 23, 2020 guidance on the SFO's approach

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<sup>400</sup> *SFO closes investigation into De La Rue Plc*, (Jun. 16, 2020), <https://www.sfo.gov.uk/2020/06/16/sfo-closes-investigation-into-de-la-rue/>.

<sup>401</sup> James Thomas, *SFO criticised for "unsatisfactory" efforts to turn over material to ENRC*, GLOBAL INVESTIGATIONS REV. (Oct. 1, 2020), <https://globalinvestigationsreview.com/sfo-criticised-unsatisfactory-efforts-turn-over-material-enrc..>

<sup>402</sup> *SFO confirms investigation into Bombardier*, SFO (Nov. 5, 2020), <https://www.sfo.gov.uk/2020/11/05/sfo-confirms-investigation-into-bombardier/>.

<sup>403</sup> Bombardier, Inc., Third Quarterly Report for the Periods Ended (Sept. 30, 2020), available at <https://ir.bombardier.com/en/investors/investor-events/2020/financial-results-third-quarter-ended-september-30-2020>.

<sup>404</sup> *Id.*

<sup>405</sup> Steptoe International Compliance Blog, *The UK Bribery Act: Adequate Procedures but Inadequate Guidance* (Jan. 27, 2020), <https://www.steptoointernationalcomplianceblog.com/2020/01/the-uk-bribery-act-adequate-procedures-but-inadequate-guidance/>; see also *Evaluating a Compliance Programme*, <https://www.sfo.gov.uk/publications/guidance-policy-and-protocols/sfo-operational-handbook/evaluating-a-compliance-programme/> (last accessed Dec. 11, 2020).

to DPAs and how the SFO interacts with companies when a DPA is on the table.<sup>406</sup> With the publication, SFO Director Ms. Osofsky said the agency sought to “provide further transparency on what we expect from companies looking to co-operate with us.” Although some commentators heralded the guidance as clarifying self-reporting requirements, others view the guidance as still lacking and a missed opportunity.<sup>407</sup>

*Reports and Potential Reform Efforts.* As discussed in our [2018 FCPA/Anti-Corruption Year in Review](#), the HM Crown Prosecution Service Inspectorate (HMCPsi) published two reports on the SFO’s leadership<sup>408</sup> and on case progression systems and processes between case acceptance and charging.<sup>409</sup> The reports highlighted a number of organizational failures, including the inconsistency of complying with internal process guidelines when handling a case, and the delay in allocating cases and processing digital material. The report on the SFO’s leadership further identified, among other things, “tolerance of neglectful approaches to management or, in some cases, of unacceptable behaviors,”<sup>410</sup> to which the SFO formally responded on June 2, 2020, addressing the observations and recommendations made by the inspectors. The SFO welcomed the findings of the HMCPsi and accepted the recommendations made in both reports. It committed to, among other things, actively monitor case progression and rebalance the allocation of resources according to business needs. As a response to the leadership report, the SFO introduced a three-year Culture Change Programme and a new People Strategy, including implementing effective development of the SFO’s vision, continuously training staff, maintaining a balanced workforce and investing in employee’s well-being.

HMCPsi also published on July 30, 2020 a review of the SFO’s response to the COVID-19 pandemic covering March 16 to May 8, 2020.<sup>411</sup> On the same day the review was published, SFO Director Lisa Osofsky responded to HMCPsi’s review.<sup>412</sup> After welcoming HMCPsi’s recognition of the SFO’s positive steps to continue work during the pandemic, Ms. Osofsky stated that “[i]t is important now, more than ever, for the SFO to continue to investigate and prosecute serious economic crime with passion and focus.”

On November 3, 2020, the UK government announced that it had finished a three-year examination of the case for reform of the UK’s corporate criminal liability laws and tasked the Law Commission, an independent body designed to recommend legal reforms, to conduct further analysis. The Law Commission has said that it aims to publish its recommendations in late 2021. With some limited exceptions (most notably, the section 7 offence under the Bribery Act 2010 and the facilitation of tax

<sup>406</sup> *Serious Fraud Office releases guidance on Deferred Prosecution Agreements*, (Oct. 23, 2020), <https://www.sfo.gov.uk/2020/10/23/serious-fraud-office-releases-guidance-on-deferred-prosecution-agreements/>.

<sup>407</sup> *New SFO guidance clears up point on self-reporting*, . (Oct. 23, 2020), <https://globalinvestigationsreview.com/new-sfo-guidance-clears-point-self-reporting>.

<sup>408</sup> *Serious Fraud Office Leadership Review*, HMCPsi (July 22, 2019), <https://www.justiceinspectors.gov.uk/hmcp/inspections/serious-fraud-office-leadership-review/>.

<sup>409</sup> *Case Progression in the Serious Fraud Office*, HMCPsi (Oct. 8, 2019), <https://www.justiceinspectors.gov.uk/hmcp/inspections/case-progression-sfo-oct-19/>.

<sup>410</sup> *Serious Fraud Office Leadership Review*, HMCPsi (July 22, 2019), <https://www.justiceinspectors.gov.uk/hmcp/inspections/serious-fraud-office-leadership-review/>.

<sup>411</sup> *SFO response to COVID-19: 16 March to 8 May 2020* HMCPsi (Jul. 30, 2020), <https://www.justiceinspectors.gov.uk/hmcp/inspections/sfo-response-to-covid-19-16-march-to-8-may/>

<sup>412</sup> *HMCPsi Inspection of SFO’s response to COVID-19: 16 March to 8 May 2020*, SFO (July 30, 2020) <https://www.sfo.gov.uk/2020/07/30/hmcp/inspection-of-sfos-response-to-covid-19-16-march-to-8-may-2020/>.

evasion offences), corporate criminal liability in the UK is based on the “identification principle,” which provides that a company can only be held criminally liable for financial crime offences if prosecutors can prove beyond a reasonable doubt that the “directing mind and will” of the company committed or was aware of the misconduct. The “identification principle” has long been a thorn in the side of UK prosecutors. It has been cited by a series of SFO directors as a major obstacle to mounting successful prosecutions of companies, most recently in the case brought by the SFO against Barclays relating to Barclays’ 2008 Qatari dealings.

## **B. Continental Europe**

While enforcement of foreign bribery in many continental European countries remained spotty,<sup>413</sup> a number of countries in the region grappled with significant domestic corruption cases, some with significant foreign elements, involving a number of high-level officials.

### **1. Austria**

Austria recorded its biggest corruption trial in post-war history this year, in which former finance minister, Karl-Heinz Grasser, was sentenced to eight years in prison.<sup>414</sup> On December 4, 2020, the Vienna Regional Court found Mr. Grasser guilty of passing on inside information to private investors prior to the sale of 60,000 federal apartments known as the “Terminal Tower” by the Austrian government in exchange for the receipt of bribes totaling €9.6 million. The trial included 14 other defendants, 150 witnesses and lasted three years. The preceding investigations by Vienna’s prosecutor were initiated in 2009.<sup>415</sup> Mr. Grasser, along with other defendants, has indicated that he intends to appeal the decision.

### **2. Germany**

Perhaps with their focus on the Cum-Ex trading scandal where it is said that up to 100 banks are under investigation by German prosecutors for tax evasion offences and the collapse of Wirecard AG, the insolvent German payment processor and financial services provider, which has been found to have €1.9 billion in cash missing, German public prosecutor offices have launched a limited number of corruption investigations in 2020.

In November 2020, the public prosecutor’s office in Frankfurt launched an

<sup>413</sup> See Transparency International, *Exporting Corruption Progress report 2020: Assessing enforcement of the OECD Anti-Bribery Convention* (Oct. 20, 2020), <https://www.transparency.org/en/publications/exporting-corruption-2020#>. (finding that only 4 countries—the US, UK, Switzerland and Israel—had what TI termed “active” enforcement programs in the past year. Several continental European countries featured “moderate” enforcement in that period of time (Germany, France, Italy, Spain, Sweden, Norway and Portugal, along with Australia and Brazil), while a number of others were in the “little or no enforcement category (Netherlands, Austria, Denmark, Greece, Lithuania, Slovenia, Estonia, Latvia, along with Canada, South Africa, Argentina, Chile, Colombia, New Zealand, and Costa Rica). Countries with “little or no” enforcement in the region included Ireland, Belgium, Poland, Czech Republic, Hungary, Luxembourg, Finland, Slovakia and Bulgaria, along with China, Japan, South Korea, Hong Kong, India, Mexico, Russia, Singapore, Turkey, and Peru.

<sup>414</sup> Kirsti Knolle, *Ex-finance minister found guilty of corruption*, DW (Dec. 4, 2020), <https://www.dw.com/en/austria-ex-finance-minister-found-guilty-of-corruption/a-55819493>.

<sup>415</sup> Kirsti Knolle, *Austria ex-finance minister goes on trial accused of corruption*, REUTERS (Dec. 12, 2017), <https://www.reuters.com/article/us-austria-politics-crime-idUSKBNIE61VF>.

investigation into individuals in connection with an alleged bribery scheme involving aircraft service company Airline Services Limited (ASL).<sup>416</sup> The investigation into the individuals is related to the DPA entered into between the UK Serious Fraud Office (SFO) and ASL in October 2020 (discussed at Section VIII.A, above), pursuant to which the company agreed to pay £2.2 million in financial penalties for having failed to prevent bribery.<sup>417</sup> According to the DPA, ASL failed to prevent its employees from paying a German agent in order to secure three contracts with Lufthansa worth £7.3 million.<sup>418</sup> It is alleged that the agent also worked as a project manager for Lufthansa and was responsible for evaluation tenders. In his role, he was able to access confidential information and provide it to ASL. The public prosecutor's office has not provided any additional information on the investigated individuals.

### 3. Spain

Spain's Supreme Court prosecutors have launched an investigation into Spain's former King, Juan Carlos I, related to corruption allegations arising out of his involvement in a public procurement process in Saudi Arabia. Juan Carlos allegedly received \$100 million from Saudi Arabia's King Abdullah in 2008 in exchange for his role in a deal which led to a Spanish consortium being awarded the contract to build a high-speed rail line connecting Medina and Mecca in Saudi Arabia worth \$6.7 billion.<sup>419</sup> According to the allegations, payments were made three years after the contract was awarded and transferred to a bank account in Switzerland. Preliminary inquiries into the matter were launched in September 2018. Prosecutors can only investigate Juan Carlos' alleged misconduct after 2014, when he abdicated the throne and no longer benefited from immunity. The former king currently resides in the United Arab Emirates.<sup>420</sup>

### 4. Switzerland

While Switzerland is considered to be an "active" enforcer of foreign bribery prohibitions, COVID-19 restrictions and resultant delays in court processes saw the first trial in the Swiss FIFA corruption probe expire under the statute of limitations. The trial of four soccer officials related to the 2006 FIFA World Cup opened on March 9, 2020, but was then suspended due to restrictions in connection with the COVID-19 pandemic, pushing the prosecution beyond the April 27, 2020 deadline to resolve the case.<sup>421</sup> Two German members of the 2006 World Cup organizing committee as well as former FIFA secretary general Urs Linsi were charged with fraud in an investigation over Germany's hosting of the 2006 World Cup. A third German official was charged with being complicit in fraud in an alleged collective attempt to mislead a 2006 World Cup oversight panel in Germany. FIFA expressed its

<sup>416</sup> James Thomas, *Germany investigates business dealings tied to UK DPA*, GLOBAL INVESTIGATIONS REV. (Nov. 3, 2020), <https://globalinvestigationsreview.com/germany-investigates-business-dealings-tied-uk-dpa>

<sup>417</sup> *SFO enters into Deferred Prosecution Agreement with Airline Services Limited*, (Oct. 30, 2020), <https://www.sfo.gov.uk/2020/10/30/sfo-enters-into-deferred-prosecution-agreement-with-airline-services-limited/>.

<sup>418</sup> *Id.*

<sup>419</sup> *Spain probes ex-King Juan Carlos over alleged Saudi bribe*, DW (Jun. 8, 2020), <https://www.dw.com/en/spain-probes-ex-king-juan-carlos-over-alleged-saudi-bribe/a-53733202>

<sup>420</sup> *Spain's former king to leave the country amid corruption claims*, AL JAZEERA (Aug. 3, 2020), <https://www.aljazeera.com/news/2020/8/3/spains-former-king-to-leave-the-country-amid-corruption-claims>

<sup>421</sup> Swiss Federal Criminal Court press release of April 28, 2020, <https://www.bstger.ch/fr/media/comunicati-stampa/2020.html> (last accessed Dec. 11, 2020).

disappointment about the fact that the trial had become time-barred and suggested it would support any attempt to reopen the investigation.<sup>422</sup>

The Swiss Federal Prosecutor's office opened a criminal investigation into Glencore over its alleged failure to prevent corruption in the Democratic Republic of Congo (DRC). The world's largest commodities trader has considerable business interests in the DRC where it mines copper and cobalt. Investigations were launched following a complaint<sup>423</sup> filed by Swiss NGO Public Eye in 2017.<sup>424</sup> Glencore also faces investigations by a number of other law enforcement agencies including in the United States and United Kingdom.

Finally, in September 2020, the Swiss Attorney General opened an investigation into three Swiss subsidiaries of SBM Offshore for allegedly failing to prevent corruption of foreign government officials. The company which provides solutions to the offshore energy industry has been accused of bribing officials in Brazil, Equatorial Guinea and Angola between 2005 and 2012 and previously settled bribery allegations with the Dutch, Brazilian and US authorities to the tune of almost \$740 million.<sup>425</sup>

## 5. France

As previously noted in our US and UK reports above, the French Parquet National Financier (PNF) recorded its biggest success in the country's history of anti-corruption enforcement actions. On January 31, 2020, the PNF, following a joint investigation with the UK SFO and the US DOJ, reached a settlement agreement with Airbus. In order to resolve allegations of bribery and corruption, the company agreed to pay a record sum of €3.598 billion plus interest and costs to the French, UK and US authorities to avoid prosecution.<sup>426</sup> The French authorities received €2,083,137,455, the highest payment among the three agreements, reflecting its significant interests in the matter. (Indeed, as discussed earlier (see Section IV.B.1), the US DOJ explicitly deferred to the stronger interests of France and the UK in the matter, receiving the smallest share of the penalties.) According to the settlement agreements, the aircraft manufacturer made illicit payments to foreign public officials in multiple countries in order to receive business advantages and/or secure contracts from both privately owned enterprises and state-owned and state-controlled entities between 2008 and 2015.<sup>427</sup> This is the sixth judicial public interest agreement (CJIP) – the French equivalent of a DPA – the PNF has entered into. In addition to completing the design of its compliance program to the satisfaction of the French Anti-Corruption

<sup>422</sup> FIFA statement, (Apr.28, 2020), <https://www.fifa.com/who-we-are/news/fifa-statement-x8778>.

<sup>423</sup> *Glencore in the DRC: Public Eye calls upon Swiss justice to take action*, (Dec. 19, 2017), <https://www.publiceye.ch/en/media-corner/press-releases/detail/glencore-in-the-drc-public-eye-calls-upon-swiss-justice-to-take-action>.

<sup>424</sup> *Glencore faces Swiss probe over alleged Congo corruption*, (June 20, 2020), <https://www.swissinfo.ch/eng/glencore-faces-swiss-probe-over-alleged-congo-corruption/45849694>.

<sup>425</sup> *Swiss investigating SBM Offshore subsidiaries over past corruption*, REUTERS, <https://www.reuters.com/article/us-sbm-offshore-swiss-corruption/swiss-investigating-sbm-offshore-subsidiaries-over-past-corruption-idUSKBN28A2JH> (last accessed Dec. 15, 2020). See also our prior discussion of the US enforcement activity in our 2017 FCPA/Anti-Corruption Year in Review.

<sup>426</sup> *Airbus Agrees to Pay over \$3.9 Billion in Global Penalties to Resolve Foreign Bribery and ITAR Case*, (Jan. 31, 2020), <https://www.justice.gov/opa/pr/airbus-agrees-pay-over-39-billion-global-penalties-resolve-foreign-bribery-and-itar-case>.

<sup>427</sup> *Airbus pays \$4 billion to settle global bribery and trade offenses*, (Jan. 31, 2020), <https://fcpablog.com/2020/01/31/airbus-pays-4-billion-to-settle-global-bribery-and-trade-offenses/>.

Agency (Agence Française Anticorruption, or AFA), Airbus has agreed to a three-year compliance monitoring by the AFA, which includes targeted audits of Airbus' compliance program and reporting requirements. The PNF will update the SFO and DOJ regarding the AFA's monitoring of Airbus.

Former president Nicolas Sarkozy faced corruption and influence-peddling charges in a trial before a court in Paris on December 10, 2020. Mr. Sarkozy was alleged to have bribed a judge and offered him a desirable job in Monaco in exchange for insider information on an inquiry into him having received illicit payments from L'Oreal heiress, Liliane Bettencourt, during his presidential campaign.<sup>428</sup> The corruption and influence peddling charges that were brought against him carry a maximum sentence of ten years in prison and a fine of €1 million. While the trial came to an end on December 10, 2020, the verdict is not expected until March 2021. Prosecutors have demanded a four-year prison sentence for Sarkozy of which he should serve two.<sup>429</sup>

France's Commission de Sanctions rendered a ruling providing insight into the focus of the AFA when enforcing the transparency, anti-corruption and modernization law known as Sapin II. In the Imerys case,<sup>430</sup> the company was alleged to have failed to address the risks associated with the company's industry, activity and geographical locations in its risk mapping; that it did not factor in the corruption risks that it was exposed to in its accounting procedures; and that its code of conduct was out-of-date and inadequate. As regards risk mapping, the Commission de Sanctions concluded that the Sapin II law did not specify the appropriate level of granularity and that a plan of action was not required. Further, the Commission recognized that Imerys complied with certain AFA recommendations for risk mapping. It also granted a longer period of time for the company to update its employee code of conduct as well as accounting procedures and controls surrounding the risk of corruption.

Finally, the French Minister of Justice issued a circular to public prosecutors on "criminal policy in the fight against international corruption." The circular calls on the PNF to increase its efforts to detect international corruption and suggests that the authority should pay special attention to press articles which may justify in-depth verifications with a view to the possible launch of criminal investigations. The circular also provides guidance on investigation strategies and the appropriate mode of prosecution.<sup>431</sup>

## 6. Italy

The prosecution of corruption offences has continued in Italy, with particular

<sup>428</sup> The charges related to payments received by Ms. Bettencourt were dropped in 2013. *Sarkozy corruption trial comes to a close, with verdict expected March 1*, (Dec. 11, 2020), <https://www.france24.com/en/europe/20201211-sarkozy-corruption-trial-comes-to-a-close-with-verdict-expected-march-1>.

<sup>429</sup> *Sarkozy corruption trial comes to a close, with verdict expected March 1*, (Dec. 11, 2020), <https://www.france24.com/en/europe/20201211-sarkozy-corruption-trial-comes-to-a-close-with-verdict-expected-march-1>.

<sup>430</sup> Commission de Sanctions, Decision no. 19-02, <https://www.agence-francaise-anticorruption.gouv.fr/files/files/DECISION%2019-02%20COMMISSION%20DES%20SANCTIONS%20%20ANONYME.PDF> (last accessed Dec. 11, 2020).

<sup>431</sup> *Circulaire de politique pénale en matière de lutte contre la corruption internationale*, NOR: JUSD2007407C (Juen 2, 2020), <https://www.legifrance.gouv.fr/download/pdf/circ?id=44989>

emphasis on allegations of corruption of foreign public officials in Algeria and Nigeria.

The 2011 Milan court case over alleged corruption in Nigeria involving an offshore oilfield license known as OPL 245 is near completion. Italian prosecutors allege that Eni and Shell and various employees (including Eni's CEO Claudio Descalzi and former Shell exploration chief Malcolm Brinded) paid bribes to secure the license. In July 2020, Italian prosecutors asked the Milan court to fine the companies €900,000 each and to impose custodial sentences on some of their present and former executives, including Mr. Descalzi. They also requested that nearly \$1.1 billion (the equivalent of the alleged bribes) be confiscated from all the defendants. All of the evidence has now been presented, including evidence obtained from abroad via letters rogatory. The Italian prosecution, the Federal Republic of Nigeria (FRN), and some of the defendants have presented their closing arguments; and the remaining defendants will make their closing arguments during the course of January 2021.<sup>432</sup> The decision of first instance is expected in 2021. In a related case, in October 2020, Eni submitted a request to the federal court in Wilmington, Delaware, seeking permission to subpoena litigation funder Drumcliffe Partners and an entity it established in the state named Poplar Falls for the "production of documents and deposition testimony." The request follows media reports about how Poplar Falls could benefit from litigation brought on behalf of Nigeria in the US to recover assets from the allegedly corrupt oil deal.<sup>433</sup> On November 18, 2020, Drumcliffe Partners asked the US court to reject Eni's application.<sup>434</sup>

Further to an Italian court of appeal's ruling of January 15, 2020, which overturned Saipem's 2018 conviction for allegedly paying intermediaries approximately €198 million in bribes to win €8 billion worth of contracts from Algerian state-owned company Sonatrach, Milan's public prosecutors appealed the judgment in June 2020.<sup>435</sup> Eni was acquitted in the same matter by an Italian court of first instance in January 2018, with the acquittal being upheld by the court of appeal.<sup>436</sup>

In June 2020, Milan's public prosecutors launched an investigation into the Italian subsidiaries of French engineering company Alstom and German industrial manufacturing company Siemens, as well as a number of Italian engineering companies, over an alleged bribery scheme to win public tenders worth €150 million

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<sup>432</sup> *FACTBOX-Legal cases sparked by Nigerian OPL 245 oilfield licence*, R (Nov. 12, 2020), <https://uk.reuters.com/article/eni-shell-nigeria-corruption/factbox-legal-cases-sparked-by-nigerian-opl-245-oilfield-licence-idUKL8N2HW4QL>.

<sup>433</sup> Michael Griffiths, *Eni targets controversial Nigerian asset recovery contract to aid Italian bribery trial*, GIR (Oct. 08, 2020), <https://globalinvestigationsreview.com/eni-targets-controversial-nigerian-asset-recovery-contract-aid-italian-bribery-trial>.

<sup>434</sup> Sam Fry, *Litigation funder tries to block subpoenas linked to controversial Nigerian asset recovery deal*, GIR (Nov. 20, 2020), <https://globalinvestigationsreview.com/bribery/litigation-funder-tries-block-subpoenas-linked-nigerian-asset-recovery-efforts>.

<sup>435</sup> Will Barbieri, *Italian prosecutors appeal against Saipem acquittal*, GIR (June 19, 2020), <https://globalinvestigationsreview.com/italian-prosecutors-appeal-against-saipem-acquittal>; *Italy prosecutors appeal acquittal of Saipem in Algeria graft case - source*, R (June 19, 2020), <https://uk.reuters.com/article/saipem-corruption-algeria-idAFS8N29Z0FE>.

<sup>436</sup> As noted in Section IV.D.3, Eni settled a case the SEC for alleged accounting failures in relation to its affiliate Saipem in connection with the Sonatrach contracts.

relating to the Milan subway system.<sup>437</sup> Italian tax police reportedly arrested 13 executives on June 23, 2020. Those detained are being investigated for offences including criminal conspiracy, corruption, fixing auctions and misappropriation of public funds. Milan's prosecutor Francesco Greco reportedly filed a complaint against the same 13 executives, detailing an alleged scheme to pay bribes to public officials between 2018 and 2019 to obtain confidential information about the bidding process for the construction of the Milan subway. According to the filing, prosecutors are focusing on at least seven companies and 28 individuals. Prosecutors have also issued search warrants as part of the investigation. Siemens, Alstom and ATM have said that they are cooperating with the investigation.<sup>438</sup>

Also in 2020, a Milan court reportedly ordered San Faustin, the holding company that controls Italian steel pipe supplier Tenaris TENR MI, and its owners (Messrs. Gianfelice Rocca, Paolo Rocca and Roberto Bonatti) to stand trial in a Brazil corruption case relating to alleged bribes paid to an executive at Brazilian energy group Petrobras PETR4 SA to win contracts worth around €1.4 billion.<sup>439</sup> Tenaris is controlled by the Techint Group which in turn is owned by Italy's Rocca family through their financial holding San Faustin. The Milan prosecutors claim a manager at Italy's Techint Group allegedly paid a total of approximately €6.6 million to a Petrobras executive over the period from 2009 to 2014. The Italian judge's decision follows the prosecution's request for San Faustin and its owners to be sent to trial in October 2019.<sup>440</sup> The first court hearing is reportedly set for May 14, 2021 in Milan.

## 7. European Union

The process of the operational establishment of the European Public Prosecutors Office (EPPO) is ongoing. The office will investigate and prosecute crimes "affecting the financial interests of the EU," including fraud, corruption, and VAT fraud involving two or more European countries and funds above €10 million.<sup>441</sup> So far, 22 EU Member States have joined while the remaining five<sup>442</sup> have decided not to participate. The EPPO is based in Luxembourg but its structure and work is built both on national and European levels. The Romanian prosecutor Laura Kovesi was appointed by the European Parliament and the Council of the European Union as the European Chief Prosecutor in October 2019 and will be organizing EPPO's work and representing the office in contacts with EU institutions, Member States and third countries. Ms. Kovesi and the College of European Prosecutors will head the day-to-day activities of the European Delegated Prosecutors located in each of

<sup>437</sup> Sam Fry, *Italian prosecutors investigate Siemens, Alstom and others in bribery probe*, GIR (June 23, 2020), <https://globalinvestigationsreview.com/italian-prosecutors-investigate-siemens-alstom-and-others-in-bribery-probe>; Emilio Parodi, Gianluca Semeraro & Edmund Blair, *Italy arrests Siemens, Alstom executives over Milan subway deals*, R (June 23, 2020), <https://uk.reuters.com/article/us-italy-arrests-siemens-alstom/italy-arrests-siemens-alstom-executives-over-milan-subway-deals-idUKKBN23U1J4>.

<sup>438</sup> James Thomas, *Alstom suspends executive amid Italian bribery probe*, GIR (Nov. 11, 2020), <https://globalinvestigationsreview.com/bribery/alstom-suspends-executive-amid-italian-bribery-probe>.

<sup>439</sup> Emilio Parodi, Alfredo Faieta, Stephen Jewkes & Kirsten Donovan, *UPDATE 1-Techint owners ordered to stand trial in Brazil graft case*, R (Feb. 13, 2020), <https://uk.reuters.com/article/techint-brazil-corruption-idUSL8N2AD54S>.

<sup>440</sup> Alfredo Faieta, Emilio Parodi, Gram Slattery, Stephen Jewkes & Alexandra Hudson, *Italian prosecutors ask for Techint owners to stand trial in Brazil graft case - sources*, R (Oct. 03, 2019), <https://www.reuters.com/article/techint-brazil-corruption/italian-prosecutors-ask-for-techint-owners-to-stand-trial-in-brazil-graft-case-sources-idUSL5N26O599>.

<sup>441</sup> Zoe Osborne, *European Public Prosecutor to Take EU Finance Fraudsters to Task*, STEPTOE (Apr. 28, 2020), <https://www.steptoec.com/en/news-publications/european-public-prosecutor-to-take-eu-finance-fraudsters-to-task.html>

<sup>442</sup> Sweden, Hungary, Poland, Ireland and Denmark have not joined.

22 participating EU countries and will define the strategy and internal rules related to all cases ensuring consistency among the EPPO's work. The College of European Prosecutors includes 22 prosecutors from each member country. On September 28, 2020, the European Chief Prosecutor and the 22 European Prosecutors took an oath before the Court of Justice of the European Union.<sup>443</sup> Shortly after, on November 25, 2020, the EPPO announced that it appointed its first 14 out of 140 Delegated Prosecutors.<sup>444</sup>

### C. Russia

In August 2020, the Group of States against Corruption (GRECO) – the Council of Europe's anti-corruption institution, of which Russia is a member – released a report on Russia's compliance with GRECO's corruption prevention recommendations with respect to members of parliament, judges, and prosecutors.<sup>445</sup> Out of the 22 recommendations, GRECO concluded that Russia implemented nine satisfactorily; partly implemented another nine; and had not implemented four.<sup>446</sup> While GRECO “welcome[d] Russia's progress[,]” it stated that “work is still needed to ensure full compliance with Council of Europe standards.”<sup>447</sup> Satisfactorily implemented recommendations included the drawing-up of “practical guidance ... on the requirement for MPs to report gifts, including in kind, received from third parties.”<sup>448</sup> Recommendations that had not been implemented included limiting the immunity of judges “to activities related to their participation in the administration of justice ... to the extent possible.”<sup>449</sup>

Russian prosecutorial efforts led to the initiation of almost 2,500 criminal corruption cases in the first nine months of 2020, as well as the firing of over 350 people – including high-profile government officials – due to “loss of trust.”<sup>450</sup> The Russian Prosecutor General estimated the level of damage from corruption-related criminal cases to be 45.4 billion rubles in the first nine months of the year, compared to 55.1 billion at the end of 2019.<sup>451</sup> He further announced the identification of over 26,000 corruption-related crimes in the first nine months of 2020, which is consistent with the recent average of around 30,000 per year.<sup>452</sup>

Legal changes in the anti-corruption sphere included the decree signed by

<sup>443</sup> European Chief Prosecutor and 22 European Prosecutors take oath before Court of Justice of the European Union, (Sept. 28, 2020), [https://ec.europa.eu/info/news/european-chief-prosecutor-and-22-european-prosecutors-take-oath-court-justice-european-union-2020-sep-28\\_en](https://ec.europa.eu/info/news/european-chief-prosecutor-and-22-european-prosecutors-take-oath-court-justice-european-union-2020-sep-28_en).

<sup>444</sup> Sam Fry, *EPPO appoints first prosecutors*, . (Nov. 25, 2020), <https://globalinvestigationsreview.com/bribery/eppo-appoints-first-prosecutors> (last accessed Dec. 11, 2020).

<sup>445</sup> Council of Europe, Group of States against Corruption, *Compliance Report Russian Federation, Fourth Evaluation Round: Corruption prevention in respect of members of parliament, judges and prosecutors (GrecoRC4(2019)19)* (adopted Dec. 6, 2019; published Aug. 18, 2020), <https://rm.coe.int/fourth-evaluation-round-corruption-prevention-in-respect-of-members-of/16809f3c18>. ((hereinafter GRECO Russia Report).

<sup>446</sup> *Id.* at 20.

<sup>447</sup> *Russia makes progress on corruption but more is needed, GRECO concludes*, COUNCIL OF EUROPE (Aug. 18, 2020) <https://www.coe.int/en/web/portal/-/russia-makes-progress-on-corruption-but-more-is-needed-greco-concludes>.

<sup>448</sup> GRECO Russia Report4-5.

<sup>449</sup> *Id.* at 14.

<sup>450</sup> The Prosecutor General's Office of the Russian Federation, *Интервью Генерального прокурора Российской Федерации Игоря Краснова «Российской газете»* (Interview with the Prosecutor General of the Russian Federation Igor Krasnov in the “Russian Gazette”), GENPROC (Dec. 8, 2020) [https://genproc.gov.ru/ms/ms\\_news/news-1894644](https://genproc.gov.ru/ms/ms_news/news-1894644).

<sup>451</sup> *Id.*

<sup>452</sup> *Id.*

President Putin on December 10 that generally gives federal civil service members and applicants from January 1 to June 30, 2021 to submit declarations of digital financial assets.<sup>453</sup> The decree, “On measures to implement certain provisions of the Federal Law ‘On Digital Financial Assets, Digital Currency and on Amendments to Certain Legislative Acts of the Russian Federation,’” also requires the declaration of digital financial assets belonging to civil servants’ spouses and minor children.<sup>454</sup>

## **D. Asia Pacific**

### **1. China**

After spending much of the first quarter of 2020 in a nationwide lockdown to bring the COVID-19 outbreak under control, China quickly rebooted its economy, rule-making activities and enforcement actions, coupling those steps with efforts to further encourage international investment and trade. In the public sector, the National Supervision Commission (NSC) and the China Commission for Discipline Inspection (CCDI) continue to lead China’s anti-corruption efforts. With a new law subjecting public functionaries to administrative discipline for wrongdoing, the NSC and the CCDI provide further transparency by issuing more procedural rules regarding their investigations. Repatriation of fugitive officials continues despite the worldwide pandemic outbreak, while conformity with international compliance efforts continues to be strengthened. On the commercial bribery side, China retained its industry-specific enforcement strategy and the pharmaceutical industry remains a top target. As China remains a key player in the Belt and Road Initiative and stands out as the sole major economy with growth in 2020, Chinese companies increasingly seek opportunities abroad and expand in the global market, and international regulatory compliance remains an important subject for Chinese companies.

Also of note is the inclusion of an anti-corruption element in the new PRC Export Control Law, effective as of December 1, 2020, as one of the grounds for revocation of an export license. While it remains to be seen how this anti-corruption element will be incorporated into export control compliance, it is clear that anti-corruption compliance for both Chinese companies and multinational companies in China is becoming more important.

With respect to foreign bribery, China continues to be ranked in the “little or no enforcement category by Transparency International.<sup>455</sup>

#### **a. NSC Continues to Crackdown on Public Corruption**

The NSC’s power to investigate and discipline personnel who perform public duties who commit corruption and bribery offences has been further enhanced by the newly issued law on administrative sanctions. In June 2020, the Standing

<sup>453</sup> Указ Президента Российской Федерации от 10.12.2020 г. № 778, О мерах по реализации отдельных положений Федерального закона «О цифровых финансовых активах, цифровой валюте и о внесении изменений в отдельные законодательные акты Российской Федерации», KREMLIN Russian Federation Presidential Decree No. 778, (Dec. 10, 2020), <http://www.kremlin.ru/acts/bank/46195>.

<sup>454</sup> *Id*

<sup>455</sup> See Transparency International, *Exporting Corruption Progress report 2020: Assessing enforcement of the OECD Anti-Bribery Convention* (Oct. 20, 2020), <https://www.transparency.org/en/publications/exporting-corruption-2020#>.

Committee of the National People's Congress (the NPC Standing Committee) promulgated the Law of Administrative Sanctions against Public Functionaries of the People's Republic of China (Administrative Sanctions Law), which empowers the NSC to impose administrative sanctions on public functionaries violating laws and regulations, including committing corruption, bribery, and abuse of power. Consistent with the Supervision Law, public functionaries are defined broadly to include not only civil servants, but also management personnel at state-owned enterprises (SOEs) and other personnel with duties in public affairs. Administrative sanctions, ranging from warnings to discharge from public service, may be imposed on public functionaries who commit violations. The Administrative Sanctions Law is the first nationwide law to consolidate administrative sanctions on all types of individuals undertaking public functions and is a remarkable step for implementation of the Supervision Law.

In order to enhance transparency, the NSC and the CCDI, following the internal rule-making trend in 2019, continued to issue new rules providing guidance to their local branches, as well as educating the general public, about their investigation process. In January 2020, the NSC and the CCDI published *Rules regarding CCDI and NSC Handling of Tip-off and Complaint Work*. These rules expressly set out procedures for the CCDI, the NSC and their local branches in relation to whistleblowing complaints, including the rights and obligations of the whistleblower and the timeline for information provision, internal reporting to authorities at a higher level and notification of acceptance or declination of an investigation.

Also, the efforts to investigate and punish government official corruption continues. During the first three quarters of 2020, the NSC reportedly filed investigations of 443,000 public officials and disciplined 390,000 of them,<sup>456</sup> and based on the information published on the NSC's website,<sup>457</sup> the NSC is in the process of investigating and disciplining more public officials, including high-ranking government officials as well as senior management personnel from major SOEs.

In addition, the NSC is the designated authority to coordinate anti-corruption international cooperation, taking over responsibilities from other government authorities, including the CCDI, and to lead the efforts to combat corruption, repatriate fugitive officials and recover proceeds of corruption. According to the report published by the CCDI and the NSC on the 17<sup>th</sup> International Anti-Corruption Day, between March 2018, when the NSC was set up, and September 2020, a total of 4,257 fugitive officials were repatriated from overseas, and a total amount of RMB 10.937 billion (approximately USD 1.65 billion) of criminal proceeds was recovered.<sup>458</sup>

The campaign for repatriation of fugitive officials, also known as the "Sky Net" campaign starting from 2015, is another effort by the Chinese government to deepen international collaboration and mutual judicial assistance in combatting corruption. According to the NSC report, in the first three quarters of 2020, the "Sky Net 2020"

<sup>456</sup> *Report on Supervision, Inspection and Investigation by Nationwide CCDI and NSC Organs during January to September 2020*, CCDI and NSC (Oct. 20, 2020), [http://www.xinhuanet.com/politics/2020-10/24/c\\_1126650819.htm](http://www.xinhuanet.com/politics/2020-10/24/c_1126650819.htm).

<sup>457</sup> *Ongoing Inspection and Investigation*, CCDI and NSC, <http://www.ccdi.gov.cn/scdc/> (last accessed Dec.23, 2020).

<sup>458</sup> *Inject China Power into International Anti-Corruption - in the 17<sup>th</sup> International Anti-Corruption Day*, CCDI and NSC (Dec. 19, 2020), <http://v.ccdi.gov.cn/2020/12/08/VIDEBfGL0DhQhPrJv31no8Nj201208.shtml>.

campaign has led to the repatriation of 998 fugitive government officials and the successful retrieval of illegal proceeds of crime in a total amount of RMB 2.105 billion (approximately USD 318 million).<sup>459</sup> China is playing an increasingly active role in seeking international cooperation on anti-corruption. To date, China has signed a total of 169 extradition or criminal judicial assistance treaties with 81 countries.<sup>460</sup>

## **b. Efforts to Combat Commercial Bribery**

Compared to corruption by public officials, commercial bribery may come in a wide variety of forms and be more industry-specific. Under the current Chinese government organization structure and division of authority, it appears difficult to launch a universal campaign to fight against commercial bribery in all industries at the same time. Nonetheless, actions to tackle commercial bribery were seen in different industries.

The Anti-Unfair Competition Law (AUCL) remains one of the key statutes to define and penalize commercial bribery. Following the amendments in both 2018 and 2019, the State Administration for Market Regulation (SAMR) endeavored to implement the new AUCL and issue rules facilitating its implementation. For example, in September 2020, the SAMR issued the draft *Rules of Trade Secrets Protection*, which specifically defines trade secrets and prohibits infringement of others' trade secrets by unjust means such as theft, bribery, fraud, coercion, electronic invasion, etc. Violation of these rules will result in penalties under Article 21 of the AUCL, which imposes a monetary penalty up to RMB 5 million (approximately USD 750,000) for a material violation of a trade secret. In October 2020, in accordance with the AUCL, the SAMR issued the *Interim Provisions on the Regulation of Sales Promotion*, prohibiting business operators from bribing others under the guise of sales promotion in order to seek business opportunities or competitive advantages, and the violation of which is subject to penalty under the AUCL.<sup>461</sup>

The pharmaceutical industry remains one of the key sectors of anti-corruption and anti-bribery enforcement. In the second half of 2020, the National Healthcare Security Administration (NHSA), the authority overseeing the pharmaceutical industry in China, took actions to tackle commercial bribery in the pharmaceutical tender and procurement process. For example, in August 2020, the NHSA issued guiding opinions aiming to establish a credit assessment system to report, record, monitor and discipline pharmaceutical companies which commit commercial bribery in pricing, tendering, procurement and marketing processes.<sup>462</sup> Under the credit assessment system, pharmaceutical companies will be assessed and scored based on their record of any dishonest behavior. The record of commercial bribery, mainly including giving kickbacks or other improper benefits during the purchase and sales of pharmaceutical products, will be one of the key factors considered by this new

<sup>459</sup> *Id.*

<sup>460</sup> *Deepen Anti-Corruption International Cooperation with Legal Mindset and Rule of Law – Review of China's International Pursuit of Fugitives and Repatriation of Corruption Proceeds in the New Era*, (Nov. 15, 2020), [http://www.xinhuanet.com/legal/2020-11/15/c\\_1126742511.htm](http://www.xinhuanet.com/legal/2020-11/15/c_1126742511.htm).

<sup>461</sup> Articles 9 and 26, *Interim Provisions on the Regulation of Sales Promotion*, SAMR (Oct. 29, 2020), SAMR Order No. 32.

<sup>462</sup> Yi Bao Fa, *Guiding Opinions of Establishing Credit Assessment System for Price and Bidding Procurement of Pharmaceutical Products*, NHSA (Aug. 28, 2020), No. 34.

credit assessment system.

Subsequently in November 2020, the NHSA further issued implementing rules<sup>463</sup> setting forth the procedures and rules to establish such credit assessment system. The NHSA's efforts to tackle commercial bribery in the pharmaceutical industry are supported by other key government authorities. The Supreme People's Court signed a memorandum with the NHSA to establish an information-sharing mechanism on juridical cases in relation to commercial bribery to better assist the NHSA to establish the aforementioned credit assessment system.<sup>464</sup> In the meantime, the CCDI and the NSC also showed support by stating they will strengthen their supervision over the pharmaceutical industry to eliminate corruption.<sup>465</sup>

### **c. Chinese Companies Pay More Attention to Cross-Border Compliance**

As previously reported, China continues to reinforce its anti-corruption commitments in relation to the overseas operations of Chinese companies, especially in Belt and Road Initiative regions. On November 25, 2020, Chinese companies with operations in the Belt and Road Initiative attended a compliance training on anti-corruption and integrity and collectively entered into an *Integrity Compliance Initiative among Belt and Road Participating Companies*.<sup>466</sup> This is the third annual compliance training hosted by the NSC in coordination with other government authorities. Companies operating overseas and making overseas investments, especially participating in international projects under the Belt and Road Initiative, are encouraged to establish and implement robust compliance programs under the guidance of the *Guidelines on the Compliance Management for Central SOEs*, which was issued in 2019 and discussed in more detail in our 2019 FCPA Year in Review.

The International Financial Institutions (IFIs), which financed critical projects in countries within the Belt and Road Initiative, also played a key role in compliance training. World Bank representatives gave a presentation in the Belt and Road compliance training sessions in both 2018 and 2019, and the Asia Infrastructure Investment Bank gave a presentation in the 2020 training session. Chinese companies engaging in overseas investment projects financed by these IFIs were increasingly reported to be targets of IFI investigations and sanctions due to improper acts in IFI-financed projects.<sup>467</sup> The consequences of IFI sanctions and ancillary sanctions, including cross-debarment by other IFIs, have pushed Chinese companies to pay closer attention to compliance, especially when engaging in cross-border projects.

<sup>463</sup> Yi Bao, Jia Cai, Zhong Xin Han, *Operational Specifications on Credit Assessment of Pricing, Tender and Procurement of Pharmaceutical Products* (2020 Edition), NHSA (Nov. 18, 2020), (2020), No. 24.

<sup>464</sup> *Memorandum of Cooperation on Carrying Out Information Exchange and Sharing of Commercial Bribery Cases in Pharmaceutical Industry*, NHSA (Sept. 17, 2020), [http://www.nhsa.gov.cn/art/2020/9/17/art\\_14\\_3592.html](http://www.nhsa.gov.cn/art/2020/9/17/art_14_3592.html).

<sup>465</sup> *CCDI and NSC Aim to Enhance Supervision in the Pharmaceutical Industry, Closely Monitor Risks and Cut Off Chain of Benefit*, (Sept. 18, 2020), [http://www.ccdi.gov.cn/yaowen/202009/t20200918\\_225757.html](http://www.ccdi.gov.cn/yaowen/202009/t20200918_225757.html), [http://www.nhsa.gov.cn/art/2020/9/17/art\\_14\\_3592.html](http://www.nhsa.gov.cn/art/2020/9/17/art_14_3592.html).

<sup>466</sup> *Belt and Road Participating Enterprises Launch an Integrity Compliance Initiative to Ensure More Stable Pace Going Outbound*, (Nov. 28, 2020), [www.ccdi.gov.cn/toutiao/202011/t20201127\\_230859.html](http://www.ccdi.gov.cn/toutiao/202011/t20201127_230859.html).

<sup>467</sup> *World Bank Group Sanctions Two Chinese Engineering Companies for 18 months*, WORLD BANK (Oct. 28, 2020), <https://www.worldbank.org/en/news/press-release/2020/10/28/world-bank-group-sanctions-two-chinese-engineering-companies-for-18-months>.

Export control is a hot topic in China in 2020 apparently as a result of the China-US trade tensions which have been further intensified by the pandemic. Anti-corruption has been added and highlighted in export control legislative developments. The Export Control Law, one of the more significant new PRC laws enacted in 2020, provides that an export control license obtained by fraud and bribery, or other improper means, shall be revoked, and the violating party will be not only subject to confiscation of illegal proceeds, but also a monetary fine based on the amount of the illegal proceeds. If the illegal proceeds are less than RMB 200,000 (approximately USD 30,300), the maximum monetary fine is RMB 2 million (approximately USD 303,000); however, for illegal proceeds exceeding RMB 200,000, the maximum monetary fine is 10 times that amount.<sup>468</sup> Therefore, a company trying to comply with relevant export control requirements must also pay attention to anti-corruption compliance, and a more comprehensive compliance program is required for a company to navigate through this increasingly sophisticated regulatory environment in China.

## 2. South Korea

Although Korea continues to be ranked poorly in its enforcement of foreign bribery legislation,<sup>469</sup> there have been some developments. On October 29, 2020, South Korea's Supreme Court upheld former president Lee Myung-bak's 17-year prison sentence for bribery in a final ruling. The former president was convicted of accepting KRW 8.5 billion (approximately USD 7.5 million) in bribes from a Samsung executive in exchange for granting a presidential pardon to the company's chairman, who was convicted of embezzlement and tax evasion in 2009, as well as using a relative as an agent to embezzle corporate funds from an auto parts company in which he held a stake. Former president Lee joins a long list of predecessors, as well as one successor, who have been implicated in corruption scandals.<sup>470</sup>

As mentioned in the [2019 FCPA/Anti-Corruption Year in Review](#), the "Corruption Investigation Office" (CIO) Act was passed in the Korean National Assembly in late 2019, thereby establishing an independent anti-corruption agency dedicated to investigating corruption allegations made against senior public officials.<sup>471</sup> While the CIO Act called for the agency to be established on July 15, 2020, the launch of the CIO was met with delays when the opposition party vetoed the candidate proposed to head the agency. In December 2020, the current ruling party of Korea revised the CIO Act in the National Assembly in order to neutralize the opposition's veto power over the selection of candidates for the role of inaugural head of the CIO. This revision may allow the agency to begin its operations in early

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<sup>468</sup> Article 35, the Export Control Law of the People's Republic of China, the Standing Committee of the National People's Congress

<sup>469</sup> See Transparency International, *Exporting Corruption Progress report 2020: Assessing enforcement of the OECD Anti-Bribery Convention* (Oct. 20, 2020), <https://www.transparency.org/en/publications/exporting-corruption-2020#>.

<sup>470</sup> Choe Sang-Hun, *Former South Korean President Ordered Back to Prison for Bribery*, (Oct. 29, 2020), <https://www.nytimes.com/2020/10/29/world/asia/south-korea-president-bribery.html>.

<sup>471</sup> Song Jung-a, *South Korea passes bill to set up anti-corruption agency*, (Dec. 30, 2019), <https://www.ft.com/content/11b3f736-2aec-11ea-bc77-65e4aa615551>.

2021.<sup>472</sup> President Moon Jae-in expressed hope that the revision of the CIO can “open a path toward a rapid launch” of the agency, which will have the power to investigate and prosecute corruption-related allegations against and offenses committed by almost 6,500 high-ranking government officials and politicians, as well as some of their family members.<sup>473</sup>

### 3. India

The 2020 Transparency International Progress Report on assessing enforcement of the OECD Anti-Bribery Convention ranked India in the “little to no enforcement” category, with no reported enforcement actions in foreign corruption cases between 2016 to 2019,<sup>474</sup> despite the passage of the Lokpal Act and the Finance Act 2019 (as noted in the [2019 FCPA/Anti-Corruption Year in Review](#)) in the previous year.

The Ministry of Corporate Affairs (MCA), an Indian government ministry primarily concerned with administration of companies, issued a clarification on March 2, 2020 that independent and non-executive directors who are not the “promoter” or key managerial personnel should not be prosecuted for breaches of the Indian Companies Act 2013 unless they had knowledge of the acts or omissions of the company, provided consent, or did not act diligently. Before the clarification, independent or non-executive directors were as much at risk as directors who are involved in the company’s daily operations, and this clarification shields independent or non-executive directors from liability when the actions or lapses are not within their control.<sup>475</sup>

On September 19, 2020, the Lok Sabha (Parliament of India) passed a bill to amend the Companies Act of 2013. These amendments decriminalized offences in 48 sections of the law, and reduced the number of penal provisions from 134 to 124.<sup>476</sup> These amendments reduce or lessen prison terms and financial penalties for some offenses, and smaller companies may now be entitled to a 50% discount in penalty for some offences. The bill also provides the central government with the ability to allow certain public companies to list their shares in foreign jurisdictions, and exempts smaller companies from its Corporate Social Responsibility requirements, thereby help reducing the litigation burdens of small companies, while keeping the focus of enforcement on more serious offences including fraud and those that cause

<sup>472</sup> Sarah Kim, *Ruling party steamrolls CIO bill through Assembly*, (Dec. 10, 2020), <https://koreajoongangdaily.joins.com/2020/12/10/national/politics/CIO-Corruption-Investigation-Office-for-Highranking-Officials-National-Assembly/20201210180000532.html>.

<sup>473</sup> Elizabeth Shim, *South Korea parliament approves contentious anti-corruption bill*, (December 10, 2020), [https://www.upi.com/Top\\_News/World-News/2020/12/10/South-Korea-parliament-approves-contentious-anti-corruption-bill/7041607609353/](https://www.upi.com/Top_News/World-News/2020/12/10/South-Korea-parliament-approves-contentious-anti-corruption-bill/7041607609353/).

<sup>474</sup> Transparency International, *Exporting Corruption Progress report 2020: Assessing enforcement of the OECD Anti-Bribery Convention* (Oct. 20, 2020), <https://www.transparency.org/en/publications/exporting-corruption-2020#>.

<sup>475</sup> PTI, *No unnecessary action against independent directors without strong evidence of wrong doing: MCA*, (Mar. 2, 2020), <https://economictimes.indiatimes.com/news/economy/policy/no-unnecessary-action-against-independent-directors-without-strong-evidence-of-wrong-doing-mca/articleshow/74446277.cms>.

<sup>476</sup> Gaurav Noronha, *Companies Act amendments notified; various offences decriminalized*, (Sept. 29, 2020), <https://economictimes.indiatimes.com/news/economy/policy/companies-act-amendments-notified-various-offences-decriminalised/articleshow/78379803.cms>.

“injury to public interest or deceit.”<sup>477</sup>

One of the key promises of current President Narendra Modi during his 2014 campaign for office was to combat corruption, and although India has been stagnant in the enforcement against corruption, the series of changes in and improvements to the existing laws may provide the government with powerful tools to refocus and enhance its fight against corruption.

#### 4. Japan

While Japan is ranked as having “little or no enforcement” of foreign bribery laws,<sup>478</sup> two cases involving bribing foreign officials by Japanese companies have been reported in 2020. The factual pattern of the two cases is similar, both involving the bribery of Vietnamese customs officials. On January 16, 2020, the former president of the Vietnamese subsidiary of a Japanese electronics wire and harness supplier was referred to the local prosecutor’s office by the investigating Aichi Prefectural Police for suspected violation of Japan’s Unfair Competition Prevention Law, which prohibits bribery of a foreign public official.<sup>479</sup> The individual was found to have paid a bribe of JPY 7.35 million (approximately USD 70,000) to two customs officials in Vietnam to reduce customs penalties.<sup>480</sup> The individual was found guilty by the Nagoya Magistrate’s Court on January 21, 2020 and fined JPY 1 million (approximately USD 9,000).<sup>481</sup> Similarly, on May 11, 2020, Japanese media reported that a Japanese plastics company listed on the Tokyo Stock Exchange had voluntarily disclosed to the Tokyo Public Prosecutors’ Office payments of a total of JPY 25 million (approximately USD 240,000) to Vietnamese customs and tax officials to reduce customs and tax penalties.<sup>482</sup>

There have also been developments in the case against the former executive of Mitsubishi Hitachi Power Systems. The company was involved in bribery of foreign officials in Thailand and resolved its case under the newly adopted plea agreement system that became effective in Japan on June 1, 2018, as reported in our [2018 FCPA Year in Review](#). The former executive of the company appealed to the Tokyo High Court after being convicted by the Tokyo District Court and sentenced to a suspended 18-month imprisonment. On July 21, 2020, the Tokyo High Court vacated the imprisonment sentence and instead imposed a JPY 2.5 million fine

<sup>477</sup> *Changes to Companies Act: Here are the amendments passed by Lok Sabha*, BUSINESS STANDARD (Sept. 20, 2020), [https://www.business-standard.com/article/companies/ls-passes-bill-to-amend-companies-act-here-are-the-proposed-amendments-120092000212\\_1.html](https://www.business-standard.com/article/companies/ls-passes-bill-to-amend-companies-act-here-are-the-proposed-amendments-120092000212_1.html).

<sup>478</sup> See Transparency International, *Exporting Corruption Progress report 2020: Assessing enforcement of the OECD Anti-Bribery Convention* (Oct. 20, 2020), <https://www.transparency.org/en/publications/exporting-corruption-2020#>.

<sup>479</sup> Kyodo News, *Former Executive Referred to Prosecutor’s Office by Aichi Prefectural Police for Suspected Bribery of Vietnam Customs Officials*, (Jan. 20, 2020), <https://news.yahoo.co.jp/articles/b711df7ae9c465b78ca19ce77f7bc245307e7c8f> (available in Japanese only).

<sup>480</sup> *Id.*

<sup>481</sup> Industrial Structure Council Intellectual Property Committee Unfair Competition Prevention Subcommittee, *The 17<sup>th</sup> Meeting Material 3 - Major Cases of the Unfair Competition Prevention Law 2018-2020* (Jun. 3, 2020), [https://www.meti.go.jp/shingikai/sankoshin/chiteki\\_zaisan/fusei\\_kyoso/pdf/011\\_s03\\_00.pdf](https://www.meti.go.jp/shingikai/sankoshin/chiteki_zaisan/fusei_kyoso/pdf/011_s03_00.pdf) (available in Japanese only).

<sup>482</sup> Kyodo News, *Cash Payments to Vietnamese Officials and Voluntary Self-Disclosure Involving Tenma’s Local Subsidiary*, (May 11, 2020), <https://news.yahoo.co.jp/articles/Oafab0ab3f04f9b8901deaaa947104f217e500df> (available in Japanese only); see also, *Notice on the Publication of Third-Party Committee Investigation Report*, Corp. (Apr. 2, 2020), <https://www.tenmacorp.co.jp/dl/?no=1558> (available in Japanese only). To date, no further enforcement action by the Tokyo Public Prosecutors’ Office has been reported.

(approximately USD 24,000).<sup>483</sup> Following the Tokyo High Court decision, both the prosecutor and the defendant appealed. The case is currently pending before the Japanese Supreme Court.<sup>484</sup>

## 5. Australia

Australia saw several high-profile bribery and corruption enforcement actions in 2020. On September 21, 2020, the New South Wales (NSW) Independent Commission Against Corruption (ICAC) launched an investigation into Daryl Maguire, a former member of the NSW Parliament, who is accused of the misuse of a public office and parliamentary resources to improperly gain benefits through a “cash for visa” scheme for Chinese nationals and by operating a company that charged an “introduction fee” in connection with a visit to the NSW Parliament by a delegation from Liaoning Province in the People’s Republic of China.<sup>485</sup> ICAC’s findings are awaited.

Another high-profile enforcement action involved the November 18, 2020 arrest of a top executive at Leighton Holdings, an Australian construction giant, for alleged involvement in an AUD 1 billion international graft scandal, after a 9-year investigation that, according to the Australian Federal Police, involved “a really complex jigsaw puzzle” of intermediary companies in 10 countries.<sup>486</sup> Russell Waugh is the first of at least three senior Australian executives to face charges in connection to the Unaoil investigation, which allegedly involved bribes paid to ministers and officials in oil producing nations around the world.

As mentioned in the [2019 FCPA/Anti-Corruption Year in Review](#), the Australian government introduced the then-pending Crimes Legislation Amendment (Combatting Corporate Crime) Bill to the Senate in late 2019. The Senate Legal and Constitutional Affairs Legislation Committee published a report on March 17, 2020, expressing its support for the bill, and specifically recommended adopting additional measures, including broadening the scope of offenses covered by the existing foreign official bribery statute, the introduction of corporate liability for failure to prevent foreign bribery even if the act is committed by an “associate,” an amendment to the definition of “dishonest” that enables law enforcement agencies to effectively prosecute dishonest corporate conduct, and perhaps most significantly, the adoption of DPAs to resolve allegations and charges relating to bribery and corruption,

<sup>483</sup> Michael Griffiths, *Japan’s High Court vacates sentence stemming from first bribery plea deal*, (Aug. 4, 2020), <https://globalinvestigationsreview.com/japans-high-court-vacates-sentence-stemming-first-bribery-plea-deal>.

<sup>484</sup> Kyodo News, *Both the Prosecutor and the Defendant Have Appealed After Fine by the Tokyo High Court in the Thai Bribery Case that Involved the First Plea Deal*, MSN News (Aug. 3, 2020), <https://www.msn.com/ja-jp/news/national/%E5%88%9D%E5%8F%B8%E6%B3%95%E5%8F%96%E5%BC%95%E3%81%AE%E3%82%BF%E3%82%A4%E8%B4%88%E8%B3%84%E3%80%81%E5%8F%8C%E6%96%B9%E4%B8%8A%E5%91%8A%E4%BA%8C%E5%AF%A9%E3%81%AE%E6%9D%B1%E4%BA%AC%E9%AB%98%E8%A3%81%E3%81%AF%E7%BD%B0%E9%87%91%E5%88%91/ar-BB17uiRk> (available in Japanese only).

<sup>485</sup> *Operation Keppel Opening Statement* (Sept. 21, 2020), NEW SOUTH WALES INDEPENDENT COMMISSION AGAINST CORRUPTION, [https://www.icac.nsw.gov.au/ArticleDocuments/964/Operation%20Keppel%20Opening%20Statement\\_21Sep20.pdf.aspx](https://www.icac.nsw.gov.au/ArticleDocuments/964/Operation%20Keppel%20Opening%20Statement_21Sep20.pdf.aspx).

<sup>486</sup> Nick McKenzie & Lucy Stone, *Former Australian executive arrested, charged over alleged oil bribery plot*, (Nov. 18, 2020), <https://www.smh.com.au/business/companies/former-australian-executive-arrested-charged-over-alleged-oil-bribery-plot-20200918-p55wv1.html>.

comparable to those that are widely used by US and UK prosecutors.<sup>487</sup>

On November 2, 2020, the Australian government introduced a bill in the Senate to establish the Commonwealth Integrity Commission (CIC), a centralized agency to investigate public sector crimes and corruption.<sup>488</sup> If the bill is passed, the CIC would eventually subsume the Australian Commission for Law Enforcement Integrity (ACLEI), the agency currently responsible for public service integrity, and the CIC will have the power to compel parties to provide information, produce evidence, and give sworn evidence at hearings, to search people and their homes, to seize property, and to conduct surveillance, among other powers.

In the 2020 Transparency International progress report on assessing enforcement of the OECD Anti-Bribery Convention, Australia is in the “Moderate Enforcement” category, having 14 investigations that commenced between 2016 and 2019.<sup>489</sup> With the possible passage of the Crimes Legislation Amendment (Combatting Corporate Crime) Bill and the potential establishment of the CIC, 2021 could see significant enhancements and an increase in anti-bribery and anti-corruption enforcement in Australia.

## **E. Latin America and Mexico**

### **1. Brazil**

During the second year of Mr. Jair Bolsonaro’s Presidency, there was wide local media coverage indicating political setbacks in Brazil’s fight against corruption.<sup>490</sup> Mr. Sergio Moro – known for his leading role as the Judge responsible for the Car Wash Operation – resigned his position as Mr. Bolsonaro’s Justice Minister in April, after openly disagreeing with the President about the conduct of certain policy issues.

Once a strong supporter of the Car Wash Operation and a critic of generalized corruption in Brazil, President Bolsonaro assumed a defensive posture after corruption allegations involving his family and allies were brought to light. A newly appointed Prosecutor General – Mr. Augusto Aras – announced that it was time to *correct directions* and end *lavajatismo* (an expression used to describe and criticize the *modus operandi* of the prosecutors involved with the Operation).

Despite the political turmoil, prosecutors and authorities continue to conduct raids and initiate new investigations. Some of those new investigations derive from past information related to Operation Car Wash, but others seem to derive from new areas of concern, including COVID-related emergency measures. The health sector, in

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<sup>487</sup> The Senate Legal and Constitutional Affairs Legislation Committee, *Report on Crimes Legislation Amendment (Combatting Corporate Crime) Bill 2019*, (Mar. 2020), [https://www.aph.gov.au/Parliamentary\\_Business/Committees/Senate/Legal\\_and\\_Constitutional\\_Affairs/CombattingCorporateCrime/Report](https://www.aph.gov.au/Parliamentary_Business/Committees/Senate/Legal_and_Constitutional_Affairs/CombattingCorporateCrime/Report).

<sup>488</sup> *Release of Commonwealth Integrity Commission consultation draft* (Nov. 2020), ATTORNEY-GENERAL FOR AUSTRALIA AND MINISTER FOR INDUSTRIAL RELATIONS, <https://www.attorneygeneral.gov.au/media/media-releases/release-commonwealth-integrity-commission-consultation-draft-2-november-2020>.

<sup>489</sup> Transparency International, *Exporting Corruption Progress report 2020: Assessing enforcement of the OECD Anti-Bribery Convention* (Oct. 20, 2020), <https://www.transparency.org/en/publications/exporting-corruption-2020#>.

<sup>490</sup> This is also the conclusion reached by International Transparency in the report: Transparency International, *Brazil: Setbacks in the Legal and Institutional Frameworks* (2020 Update), <https://www.transparency.org/en/publications/brazil-setbacks-in-the-legal-and-institutional-anti-corruption-frameworks#>.

particular, seems to remain an industry of interest.

In addition, Brazilian authorities responsible for coordinating anti-corruption initiatives and enforcement finally announced a long-awaited co-working agreement. Practitioners and companies had long criticized the complexity of dealing with a variety of government entities and procedures in connection with Car Wash negotiations. In August 2020, a Technical Cooperation Agreement among the Office of the Comptroller General (CGU), the Office of the Attorney General (AGU), the Federal Court of Auditors (TCU), and the Ministry of Justice and Public Security was announced. The agreement will be supervised by the Supreme Court. The agreement aims to establish common procedures for joint action in anti-corruption activities and information sharing. In furtherance of the agreement, the parties signed a Protocol<sup>491</sup> in November 2020 establishing the procedures and mechanisms to facilitate information sharing, especially as they relate to leniency agreements (signed between the CGU/AGU and companies under the Brazilian Clean Company Act) and collaboration agreements (signed between the Federal Police/MPF<sup>492</sup> and individuals). The initiative also establishes certain standardized procedures and the opportunity for joint resolution of issues with the various agencies.

2020 also saw the imposition of some of the largest individual penalties to date. These included agreements between the Office of the Prosecutor General and former Hypermarchas (now known as Hypera Pharma) executives, including: Mr. João Alves de Queiroz Filho, who agreed to pay an additional R\$1 billion (approximately US\$200 million) in penalties, and the Batista brothers, who agreed to pay R\$1 billion to Brazilian authorities in connection with the re-negotiation of their collaboration agreement. The Batista brothers, who own the parent company of JBS SA, one of the largest meatpackers in the world, reached agreements in 2017 to pay \$3.2 billion in fines for their role in corruption scandals that threatened to topple then-President Michel Temer.<sup>493</sup>

Also in October, the United States and Brazil updated the protocol for the 2011 Agreement on Trade and Economic Cooperation (ATEC) and included an Anticorruption annex (along with two others: Customs Administration and Trade Facilitation, and Good Regulatory Practices). According to the joint statement on anti-corruption, the Protocol further expands both countries' frameworks to include provisions addressing money laundering, the recovery of proceeds of corruption, the denial of a safe haven for foreign public officials that engage in corruption and additional protections for whistleblowers.

Despite concerns expressed by the local media that the Car Wash Operation was losing momentum, the last weeks of 2020 saw the development of new litigation initiatives arising from the long-running Operation. In what is likely the first attempt of its kind, Paraná State prosecutors initiated civil proceedings in Brazil

<sup>491</sup> *Protocolo de Execução N.º 01/2020*, [https://www.gov.br/cgu/pt-br/assuntos/noticias/2020/11/cgu-agu-e-pf-definem-procedimentos-para-troca-de-informacoes-sobre-acordos-de-leniencia-e-delacoes-premiadas/protocolo\\_de\\_execucao\\_pf.pdf](https://www.gov.br/cgu/pt-br/assuntos/noticias/2020/11/cgu-agu-e-pf-definem-procedimentos-para-troca-de-informacoes-sobre-acordos-de-leniencia-e-delacoes-premiadas/protocolo_de_execucao_pf.pdf) (last accessed Jan. 12, 2021).

<sup>492</sup> It should be noted that although the Federal Prosecutor's Office (MPF) was invited and initially participated in the discussions and negotiations, it eventually decided not to join into the agreement.

<sup>493</sup> US proceedings against the Batista brothers and their firms J&F Investimentos and JBS SA are described in Section IV.A.3, above.

against companies and individuals seeking to recover damages arising from their alleged participation in the corruption scheme.<sup>494</sup> One of the most notorious cases is that against Trafigura and certain of its controlling shareholders. Defendants include Petrobras employees, Trafigura and certain of Trafigura's management and controlling shareholders (the former not domiciled in Brazil). It is a joint liability claim that seeks, among others, the application of treble civil penalties, disgorgement of profits, "collective damages" on behalf of the society at large and disbarment from transacting with government entities. The prosecutors asked for a preliminary injunction freezing assets of the defendants in an amount sufficient to cover the claims. No injunction has been issued to date.

The proceedings present a number of novel issues and although it remains to be seen if the claims will be successful, it marks the introduction of a new front of concern and litigation for international companies and individuals involved in corruption allegations in Brazil.

Similarly, Petrobras recently announced it would initiate similar proceedings in Brazil against 23 individuals and companies seeking to recover damages arising out of the alleged participation of the defendants in the corruption scheme. Among those named in the proceedings are countless collaborators, but no former directors of Petrobras itself.

## 2. Argentina

In November 2020, former president and current vice-president Cristina Fernández Kirchner found some success in one of the many ongoing corruption cases against her when a federal judge found the notebooks of former Federal Planning Ministry chauffeur Oscar Centeno chronicling alleged public works graft to be inadmissible, and acquitted her.<sup>495</sup> However, eight corruption cases against Ms. Kirchner remain ongoing. As discussed in our 2019 FCPA/Anti-Corruption Year in Review, the trial is part of the so-called "notebooks" (*cuadernos*) scandal, a publication of written notes taken by the chauffeur of Ms. Kirchner's former planning minister who allegedly delivered cash payments around Buenos Aires. Ms. Kirchner is alleged to have received bribes from Brazilian construction company Odebrecht in return for construction contracts. Meanwhile, in October 2020, the Argentine Supreme Court ruled to reinstate three judges that were previously relocated by the Argentine Senate. The three judges were appointed to the Criminal Court of Appeals by former president Mauricio Macri and were part of bodies scheduled to hear proceedings in the cases against Ms. Kirchner.<sup>496</sup> The Supreme Court's ruling reinforces Argentina's judicial independence and willingness to confront apparent political pressure.

The murder of Fabián Gutiérrez, former secretary to former president Nestor Kirchner and Ms. Kirchner, marks another tragic incident in the ongoing and highly-politicized "notebooks" scandal in Argentina. It is said that Mr. Gutiérrez worked

<sup>494</sup> Proceeding N° 5058422-79.2020.4.04.7000, Juízo Federal da 5ª VF de Curitiba.

<sup>495</sup> *Fernández de Kirchner acquitted in 'cuadernos' graft trial cases*, (Nov. 28, 2020), <https://batimes.com.ar/news/argentina/fernandez-de-kirchner-acquitted-in-cuadernos-graft-trial-cases.phtml>.

<sup>496</sup> *Fernández issues decree formalising removal of judges probing CFK*, (Sept. 19, 2020), <https://www.batimes.com.ar/news/argentina/fernandez-issues-decree-formalising-removal-of-judges-probing-cfk.phtml>.

closely with Mr. and Ms. Kirchner during their presidencies. In 2018 and 2019, Mr. Gutiérrez was arrested in relation to money laundering allegations and was later granted a protected witness status after testifying against Ms. Kirchner in connection with the notebooks scandal. In a detailed statement, he reported bags of money being brought to the Kirchner residence and described the routes of the bribery payments across Buenos Aires. In July 2020, Mr. Gutiérrez was found murdered and four individuals have been arrested in connection with the murder.<sup>497</sup>

Argentina moved up 19 places in Transparency International's Corruption Perception Index, but is still ranked as a "limited" enforcement jurisdiction.<sup>498</sup> It remains to be seen if and how Argentina continues the investigations with regards to the notebooks scandal and how it deals with the continuous increase in political pressure to drop the investigations.

### 3. Peru

Peru continues its efforts to investigate and prosecute corruption as one of the strongest anti-corruption enforcers in Latin America. Its anti-corruption work continues to be significantly dominated by alleged misconduct in connection with the Brazilian construction company Odebrecht. In August of 2020, Peru's Congress voted to establish a multi-party commission to investigate fraud and corruption in the construction sector since 1990.<sup>499</sup> The commission has the power to issue subpoenas to public officials, compel witness testimonies and access relevant bank accounts, and is set to operate for at least a period of six months.

The political landscape around Peru's former presidents continues to be shaken by corruption scandals. Only recently, on November 9, 2020, former president Martín Vizcarra was removed from office by Congress on corruption charges in a second impeachment trial. During his time as a governor, Mr. Vizcarra allegedly received \$640,000 in bribes from two companies related to public tenders.<sup>500</sup> Mr. Vizcarra is the sixth consecutive head of state accused of corruption in Peru.

In 2020, Peru's prosecutors continued their anti-corruption enforcement actions against prominent political figures.

As we discussed in our [2019 FCPA/Anti-Corruption Year in Review](#), former president Alejandro Toledo (2001-2006) was arrested in the United States in July 2019 pending extradition. In the midst of the global pandemic, a US judge ordered the release of 74-year old Toledo on bail due to insufficient medical safeguards for elderly

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<sup>497</sup> *Violent killing of Cristina Fernández's former aide roils Argentina*, (July 9, 2020), <https://www.ft.com/content/2a35014d-1199-4f27-96c4-c6105dbbad11>.

<sup>498</sup> In the latest Corruption Perception Index, Argentina holds rank 66 out of 180; while in 2018 Argentina ranked 85 out of 180. See Transparency International, *Corruption Perception Index 2019*, [https://www.transparency.org/files/content/pages/2019\\_CPI\\_Report\\_EN.pdf](https://www.transparency.org/files/content/pages/2019_CPI_Report_EN.pdf), and Transparency International, *Corruption Perception Index 2018*, <https://www.transparency.org/cpi2018> (last accessed Dec. 12, 2020). See also Transparency International, *Exporting Corruption Progress report 2020: Assessing enforcement of the OECD Anti-Bribery Convention* (Oct. 20, 2020), <https://www.transparency.org/en/publications/exporting-corruption-2020#>

<sup>499</sup> James Thomas, *Peru's congressional corruption investigation labelled overambitious*, . (Sept. 18, 2020), <https://globalinvestigationsreview.com/perus-congressional-corruption-investigation-labelled-overambitious>.

<sup>500</sup> *Peruvian President Martin Vizcarra ousted by Congress on corruption charges*, (Nov. 10, 2020), <https://www.dw.com/en/peruvian-president-martin-vizcarra-ousted-by-congress-on-corruption-charges/a-55550344>.

prisoners.<sup>501</sup> The former president was previously incarcerated in the US pending an extradition request from Peru in connection with bribery allegations related to the Odebrecht scandal. Mr. Toledo allegedly received \$20 million in bribes during his presidency. He is currently under house arrest awaiting his extradition proceedings.

After the family home of Nadine Heredia, wife of former president Ollanta Humala Tasso (2011-2016), was raided last year, in March 2020, Peru's prosecutors demanded a three-year preventative prison sentence for Ms. Heredia for her involvement in the Odebrecht scandal.<sup>502</sup> As we discussed in our 2019 FCPA/Anti-Corruption Year in Review, Ms. Heredia allegedly steered a construction contract related to the Gasoducto Sur Peruano pipeline project to Odebrecht in return for a \$3 million contribution to her husband's presidential campaign. On September 18, 2020, Ms. Heredia was given a sentence of 36-month house arrest.

Former president, Pedro Pablo Kuczynski (2016-2018), remains under house arrest while prosecutors continue investigating alleged bribes received by Mr. Kuczynski in order to favor construction contracts with Odebrecht.<sup>503</sup>

In April 2020, Keiko Fujimori, the daughter of former president Alberto Fujimori, was released from prison after a successful appeal to Peru's Supreme Court.<sup>504</sup> Ms. Fujimori was first condemned to preventive detention in November 2018 and released after 13 months, but after only two months was ordered to return to prison for another 15 months.<sup>505</sup> Her most recent release from prison on a \$20,000 bail was connected to the risk of a COVID-19 outbreak in prison. As discussed in our [2019 FCPA/Anti-Corruption Year in Review](#), Ms. Fujimori allegedly received illegal campaign contributions totaling \$1.2 million from Odebrecht for her unsuccessful 2011 presidential campaign.

Finally, on the slate of Peruvian political figures facing corruption allegations, former prime minister Yehude Simon Munaro was arrested in February 2020 for his involvement in the Odebrecht scandal.<sup>506</sup> In 2006, Mr. Munaro allegedly received \$300,000 from Odebrecht in order to support his re-election campaign as governor of Lambayeque in return for advantages related to the Tránsito Olmos construction work. On June 23, 2020, the National Superior Court of Peru imposed a sentence of 36-month house arrest against Mr. Munaro.

On October 6, 2020, the Peruvian Attorney General announced it had entered into a civil settlement over bribery allegations with Odebrecht pursuant to which the company agreed to pay \$180 million.<sup>507</sup> The original agreement was reached

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<sup>501</sup> *US judge orders release of Peru ex-president on bail due to coronavirus outbreak*, (Mar. 20, 2020), <https://www.reuters.com/article/us-peru-corruption-toledo-idUSKBN21703W>.

<sup>502</sup> <https://www.icij.org/investigations/bribery-division/perus-former-first-lady-faces-jail-over-odebrecht-corruption/>

<sup>503</sup> Marco Aquino, *Peru's presidential lineup: graft probes, suicide and impeachment*, REUTERS (Nov. 15, 2020), <https://uk.reuters.com/article/us-peru-politics-presidents-factbox/perus-presidential-lineup-graft-probes-suicide-and-impeachment-idUSKBN27VOM1>

<sup>504</sup> <https://www.reuters.com/article/us-peru-corruption-idUSKBN22C3YQ>

<sup>505</sup> *Id.*

<sup>506</sup> *Former Peru PM arrested in Odebrecht investigation* <https://globalinvestigationsreview.com/former-peru-pm-arrested-in-odebrecht-investigation>

<sup>507</sup> Sam Fry, *Odebrecht signs new agreement to pay Peruvian bribery settlement*, (Oct. 7, 2020), <https://globalinvestigationsreview.com/odebrecht-signs-new-agreement-pay-peruvian-bribery-settlement>.

between Odebrecht and the Peruvian authorities in September 2018. The company has already paid \$22 million and will be paying the remainder of the money by providing a percentage of the income of Odebrecht's subsidiary in Peru, according to the recent agreement. According to the original agreement, Odebrecht paid bribes in return for six construction contracts, four of which were awarded during the presidency of Mr. Toledo (2001-2006) and Mr. García (2006-2011).<sup>508</sup>

#### 4. Mexico

Mexican authorities, having been criticized for little or no enforcement,<sup>509</sup> have launched several new investigations in 2020. Following a settlement between the US, Brazilian authorities and the Swiss commodities trading company Vitol Inc. (Vitol) in relation to corruption allegations, a new investigation was initiated by Mexican prosecutors in connection with the same alleged misconduct.<sup>510</sup> The company allegedly made payments to government officials at state-owned energy companies in Mexico, Ecuador and Brazil in order to secure oil contracts and obtain competitive advantages. As part of the settlement with the US DOJ and the Brazilian authorities, the company agreed to pay \$135 million to resolve the matter.<sup>511</sup>

In a politically sensitive move, in May 2020, the Mexican authorities launched an investigation into medical supply contracts worth \$640 million that were awarded by the former government between 2013 and 2018.<sup>512</sup> The contracts were awarded to Baxter International and Plasti-Esteril. The latter was allegedly founded by former president Enrique Peña Nieto's family in 1991. The investigation continues.

Finally, in March 2020, the Mexican government requested the extradition from Spain of Emilio Lozoya, the former chief executive of Mexico's state-owned oil company Pemex.<sup>513</sup> On July 6, 2020, Spain's National Administrative Tribunal granted Mexico's request and approved Mr. Lozoya's extradition.<sup>514</sup> The request is linked to the Odebrecht scandal. Mexican Prosecutors are investigating Mr. Lozoya for bribery payments of \$10 million received from Odebrecht.<sup>515</sup> In connection with the investigation into Pemex, the Mexican attorney general's office is also investigating the former president Enrique Peña Nieto in respect to alleged corruption.<sup>516</sup> At the same time, the Mexican Supreme Court has approved the current president's initiative to hold a referendum on whether five former presidents should be

<sup>508</sup> Marco Aquino, *Odebrecht Peru agrees to plea deal with Peruvian authorities over bribery scandal*, (Dec. 8, 2018), <https://www.reuters.com/article/us-peru-odebrecht-exclusive-idUSKBN1070U4>.

<sup>509</sup> See Transparency International, *Exporting Corruption Progress report 2020: Assessing enforcement of the OECD Anti-Bribery Convention* (Oct. 20, 2020), <https://www.transparency.org/en/publications/exporting-corruption-2020#>.

<sup>510</sup> Sam Fry, *Mexico investigating Vitol following US settlement*, GLOBAL INVESTIGATIONS REV. (Dec. 10, 2020), <https://globalinvestigationsreview.com/bribery/gir-interactive-mexico-investigating-vitol-following-us-settlement>.

<sup>511</sup> DOJ, *Vitol Inc. Agrees to Pay over \$135 Million to Resolve Foreign Bribery Case* (Dec. 3, 2020), <https://www.justice.gov/opa/pr/vitol-inc-agrees-pay-over-135-million-resolve-foreign-bribery-case>. See *supra* Section IV.B.4.

<sup>512</sup> *Mexico orders probe into alleged graft linked to ex-president*, REUTERS (May 20, 2020), <https://uk.reuters.com/article/mexico-politics-corruption/mexico-orders-probe-into-alleged-graft-linked-to-ex-president-idUSL1N2D21JE>

<sup>513</sup> Michael Griffiths, *Spain approves extradition of ex-Pemex head to Mexico*, GLOBAL INVESTIGATIONS REV. (July 7, 2020), <https://globalinvestigationsreview.com/spain-approves-extradition-of-ex-pemex-head-mexico>.

<sup>514</sup> *Id.*

<sup>515</sup> *Former Mexico President Pena Nieto investigated in corruption probe: report* <https://www.reuters.com/article/us-mexico-corruption-idUSKBN20E01N>

<sup>516</sup> *Id.*

investigated on corruption charges.<sup>517</sup> Mexico’s president has proposed to hold the referendum during the summer 2021 midterm elections.

## 5. Other Latin American Countries

Latin America witnessed another former president being convicted of corruption charges. In April 2020, Ecuador’s former president, Rafael Correa, was sentenced in absentia to eight years in prison for corruption during his presidential tenure from 2007-2017. Mr. Correa was among 19 other individuals who allegedly received \$7.5 million to support Mr. Correa’s presidential campaigns in return for being awarded public contracts between 2012-2016.<sup>518</sup> Mr. Correa, who currently resides in Belgium, is further banned from holding any political position for the next 25 years. In September 2020, the National Court of Justice rejected Mr. Correa’s appeal upholding the eight-year prison sentence.<sup>519</sup> Amongst other political figures convicted was former vice president, Jorge Glas, who has been serving a six-year prison sentence in a separate case for accepting payments from Odebrecht.

Like Mexican authorities, Ecuador’s office of the Attorney General announced the opening of its investigation into Vitol in connection with evidence revealed after the US and Brazil settlement with Vitol.

## F. Africa

### 1. South Africa

Further, to South African President Cyril Ramaphosa’s vows to clean up corruption in the country discussed further in our [2019 FCPA/Anti-Corruption Year in Review](#), South Africa has changed its rules controlling “state capture inquiries” (that is, inquiries into systematic public sector corruption).<sup>520</sup> The July 28, 2020 change of the rules now allows the Judicial Commission of Inquiry into Allegations of State Capture—or the Zondo Commission as it is led by Deputy Chief Justice Raymond Zondo—to share evidence with the National Prosecuting Authority of South Africa (NPA).<sup>521</sup> The rule change lets the Zondo Commission share with the NPA most information presented in hearings before the commission.<sup>522</sup> Before the change, the NPA was privy to only the final inquiry report and publicly available witness testimony.<sup>523</sup> While the expansion of information available to the NPA is a positive change, not all information presented in inquiry hearings will be admissible in Court by the NPA as inquiry witnesses do not have the right against self-incrimination when testifying in front of the Commission, and some of the Zondo Commission’s

<sup>517</sup> *Mexico’s Supreme Court approves referendum on presidential trials*, (Oct. 1, 2020), <https://www.ft.com/content/977ca3e3-f343-4597-9df3-03e3cfd6a7a>.

<sup>518</sup> Alexandra Valecia, *Ecuador’s former president found guilty of corruption*, REUTERS (Apr. 7, 2020), <https://uk.reuters.com/article/uk-politics-ecuador-idUKKBN21P36D>.

<sup>519</sup> *Ecuador ratifies sentence against Correa, blocking vice presidential bid*, REUTERS (Sept. 8, 2020), <https://www.reuters.com/article/us-ecuador-justice-correa-idUSKBN25Z01F>.

<sup>520</sup> Sam Fry, *South Africa’s new evidence-sharing rule to aid corruption investigations*, GLOBAL INVESTIGATIONS REV. (Aug. 6, 2020), <https://globalinvestigationsreview.com/south-africas-new-evidence-sharing-rule-aid-corruption-investigations>.

<sup>521</sup> *Id.*

<sup>522</sup> *Id.*

<sup>523</sup> *Id.*

evidentiary standards are lower than those of South African courts.<sup>524</sup> The amended Zondo Commission regulations should also allow foreign authorities, such as the US DOJ and the UK SFO, to access Commission evidence through mutual legal assistance treaty requests to the NPA.

As discussed in our [2019 FCPA/Anti-Corruption Year in Review](#), the criminal proceeding against former South African President Jacob Zuma for alleged corruption related to South Africa's arms deal with French arms company Thales remains ongoing. The charges of corruption, racketeering, fraud and tax evasion, initially brought against Zuma and Thales over a decade ago and reinstated in March 2018, have been mired in procedural wrangling. While the trial was scheduled initially for April 2020, the case still has not gone to trial. In fact, a South African court has postponed the trial until it considers Thales' application to drop the racketeering charges the company is facing.<sup>525</sup> The next hearing in the proceedings is scheduled for February 23, 2021 in front of the Pietermaritzburg High Court.

Along with former President Zuma's corruption trial, South Africa took another step forward to combat entrenched corruption when a top African National Congress (ANC) official was charged on November 13, 2020 with 21 counts that include corruption, fraud, and money laundering.<sup>526</sup> The charges against Ace Magashule, ANC's secretary general, revolve around a 2014 government contract worth nearly \$14.5 million to survey low-income homes built with asbestos.<sup>527</sup> Allegedly, the companies that won the contract outsourced work to slash costs and then passed its savings on to accounts linked to ANC affiliates.<sup>528</sup> In one instance, 13 individuals and 5 companies are alleged to have misappropriated almost \$14 million in public funds.<sup>529</sup> Yet other allegations facing Mr. Magashule involve amounts lower than \$3,500.<sup>530</sup> Mr. Magashule is the second highest-ranking ANC official to face corruption charges.<sup>531</sup>

Finally, it was reported on August 10, 2020 that South Africa's Special Investigating Unit is seeking to recover 400 million rand (\$23 million) from German software firm SAP in connections with contracts from 2015 and 2016 that the software giant entered into with the South African Department of Water and Sanitation.<sup>532</sup> South African investigators claim that the contracts should be voided because they are not in line with government regulations.

## 2. Other Developments in Africa

In addition to South Africa's continued efforts to fight corruption, some

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<sup>524</sup> *Id.*

<sup>525</sup> Derek Alberts, *South African Court Postpones Hearing of Jacob Zuma's Corruption Trial*, Bloomberg (Dec. 8, 2020), <https://www.bloomberg.com/news/articles/2020-12-08/south-african-court-postpones-hearing-of-zuma-corruption-trial>.

<sup>526</sup> Monica Mark, *Top A.N.C. Official Charged With Corruption in South Africa*, (Nov. 13, 2020), <https://www.nytimes.com/2020/11/13/world/africa/anc-corruption-south-africa.html>.

<sup>527</sup> *Id.*

<sup>528</sup> *Id.*

<sup>529</sup> *Id.*

<sup>530</sup> *Id.*

<sup>531</sup> *Id.*

<sup>532</sup> James Thomas, *South Africa seeks \$23 million from German software company SAP over "unlawful" contracts*, (Aug. 10, 2020), <https://globalinvestigationsreview.com/fraud/south-africa-seeks-23-million-german-software-company-sap-over-unlawful-contracts>.

other African countries have also stepped up anti-corruption efforts. Nigeria's Economic and Financial Crimes Commission (EFCC) has been investigating Chinese construction company China Zhonghau Nigeria Ltd. in connection with bloated construction contracts awarded to the company by Nigeria's Zamfara state government between 2012 and 2019.<sup>533</sup> On May 11, 2020, the EFCC arrested two Chinese nationals who allegedly offered EFCC officials more than \$250,000 in an attempt to influence the investigation into China Zhonghau. On top of the EFCC's investigation into China Zhonghau's African activities, the African Development Bank has barred the company from bidding on contracts funded by the bank until mid-October 2021 due to fraudulent bidding practices.<sup>534</sup>

While EFCC is taking actions to fight corruption in Nigeria, the agency has had its own issues in 2020. Specifically, the agency's acting chairman, Ibrahim Magu, was arrested on July 6, 2020 by Nigerian authorities for allegedly failing to properly account for assets the EFCC recovered from 2015 to 2020.<sup>535</sup> As part of the continuing investigation into Magu's alleged wrongdoing, Nigeria has suspended 12 EFCC directors.<sup>536</sup> This development has reportedly sparked concerns from international commentators over Nigeria's commitment to combatting corruption.<sup>537</sup>

As set out in other sections of this Year in Review, a number of cases involving African countries are being pursued by other overseas agencies, including Glencore and related parties currently under investigation by the United Kingdom.

## G. Canada

As discussed in our [2019 FCPA/Anti-Corruption Year in Review](#), former SNC-Lavalin executive, Sami Bebawi, was found guilty by a Quebec jury of five charges, including fraud, corruption of foreign officials, and money laundering, for his role in a Libyan bribery scheme which focused on several major infrastructure projects and dealings with Saadi Gadhafi, a son of the late Libyan dictator Moammar Gadhafi.<sup>538</sup> Bebawi was sentenced in January 2020 to eight and a half years in prison.<sup>539</sup> Along with the prison sentence, Bebawi was also fined \$24.6 million in place of additional criminal proceedings after allegedly receiving \$26 million in kickbacks connected to the bribes.<sup>540</sup> Bebawi was given six months to pay the fine.<sup>541</sup> If he fails to pay on time, Bebawi faces another 10 years in prison.<sup>542</sup> A Quebec Superior Court judge also seized over \$4 million of Bebawi's assets in September 2020, with just over \$1 million being forfeited in lieu of

<sup>533</sup> Will Barbieri, *Nigeria arrests Chinese nationals for alleged bribery*, GLOBAL INVESTIGATIONS REV. (May 13, 2020), <https://globalinvestigationsreview.com/nigeria-arrests-chinese-nationals-alleged-bribery>.

<sup>534</sup> African Development Bank Press Release, *African Development Bank debars China Zhonghao Nigeria Limited for 18 months for fraudulent practices*, AFDB (Apr. 20, 2020), <https://www.afdb.org/en/news-and-events/press-releases/african-development-bank-debars-china-zhonghao-nigeria-limited-18-months-fraudulent-practices-35287>.

<sup>535</sup> Will Barbieri, *Nigeria removes anti-corruption agency directors*, GLOBAL INVESTIGATIONS REV. (Jul. 17, 2020), <https://globalinvestigationsreview.com/nigeria-removes-anti-corruption-agency-directors>. See *supra* Section VII.

<sup>536</sup> *Id.*

<sup>537</sup> *Id.*

<sup>538</sup> Sean Boynton, *Over \$4M in assets seized from convicted former SNC-Lavalin exec Sami Bebawi*, (Sep. 9, 2020), <https://globalnews.ca/news/7325460/snc-lavalin-sami-bebawi-assets/>.

<sup>539</sup> *Id.*

<sup>540</sup> *Id.*

<sup>541</sup> *Id.*

<sup>542</sup> *Id.*

additional properties being seized.<sup>543</sup> Bebawi is appealing his conviction.<sup>544</sup> Bebawi was the last former SNC-Lavalin employee charged in the scandal that saw the company agree to pay \$280 million in fines and accept three-years' probation from bidding on projects.<sup>545</sup>

Finally, on November 12, 2020, the Royal Canadian Mounted Police (RCMP) announced that it had charged a former executive at Toronto-based technology company IMEX Systems—Damodar Arapakota—for allegedly bribing a public official in Botswana. The agency, which apparently opened an investigation into Arapakota in 2018 after the company self-reported the matter alleges that the former executive “provided financial benefit for a Botswanan public official and his family” but did not detail the benefit he sought in return.<sup>546</sup>

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<sup>543</sup> *Id.*

<sup>544</sup> *Id.*

<sup>545</sup> *Id.*

<sup>546</sup> Sam Fry, *Canada charges former IMEX Systems executive with foreign bribery offence*, GLOBAL INVESTIGATIONS REV. (Nov. 13, 2020), <https://globalinvestigationsreview.com/canada-charges-former-imex-systems-executive-foreign-bribery-offence>.

## IX. Conclusion

The *tour d'horizon* in this Review shows how interconnected the world has become. While some of the cases discussed in this 2020 report are isolated incidents, many US cases today have foreign counterparts. Some, like Airbus, are susceptible to coordinated multijurisdictional resolution, while others are sequential, touching a variety of actors in a corruption scheme, from the companies to their personnel and third parties, and even public officials. Enforcement by one jurisdiction can have repercussions for years in other jurisdictions, as the Odebrecht case shows in particular. While the US continues to lead in enforcement efforts around the world, it is increasingly willing to defer to other jurisdictions with a stronger interest in the matter, as the Airbus case demonstrates. Operation Car Wash in Brazil also shows the multijurisdictional ramifications enforcement activity can produce. While 2020 may not have been a dramatic year in anti-corruption policy in the US or elsewhere, it was a year of continued developments in both enforcement and preventive measures, notwithstanding the effects of a worldwide pandemic. The pandemic has, however, likely affected the enforcement pipeline in the short to medium term, given the difficulties of conducting remote investigations. We expect 2021 to reveal those effects more clearly and also potentially to bring some new policy developments both domestically and internationally.

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